



Mental Capacity Act – Deprivation of Liberty Safeguards policy

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Policy, Performance and Customer Care Team
Adult Social Care | People Directorate

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Policy Summary

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1. Introduction

This policy, practice and procedures (PPP) document outlines the key features of the legislation governing Deprivation of Liberty Safeguards (DoLS). It describes the circumstances and processes that must be undertaken to implement a request to deprive someone of their liberty, and explains how authorisation is granted. It is not intended as a stand-alone document but should be read alongside related policy, legislation, good practice guidance.

2. The Mental Capacity Act

The Mental Capacity Act 2005 was designed to protect and empower people whose illness or injury impedes their ability to make decisions about their own care and treatment.

Those subject to the Mental Capacity Act 2005 may have conditions of illness such as (this list is not exhaustive):

- Dementia
- An acquired brain injury
- A mental health condition
- Suffered a stroke
- Severe learning difficulties

The Act applies to those aged 16 and over in England and Wales.

It is governed by five basic principles, enforceable in law. These say that:

- A person must be assumed to have capacity, unless an assessment has taken place to decide otherwise. This means everyone has the right to make his or her own decisions.
- A person must not be treated as unable to make a decision unless all practicable steps have been taken to help them do so without success. This means that individuals may require help to understand or communicate a decision. This might include, for example, providing the person with information in a format that is easier for them to understand or gaining assistance from an Independent Mental Capacity Advocate (See Section 5.6).
- Decisions deemed 'unwise' by those caring for the person are a choice. Where someone has the capacity to make such a decision they have the right to make such choices. 'Unwise' decisions should not be grounds for assessment of lack of capacity.
- Judgments of lack of capacity, made following a capacity assessment, can be made regarding one or more areas of decision making. For example, someone may lack the capacity to make decisions about their financial arrangements but may have the capacity to make decisions about their day-to-day activities. Following a capacity assessment any decisions made on someone's behalf must be in their best interest.
- Care must be taken to protect a person's basic rights and freedoms, particularly if they lack capacity to make their own decisions. This requires treatment and care to be delivered in the least restrictive ways possible.

The Act covers all aspects of decision-making including those relating to someone's property, financial affairs; their healthcare treatment; where they live; as well as everyday decisions about personal care (for example, what to eat, what to wear, and what activities to undertake.)

The Act also provides for those who may be aware of a future lack of mental capacity, for example, where decision-making ability may deteriorate, such as with a degenerative disease. Here, a trusted person can be appointed to make a decision on someone's behalf at the point at which capacity is assessed to have been lost.

See also: [Mental Capacity Act – Advance Decisions policy](#)

2.1 How 'mental capacity' is determined:

The MCA sets out a two-stage test of capacity:-

- a. Does the individual concerned have an impairment of, or a disturbance in the functioning of, their mind or brain, whether as a result of a condition, illness, or external factors such as alcohol or drug use?
- b. Does the impairment or disturbance mean the individual is unable to make a specific decision when they need to? Individuals can lack capacity to make some decisions but have capacity to make others, so it is vital to consider whether the individual lacks capacity to make the specific decision.

A person is unable to make a decision if they cannot:

- i. understand the information relevant to the decision
or
- ii. retain that information for long enough to make the decision
or
- iii. use or weigh up that information as part of the process of making the decision
or
- iv. Communicate that decision

If they are not able to do any of the three things above, or communicate their decision (by talking, using sign language, or through any other means), the MCA says they will be treated as unable to make the specific decision in question.

The MCA takes into account that capacity can fluctuate with time – an individual may lack capacity at one point in time, but may be able to make the same decision at a later point in time. Where appropriate, individuals should be allowed the time to make a decision themselves.

3. What is a Deprivation of Liberty Safeguard?

The Deprivation of Liberty Safeguards (DoLS) amendment to the Mental Capacity Act was made in 2007 and came into effect in 2009. They provide a legal framework, and [right of appeal](#), to ensure that adults lacking mental capacity are properly represented and not deprived of their liberty unless it is in their best interest.

Everyone working in a health and social care setting may have to make decisions for people who lack capacity. It is their duty to know and understand the legislation and practice related to the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards (DoLS).

The amendments were a response to a European Court of Human Rights judgement in 2004 regarding the case (HL v UK) of an autistic man with learning difficulties who was unlawfully deprived of his liberty.

[Bournewood Case](#)

The Safeguards ensure that arbitrary decisions are not being made about a person's care and treatment because of their lack of capacity; that they are not subject to unnecessary supervision and control; that the person's wishes and interests are advocated in the most appropriate way; that all other options are explored and the least restrictive option is applied; and that there is a right of appeal against any decisions made.

A deprivation of liberty is determined through a rigorous process – set out within this policy – within which a Supervisory Body (here, Halton Borough Council) has to authorise any deprivation of liberty arrangements for an individual within a Managing Authority (residential care home and nursing homes, hospital*).

Care and support given in others settings (e.g. domiciliary care given in person's own home, supported living settings, extra care housing or shared lives scheme) operates under a separate system of authorisation for deprivations of liberty. This involves application to the Court of Protection.

See also: [Court of Protection](#)

*See Section 3.2 regarding 2017 case law precedence.

Restrictions placed upon a person as a result of an unauthorised deprivation of liberty are a breach of a person's human rights. See also: [Human Rights Act 1998](#)

APPENDIX 4 describes practical steps to reduce the risk of a deprivation of liberty occurring.

DoLS authorisation relates solely to the deprivation of liberty and not to any other element of care and treatment which might require separate consent.

The [DoLS Code of Practice](#) sets out the legal framework within which care and treatment might be legitimately provided.

See also [MCA Code of Practice](#).

Where someone has a DoLS authorisation in force they are additionally subject to the wider provisions of the Mental Capacity Act (MCA) 2005.

3.1 Who do they apply to?

The DoLS arrangements apply to those over 18 years of age in England and Wales who:

- Have an impairment of, or a disturbance in the functioning of, the mind or brain (for example, dementia, or an acquired brain injury).
- Lack the capacity to give consent to the arrangements made for their care or treatment.
- Such care is deemed to be necessary and in their best interest to protect them from harm.

In respect of the decision making capacity of children up to the age of 18 years the [Children's Act 1989 – Part One, Section Three](#) defines the role of 'Parental Responsibility' in relation to the "rights, duties, powers, responsibilities and authority which by law a parent has in relation to a child". Where no parental figure is identified a court order can be sought for a 'Corporate Parent' role undertaken by the Local Authority.

While parental responsibility gives decision-making rights it does not deter from the child's rights to liberty under Article 5 of the [Human Rights Act](#).

In the case of medical decisions children (under the age of 16) may be able to give his or her own consent to treatment under a ruling of a [Gillick Competence](#).

Children under 18 years of age may be deprived of the liberty in certain circumstances. A deprivation of liberty will be lawful under particular areas of statute:

- The Children's Act 1989 – Section 25 – covering provisions for the placement of looked-after children in secure accommodation;
- Detention under the Mental Health Act 1983
- Remand under provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; or
- Custodial sentencing under the Powers of Criminal Courts (Sentencing) Act 2000.

Other instances may apply and details of case law precedence should be sought through contact with Legal Services.

3.2 When do they apply?

Following the Supreme Court judgement in 2014 ([“P v Cheshire West and Chester Council and another”](#) and [“P and Q v Surrey County Council”](#)) the definition of what constitutes a deprivation of liberty has been widened and clarified, and an ‘**acid test**’ applies to whether a DoLS assessment needs to be initiated. This asks:

- a. Is the person free to leave? i.e. if the person were to try to walk out, or did walk out, would staff attempt to stop or return them?

