

# Mental Capacity Act 2005 Deprivation of Liberty Safeguards: Scheme of Delegation

## Document Summary

The purpose of this document is to clearly identify to whom the Trust delegates responsibilities for the Mental Capacity Act (2005) Deprivation of Liberty Safeguards.

<b>DOCUMENT NUMBER</b>	POL/001/079/001
<b>DATE RATIFIED</b>	September 2017
<b>DATE IMPLEMENTED</b>	October 2017
<b>NEXT REVIEW DATE</b>	October 2019
<b>ACCOUNTABLE DIRECTOR</b>	Director of Quality & Nursing
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## Important Note:

**The Intranet version of this document is the only version that is maintained.**

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## 1 SCOPE

This Scheme of Delegation applies to the Cumbria Partnership NHS Foundation Trust (the Trust) as a whole. It provides clarity in relation to the delegation of duties and responsibilities relating to patients who are or may become subject to the Deprivation of Liberty Safeguards (DoLS) under the Mental Capacity Act (2005) whilst receiving care within the Trust. The protocol is resultant from Schedule 1A of the Act, its associated Code of Practice and therefore any deviation from the protocol must be agreed by the Mental Health Act Hospital Managers & Associates Board.

## 2 INTRODUCTION

DoLS provide legal protection for those vulnerable people who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights (ECHR). The safeguards provide for deprivation of liberty to be made lawful through 'standard' or 'urgent' authorisation processes. These processes are designed to prevent arbitrary decisions to deprive a person of liberty and give a right to challenge deprivation of liberty authorisations. Schedule A1 paragraph 176(1b) defines the trust as a 'managing authority' in respect of the legislation. The safeguards require that a managing authority must seek authorisation from a 'supervisory body' (the area Local Authority) in order to be able lawfully to deprive someone of their liberty. The safeguards only apply to patients aged 18 years and older and cannot be applied to individuals subject to detention under the Mental Health Act (1983).

The trust's Mental Health Act Hospital Managers and Associates (MHAHM) have a statutory duty to ensure that all relevant functions of DoLS (within the meaning of the Mental Capacity Act 2005) are applied and monitored according to given standards. Additionally, all staff within the trust working within the framework of the Deprivation of Liberty Safeguards and the Mental Capacity Act have a statutory duty to apply its overarching key principles and pay due regard to their respective Codes of Practice. The trust (as a whole) and the MHAHM when performing their duties are public bodies. As such their actions and decisions are subject to judicial review and immutable to the state.

In respect of the operation of the safeguards the principle duties and responsibilities of the Managing Authority are:

1. Duty to give Urgent Authorisations
2. Duty to request Authorisations
3. Duty to request Renewal of Authorisation
4. Duty to inform the Supervisory Body changes to Authorisations
5. Duty to keep records and give copies
6. Duty to give information about effect of authorisation

This protocol details which of, and to whom, those responsibilities are delegated.

## 3 STATEMENT OF INTENT

To clearly identify to whom the trust delegates responsibilities to ensure compliance with the legislation and the associated Code of Practice.

#### 4 RELATED TRUST POLICIES, PROCESSES AND PROCEDURES

<a href="#">POL/001/005/019</a>	Mental Capacity Act Multi-Agency Policy
<a href="#">POL/001/006</a>	Safeguarding Policy (Oct 16-Oct 19)
<a href="#">POL/001/005/008</a>	Entry and Exit Policy for Mental Health and Learning Disabilities Wards
<a href="#">POL/001/010</a>	Consent Policy
<a href="#">POL/001/005/014</a>	Age Appropriate Admissions Policy
<a href="#">CCC Guardianship</a>	Guardianship Policy, Procedures and Guidance (Interim Joint Cumbria County Council Policy)
<a href="#">POL/001/005/005</a>	Informal Patients Leave Arrangements Guidelines
<a href="#">POL/001/005/016</a>	Management of Mental Health and Learning Disabilities Patients Policy
<a href="#">POL/001/005/010</a>	Use of Supervised Community Treatment MHA Section 17(a)
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<a href="#">POL/001/005/010</a>	Use of Supervised Community Treatment MHA Section 17(a)

## 5 DEFINITIONS

AMHAHM	Associate Mental Health Act Hospital Manager
CoP	Code of Practice
CrtP	Court of Protection
CTO	Community Treatment Order
DoLS	Deprivation of Liberty Safeguards
LSSA	Local Social Services Authority
MCA	Mental Capacity Act (2005)
MDT	Multi-disciplinary team
MHA (83)	Mental Health Act 1983
MHAA	Mental Health Act Administrator
MHAHM	Mental Health Act Hospital Manager
MHLO	Mental Health Legislation Officer
MHLU	Mental Health Legislation Unit
MA	Managing Authority
RC	Responsible Clinician
RP	Relevant Person
RPR	Relevant Person Representative
SB	Supervisory Body
SCT	Supervised Community Treatment
SA	Standard Authorisation
UA	Urgent Authorisation

## 6 DUTIES

The scheme of delegation which outlines duties and responsibilities in relation to the Deprivation of Liberty Safeguards within the trust is appended to this document as Appendix 1.

