Mental Capacity Act 2005
Policy and Procedures for Deprivation of Liberty Safeguards

June 2010
Practice and Guidance for all staff involved with persons who lack / may lack capacity who are or may be deprived of their liberty.

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Context

Under the Deprivation of Liberty (DoL) safeguards, Newcastle City Council (NCC) are the supervisory body for Care Homes, with in their geographical jurisdiction, registered in Newcastle under the Care Homes Act 2000 or for out of area placements for which they provide funding. As such both NCC and the Care Homes have statutory roles and responsibilities.

The Mental Capacity Act 2005 came into force in October 2007 and brought with it significant changes to practices around people who lack capacity.

The Mental Capacity Act has now been amended (through the Mental Health Act 2007) to introduce further statutory obligations. These could impact upon every resident in a care home who lacks capacity, whether they are local authority, health, self or otherwise funded.

Under the new provisions the Managing authorities (care homes) must obtain an authorisation from the supervisory body to deprive mentally incapacitated persons of their liberty where:

- The patient has a mental disorder and lacks the capacity to consent to remain.
- The patient needs to remain in care home to receive care or treatment.
- The treatment is necessary to prevent harm to themselves.
- The circumstances around their treatment or care deprives them of their liberty.

This will not apply to people who are already subject to a provision of the Mental Health Act 1983 or a Court Order dealing with their particular circumstances.

By 1st of April 2009, Newcastle City Council had developed structures and systems as a supervisory body, in relation to the Deprivation of Liberty Safeguards.

The Local Implementation Network (LIN) for the Deprivation of Liberty Safeguards, with representatives from all of the partner agencies, meets to discuss the issues affecting the Supervisory bodies and the Managing Authorities within its geographical jurisdiction.

The Newcastle Safeguarding Adult Board oversees the implementation of the DOL safeguards in Newcastle.
Deprivation of Liberty Safeguards
Policy and Procedure

This policy and procedure is intended for staff working within the Adult and Culture Services Directorate, who are involved with service users who lack capacity and who are or may be Deprived of Liberty in a care home or on a hospital ward. The information contained within this document should be used in conjunction with the main Mental Capacity Act 2005 Code of Practice and with the Deprivation of Liberty code of practice.

Copies of both of these codes of practice can be accessed/downloaded from:
www.guardianship.gov.uk, and then follow the appropriate links.

Adult and Culture Services staff working under other arrangements, e.g. care co-ordination in Adult Mental Health services, should follow the guidance of those assessments and care planning arrangements whilst ensuring that the principles of the MCA and DoL safeguards along with the information in the codes of practice are applied.

As with any new legislation it is anticipated that case law will inform the future implementation and interpretation of the legislation resulting in a review and updating of this policy and procedure.

Any practice issues that arise during the implementation of the DoL’s safeguards should be reported to your line manager who will inform the DoL lead in the Safeguarding Adults Unit.
Introduction

This policy and procedure is being issued to support staff on the use of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards which was fully implemented in April 2009.

This policy and procedure and relevant documentation are part of the Adult and Culture Services Directorate policy and procedures.
Newcastle Adult and Culture Services Directorate is committed to the implementation of and adherence to, the Mental Capacity Act 2005 (MCA), Deprivation of Liberty (DoL) Safeguards, its Code of Practice and associated regulations.

The interface of the MCA and the DoL safeguards with other legislation needs to be considered. This would include, for example:

- The Mental Health Act 1983
- Mental Health Act 2007
- Disability Discrimination Act 1995
- Human Rights Act 1998
- Data Protection Act 1995
- National Health Service and Community Care Act 1990
- The Care Standards Act 2000
- Legislation and guidance concerning the provision of treatment of physical and mental health conditions

Newcastle Adult and Culture Services staff will need to determine, in relation to each specific decision made, the mental capacity of the people with whom they work.

The Mental Capacity Act 2005 (MCA), Deprivation of Liberty (DoL) Safeguards provide a statutory framework within which staff must work with service users when determining capacity, best interest decisions and deprivation of liberty issues.

In turn if the MCA and codes are adhered to, the MCA provides the worker with protection when working with people lacking capacity provided decision making processes are fully recorded and decisions justified.

All staff acting in a professional capacity is expected to have regard to the codes of practice in all aspects of their involvement with people who lack capacity.

Each Adult Services team has a paper copy of the MCA and the DoL code of practice.