And;

- b. Are they also under continuous supervision and control? Do staff know where they are at all times, do they have bed sensors, door sensors, lap straps, etc.?

See also: <https://www.scie.org.uk/mca/dols/at-a-glance>

This ruling broadened the threshold for DoLS authorisation to be made and, as such, resulted in a marked increase in applications to the Supervisory Body (Halton Borough Council).

More recently the case [Ferriera v HM Senior Coroner for Inner South London \(2017\)](#) set a potential precedent regarding the application of DoLS in acute medical settings where urgent and intensive ‘life-saving treatment’ is required.

Here the Court of Appeal found that: *“There is in general no need in the case of physical illness for a person of unsound mind to have the benefit of safeguards against the deprivation of liberty where the treatment is given in good faith and is materially the same treatment as would be given to a person of sound mind with the same physical illness.”*

This has implications for the Local Authority as Supervisory Body in DoLS with the potential of relieving pressure to assess where a patient is in an acute healthcare setting and would receive the same treatment as a person of sound mind.

Ongoing changes to the DoLS landscape are emerging and the Government’s response to this is explored in Section 18 regarding Liberty protection Safeguards and impending legislative change.

The Local Authority (Halton Borough Council) has a duty to ensure that DoLS are **necessary to prevent harm**; are **in the person’s best interest**, and are **a proportionate response to the perceived risk** of not making the arrangements.

Only where a deprivation cannot be avoided should a request for authorisation be made to the Supervisory Body (Halton Borough Council). A DoLS is enforceable, following authorisation from the Supervisory Body (Halton Borough Council), based on a lack of capacity to make informed decisions; where there is a perceived risk of harm to the relevant person making their own decisions; where it is a proportionate response to the perceived risk; where all other options have been explored; and where it is in the relevant person’s best interest.

The flowchart – APPENDIX 1 – represents the *usual* process for managing a DoLS. There may be exceptions to this pathway, which will be guided by the needs of the situation and under the direction of the Adult Safeguarding Unit.

All DoLS authorisation requests (including Urgent Authorisations and requests for an extension to an urgent authorisation) coming into Halton Borough Council should be referred to the Adult Safeguarding Unit. Here they will be screened and where appropriate will be progressed.

Requests must be completed on the appropriate forms in the CareFirst6 data management system – See APPENDIX 3. Forms include mandatory fields and applications cannot be progressed without completion of these.

4. Safeguarding adults

Recognising and safeguarding the welfare, wellbeing, dignity, and liberty of those at risk is everyone's business and responsibility.

In an emergency situation, where someone is found to be in immediate risk of harm, always dial 999.

The [Care Act 2014](#) sets out specific supervisory requirements of a local authority in relation to Adult Safeguarding. Amongst other duties, Halton Borough Council is required to lead a multi-agency Adult Safeguarding Board, and conduct safeguarding enquiries and reviews.

Safeguarding includes ensuring that someone is not deprived of their liberty without just cause, relevant investigation of the individual situation and appropriate submission of documentation.

Halton Borough Council has a well-established multi-agency Adult Safeguarding Board with representation and core membership from required bodies. In addition Halton Borough Council has established a 'Safeguarding Unit' to ensure that responses to adult at risk situations are prompt and co-ordinated. The Unit represents a 'Single Point of Contact' (SPOC) for management of the DoLS process and collation of relevant records.

Halton Borough Council's Adult Safeguarding Unit can be contacted on
Telephone numbers: 0151 907 8306.
Email: IASU@halton.gcsx.gov.uk

See also: Safeguarding Adults in Halton Interagency Policy

See also: [Halton Safeguarding Adults Board](#)

5. Roles and Responsibilities

DoLS are a process which involves a wide range of organisations and people. This assures a fair and considered approach is taken and safeguards against wrongful and unlawful deprivation of an individual's liberty.

5.1 Supervisory Body

For the purposes of this policy the Supervisory Body is Halton Borough Council, as the Local Authority overseeing health and social care arrangements across the borough.

The Supervisory Body will arrange an assessment to establish whether the criteria for deprivation of liberty have been met.

Where '**Ordinary Residence**' of the subject of the DoLS is outside of the borough (for example, they are currently an in-patient in Halton Hospital but their home address is in Warrington) the Supervisory Body responsible for the assessment may not be Halton Borough Council. In such instances guidance should be sought from Legal Services.

The Supervisory Body is responsible for:

- Overseeing the workings of the DoLS to protect adult residents within Halton and ensure that any deprivation of liberty is lawful and applied in the least restrictive manner for the minimum period of time.
- Completing assessments within the applicable authorisation period, dependant on whether a request is made as Standard or Urgent.
- Ensuring that sufficient resource is in place to carry out DoLS assessments, including ensuring appropriate numbers of Best Interest Assessors are trained and experienced; Independent Mental Capacity Advocate (IMCA) services are commissioned according to need; and a register of Section 12 Doctors is kept and maintained.
- Ensuring Authorised Signatories are available to approve assessments and grant or refuse applications.
Within Halton Borough Council nominated Divisional Managers within the Adult Social Care team are designated as Authorised Signatories.
- Keeping accurate records of all DoLS requests, assessments, decisions and review dates (this duty is delegated to the Safeguarding Unit, however submission of data should be made by those officers involved in each individual case).
- Collating and reporting statistical data to the Halton Adult Safeguarding Board; against relevant Local Authority statutory returns; and where requested by senior management and/or Elected Members for relevant Policy and Performance Boards.

Once it receives a request for authorisation the Supervisory Body must arrange for an assessment to establish whether the subject of the DoL meets the **qualifying requirements**. These include:

1. **Best Interests** – This establishes whether there is a deprivation of liberty and whether this is:
 - in fact in the person's best interests
 - needed to keep the person safe from harm
 - a reasonable response to the likelihood of the person suffering harm.
2. **Age** – This confirms that the person is aged 18 years or over.
3. **No refusals** – This determines whether the person has made advance decisions about their treatment, and whether authorization would conflict with any decisions made by, for example, a [Court Appointed Deputy](#) or someone with [Lasting Power of Attorney](#) for health and welfare.
4. **Mental capacity** – This assessment establishes whether the subject of the DoLS process lacks capacity to decide for themselves about the restrictions which are proposed so they can receive the necessary care and treatment.
5. **Mental health** – This decides whether the person is suffering from a mental disorder, as defined by the [Mental Health Act 1983](#), and amended by the [2007 Mental Health Act](#).
Mental disorder is the term used in law to describe a set of mental health conditions, including dementia.
6. **Eligibility** – This determines whether the person would meet the requirements for detention under the [Mental Health Act 1983](#) (as opposed to imposing a DoLS)

Requirements 1-3 are conducted by an appointed Best Interests Assessor on behalf of the Supervisory Body.

Requirement 4 – This will normally be conducted by the Best Interests Assessor. It should also be conducted by the Section 12 Doctor, who will submit assessment documentation to the relevant case worker.

Requirements 5-6 – This will be completed by the Section 12 Doctor.

An authorisation for a deprivation of liberty cannot be granted unless all of these requirements are met.

All completed assessment documentation is saved to forms on the CareFirst6 case management system or the Electronic Social Care Records (ESCR) system. This will normally be the responsibility of the BIA assigned to the case.

