Deprivation of Liberty Safeguards Policy (2017)

Document Summary

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

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Important Note:
The Intranet version of this document is the only version that is maintained.
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1. Introduction

The Deprivation of Liberty Safeguards (DoLS) were added to the Mental Capacity Act (2005) by the Mental Health Act (2007); effective from 1st April 2009. Their purpose is to provide a legal framework of safeguards surrounding the deprivation of an individual liberty in a hospital or care home. DoLS apply to anyone aged 18 and over, who suffer from a mental disorder or disability of the mind-such as dementia or a profound learning disability; who lacks the capacity to give informed consent to the arrangements made for their care or treatment and for whom deprivation of liberty (within the meaning of Article 5 of the ECHR) is considered after and independent assessment to be necessary in their best interest to protect them from harm.

2. Purpose

The purpose of this policy is to provide support and guidance for those working within the framework of the Deprivation of Liberty Safeguards including their interrelationships with both the Mental Capacity Act 2005 as a whole and the Mental Health Act 1983**.**

3. Scope

All staff working within the framework of DoLS and the MCA have a statutory duty to apply its overarching key principles and pay due regard to their respective Codes of Practice.
The Trust's Mental Health Act Hospital Managers & Associates have a statutory duty to ensure that all relevant functions of the DoLS are applied and monitored according to given standards within the organisation.

4. Responsibilities

In respect of the operation of the safeguards the principle duties and responsibilities of the trust as a 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

Compliance with this policy will be the responsibility of the Chief Executive, Managing Directors, General Managers, Service managers and staff.

5. The Aims of this Policy

The aims of this policy are to provide a framework of support to enable

1. the clinical and administrative application of the Deprivation of Liberty Safeguards;
2. the effective management of the interface processes that exist between the MHA (1983), the MCA (2005) and DoLS;
3. the monitoring of the clinical and administrative application DoLS
4. support to those applying or monitoring the Deprivation of Liberty Safeguards;
5. the review and monitoring of the above process.

6. Objectives

The three principal objectives of this policy are;

1. To ensure patient's human rights will be upheld.
2. Provide a clear process for any deprivation of liberty to be authorised using a procedure prescribed in law will be followed.
3. Allow staff to undertake and demonstrate their statutory obligations to protect people's right to liberty (or it's lawful authorization if deprived of the same).

7. Definitions and abbreviations

7.1. Deprivation of Liberty

A Deprivation of Liberty occurs where:

a) a person is subject to the continuous supervision AND control; AND…
b) that person is not free to leave the environment where the continuous supervision and control is being applied; AND…
c) that person either will not or cannot give their informed consent to the three elements of continuous supervision, continuous control and not being free to leave

The law commission defines 'free to leave' as being free to be accommodated elsewhere without interference by a public body.

7.2 Deprivation of Liberty Safeguards (DoLS)

DoLS provide legal protection for those vulnerable people aged 18 and over, who are, or may become, deprived of their liberty within the meaning of Article 5 of the ECHR in a hospital or care home, whether placed under public or private arrangements. They do not apply to people detained under the MHA (1983). The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's own best interests.

Where a person detained under the MHA (1983) requires additional interventions that amount to deprivation but are not authorized by the MHA 1983 (e.g. treatment of a physical disorder unrelated to the person's mental disorder). In such circumstances a DoLS order could run alongside detention under the MHA 1983.

7.3 Managing Authorities

The person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of their liberty.

7.4 Supervisory Bodies

The local authority that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty.

7.5 Urgent Authorisation

An authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days on the direction of the supervisory body, that gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken.

7.6 Standard Authorisation

An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in the relevant hospital or care home.

7.7 Relevant Person

A person who becomes (or may become) deprived of their liberty in a hospital or care-home and is (or is to be assessed) for care and treatment under the Deprivation of Liberty Safeguards.

7.7 Relevant Person Representative

A person, independent of the relevant hospital or care home, appointed to maintain contact with the relevant person, and to represent and support the relevant person in all matters relating to the operation of the deprivation of liberty safeguards."