The codes can also be accessed at: [www.guardianship.gov.uk](http://www.guardianship.gov.uk) and then follow the appropriate links.
Rational and Purpose for the implementation of the MCA Deprivation of Liberty Safeguards, and Code of Practice

These policies and procedures provide guidance for anyone who may have cause to be involved with a service user for whom, the under the deprivation of liberty safeguards, Newcastle City Council are the supervisory body.

The principles of the Mental Capacity Act 2005 apply to any assessments, decisions and actions taken in relation to someone who lacks capacity.

Further guidance should be sought from the Deprivation of Liberty Safeguards through the Mental Health Act 2007 and the main source of information for practice guidance should be sought from the Deprivation of Liberty code of practice as above.

These policies and procedures do no seek to replace the DoL's code of practice but to provide processes, for those for whom Newcastle City Council are the supervisory body, for the requesting, assessing, granting, reviewing and renewing of DoL authorisations.

All managing authorities should have their own policies and procedures in relation to the DoL safeguards.
These policies and procedures apply to professionals, services users, their carers and the managing authorities which fall within Newcastle City Council’s jurisdiction for the DoL safeguards.

The Deprivation of Liberty Safeguard policies and procedures apply to the following people:

- Those who are 18 years old or older.
- Where they lack the capacity to consent to the arrangements for their care or treatment.
- Where they are receiving care or treatment within a care home or hospital.
- Where they are receiving care or treatment in circumstances that amount to a DOL.
- Where they have a mental disorder but their detention is not covered under the Mental Health Act.

The DoL safeguards apply to those in a care home or hospital or those about to be admitted to a care home or hospital regardless of how the placement is or is to be funded i.e. those funded by the local authority, the health primary care trust (PCT), self funders and those funded by any other means.

Managing authorities need to have their own policies and procedures for identifying a DoL prior to issuing themselves with an urgent authorisation or making a request for a standard authorisation.

For those service users who are assessed as not having mental capacity in environments other than hospitals and care homes a different process will need to be followed. Staff will need to discuss these cases with their line manager and legal services of the local authority.
Capacity- Meaning within the Act

The first step in the DoL process is to assess a person's capacity if there is any doubt that they lack the capacity to consent to their care or treatment in the chosen care home. An assessment of a person’s mental capacity has to be based on their ability to make that particular decision at a particular time. This ability may fluctuate and may not be permanent.

The five principles of the MCA need to be applied:

- A person should be assumed as having capacity unless this can be demonstrated as otherwise.
- A person must be given as much help as they need to make the decision for themselves.
- A person should be permitted to make unwise decisions.
- Any act done or decision made should be in the person’s best interests.
- Any decision made should be the least restrictive option.

The MCA recommended assessment should be followed and the outcome recorded on the service users records.

For further information please refer to Adult and Culture Services MCA policies and procedures available on the Council intranet and on www.newcastle.gov.uk/safeguardingadults/mca
All staff including social workers and care managers should be implementing Adult and Culture Services MCA policies and procedures, with reference to the MCA and DoL codes of practice, throughout their day to day working with service users and their carers. This will ensure that any care delivered is done so in a way which meets the service users needs and protects the individuals human rights.

Care providers and all commissioners of services should work together to provide care in such a way that a DoL can be avoided.

Personalised care planning should be adopted at all times involving the individual, their carers and family and delivering care in such a way that minimises control and promotes independence and freedom of choice.
What are the DoL Safeguards and why were they introduced?

The deprivation of liberty safeguards were introduced to provide a legal framework around deprivation of liberty.

The safeguards were introduced following the European Court of Human Rights judgement in the case HL v the United Kingdom (commonly known as the Bournwood Judgement).

The case concerned an autistic man with a learning disability, who lacked capacity to decide whether he should be admitted to hospital for specific treatment. He was admitted on an informal basis under common law in his best interests but this decision was challenged by HL’s carers.

In its judgement the ECtHR held that this admission constituted a deprivation of HL’s liberty and that the deprivation had not been in accordance with a procedure prescribed by law.
What is Deprivation of Liberty?

There is no legal definition as to what constitutes a Deprivation of Liberty.

The judge in the Bournwood case stated that:
‘to determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance’.