5.2 Managing Authority

This is the person or organisation with management responsibility for the health and social care setting within which the subject of the DoLS is, or may become, deprived of their liberty.

Where a setting is regulated by the Care Quality Commission the responsible person is the 'Registered Manager.'

The Managing Authority is responsible for:

- Ensuring a policy and procedure is in place, and communicated, in relation to DoLS.
- Consulting with the family and/or carer(s) of the subject of the DoL prior to a request for authorisation being made.
- Considering the needs of the individual who may have mental capacity issues and apply for the appropriate assessments. Standard Authorisation should be applied for in most cases. Only where unforeseen circumstances occur should Urgent Authorisation be applied for; and where all six qualifying requirements seem likely to be met.
- Allowing the representative of the Supervisory Body (the Best Interest Assessor) access to case records, care plans and to members of staff for consultations. Internal policies must reflect this, particularly in relation to data protection and information governance requirements.
- Supporting a Relevant Person's Representative (RPR) or an Independent Mental Capacity Advocate (IMCA) in maintaining contact with the subject of a DoL authorisation. They must also inform such persons of their right to complaints (formal/informal) and the procedure for this, as well as their right to a Court of Protection application to vary or terminate the authorisation, and the right to an Ombudsman. Managing Authorities must inform the Supervisory Body if the RPR does not meet their obligation to maintain contact with the subject of the DoLS.
- Maintaining close contact with Halton Borough Council's Safeguarding Unit to ensure that any application for extension, or appropriate termination, of a DoL arrangement is made as soon as possible.
- Taking all relevant steps towards ensuring that the subject of the DoL understands the effects of the authorisation and their right to challenge it, request a review, or instruct in IMCA.
- Reviewing arrangements:
 - To avoid potential or actual DoL if authorisation fails.
 - For change in the subject's circumstances.

- If one or more of the original qualifying statements are no longer met.
- If the subject's change in circumstances is temporary (up to 28 days), such as a detention under the Mental Health Act 1983 or if the subject of the DoL is admitted to hospital or alternative care/treatment. Should the subject become eligible again notification should be made to the Supervisory Body. If this is not done within 28 days, the authorisation will end.
This should be done through the completion of a 'Suspension of Standard Authorisation' form.
- To apply for further authorisation at least 21 days before the first had ended.
- Where the subject of the DoL dies or changes occupancy to another Managing Authority. Where the subject dies they are responsible for ensuring a coroner is notified and for informing the Supervisory Body that the DoLS is no longer applicable – 'Notification to Coroner' form.

5.3 Best Interest Assessor

Best Interest Assessor's (BIAs) are the appointed representatives of the Supervisory Body. This individual assesses whether or not the DoL is in the subject's best interest, is necessary to prevent them coming to harm and is proportionate in accordance with the risk assessed.

The BIA must:

- Not be employed by the Managing Authority [For example, where the Supervisory Body and the Managing Authority are the same organisation (e.g. Oakmeadow, Millbrow or Madeline McKenna)] or any organisation providing a service to it.
See also: Section 8 in relation to Use of Independent BIAs
- Be a progressed professional who has undertaken additional, and recognised, BIA training.
- Refresh their BIA training every twelve months, and must not undertake assessments should a period longer than twelve months have elapsed since their training.
- Maintain their Health and Care Professions Council (HCPC) Registration and Enhanced Criminal Records Bureau Certification.
- Have access to relevant case records, needs assessments and care plans. In addition they must have access to staff for consultation purposes.
Social care records kept by Halton Borough Council should be documented on the CareFirst6 system.
- Complete, and co-ordinate completion of, the relevant assessments associated with the DoLS.

- Record (CareFirst6) the assessments made, ensuring the decisions are evidenced and validated with appropriate signatures.
- Establish whether a DoL is occurring, or is likely to occur. If it is concluded that this is not the case, then they will declare this in their assessment report, and the best interests requirement will not be met. Where however, it is clear that a DoL is, or is likely to be, taking place, then the BIA will start a full best interests assessment. This involves seeking the views of a range of people, including:
 - Anyone the person subject to the DoL has previously named as someone they want to be consulted.
 - Anyone involved in caring for the person.
 - Anyone with an interest in the person's welfare (such as family, friends, advocate).
 - Any donee or deputy who represents the person (See also: [Mental Capacity Act – Advance Decisions](#)).
- Involve the subject of the DoL in the assessment and giving them as much assistance as possible, so that they can participate in the process.
- Take the views of the mental health assessor (the Section 12 Doctor) into account in relation to how the subject of the DoL would be affected by the arrangements.
- Recommend the duration of the authorisation, as well as any specific conditions of the arrangements (for example, where specific aspects of decision making may be granted).
- Submit case details and all appropriate reports to the Divisional Managers for authorisation or refusal, and record the decision reached on the appropriate case file records (CareFirst6). Presentation involves review of documentation on the Council's social care records systems (CareFirst6 and/or the Electronic Social Care Records System).
- Take an 'active role' (as defined in the [Social Work Progression Policy](#)) in the duty rota for allocation of DoLS cases, taking on a caseload as stipulated by the Adult Safeguarding Unit.
- Aim to identify a Relevant Person's Representative (RPR) as early on into the DoLS process as possible, consulting with the subject of the DoL where possible. They will discuss this role, including the availability of IMCA support, with the identified person and recommend their appointment as part of their assessment report. Where no RPR is identified the Safeguarding Unit will make a referral to the IMCA services.
- Any other delegated responsibilities for the DoLS process as determined by the Adult Safeguarding Unit.

5.4 Divisional Managers

In Halton, the responsibility for authorising a Deprivation of Liberty is delegated to Divisional Managers (DMs) within the Adult Social Care services. These DMs act as the decision-makers for the Supervisory Body, basing their professional judgement and scrutiny of the evidence and recommendations presented to them by the BIA.

Where the BIA recommends a DoLS the DM cannot override this decision, however they can recommend further consideration of alternative action is made prior to authorisation being given. This must take place within the timescale for authorisation.

The DM may additionally add or remove recommendations for action. This would more likely be in relation to care management requirements rather than liberty restrictions.

All decisions reached must be evidence-based in order that they cannot be challenged by a court of law. This is particularly important where cases of fluctuating capacity are concerned.

See Also: [Mental Capacity Act 2005 Policy](#)

If the DM on rota is on training, off sick or otherwise unavailable, another DM will provide authorisation. The Safeguarding Unit will be kept informed, by the substitute DM, of any changes.

The DM will take part in a duty rota, negotiated between those in eligible roles. The DM who is on duty at the time that the deprivation approval or refusal needs authorising will be the signatory for the decision. They are also responsible for making decisions about extending any Urgent Authorisations, and for what duration these will last.

DMs are required to sanction the appointment of the Relevant Person's Representative (RPR) at the time a Standard Authorisation is given. Their appointment will be based on the assessment report presented by the BIA. Administrative support for this process will be made by the Adult Safeguarding Unit.

The Divisional Manager, Independent Living, is responsible for:

- Monitoring performance in relation to Authorisation timescales, highlighting problems and identifying delays in process, and providing direction on resolving such issues.
- Authorising BIA training, according to experience and capability. Through the Adult Safeguarding Unit, the DM will maintain a database of trained BIAs and monitors capacity in relation to the BIA rota.

5.5 Relevant Person's Representative (RPR)

This is an individual who remains in contact with and takes on the role of representing the Relevant Person (or subject of the DoL). The RPR may or may not be a member of the person's family, and is appointed by the Supervisory Body once a Standard Authorisation has been approved.