7.8 Abbreviations

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)
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

8. Duties

8.1. Trust Board

The Trust Board has a duty to ensure that the Trust is compliant when operating within the framework of the Deprivation of Liberty Safeguards

8.2. The Mental Health Act Hospital (MHAHM)

The Mental Health Act Hospital Managers have specific statutory duties which effectively makes them responsible for the Trust's implementation and management of the Deprivation of Liberty Safeguards insofar as it interacts with the Mental Health Act 1983

8.3. Executive Directors:

The accountable Director of each Directorate is responsible for ensuring there are robust governance systems in place for the implementation and management of the Deprivation of Liberty Safeguards in their area.#

8.4. Mental Health Legislation Unit (MHLU)

The MHLU will keep and maintain the DoLS register of all in-patients who are placed in receipt of DoLS. The register will include all documents associated with each application for authorisation whether urgent or standard and the outcome of such.

8.5. Managers

Managers are responsible for ensuring:

(a) that the staff for which they are responsible are aware of their responsibilities for Deprivation of Liberty Safeguards and practice commensurate with their role (this includes reporting DoLS authorisations to the Care Quality Commission)

(b) that an infrastructure is in place to support the training of all staff required for Deprivation of Liberty Safeguards law practice;

(c) all staff in their area are aware of their duty to pay due regard to the Code of Practice when working within the framework of Deprivation of Liberty Safeguards.

8.6. MCA DoLS Mental Health Assessors

All Mental Health Act Assessors (within the meaning of the Deprivation of Liberty Safeguards) employed within the Trust are responsible for ensuring that their registered Mental Health Assessor status is up-to-date.

8.7. MCA DoLS Best Interest Assessors

All Best Interest Assessors (within the meaning of the Deprivation of Liberty Safeguards) employed within the Trust are responsible for ensuring that their registered Best Interest Assessor status is up-to-date. All Best Interest Assessors

working for or on behalf of the Trust must ensure that their registration with the local social services authority is current at the time they conduct such assessments.

All Staff

All staff in their area have ready access to the relevant Codes of Practice and are aware of and understand their duty to apply the Statutory Principles whenever they are working within the framework of the Mental Capacity Act as a whole (including the Deprivation of Liberty Safeguards). Ensuring that they keep up-to-date with both Deprivation of Liberty Safeguards and mental capacity law practice commensurate with their role.

9. Identification of a Deprivation of Liberty

9.1. The test

There are three relevant questions to be asked

- Is there valid consent to the living arrangements?
- Is the person subject to continuous supervision and control? and
- Is the person free to leave? – with the focus being not on whether a person seems to be wanting to leave, but on how those who support them would react if they did want to leave.

9.2. Considerations

In addition to the three questions above where the following are present consideration of a DoLS application should be given;

- frequent use of sedation/medication to control behaviour
- regular use of physical restraint to control behaviour
- the person concerned objects verbally or physically to the restriction and/or restraint
- objections from family and/or friends to the restriction or restraint
- the person is confined to a particular part of the establishment in which they are being cared for
- the placement is potentially unstable
- possible challenge to the restriction and restraint being proposed to the Court of Protection or the Ombudsman, or a letter of complaint or a solicitor's letter
- the person is already subject to a deprivation of liberty authorisation which is about to expire.

9.3. Trust Specific Scenarios

9.3.1. **Where the patient is a hospital in-patient for the assessment, care and/or treatment of mental disorder**

- Does P have the capacity to make an informed decision about being in hospital and/or receiving prescribed treatment?

If YES then then the patient cannot be managed under the Mental Capacity Act. Admitting them to and/or keeping them in hospital without valid consent

for the purpose of assessing/treating mental disorder can therefore only be authorised under the Mental Health Act 1983 powers.

If NO then…

- Does the patient object to being in hospital and/or receiving prescribed treatment for mental disorder?

If YES then either discharge from hospital or assess for detention under the Mental Health Act 1983 (Do not consider managing the person in hospital under the Mental Capacity Act as the Mental Health Act will always take precedence in these circumstances

If NO then the patient can only be managed under Mental Health Act 1983 powers were they meet the required criteria for detention. Instead the patient will be managed under the Mental Capacity Act 2005.

You must now ask yourself:

- In managing the patient under the Mental Capacity Act will we prevent her/him from leaving should s/he ask to do so AND are we keeping the patient under continuous supervision and control?