When considering if a DoL is taking place staff need to be aware that the following factors can be considered:

1. Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
2. Staff exercises complete and effective control over the care and movement of a person for a significant period.
3. Staff exercise control over assessments, treatment, contacts and residence.
4. A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution considers it appropriate.
5. A request by carers for a person to be discharged to their care is refused.
6. The person is unable to maintain social contacts because of restrictions placed on their access to other people.
7. The person loses autonomy because they are under continuous supervision and control.

On their own, these factors do not mean there is a deprivation of liberty. However, the more factors present the more likely it is that a DoL is occurring.

See Code of Practice for further guidance.
Roles and Responsibilities of the Supervisory Body

As the supervisory body for Care Homes which fall under their jurisdiction, Newcastle City Council has a role and responsibilities within the DoL safeguards as follows:

The development and maintenance of an administration and assessment process for the management of DoL Safeguards referrals to include:

- The receipt and recording of urgent and requests for standard authorisations to deprive someone of their liberty from managing authorities under its jurisdiction.
- To provide those managing authorities with a pathway for making such referrals.
- To appoint an IMCA as appropriate.
- To ensure there are enough appropriately qualified and trained assessors available to carry out the necessary assessments.
- To commission and co-ordinate the six necessary assessments.
- To grant or refuse requests for authorisation to deprive someone of their liberty.
- To specify the duration of the authorisation (maximum period 12 months).
- To agree or otherwise to any conditions as recommended by the Best Interests Assessor.
- To appoint a relevant persons representative as recommended by the Best Interests Assessor (paid or unpaid).
- To respond to any requests to review an authorisation.
- To respond to any information relating to a possible unauthorised DoL.
- To offer and deliver training on The Mental Capacity Act including the Deprivation of Liberty Safeguards to all relevant staff from both the Managing Authority and Supervisory Body.
• To collate facts and figures in line with the Department of Health guidelines.

• To act as signatures for all DoL authorisations and refusals agreeing or otherwise the conditions recommended by the Best Interests Assessor.

• Any requests for information or applications relating a patient in hospital should be referred back to the Newcastle Primary Care Trust by telephoning 0191 2172795.
Roles and responsibilities of the Managing authorities

The Managing authority has the responsibility for applying for an authorisation to deprive someone of their liberty within the scope of the DoL safeguards.

The Managing authority in the case of a specific care home will be the person registered, or required to be registered, under part 2 of the Care Standards Act 2000.

They should have policies and procedures in place that identify:

1. Whether a DoL is or may be necessary in a particular case.
2. What steps should be taken to assess whether to seek an authorisation.

These policies and procedures should include:

- How they can adapt care planning processes to ensure consideration is given to whether the person has the capacity to consent to their care or treatment arrangements and whether these amount to a DoL.
- How to seek to avoid depriving someone of their liberty by always considering whether a person’s needs can be met in a less restrictive way and by ensuring restrictions are kept to the minimum necessary.
- How to ensure any restrictions are kept in place for the minimum amount of time.
- Where staff can find access to clear and robust policies, procedures and practice guidance on when to grant an urgent or when to request a standard authorisation.
- How to avoid an unauthorised DoL.
- How to use robust care planning process to avoid unnecessary requests for DoL authorisations.
- How to retain communication with the appropriate supervisory body.
- The need to comply with any conditions in place in relation to a standard authorisation.
- To monitor the involvement of the persons representative.
• To monitor when an authorisation is coming to an end and reapply within the necessary time scales.
• To keep clear, systematic and accurate records.
Roles and Responsibilities of others

- If a Health or Social Care member of staff feels that a Deprivation of Liberty authorisation or needed, they should inform the Managing Authority.
- This could happen at any time but will usually be as a result of a care review or needs assessment.
- Assessing professionals should work with managing authorities through the care planning process to take all practical and reasonable steps to avoid a DoL occurring.
- They should ensure that:
  - all decisions taken and reviewed are done so in a structured way,
  - all decisions and the reasons for them are recorded,
  - established good practice for care planning is followed,
  - a proper assessment of whether a person lacks capacity to decide whether not to accept the care or treatment proposed in the care home is carried out.
- Before admitting a person to a care home in circumstances which amount to a DoL consider whether their needs could be met in a less restrictive way.
- Any restrictions placed on the person should be kept to a minimum and should be in place for the shortest possible period of time.
- Proper steps are taken to help the person to retain contact with family, friends and carers.
- Review the care plan on a regular basis.
- Involve advocacy services wherever practical and possible.
The role of the IMCA in the DoL process

Newcastle City Council as part of their supervisory responsibilities has the responsibility to:

- Appoint an IMCA as soon as it has been identified that the person subject to the application is unrepresented.