This person is identified by the BIA and is seen as crucial in the DoL process. They are subject to the 'best interests' principle in the same way as those professionals involved in the care of the person deprived of their liberty.

The RPR makes sure that the subject of the DoL receives support and representation that is independent both of service commissioners and providers. As part of this role they are eligible to receive access to Independent Mental Capacity Advocacy (IMCA) and should be informed how to access this service.

Where an RPR cannot be identified it may be appropriate for a BIA to recommend an IMCA. See Section 5.6.

Anyone over the age of 18 can be appointed to act as an RPR, however certain people are excluded from taking on this role:

- Anyone with a financial interest in, employed by, or providing services for, the managing authority where the subject of the DoL is receiving care and treatment.
- Anyone employed by the Supervisory Body and/or involved in the person's care.

An RPR must:

- Maintain regular contact with the person subject to the DoL.
- Represent and support that person in everything related to the DoLS.

The appointment of the RPR will be terminated if:

- The Standard Authorisation ends, and there is no new authorisation.
- The subject of the DoL objects to their appointment (if they have capacity to do so)
- A person involved in the life of the subject of the DoL (a family member, carer, or another person with a specific interest) objects to a specific appointment and a different RPR can be selected.
- The RPR is no longer willing or eligible to carry out the role.
- The Supervisory Body becomes aware that the RPR is not keeping regular contact with the person they are representing, supporting them effectively or acting in their best interest.
- The RPR dies, or the subject of the DoL dies.

Any termination of RPR appointment must be backed with written notice stating the date the arrangement ended and the reasons why (ADASS Form 8). This should be issued to:

- The RPR
- The subject of the DoL
- Other relevant person's in the subject's life (family members, carers, etc.)
- Any IMCA involved
- Those consulted with during the original BIA
- The Managing Authority

The RPR can request a review of arrangements at any time, in writing, to the Supervisory Body.

5.6 Independent Mental Capacity Advocate (IMCA)

An IMCA must be appointed if the subject of the DoL has no other RPR, or where the RPR needs additional support through the DoLS process.

Their role is to help the subject of the DoL, and/or their RPR to understand:

- The effect of the authorisation.
- What it means.
- Why it has been given.
- Why the subject meets the criteria for being deprived of their liberty.
- How long the DoL will last.
- Any conditions attached to the authorisation.
- How to trigger a review or challenge to the DoL.

The IMCA is a paid representative, whose services are commissioned and nominated by the Supervisory Body.

IMCAs must declare any vested interest in a case at the time of referral in order that their services are not appointed inappropriately. (For example, the subject of the DoL is a relative, family friend, or has some financial relationship).

Following a Standard Authorisation, if no RPR has been identified, an IMCA must be appointed to act as the RPR.

IMCA Referrals requests should be made via the Adult Safeguarding Unit. The IMCA referral will be recorded by the Adult Safeguarding Unit on the CareFirst6 system under client 'observations'.

5.7 Section 12 Doctor

The Section 12 Doctor is appointed by the Supervisory Body to conduct the Mental Health and Eligibility Assessments. Effectively this is to determine the most appropriate legislation under which to precede – the Mental Health Act or the Mental Capacity Act.

This assessment establishes whether the subject of the DoLS has a mental disorder as defined by the [Mental Health Act 1983](#), and amended by the [Mental Health Act 2007](#).

The Section 12 Doctor can also be asked to undertake the Mental Capacity Assessment, should the Supervisory Body deem this appropriate.

The assessment can only be carried out by a doctor who is:

- Approved under Section 12 of the Mental Capacity Act 1983 (including Approved Clinicians); or,
- Is a registered medical practitioner with more than three years post-registration experience in the diagnosis / treatment of mental disorders; and,
- Has completed the standard training for DoL Mental Health Assessors.

The Adult Safeguarding Unit will keep a list of eligible Section 12 Doctors and will arrange relevant reimbursement for fulfilment of their duties under DoLS.

5.8 The Adult Safeguarding Unit

The Adult Safeguarding Unit acts as the overseer of process management for the Supervisory Body.

They have delegated responsibility for:

- Screening all DoLS requests received from a Managing Authority to ensure that they have been appropriately completed and submitted.
- Referring the request to a duty BIA, in timely manner.
- Triggering all the necessary assessments to establish qualification for authorisation. This includes uploading the initial case details onto CareFirst6 and uploading the details of those submissions onto the appropriate data management system – CareFirst6/Electronic Social Care Records (ESCR).
- Ensuring that an equitable rotation of Section 12 Doctors is used for Mental Health and Eligibility Assessments, so that the services of one are not favoured over another.

- Appointing a Section 12 Doctor, in a timely manner.

The appointment of a Section 12 Doctor and the support of an RPR/IMCA are duties which can be delegated (for example, to the BIA or other qualified professional involved in the case) as required.

- Supporting the involvement of RPRs, and appointing the services of, an IMCA.
- Sourcing any other services required to aid the subjects' understanding of the process (for example, sign language services).
- Reporting any potential delays or problems to the Divisional Manager, Independent Living.
- Monitoring existing DoLS authorisations (ensuring that they are re-assessed prior to the expiry date) and instigating Supervisory Body process requirements in relation to such re-assessments.

A review activity will be triggered on the CareFirst6 system, 28-days prior to the expiry of the current DoL. In the event of the Managing Authority not requesting the review, the Adult Safeguarding Unit will be responsible for contacting the Managing Authority to request the completion of the appropriate form(s).

- Ensure that the duty Divisional Manager is informed on any request for extension of an Urgent Authorisation.
- Liaise with BIAs to set a duty rota.
- Monitoring case law in relation to DoLS and disseminating key decisions to the social work teams. (Unless significant changes take place an annual update will be circulated.)
- Co-ordinating the Best Interests Assessor Forum
- Appointing IMCAs or Paid RPR's through agreed referral routes
- Attending ADASS Northwest Mental Capacity Act Leads meetings to share good practice, learnings and to support with changes to DoLS in April 2020
- Ensuring Best Interest Assessors have a yearly legal update.

- Completing Audits of completed DoLS Assessments to ensure there is a quality assurance aspect, which can be fed back to the BIA's respective managers
- Ensuring that a DoL Authorisation (Granted or Not Granted) is copied to the appropriate people, including:
 - The Managing Authority.
 - The Relevant Person's Representative.
 - The subject of the DoLS.
 - Any Independent Mental Health Advocate involved.
 - The Adult Social Care Performance Team.
 - Any interested persons named by the Best Interest Assessor as someone they have consulted with as part of the assessment.

6. Requests for Deprivation of Liberty Safeguards

Use of Urgent and Standard Authorisation processes:-

6.1 Standard Authorisation:

These are used when it seems likely to a Managing Authority that, within the next 21 days (the period within which the Supervisory Body must grant or refuse the application), someone will be accommodated in the setting in circumstances which amount to a DoL. It should be a planned process, allowing the authorisation to be made in advance.

To make an application for authorisation please see 'Request Form – Standard and Urgent' – on CareFirst6. This form is also available from the Safeguarding Unit - for contact details see Section 4.

6.2 Urgent Authorisations:

Wherever possible applications for DoL authorisation should be made before the DoL commences. However, where a DoL unavoidably needs to commence before a Standard Authorisation can be obtained, an Urgent Authorisation can be submitted.

