Application to a Supervisory Body by a Managing Authority Requesting a Deprivation of Liberty Authorisation
Document Control

Document Title: Application to a Supervisory Body by a Managing Authority Requesting a Deprivation of Liberty Authorisation

Summary

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<tr>
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<th>April 2009</th>
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<tr>
<td>Related Legislation / Applicable Section of Legislation</td>
<td>The Mental Capacity Act 2005</td>
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<td>Related Policies, Strategies, Guideline Documents</td>
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<td>Replaces</td>
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<tr>
<td>Name of Partner(s) if joint</td>
<td>NHS Heywood, Middleton and Rochdale Clinical Commissioning Group (HMR CCG)</td>
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<td>Procedure Owner (Name/Position)</td>
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<td>Procedure Document Author (Name/Position)</td>
<td>Kate Hilt, Mental Capacity Act Co-ordinator</td>
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Review of Procedure

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<tr>
<th>Last Review Date</th>
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<tr>
<td>Review undertaken by</td>
<td>Kate Hilt, Mental Capacity Act Co-ordinator</td>
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Document Approvals

This document requires the following approvals.

<table>
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<th>Name</th>
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<td>Operational Management Team</td>
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This procedure provides advice and guidance to Managing Authorities regarding authorisation of Deprivation of Liberty as described in the Mental Capacity Act 2005 and the associated Code of Practice.

INTRODUCTION

1. The Mental Capacity Act 2005 (MCA) provides a statutory framework for people who lack capacity to make decisions or take actions for themselves, and others may have to make those decisions on their behalf. When they do this, they should not deprive the person who lacks capacity of their liberty, unless it is essential to do so in the person's best interests and for their own safety.

2. This procedure adds to the guidance in the MCA Policy & Procedure (MEN(o)) and the Deprivation of Liberty Safeguards addendum to the MCA Code of Practice.

3. This procedure describes the process by which Managing Authorities:
   a) Grant urgent authorisation for Deprivation Of Liberty
   b) Apply to a Supervisory Body for Standard Authorisation of Deprivation of Liberty

DEFINITIONS

Managing Authority

a. In the case of NHS hospitals, the NHS trust or authority that manages the hospital is the Managing Authority.

b. In the case of care homes and independent hospitals, the Managing Authority is the person registered under the Care Standards Act 2000 in respect of the care home or hospital.

Supervisory Body

a) Where the DoLS are applied within a hospital in England, the following will apply:
   - For a relevant person who is ordinarily resident in England, the Supervisory Body will be the local authority in which the person ordinarily resides.
   - If the relevant person is not ordinarily resident in the area of any local authority; for example is of no fixed abode, the Supervisory Body will be the local authority for the area in which the hospital is situated.
   - For a person who is ordinarily resident in Wales, the Supervisory Body will be the Welsh Local Health Board (LHB) for the area in which the relevant person is ordinarily resident.

b) Where the DoLS are applied within a hospital in Wales, the Supervisory Body will be the Welsh Local Health Board (LHB) for the area in which the hospital is situated and where the relevant person is receiving treatment. There are two occasions when this may not be the case:
Where the treatment or care is provided in a hospital that is situated in the Welsh LHB’s area and the relevant person is ordinarily resident in England, the Supervisory Body will be the Local Authority, in which the relevant person is ordinarily resident. Where the Welsh Ministers or LHB commission relevant care and treatment in a hospital in England, in that case the Supervisory Body will be the Welsh LHB for the area in which the relevant person is usually resident.

Where Welsh Ministers or the LHB commission care and treatment in England, as set out above, the Assessment and Representative Regulations for Wales, including eligibility and appointment of assessors or representatives, will apply.

c) Paragraph 182 of Schedule A1 sets out that where the DoLS are applied within a care home; whether in England or Wales, the Supervisory Body is the Local Authority for the area in which the relevant person is ordinarily resident. Where a relevant person is not ordinarily resident within a local authority area, then the Supervisory Body is the Local Authority for the area in which the care home is situated.

CROSS REFERENCES

- Adult Protection Committee Guidelines & Procedures (ABU3(a))
- Mental Capacity Act 2005 Policy & Procedures (MEN3(o))
- Deprivation of Liberty Safeguards (DoLS) Policy & Procedure (ABU3(b))
- Approval by Supervisory Body of Requests for Deprivation of Liberty (ABU3(c))
- Mental Capacity Act 2005 and Code of Practice
- Mental Health Act 1983 and 2007 amendment
- Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008
- Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person’s Representative) Regulations 2008

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<tr>
<td><strong>1.1 1. RESPONSIBILITIES</strong></td>
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<tr>
<td>1.1 Managing Authorities must ensure that no-one is deprived of their liberty without authorisation</td>
<td>Managing Authority</td>
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<td>1.2 Managing Authorities must apply to the relevant Supervisory Body in advance of any deprivation of liberty taking place. If this is not possible (see Chapter 6 in the DoLS Code of Practice for examples of when this might be) then they may themselves grant an urgent authorisation for up to <strong>7 calendar days</strong>.</td>
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<td>1.3 Under exceptional circumstances (see Code of Practice) an urgent</td>
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Application to a Supervisory Body by a Managing Authority Requesting a Deprivation of Liberty Authorisation

1.4 When an urgent authorisation is granted by a Managing Authority, they must make an application for a standard authorisation at the same time, so that it comes into effect when the urgent authorisation expires i.e. normally within 7 days.