Once a Deprivation of liberty safeguard authorisation has been granted:

- The relevant person (the person subject to the DoL) and their unpaid personal representative have a statutory right to access an IMCA and the supervisory body should make them aware of this.
- The IMCA’s role is to support the relevant person and their unpaid representative.
- This may be to help them to better understand process and effects of the DoL authorisation.
- This may also be if they need help to use the review system or to access the court of protection.

How to access an IMCA

If you need an IMCA use form attached in appendix 1
The DoLs safeguards set out a process that managing authorities need to follow in order to ensure that people are only deprived of their liberty when necessary and within the law.

This is an overview of the standard process for Managing Authorities for whom Newcastle City Council is the Supervisory Body:

1. Managing authorities have to devise a process for a pre-application evaluation and assessment process including the assessment of capacity and the issuing of urgent authorisations to themselves as appropriate.
2. Make an application for a standard authorisation.
3. Assessment process.
4. Granting or otherwise of the DoL authorisation by the supervisory body.
5. The implementation and monitoring of the DoL authorisation.
6. Renewal.
Application Process

Newcastle City Council has a DoL team office based within the Safeguarding Adults Unit who are available to discuss any issues relating to the DoL safeguards.

This is also the office which will receive all of the Managing Authority applications and co-ordinate the assessment and DoL process:

Deprivation of Liberty Team
Safeguarding Adults Unit
Shieldfield Centre
4-8 Clarence Walk
Shieldfield
Newcastle upon Tyne
NE2 1AL

Phone: 0191 2788156
Fax: 0191 2788 102

This office is available from 8.45-5.00 Monday to Friday.

If the managing authority is sending a fax than this should be followed up by a phone call to ensure that the fax has been received.

Currently there is no secure email therefore NO personal or confidential information should be sent via this media.

It is expected that prior to any application to Newcastle City Council that the issue relating to a person’s DoL will be discussed with the Newcastle DoL team.

Following that telephone conversation it is expected that any urgent authorisation and the request for a standard authorisation will be presented on the standard forms issued by the Department of Health. These can be found at:


Each application should also be accompanied by a copy of the person’s care plan.

**Form 1 is the Urgent Authorisation**

**Form 4 is the request for a Standard Authorisation**
On receipt of form 1 and/or 4 the DoLS team will consider, if the referral is appropriate and may request further information from the managing authority at this point.

**Timescale for Supervisory Body (NCC) to respond:**

From the date of receipt of the request for authorisation the supervisory body (NCC) have 21 calendar days to commission and complete all 6 assessments and to respond to the Managing Authority.

If the managing authority have issued themselves with an Urgent Authorisation then there is 7 calendar days to commission and complete all 6 assessments and to respond to the Managing Authority.
Urgent Authorisation

In circumstances where the Managing Authority feels a DoL is already taking place they can issue themselves with an Urgent Authorisation (Form 1) which can last for a maximum of 7 calendar days- for further details refer to chapter 6 of the DoLS code of practice.

This authorisation is only permissible if the managing authority immediately applies for a standard authorisation (Form 4) from the supervisory body.

The supervisory body has to then complete the six necessary assessments within the seven days and can only issue an extension of a further 7 days (Form 2) in exceptional circumstances. The outcome of the extension is recorded on Form 3.
Assessment Process

It is at this point that the DoLS manager would, if the relevant person is unrepresented, **appoint an IMCA using form 30**.

The IMCA service for Newcastle is commissioned from:

Skills for People  
Tankerville Place  
Jesmond  
Newcastle  
NE2 3AT  
Phone: 0191 281 7322  
Fax: 0191 212 0300

Staff should refer to Chapter 4 of the DoLS code of practice for information on each of the assessments and how they should be conducted and by whom.

Staff need to be aware that anyone conducting a DoLS assessment has a statutory right to see and copy any records relating to the request for authorisation.

The Newcastle DoLS Manager will commission the 6 required assessments in the following way and order.

1. **Age Assessment (Form 5)** – this will be carried out using information from the request for authorisation form and Newcastle City Council computer records—the assessment will be carried out by a Best Interests Assessor.

   The DoLS Manager will use the DoH standard form 29 to appoint the Section 12 doctor and specify in Part B any other assessments they will be required to carry out.