These are only to be used where the Managing Authority believes it is in a person's best interest to deprive them of their liberty before a Standard Authorisation referral/application can be completed, and where all six eligibility requirements are likely to be met.

Managing Authorities can grant themselves an Urgent Authorisation for up to 7 days, where all criteria are met. In exceptional circumstances the Supervisory Body can grant an extension of up to 7 further days. In such circumstances the Managing

Authority will need to make contact with the Adult Safeguarding Unit and discuss the details and nature of the requirement. Applications for such an extension will need to be made on the relevant form – ‘Request Form – Standard or Urgent’.

As an Urgent Authorisation will make a DoL lawful for only a short period of time, the Managing Authority must also make an application for a Standard Authorisation at the same time as submitting the Urgent Authorisation.

7. Conducting Assessments

The DoLS process is based on a number of assessments being carried out to ensure that the criteria for a DoL are fulfilled. This involves working across the Managing Authority, the Supervisory Body, with RPRs and/or IMCAs and with Section 12 Doctors. As such a co-ordinated approach is required and this role is primarily fulfilled by the Adult Safeguarding Unit. However the process requires commitment from all those involved to assure an appropriate outcome for the subject of the DoL.

Responsibilities of each agency involves are outlined in Section 5.

Assessments to be conducted, and reported and recorded, as part of the DoLS processes are:

7.1 Best Interest

Carried out by a qualified and capable BIA, in consideration of factors outlined on the assessment record; based on professional judgement and appraisal of the presenting situation.

7.2 Age

Any existing, official documentation which proves this can be used. If there is any doubt, the assessor can use their judgement. This assessment has to be done by a Best Interests Assessor (BIA).

DoLS do not apply to those under 18 years of age.

7.3 No Refusals

This assessment should be carried out by the BIA in conjunction with Halton Borough Council’s [‘Advance Statements and Advance Decisions - Policy, Procedure and Practice’](#). (Linked version – Nov 2013) and relates to whether any advance decisions about care have already been stated.

7.4 Mental Capacity

This assessment can be carried out by anyone who is eligible to act as a mental health assessor or BIA. A decision will be made by the Adult Safeguarding Unit as to who is best placed to conduct this assessment in each individual case.

Where possible, this should be completed by both a BIA and the Section 12 Doctor to ensure that a consensus of opinion is sought and to defensibly justify the decision made.

The [Code of Practice](#) stresses that, where possible, account should be taken of the person's particular condition(s) and their impact on decision-making. With this in mind, the assessor appointed to undertake the Mental Capacity Assessment should, where possible, have relevant knowledge and practice understanding of the particular condition(s) experienced by the subject of the DoL.

On occasion there may be a different of opinion regarding the outcome of a mental capacity assessment. Here the [MCA Code of Practice – Chapter 15](#) should be consulted.

7.5 Mental Health

This is a medical assessment to ensure that the person is detained under the correct legislative requirements. This assessment can only be carried out by a Section 12 Doctor.

7.6 Eligibility

This assessment is carried out by the Section 12 Doctor appointed to the case.

The recording of data involved in Assessments, and responsibilities for this are set out in Table 1.1 – APPENDIX 2.

8. The Use of Independent BIAs

Independent Best Interest Assessors should only be used where the Managing Authority is a service registered under the Supervisory Body. This would represent a conflict of interest where the Local Authority both runs the service and employs the BIA. For Halton this would be where the subject of the DoL is resident at Oakmeadow, Millbrow or Madeline McKenna Court.

9. Data Capture

Documentation of the DoLS process is vital. Without the relevant capture of data, reports and assessment documentation a DoL is unlawful.

Following the 2014 Supreme Court Judgement, and in anticipation of an increase in applications for DoLS, the Association of Directors of Adult Social Services (ADASS) undertook consultation to reduce the DoLS forms from 32 to 12, thereby making the process more practicable. The resulting paperwork was adopted by Halton Borough Council and has been mirrored on our client data systems.

9.1 The use of CareFirst6

The CareFirst6 client data management system is used by Halton Borough Council to capture Social Care records. Results of the DoLS process are captured on the CareFirst6 system on forms replicating the 2014 revised processes.

DoLS are a statutory arrangement and Halton Borough Council, as the Supervisory Body involved in the process, are responsible for data returns to legitimise the decisions made.

Assuring that the process is recorded accurately and timely is vital so that no one is unlawfully deprived of their liberty.

CareFirst6 records completed properly will trigger a review of the DoL; again allowing the Council to ensure that the deprivation remains lawful.

CareFirst6, as a structured database, is unable to capture support materials – such as documents scanned for records. These are captured on the Electronic Social Care Records System (ESCR).

All social work staff working within Halton Borough Council processes should receive a thorough induction on commencement of employment. This involves correct use of client data management systems and case file information recording. The Council has a statutory duty to fulfil DoLS assessment and has associated performance data measurements to achieve against the work undertaken.

10. Decision Making Processes and Actions

Within Halton Borough Council Divisional Managers have a key role to play in the DoLS process to scrutinise recommendations and make decisions. This responsibility has been designated to the Divisional Manager roles as people of 'sufficient seniority' within the Supervisory Body. Their decision will be informed by the Assessments conducted and the recommendations made therein.

“The authoriser must be satisfied that there is enough evidence that this deprivation of liberty is in the person’s best interest, and that the removal of liberty is both warranted and proportionate. The authoriser should be alert to indicators of possible poor practice in case planning or practice, and should have sufficient seniority to raise these where appropriate through operational governance frameworks, including those in hospitals and CCGs”

- [Deprivation of Liberty Safeguards: putting them into practice.](#)

In respect of granting or not granting a deprivation of liberty the DM and BIA will arrange to discuss the case once all assessment information has been collated, and within the required timescales. The BIA will submit all relevant information and case file details to the DM who will then make the a decision.

10.1 Authorisation Granted/Not Granted:

- **Authorisation Granted** (Form 5) – where a DoL is recommended, and lawful, the DM will complete a narrative to evidence scrutiny of the assessments conducted; may add or amend any ‘Conditions of the Authorisation’; and will sign-off on the appointment of an appropriately identified representative (RPR). This will completed with a status of ‘DoLS granted’.

Where an RPR is authorised the Adult Safeguarding Unit will seek the RPR’s agreement to the appointment and record the outcome.

- **Authorisation Not Granted** (Form 6) – As Authorisation Granted, but where the subject does not fit all the appropriate Assessment criteria for a DoL, restriction would be unjustified, or where restrictions being made do not represent a DoL. In these cases an authorisation cannot be granted and the DM signing-off the application would reflect this in their responses as ‘authorisation not granted’.

Where an authorisation is not granted, appropriate recommendations may be made to the Managing Authority by the BIA, or they may advise the Supervisory Body (via the Adult Safeguarding Unit) to conduct a review of practices to address the issues.

Other decision points and associated actions:

- **Urgent Authorisation Extension** – Applications, from Managing Authorities, to extend an Urgent Authorisation. These will be received by the Adult Safeguarding Unit who will make a request to the duty DM to sign-off.

Extensions may be granted where a Standard Authorisation has been requested, or an application for a Standard Authorisation has been made which is likely to be approved, and where safeguards need to continue to be in place prior to this process being completed. Extensions can be granted only for a further seven days, and only one extension may be granted.

The Adult Safeguarding Unit will maintain verbal contact with those involved (i.e. telephone conversations) to ensure action requirements are brought to their attention and timescales are met.