## 7 GOVERNANCE

The DoLS Code of Practice provides statutory guidance to a range of professional staff (doctors, dentists, nurses, therapists, radiologists, and paramedics), managers and staff of providers on how they should proceed when undertaking duties to DoLS. However, everyone within the organisation has a role in ensuring that the legislation and the Code are complied with. The Code requires all those undertaking functions in respect of the safeguards understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the MCA. Those key principles are;

1. A person must be assumed to have capacity to make a decision unless it is established that they lack the capacity to make that decision.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.
4. An act done or decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998 (HRA) and Equality Act 2010. Responsibility for compliance and the governance of the DoLS is delegated to the Mental Health Act Manager & Associates Board. The reporting structures related to the delegation of duties and decision making, associated with this protocol are detailed in Appendix 1.

## 8 MONITORING COMPLIANCE WITH THIS DOCUMENT

The table below outlines the Trusts' monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring report	Group / committee / individual responsible for ensuring that the actions are completed
Review the Trust's operation of the Act & governance arrangements	Quarterly meeting of the MHAHMA Board	Chair of the Board	Quarterly	CPFT Trust Board Quality & Safety Committee	MHAHMA Board

## 9 REFERENCES/ BIBLIOGRAPHY

Care Standards Act 2000 c.14
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)
Mental Capacity Act 2005 c.9
Equality Act 2010 c.15
Human Rights Act 1998 c.42
Mental Health Act 1983 c.20
Ministry of Justice, Deprivation of liberty safeguards Code of Practice (TSO 2008)
Department of Health, Code of Practice Mental Health Act 1983 (TSO 2015)
Department for Constitutional Affairs, Mental Capacity Act 2005 Code of Practice (TSO 2007)

## APPENDIX 1 – SCHEME OF DELIGATION

Delegated Functions			
Function	Legislation	Code of	Delegation
Governance of the DoLS Process within the organisation		DoLS CoP Chapter 6 &	Executive Directors and Mental Health Act Associate Managers
The organizational interface of MCA, DoLS and MHA		MHA CoP Chapter 13	Non-executive Directors and Mental Health Act Associate Managers
Review the Trust's operation DoLS & governance			Non-executive Directors and Mental Health Act Associate Managers
Delegated Functions			
Duty to give Urgent Authorisations	Sections 76 & 77	DoLS CoP Chapter 9	(a) the person's Responsible Clinician; or (b) the Manager of the hospital ward to which that person has been admitted to; or (c) in the absence of the Ward Manager the nurse who is in charge of the ward at the time the form(s) require completion.
Duty to request Authorisations	Sections 24 & 25	DoLS CoP Chapters 3 & 4	(a) the person's Responsible Clinician; or (b) the Manager of the hospital ward to which that person has been admitted to; or (c) in the absence of the Ward Manager the nurse who is in charge of the ward at the time the form(s) require completion. (d) all professional staff
Duty to request Renewal of Authorisations	Section 30	DoLS CoP Chapter 8	(a) the person's Responsible Clinician; or (b) the Manager of the hospital ward to which that person has been admitted to; or (c) in the absence of the Ward Manager the nurse who is in charge of the ward at the time the form(s) require completion.



Duty to inform the Supervisory Body changes to Authorisations	Sections 25, 26, 92, 103, 105, 106, & 107	DoLS CoP Chapters 5 & 8	(a) the person's Responsible Clinician; or (b) the Manager of the hospital ward to which that person has been admitted to; or (c) in the absence of the Ward Manager the nurse who is in charge of the ward at the time the form(s) require completion.
Duty to keep records and give copies	Sections 32, 82, 83, 92, & R18*  *Regulation 18(2) Care Quality Commission (Registration) Regulations 2009.	DoLS CoP Chapters 6 & 7	MHL Officer or deputy
Duty to give information about effect of authorisation	Section 59 & 83	DoLS CoP Chapters 6 & 7	MHL Officer or deputy Nurse in Charge of the ward/inpatient unit.
Receipt, scrutiny and rectification of standard documents.		DoLS CoP Chapter 3	Receipt of documents: Nurse in Charge MHL Officer or deputy Head of MHLU  Scrutiny and rectification of documents: MHL Officer or deputy Head of MHLU