2. **Mental Health Assessment (Form 6)** – this will be carried out by a Section 12 doctor from the regional list.

3. **Mental Capacity Assessment (Form 7)** – this will be carried out by a Section 12 doctor from the regional list who has a specialism in the area required.

4. **Eligibility Assessment (Form 9)** – this will be carried out by a section 12 doctor from the regional list.

   The DoLS Manager will use the DoH standard form 28 to appoint the Best Interests Assessor and specify in Part B any other assessments they will be required to carry out.

5. **No refusals Assessment (Form 8)** – this will be carried out by a Best Interests Assessor.
6. **Best Interests Assessment (Form 10)** – this will be carried out by a Best Interests Assessor. This is probably one of the most important assessments as it is the Best Interests assessor who establishes if a DoL is occurring or is likely to occur and who determines if it is in the relevant person's best interests.

In addition they have to identify someone who can act as the relevant person’s representative using form 24 getting that person to sign the form saying they agreed to the appointment.

**All assessments have to concur for a DoLS authorisation to be granted.**

If any one of the assessments is negative then the DoLS assessment process must stop.

The DoLS Manager can use an equivalent assessment instead of requesting a new assessment. The equivalent assessment does not have to have been done for the purpose of DoLS but has to have been completed with in the last year.

If an equivalent assessment is used the DoLS Manager needs to complete Form 11.
**Assessment Outcome**

**Form 12** needs to be completed by the DoLS Manager if all six assessments support the DoLS request for authorisation.

**Form 13** needs to be completed by the DoLS Manager if one of the assessments is negative.

It is the supervisory body who ultimately have the responsibility for signing the outcome report and granting or not the request for authorisation. In doing so they need to consider the length of the authorisation and any conditions as recommended by the Best Interests Assessor.

Once the authorisation has been signed the DoLS Manager needs to ensure that all of the forms are uploaded to Total View against the relevant person and that all forms are copied onto the Care First system.

**Written copies of form 12 or 13 and form 25 (RPR appointment) and copies of all DoL assessments are sent to the following people:**

- The relevant person.
- The relevant person’s representative.
- The Managing Authority.
- The IMCA if appropriate.

The manager of the commissioning social worker/care manager should also be informed by email of the outcome of the request for authorisation and any commissioning implications.

The DoLS Manager should also complete for the records form 32 which records the assessments, authorisations and reviews for each individual.
When a standard authorisation is granted?

Once an authorisation has been granted the DoLS Manager will need

- To appoint a Relevant Person’s Representative.

as recommended by the Best Interests Assessor (using Form 24).

The role of the Relevant Person’s Representative is to maintain contact with the relevant person and to support them in all aspects relating to the DoL. Chapter 7 in the DoLS code of practice explains more fully the role of the Relevant Person’s Representative.

The Managing Authority should provide the relevant person and their representative with the following information **both orally and in writing**:

- The effects of the authorisation.
- The right to request a review.
- Complaints procedures.
- The right to apply to the court of protection.
- The right to have the support of an IMCA if the RPR is unpaid.

The Managing Authority also need to

- Review the relevant person’s care plan to include any conditions attached to the authorisation.
When a standard authorisation is denied?

The actions needed when a request for authorisation is denied will depend on the circumstances. Some examples may be:

- If the outcome of the process is that the person is not being deprived of their liberty, the Managing Authority should be able to continue to support them without any further action being needed;
- If the Age assessment is not met then action under the Children Act 1989 may need to be considered;
- If the Mental Health Assessment or Eligibility Assessment are not met then action under the Mental Health Act 1983 may need to be considered;
- If the Mental Health Assessment is not met then the Managing authority and commissioners will need to consider how they will support the person to make their own decisions.

Form 13 may give recommendations for alternative actions

The Managing Authority should make alternative arrangements for the delivery of care having mind for the potential for unlawful DoL

A referral through the Safeguarding process may need to be discussed with the Safeguarding Unit should concerns be raised about an unlawful DoL
Monitoring the DoL Authorisation

The Managing Authority need to:

- Record in the relevant person’s care plan who within their organisation will be responsible for monitoring the DoL and its conditions.
- Monitor, support and facilitate visits by the Relevant Person’s Representative.
- Report to the Supervisory Body any concerns relating to the Relevant Person’s Representative and their involvement.
- Agree to how often the situation will be reviewed.
- Consider what circumstances will trigger a review.
- How any change in circumstance will be monitored and reported to the supervisory body – using Form 19.
- If the Eligibility Assessment is no longer valid then the Managing Authority should report this to the Supervisory Body, using Form 14.
- If within 28 days the person once again becomes eligible for the DoL then the Managing Authority should inform the Supervisory Body – using Form 15.
- Continue to try to reduce the restrictions to a level where a DoL would no longer be needed.
Chapter 8 of the DoLS code of practice gives further information about reviewing the DoLS authorisation. The Supervisory body is responsible for carrying out reviews which can be requested at any time during the period of the DoLS authorisation.