- **IMCA Referral** – An Independent Mental Capacity Advocate should be appointed where no RPR can be identified, or where additional support is needed. This requirement will be identified by the BIA as part of their initial review of the case. A request for an IMCA should be made by the BIA to the Adult Safeguarding Unit. The Adult Safeguarding Unit may seek approval from a duty DM to employ IMCA services.

The Adult Safeguarding Unit will keep a record of the IMCA referral on the CareFirst6 system for reporting and monitoring purposes.

- **Termination of an RPR** – Upon notification and verification of reason for a termination the Adult Safeguarding Unit will activate an authorisation request which may be signed-off by the duty DM. Reasons for termination of the role are outlined in Section 5.5.

11. Planned re-assessment and review of arrangements

A 'Standard' DoLS arrangement should last for the shortest time possible, according to the assessments made, and no more than 12 months.

In addition, a Supervisory Body can decide to carry out a review at any time, at its discretion, and a DoL can be terminated prior to the end of the formal review period.

The Managing Authority must:

- Make regular checks to see if the authorisation is still needed.
- Inform the Supervisory Body of any changes in circumstance.
- Remove the authorisation when no longer necessary.

- Provide the RPR and/or IMCA with information about the subject's care and treatment.
- Maintain contact with the Supervisory Body to discuss re-assessment dates and arrangements.

The Safeguarding Unit should be alerted following a variation to a person's status in meeting the DoLS qualifying requirements. Here, the arrangements can be discontinued with immediate effect and anyone involved in the care and treatment of the subject of the DoL must be informed of the change.

Where relevant, a formal termination of the DoL can be made (Standard Authorisation Ceased) or a notification of death can be made (Notification to Coroner).

Re-assessments:

This is where a DoL is expected to continue and a current authorisation is due to expire. Re-assessment should take place prior to the end of the current authorisation period, to ensure that the DoL is lawful and that one authorisation transitions smoothly into another – there should be no gap between authorisations if the DoL is to continue.

Planned-reassessments will be flagged as a review activity by CareFirst6, based on information loaded against the DoLS documentation.

Upon determining an 'Authorisation Granted' status an end date for the Standard Authorisation period (normally for a period no longer than 12 months) will be generated.

28-days prior to the expiry of a DoLS period the CareFirst6 system will notify the Adult Safeguarding Unit that a review activity is due to take place. This allows for the appropriate 'Standard Authorisation' period (21-days) to be adhered to.

A 'Further Authorisation Request' should be received from the Managing Authority within seven days of the re-assessment notice being flagged by CareFirst6 to the Safeguarding Unit. Should the form not be received within this period the Safeguarding Unit will prompt, via a phone call, the Managing Authority - 'Review Request Form'

Review:

A DoLS review is a formal process to ensure that the DoL is still required and remains lawful. It should be recorded as a 'Review request'.

The review can be triggered by a request from the subject of the DoL, their RPR, the Managing Authority, or a challenge made to the Court of Protection. This may be based on a change in circumstances:

- to health or best interests requirements;
- where the subject of the DoL needs to be detained under the Mental Health Act 1983 (instead of the Mental Capacity Act);
- to the extent that a condition of the authorisation may need to be amended, deleted or added;
- to the qualifying requirements given at the time of the Standard Authorisation;
- where the subject of the DoL no longer meets the age, no refusals, mental capacity, mental health or best interest requirements.

12. Temporary changes in circumstances – Suspension of Standard Authorisation

Occasionally changes may occur which mean that an 'Authorisation Granted' status may need to be suspended. In such circumstances the Managing Authority will contact the Supervisory Body to inform them of the changes and a suspension of the DoLS can be made for up to 28 days (Suspension of Standard Authorisation).

For example, where a subject is temporarily admitted to hospital, or another health or social care setting for the care and treatment. Or where capacity has changed but is likely to vary.

Where the DoLS need to recommence, within those 28 days, the Managing Authority will inform the Supervisory Body of the date this occurs. Should no notification be given within 28 days then the Authorisation will end. Once Authorisation has ended, a Managing Authority cannot lawfully deprive someone of their liberty.

Application for Suspension should be submitted to the Halton Borough Council's Adult Safeguarding Unit and will be authorised by the Principal Manager of this team.

In circumstances where capacity varies, then the Mental Health Code of Practice is clear that each case should be treated on its merits. A key issue is whether there is evidence of consistent regaining of capacity – where this is likely to be temporary; the authorisation should remain in place but be kept under on-going review, and should only be deemed to apply at those times when the person clearly lacks capacity.

The [Mental Health Act 1983: Code of Practice](#), paragraphs 13.54 and 14.22, refer to issues of fluctuating or temporary capacity.

13. Departure from the accommodation to which the DoLS authorisation applies

DoLS arrangements are not transferrable between accommodation or health and care settings. Where a change in accommodation is made, a new DoLS authorisation request must be submitted by the relevant Managing Authority. This includes planned stays, for example hospitalisation for planned care and treatment.

This applies no matter how short the change in accommodation is.

A 'Standard Authorisation' request must be submitted for all planned changes in accommodation. The request must be made within a sufficient timescale to complete the relevant assessments (ideally at least 21 days).

Where the change is unplanned an 'Urgent' request can be granted, however this should only be applicable in extreme circumstances.

In all cases the Supervisory Body must be notified of changes to accommodation, including the dates of the changes. Notification may be made as a new DoLS request, or a 'Standard Authorisation Ceased'.

As stated in Section 12, where the person intends to return to the accommodation (to which a standard authorisation applies) within 28 days, a 'Suspension of Standard Authorisation' must be completed.

14. Ordinary Residence

The Care Act 2014 provides guidance where there are disputes over which Local Authority should be the Supervisory Body for the purposes of granting a DoL authorisation.

Ordinary residence is normally determined by the geographical area the person lived immediately prior to entering the accommodation to which the DoLS applies.

In the event of a dispute the Supervisory Body receiving the DoLS request must act upon it until such time as the dispute is resolved. Where the dispute cannot be resolved then a ruling must be sought from the Secretary of State.

See also: [The Care Act – Ordinary Residence](#)

15. Deceased clients

The Managing Authority will inform the Supervisory Body of the death of a person who is a subject of a DoLS. Notification is to be submitted to the Adult Safeguarding Unit and recorded against case file data.

Additionally the notice of death will be recorded on the DoLS review activity – as review ‘abandoned’, and with reason details given in the ‘progress notes’ section. This will end the DoLS authorisation.

Copies of the ‘Notification to Coroner’ are also to be sent to:

- Any IMCA whose services have been engaged on behalf of the person who was subject to the DoL;
- The BIA involved in the case.

Where no notice of death is received immediately after death, but knowledge of the person’s death is gained, the relevant records should be requested. This request is to be made by the Supervisory Body’s representative who gains knowledge of the death; for example a Social Worker.

16. The Court of Protection

The [Court of Protection](#) was set up under the Mental Capacity Act 2005. It is a statutory institution which has jurisdiction over the property, financial affairs and personal welfare of people who lack mental capacity to make decisions for themselves.

Amongst its powers the Court can make decisions on whether a person has capacity in relation to particular decisions; make decisions on their behalf; appoint or remove people who make decision on the person’s behalf; and make decisions relating to [Lasting Powers of Attorney](#) and [Enduring Powers of Attorney](#).

The Court of Protection can make an order to vary or terminate a standard or urgent DoLS authorisation made by a Managing Authority and/or Supervisory Body.