If YES then complete Form 1 (Urgent Order of Deprivation) Request for an Urgent, Extended Urgent and/or Standard Authorisation of Deprivation.

Send the completed forms to your local MHLU office,

9.3.2. **Where the patient is to be discharged to a Registered Care/Nursing Home**

If the patient lacks capacity to give valid consent to being managed in a registered nursing home/care home then, the placement in question must be informed of the necessary support on discharge and whether the multi-disciplinary team believe this to meet the criteria for Deprivation of Liberty.

Even if the patient is already in receipt of a Standard Authorisation within the trust this is non-transferable and a fresh application will be required. That responsibility lies with the prospective placement.

Wherever practicable the prospective placement should be given sufficient notice to complete the application up to 21 days in advance of transfer (this will negate the need to complete an Urgent Authorisation).

If the placement appears unsure about how to proceed they should be advised to get guidance from the relevant supervisory body or their own legal team/ solicitor.

9.3.3. **Where P is to be Discharged to Supported Living or their own home with support**

DoLS only apply in hospitals, registered care homes and registered nursing homes. All other placements such as small group homes, supported living accommodation etc. are not authorised to apply the Deprivation of Liberty Safeguards. Instead they must apply to the Court of Protection if it is felt that P lacks capacity and is likely to be deprived of her/his liberty. The responsibility for making such applications lies with the commissioning organization (Local Authority or CCG) and not Cumbria Partnership NHS Foundation Trust.

Where the Trust is directly responsible for the placement or directly provides the care they may be joined as a party to the Court of Protection application.

9.3.4. **Patients Attending Day Centres/Day Hospitals**

Where Trust Services send a patient to a Day Centre or Day Hospital on a regular basis it must be recognised that this may amount to a deprivation of liberty. Depending upon the other aspects of the person's care arrangements. Practitioners are advised to contact the MHLU offices on a case-by-case basis for guidance in these circumstances.

9.3.5. **General Hospitals**

If the patient is in hospital for assessment and/or treatment of a physical disorder and lacks the capacity to give valid consent then the same principles apply as in 9.3.1 above. However, that the Mental Health Act could not be used in these circumstances unless the patient has a mental disorder which, of itself warrants detention under the Mental health Act and a link can be established between the mental and physical disorders where one is adversely impacting upon the other (or vice versa).

Where the two disorders are not linked DoLS could be used for the treatment of the physical disorder even where the person is detained under the Mental Health Act for treatment of the mental disorder. This is the only set of circumstances where the Deprivation of Liberty Safeguards may be used on a patient detained under the Mental Health Act 1983.

The responsibility for managing the patient under the Mental Capacity Act/Deprivation of Liberty Safeguards lies with the hospital that prescribes and administers the treatment (they will be the Managing Authority, as defined above, for this part of the person's care).

10. Documentation

Standard forms are to be utilised for the purpose of the application, implementation and on-going management of the Deprivation of Liberty Safeguards process. Staff are expected to use these forms and ensure they are fully completed as appropriate. Staff are not to use any alternative forms where the wording differs. All forms are available from your local MHLU office.

Copies of the forms must be kept in the patient's case notes either electronic or paper and the originals scanned and emailed to the local MHLU who will forward to the relevant Supervisory Body.

MHLU must be copied into all correspondence relating to completed forms either sent or received by the Trust.

11. The Process

11.1. Urgent Authorisation of Deprivation, Extended Urgent Authorisation and Application for Standard Authorisation of Deprivation

Form 1 must be completed by:

(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.

11.2. Request for a Further Standard Authorisation

Form 2 must be completed by:

(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.

11.3. Suspension of Authorisation

Form 7 must be completed by:

(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

11.4. Standard Authorisation Ceased

Form 9 must be completed by:

(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.

11.5. Request for a Review of an existing Standard Authorisation for Deprivation

Form 9 must be completed by:

(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.

All forms must be completed electronically and sent to your local MHLU office.

12. Monitoring Compliance

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 DoLS & governance arrangements	Quarterly meeting of the MHAHMA Board	Chair of the Board	Quarterly	CPFT Trust Board Quality & Safety Committee	MHAHMA Board

13. References

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)