There are statutory grounds for reviewing a DoLS authorisation:

- Where the Relevant Person no longer meets any of the following assessments, the age, no refusals, mental capacity, mental health or best interests requirements.
- The relevant person no longer meets the eligibility requirement as they meet the criteria for admission to hospital under section 2 or 3 of the Mental Health Act 1983.
- There is a change in the relevant persons situation and, because of the change, it would be appropriate to amend an existing condition to which an authorisation is subject, delete an existing condition or add a new condition.
- The reason the person now meets the qualifying requirement is different from the reason given at the time that the Standard Authorisation was given.

The Managing Authority should send form 19 to the Supervisory Body to request a review.

If the Relevant Person or their Representative requests a review they can use a standard letter from the Department of Health DoLS Standard Forms website.
The Review

When the Supervisory Body is to carry out a review they need to inform the
- Relevant Person and
- their Representative and
- the Managing Authority

using form 20.

The DoLS Manager will need to decide which elements need to be reviewed and record
the decisions relating to any review on form 21.

A review assessment will need to be carried out for each element where there has been
a change of circumstance.

The review process will follow the same lines as the original DoLS assessment process
but if the DoLS Manager does not feel that any of the qualifying requirements need to be
reviewed then there need be no further action.

Form 22 should be used to summarise the outcome of the review and should be
authorised by a signatory from the Supervisory Body.

Then form 22 and copies of any assessments carried out during the review should
be sent to:
- The relevant person
- The Relevant Person’s Representative
- The Managing Authority
- IMCA
- Any other person consulted in the assessment
When a DoLS Authorisation Ends

If any of the requirements cease to be met then the authorisation should be terminated with immediate effect.

Once an Authorisation comes to an end the Managing Authority cannot lawfully continue to deprive the relevant person of their liberty.

If the Authorisation is about to come to an end and the Managing Authority feel the person will still be deprived of their liberty then it must apply for a further Standard Authorisation.

There is no statutory guidance as to how far in advance of the expiry of one authorisation another can be applied for. In Newcastle it would be expected that the care home will apply 28 days in advance.

Once requested the process for renewing an authorisation is the same as that for obtaining the original authorisation.
It is a serious issue to deprive someone of their liberty without authorisation and if anyone feels this is the case they should report it to the appropriate authorities.

Chapter 9 of the DoLS code of practice explains this in more detail.

Initially anyone believing that a person is being deprived of their liberty without authorisation they should initially discuss this with the Managing Authority

The Managing Authority should respond within 24 hours.

If the Managing Authority does not resolve the situation or apply for an authorisation then the concerned person can ask the Supervisory Body to decide.

They should:

- Tell the supervisory body the name of the relevant person and the care home or hospital where they are Deprived of their liberty
- As far as they can they should explain why they feel that the relevant person may be deprived of their liberty

The Supervisory Body does not have to investigate this further if:

- If the request appears to be vexatious or frivolous
- Where a recent assessment has been carried out and repeat requests are received
- Where there is no change of circumstance that would merit the question being considered again

If the request appears genuine the Supervisory Body should appoint someone eligible to be a Best Interests Assessor to consider if the relevant person is deprived of their liberty.

They will notify all concerned using form 16:

- That they have been asked to assess whether a DoL is taking place.
- Whether or not they have decided to commission an assessment.
- Who the relevant assessor is.
The Supervisory Body will use **Form 17 to record their decision** and forward this:

- To the person who raised the concern.
- The relevant person.
- The Managing Authority.
- And any IMCA involved.

If the BIA’s assessment indicates a DoL is taking place, then they will start the process as if the Managing Authority had applied for a Standard Authorisation.