It can also make decisions on depriving someone of their liberty where a person is living in a setting outside of the scope of the DoLS process, for example in supported living, shared lives or adult placement settings, or where they receive considerable support in the form of domiciliary care in their own home.

Anyone, including the subject of a DoL, can make an application to the Court of Protection for a decision to be made in relation to decision-making capacity.

It should be noted that all other avenues of resolve should be explored in the first instance and no one should feel forced to apply to the Court because of failure or

unwillingness of a Managing Authority or Supervisory Body to engage in constructive discussion.

Any application made must be in accordance with the Court's guidelines and will incur the relevant fees.

See also: [Court of Protection forms](#)

17. Unauthorised Deprivation of Liberty

The Mental Capacity Act allows for restrictions and restraint to be made as a proportionate response to the prevention of harm. For example, a locked door in a care home on its own is unlikely to amount of a deprivation of liberty, nor is encouraging them to return should they attempt to leave.

Practical Steps to Reduce the Risk of Deprivation of Liberty Occurring (APPENDIX 4)

What does need to be considered is the nature of the restriction, its degree, duration and regularity. The boundaries of restraint may have moved into a deprivation of liberty where:

- Staff are exercising complete and effective control over the care and movement of a person for a significant amount of time.
- The person losing autonomy is under continuous supervision and control.
- Restraint is being used, including sedation, to admit a person to a placement where they have resisted admission.
- Decisions are being taken in relation to the relevant person's release from care.
- A request by a carer/family member, for the relevant person to be discharged into their care, is refused.
- Medication is being administered covertly (which would require a best interests decision)
- Electronic equipment is in place to monitor a person's movements (such as a falls alarm)
- A person is unable to maintain social contacts because of the restrictions placed on their access to other people.
- Staff exercise control over assessments, treatment, contacts and residence.
- Other prolonged or consistent restrictions and control are placed on the relevant person's movements and decision-making ability.

No one should be deprived of their liberty where they have the mental capacity to make decisions. Any unauthorised deprivation of liberty, or specific care concerns, should be reported to Halton Borough Council's Adult Safeguarding Unit.

Reporting can be carried out through a confidential notification – See Halton Borough Council's [Whistleblowing Policy](#).

18. Liberty Protection Safeguards - legislative changes and the implementation of the 2018 Mental Capacity (Amendment) Bill

In response to a consultation paper published by the Law Commission the Government commissioned a report to investigate the future of Deprivation of Liberty Safeguards,

An interim report was published in May 2016 highlighting initial conclusions and a final report, together with a draft Bill was set out in March 2017.

The recommendations involve reform and repeal of the existing system and implementation of a new framework of Liberty Protection Safeguards (LPS).

The LPS include changes to:

- Responsibility for those in hospital settings or in receipt of Continuing Health Care – this is to be passed to the relevant National Health Services, the Clinical Commissioning Group or private healthcare setting.
- The way deprivations of liberty are initiated in Care Homes – Registered Managers will lead assessment of capacity, and judge necessity and proportionality of deprivation.
- The assessment process – criteria involves determining whether a person lacks capacity to consent to care arrangements, whether they are of unsound mind and whether the arrangements are necessary and proportionate.
- Roles supporting the process – the creation of an Approved Mental Capacity Professional is proposed. These will conduct case reviews where a person of unsound mind objects to the care arrangements.
- Review periods – a review is required after a year but the deprivation may then stand for a further three years without review.

In July 2018 the Government published a Mental Capacity (Amendment) Bill. The Bill takes it lead from the Law Commission's proposals.

At the time of reviewing this policy the Bill is awaiting assent into Law. Once approved this policy will be evaluated and updated to reflect amendments.

Process Flowchart

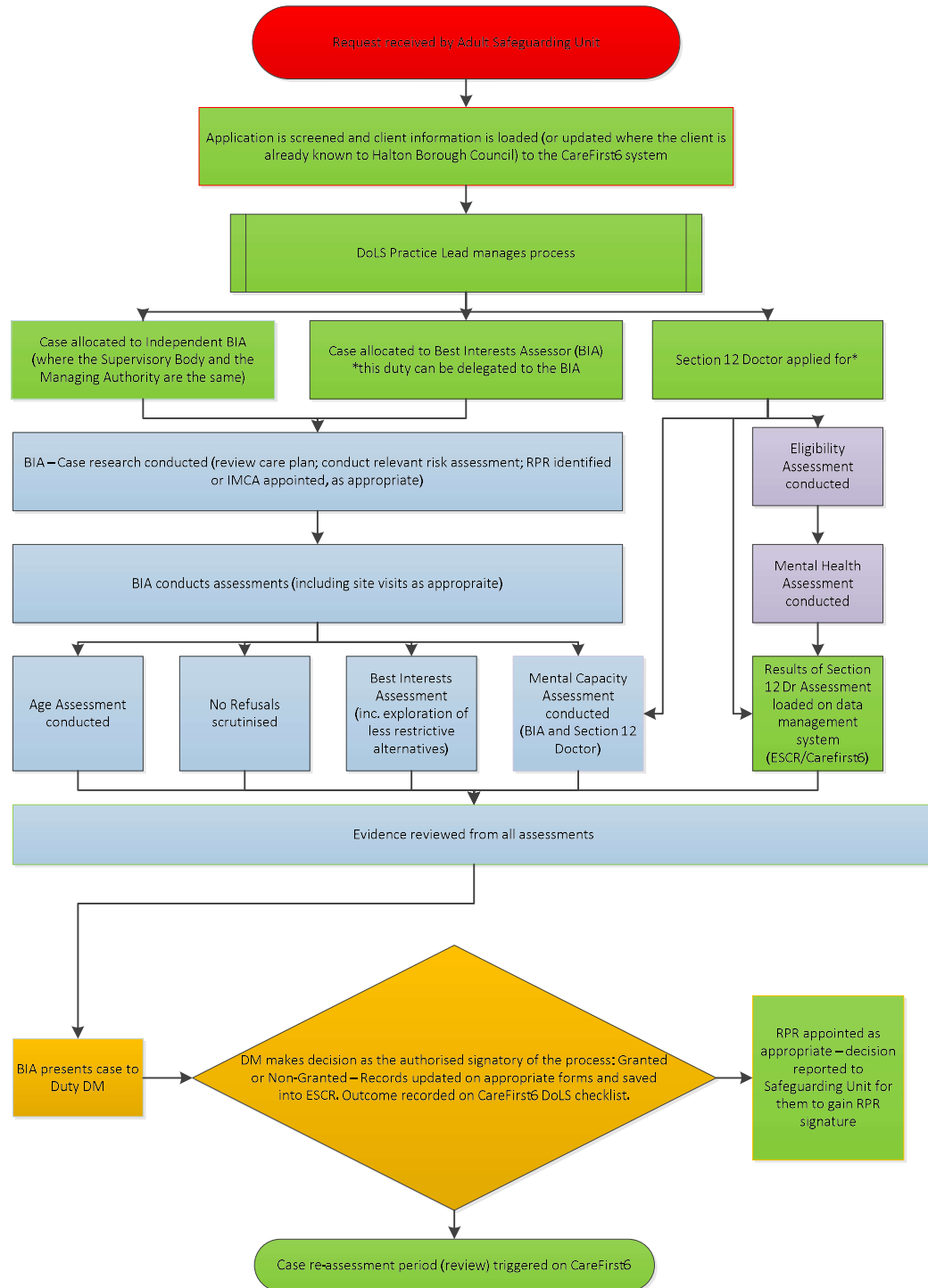


Table 1.1 – Assessments

In all cases, completed Forms will be saved to the SharePoint Electronic Social Care Records (ESCR) document management system. Details of completions will be recorded on the CareFirst6 DoLS Checklist.