The DoLS manager will also discuss the case with the Newcastle Safeguarding Adults Unit if they feel the Managing Authorities failure to apply for a DoLS authorisation constitutes abuse.
Out of Area Requests

Managing Authorities need to know which Supervisory Body to apply to for each DoLS request for authorisation:

- For hospitals this will be the PCT that commissions the care or treatment.
- For care homes this will be the local authority for the area in which the relevant person is ordinarily resident. Generally speaking this would be the local authority funding the placement.
- If the relevant person is not ordinarily resident in any area then the supervisory body will be the local authority where the care home is geographically located.

If any person is unsure about who is the relevant Supervisory Body would be then they can contact the DoLS team to discuss this.
Role of the Court of Protection in the DoLS process

Chapter 10 of the DoLS code of practice and chapter 15 of the main MCA code of practice contain further information explaining how complaints and disputes are managed under the Mental Capacity Act 2005.

Whenever possible any disputes should be resolved informally or through Managing Authority and Supervisory Body complaints procedures. Referrals to the Court of Protection should be kept to a minimum, although relevant persons and their representatives should not be discouraged from doing so.

The relevant person or their representative can make a referral before a decision has been made on an application to deprive the person of their liberty. This may for example be to ask the court to decide if the relevant person lacks capacity.

Once a standard authorisation has been given the relevant person or their representative have a right to apply to the Court of Protection in relation to the following matters. They may also ask the same questions of the court relating to an urgent authorisation:

- **Whether the relevant person meets one or more of the qualifying requirements for DoLS.**
- **The period for which the authorisation should be in force.**
- **The purpose for which the standard authorisation is given.**
- **The conditions of that authorisation.**
Newcastle
North Tyneside
& Northumberland

Referral form for the involvement of an
Independent Mental Capacity Advocate (IMCA).
For the making of a best interests decision.

Guidance 1
1. This form must be completed in full by the person responsible for making the best interest decision.
2. Questions 1–4 below are situations where a referral to the IMCA service MUST be made.
3. Guidance for referral regarding safeguarding adults and care reviews is on page 4.
4. Complete Part 1 of this form prior to making contact with the IMCA service. Referrals for this service can be made initially by phone but must be followed immediately by a completed form. Receipt of a completed form will be the trigger for involvement of the IMCA service.

Independent Mental Capacity Advocates are provided to Newcastle by:

Newcastle and North Tyneside: Skills for People
Key House, Tankerville Place, Newcastle upon Tyne NE2 3AT
Telephone: 0191 281 7322 Fax: 0191 212 0300
Email: gemma.hill@skillsforpeople.org.uk

REFERRER CONTACT DETAILS

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Designation</td>
<td></td>
</tr>
</tbody>
</table>

Team Designation (e.g. Hospital Discharge Team, Social Work Team, Care at Home Service)

<table>
<thead>
<tr>
<th>Address</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Telephone</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fax</td>
<td></td>
</tr>
</tbody>
</table>
Part 1: eligibility for service.
1. You are making this referral because:

**Q1.** A capacity assessment has been made under the arrangements of the Mental Capacity Act 2005 (Section 3 MCA 2005 / Code: Chapter 4) and as a result of this assessment the person is considered not to have the mental capacity to make the decision required.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Date assessment completed</th>
</tr>
</thead>
</table>

**Q2.** There is a best interest decision to be made (Section 4 & 5 MCA 2005/Code: Chapter 5)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Date commenced</th>
</tr>
</thead>
</table>

**Q3.** To the best of your knowledge the person referred who lacks capacity does not have any friends or relatives to consult or it is impracticable to consult them (there is no one to speak for them), there is no nominated person, valid and applicable advanced directive, Court appointed Deputy and no EPA / LPA

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

**Q4.** The decision to be made relates to (select):

<table>
<thead>
<tr>
<th>Serious medical treatment</th>
<th>Guidance</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatments regulated under Part 4 of the Mental Health Act 1983 are excluded from referral to the IMCA service or</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NHS to arrange a hospital stay for 28 days or more or</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>NHS to arrange accommodation for 8 weeks or more or</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>The Local Authority proposes to provide residential accommodation for more than 8 weeks whilst acting under the National Assistance Act</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Please provide a brief summary:

**Guidance:** If you have answered “yes” to questions Q1 to Q3 and yes to an element of Q4 please complete Part 2 of this form and send it to the IMCA service. If you have answered “no” or are unable to answer any of the questions seek advice before taking forward a referral to the IMCA service.

2. **Care Review:** If your referral is related to care review and is consistent with the guidance on page 4 and you have answered yes to questions 1 to 3 please continue to part 2 of this form.

<table>
<thead>
<tr>
<th>Care Review</th>
<th>Yes</th>
</tr>
</thead>
</table>

3 **Safeguarding adults:** If your referral is related to a safeguarding adults case and conforms to questions 1 to 4 above a referral to IMCA must be made - continue to part 2 of this form.

**OR**

If the person speaking for the person without capacity is considered not to be acting in the best interests of the person without capacity a referral should be made to general
advocacy services and not the IMCA. If however the position is consistent with the exceptional criteria guidance on page 4, continue to part 2 of this form

| Safeguarding Adults | Yes |

**Part 2. Referral details:**

Guidance: Wherever possible please send additional relevant information (Background information, Assessment, Care Plan etc), this will facilitate the IMCA's involvement. Please keep a copy of this referral for your records.

<table>
<thead>
<tr>
<th>Name of Person</th>
<th>Persons Date Of Birth</th>
<th>Persons Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons home address:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How can the person be contacted?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In which local Authority district is the person now?</td>
<td>Newcastle</td>
<td></td>
</tr>
<tr>
<td></td>
<td>North Tyneside</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Northumberland</td>
<td></td>
</tr>
<tr>
<td>Does the person have any specific communication needs? If yes please detail</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Is there any risk of violent or dangerous behaviour or any other pertinent risks the IMCA should be aware of? | Yes | No |
| If yes please explain: | | |

| Estimated date by which report from the IMCA is required | |
| Dates of meetings relating to decision | |
| Who else is involved in making this best interest decision? | Name | Designation | Contact details |
Policy and Procedure for Deprivation of Liberty

Referral criteria for advocacy in relation to safeguarding adults and care reviews:
The IMCA Service is a limited resource, and is not intended to duplicate the services offered by other local advocacy services.

Care reviews and adult protection
In very limited cases, a referral can be made to the IMCA service in relation to
- care reviews regarding accommodation or
- cases of adult projection (where it is alleged that a person who may lack capacity has been abused or neglected by another person; or may have abused another).
However in most cases a referral to a local relevant advocacy service and not an IMCA service will suffice.

When to refer to a local advocacy service
Local commissioners expect local advocacy services should be referred to for professional issue specific advocacy in cases of adult protection where:
- there is a conflict of interest between the professionals or carers.
- cases where consulting family or friends is compromised by the reasonable belief that they would not have the person’s best interests at heart.

It is expected that when undertaking such work local advocacy services follow the best practice guidelines within the Code of practice. Such best practice would include:
- meeting with the Vulnerable Adult
- discussing the issue with appropriate others.
- producing a report outlining their best interest recommendation
- being involved in the final decision of best interest

When to refer to IMCA service in relation to care reviews and/or adult protection
Referral should ONLY be made to an IMCA service where it is felt that the IMCA’s legal right to full access of medical notes, or to obtaining a second opinion may be required i.e. in areas of conflict where otherwise good practice may be denied to the person without capacity.
(This position will be reviewed periodically and appropriate decisions taken upon consideration of an analysis of the respective referral data from the IMCA & other advocacy services within the localities.)
Additional information about functions of Independent Mental Capacity Advocates:
- Must confirm that the person instructing them has authority to do so.
- Should interview or meet the person who lacks capacity, if possible.
- Must act in accordance with the principles of the Act, particularly in the duty to act in the persons best interests, and take account of the relevant guidance in the Code.
- May examine any relevant records that the Act gives them access to.
- Should obtain the views of professionals and paid workers providing care or treatment for the person who lacks capacity.
- Should obtain the views of anybody else who can give information about the wishes and feelings, beliefs and values of the person who lacks capacity.
- Should obtain any other information they think necessary.
- Must find out what support a person who lacks capacity has had to help them make the specific decision.
- Must try to find out what the person’s wishes and feeling, beliefs and values would be likely to be if the person had capacity.
- Must try to find out what the person’s past and present wishes and feeling, beliefs and values are
- Should find out what alternative options there are.
- Should consider whether getting another medical opinion would help the person who lacks capacity, and
- Must write a report on their findings for the local authority or the NHS.

An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in his welfare. The right of challenge applies both to decisions about lack of capacity and a person’s best interests.

Taken from D. of H. document ‘The Mental Capacity act 2005, issued in February 2007 – Gateway reference 7890 part 2.4 other information can be found in the Mental Capacity Act Code of Practice.