ASSESSMENT	WHO CONDUCTS THE ASSESSMENT	BY WHOM
Age	BIA	BIA EXCEPTION: Where an independent BIA is used the Adult Safeguarding Unit will capture the data.
No Refusals		
Best Interest		
Mental Capacity	BIA	BIA EXCEPTION: Where an independent BIA is used the Adult Safeguarding Unit will capture the data.
	AND	
	Section 12 Doctor	The Adult Safeguarding Unit
Mental Health	Section 12 Doctor	The Adult Safeguarding Unit
Eligibility		

Data Capture and Storage

All processed completed internally to Halton Borough Council should be undertaken on the forms on the CareFirst6 data management system. Other completed forms should be scanned and saved to the **ESCR system** and submitted to the **Adult Safeguarding Unit**. Additionally copies must be sent to other stakeholders as required by the processes in the main body of this document.

Records of the DoLS process are essential and a statutory requirement of the Council as the Supervisory Body.

Form Name	Who completes this?	Who is responsible for recording this information on CareFirst6/ESCR?
Standard and Urgent Request	Managing Authority	Adult Safeguarding Unit
Further Authorisation Request	Managing Authority	Adult Safeguarding Unit
BIA Combined Assessments	Independent BIAs only (Halton Borough Council BIAs will complete on CareFirst6)	Halton Borough Council BIA or Adult Safeguarding Unit where an Independent BIA is used
Mental Health Eligibility Capacity Assessments	Section 12 Doctor	Best Interests Assessors save completed form into ESCR
Standard Authorisation Granted	Divisional Manager	Halton Borough Council BIA or Adult Safeguarding Unit where an Independent BIA is used
Standard Authorisation Not Granted	Divisional Manager	Halton Borough Council BIA or Adult Safeguarding Unit where an Independent BIA is used
Suspension of Standard Authorisation	Managing Authority	Adult Safeguarding Unit
Termination of Representation	Supervisory Body	Adult Safeguarding Unit
Standard Authorisation Ceased	Managing Authority or Supervisory Body	Adult Safeguarding Unit
Review Request	Anyone	Adult Safeguarding Unit
IMCA Referral	Supervisory Body	Adult Safeguarding Unit
Notification to Coroner	Managing Authority	Adult Safeguarding Unit

Practical Steps to Reducing the Risk of Deprivation of Liberty Occurring

Where there is not a Deprivation of Liberty Safeguards (DoLS) authorisation in place, or where a request has been refused, Managing Authority needs to make appropriate arrangements to ensure that no deprivation of liberty is occurring.

Managing Authorities should:

- Monitor and minimise the use of restrictions imposed and ensure that decisions are taken with the involvement of the relevant persons, and their family, friends, carers and advocates.
- Make sure all decisions are taken (and reviewed) in a structured way and reasons for decisions are recorded.
- Follow established good practice for care planning.
- Ensure that the knowledge and skills of staff are commensurate with the Care Quality Commissions (CQC) and other professional standards; and that training remains up-to-date.
- Make proper assessment of whether a person lacks capacity to decide whether or not to accept the care and treatment proposed, in-line with the principles of the Mental Capacity Act (2005)
- Ensure that before a person is admitted to a hospital or care home in circumstances that may amount to a deprivation of liberty, consideration is given to whether the person's needs could be met in a less restrictive way. Any restrictions placed on the person while in the hospital or care home must be kept to a minimum necessary, and should be in place for the shortest possible period.
- Take proper steps to help the relevant person to retain contact with family, friends, carers and advocates. Where local advocacy services are available, their involvement should be sought.
- Review the care plan on an ongoing basis. It may be helpful to include an independent element, possibly via an advocacy service, in the review.
- Record any risks, associated with actions and interventions considered necessary to reduce harm to the relevant person, clearly in the care plan.
- Appropriate use of restraints falls short of any deprivation of liberty.
- Make proportionate responses in all circumstances.

This is not an exhaustive list. Managing Authorities should additionally refer to legislation, Care Quality Commission (CQC) guidance, relevant professional standards and their own internal policies.

Relevant Person's Representative – Quick Guide to Understanding my Role

What is an RPR?

An RPR acts in the 'best interest' of someone who is the subject of a Deprivation of Liberty Safeguard arrangement. They support decision-making for that person.

The term 'best interest' is key principle of the Mental Capacity Act 2005, and involves ensuring that assumptions are not made and that due consideration is given to all relevant circumstances relating to the decision in question. The decision-maker must consider the person's past and present wishes and feelings, as well as their beliefs and values. Every effort must be made to involve the person as fully as possible in the decision that is being made.

Who Can Be an RPR?

Those:

- Over 18 years of age;
- Able to keep contact with the persons who is subject to the deprivation;
- Who are willing to be appointed.

You must not be:

- Financially invested with the person being deprived of their liberty or with the Managing Authority within which they reside.
- Employed by the Managing Authority or the Supervisory Body involved in the case.

What does the role involve?

- Regular, face-to-face contact with the person being deprived of their liberty;
- Working in accordance with the principles of the Mental Capacity Act 2005;
- Consultation and collaboration with those involved in the care and treatment of the person being deprived of their liberty.

RPR Rights

- An RPR has the right to support, including having access to an Independent Mental Capacity Advocate.
- They should be informed of review and appeals procedures.
- They should be kept up-to-date with all outcomes of assessments and arrangements relating to the person who is the subject of the DoLS.

Finishing your work as an RPR:

This decision can be made by yourself or may be made by the Managing Authority of Supervisory Body, based on changes in circumstances and eligibility, objections to your appointment, or non-compliance with your duties.

Quick Reference Guide

Deprivation of Liberty Safeguards

Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to ensure that people who receive care and treatment do not have their freedom inappropriately restricted.

Where someone lacks capacity to make decisions about their care and treatment a DoLS may be applied so that others can make decisions for them, in their 'best interest', to keep them from harm. This may involve restrictions to their independence and movement.

Unlawful deprivation of liberty is a breach of a person's human rights.



Assessment for a DoLS

In order to deprive someone of their liberty a range of assessments must be carried out. To initiate these assessments two questions might be asked:

- Is the person free to leave, and;
- Are they under continuous supervision and control?

Assessment establishes six qualifying requirements:

- Age (DoLS apply to those 16 years and over)
- Whether any 'no refusals' have been pre-established, involving advance decisions having been made about their care and treatment
- Whether the person has or does not have the mental capacity to make decision for themselves
- Whether they have a mental health condition under the Mental Health Act 1983
- Whether they are eligible to be detained under the Mental Health Act 1983
- 'Best interest' – whether a deprivation of their liberty would be in their best interest

Managing Authority

This is the organisation that provides the care and treatment for the person who is to be deprived of their liberty.

Supervisory Body

This is a Local Authority or Primary Care Trust who oversees and authorises the deprivation.

Standard Authorisation

Permits lawful deprivation of liberty for a period of time, no greater than 12 months. It is sanctioned by the Supervisory Body following a rigorous assessment process.

Urgent Authorisation

Issued by the Managing Authority in emergency circumstances and permits lawful deprivation of liberty for up to 28 days.

The Mental Capacity Act and associated Deprivation of Liberty Safeguards are currently under legislative review. Following reform the Council's policy for application of DoLS will be re-examined.