1.5 It is the responsibility of the Supervisory Body to consider the request for approval of Standard Authorisation and the process for this is described in a separate procedure (See ABU3(c)).

### PROCEDURE

**authorisation may be extended by the Supervisory Body for a **further 7 days. This may take place **once only.**

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### 2. WHEN IS AUTHORISATION REQUIRED?

2.1 The purpose of the Deprivation of Liberty Safeguards is primarily to avoid deprivation of liberty rather than authorise it. Therefore it is important that Managing Authorities are familiar with the Mental Capacity Act 2005 and the MCA Code of Practice including the DoLS addendum.

2.2 All practical steps must be taken to minimise restrictions placed on relevant people and minimise the risk of deprivation of liberty.

2.3 Steps should be taken to ensure that the person retains contact with family, friends, and carers. Involvement of local advocacy services is encouraged.

2.4 See also the ‘Issues to be considered by a Managing Authority’ in Appendix A of the main Deprivation of Liberty Safeguards (DoLS) Policy & Procedure (ABU3(b)).

2.5 The Managing Authority must be reasonably satisfied that authorisation will be granted if an application to the Supervisory Body is to be made, and must be familiar with the six assessments which will be arranged by the Supervisory Body in order to consider authorisation. See Approval by Supervisory Body of Requests for Deprivation of Liberty (ABU3(c)).

2.6 Full details of the assessments is available in the MCA Code of Practice.

### 3. HOW TO APPLY FOR DOLS AUTHORISATION

3.1 Standard forms are available for making the application.

3.2 **Urgent Authorisation**

3.3 A Managing Authority can itself give an urgent authorisation for deprivation of liberty where:
   - It is required to make a request to the Supervisory Body for a standard authorisation, but believes that the need for the person to
be deprived of their liberty is so urgent that deprivation needs to begin before the request is made, or

- It has made a request for a standard authorisation, but believes that the need for a person to be deprived of liberty has now become so urgent that deprivation of liberty needs to begin before the request is dealt with by the Supervisory Body.

3.4 This means that an urgent authorisation can never be given without a request for a standard authorisation being made at the same time.

Therefore, before giving an urgent authorisation, a Managing Authority will need to have a reasonable expectation that the six qualifying requirements for a standard authorisation are likely to be met.

3.5 In order to assist Managing Authorities in granting an urgent authorisation, a flow-chart of the process is included in this procedure (see Appendix A)

3.6 2. **Standard Authorisation**

3.6.1 4. An application for Standard authorisation is made to the Supervisory Body by completing

3.6.2 5. **Contact details:**

By mail
MCA/DOLS Coordinator,
3rd Floor,
No 1 Riverside,
PO Box 100
Rochdale
OL16 9NP

Telephone: 01706 922910
DOLS Fax: 0845 409 3661
Email: dols@rochdale.gov.uk

3.7 A summary of the information that will be required regarding the relevant person is as follows:

- Name and gender
- Age
- Address
- Name, address, and tel. no. of the Managing Authority and the name of the person within the Managing Authority who is dealing with the request
- The purpose for which the authorisation is requested
- The date from which the authorisation is sought
### PROCEDURE

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- Whether the Managing Authority has granted an urgent authorisation

| 3.8 | The duration of the deprivation of liberty standard authorisation may not exceed 12 months |
| 3.9 | The deprivation of liberty will only be approved if every one of the DoLS assessments indicates that it is justified. If any one of them says no, then the application will not be authorised |

| 3.10 | The approval will to a large extent rest on the recommendation of the Best Interests Assessor, who may make certain conditions applicable to the authorisation. These will be stated in the Best Interests Assessors report. |
| 3.11 | If the request for authorisation is approved, then the Supervisory Body will also appoint a Relevant Person’s Representative. |
| 3.12 | The Relevant Person’s Representative has the following role: |
| 3.13 | In the period before a Relevant Person’s Representative is appointed or if there is no suitable person that can be appointed by the Supervisory Body, then they will instruct an Independent Mental Capacity Advocate (IMCA) to represent the relevant person. |
| 3.14 | The relevant person, their Representative, or the IMCA may request a review of the DoLS authorisation at any time. |
| 3.15 | The Managing Authority must take all practical and possible steps to ensure that the relevant person understands the effect of the authorisation and their rights around it. These include their right to challenge the authorisation via the Court of Protection, their right to request a review, and their right to have an IMCA instructed, along with the process for doing so. |

### 5.1 4. WHAT DOES A DOLS AUTHORISATION COVER?

| 4.1 | The authorisation applies only to the Deprivation of Liberty and not to any particular type of care or treatment i.e. it relates to how the care or |
**Application to a Supervisory Body by a Managing Authority Requesting a Deprivation of Liberty Authorisation**

### 5.2 5. REVIEWS

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<tr>
<td>5.1</td>
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<td>A standard authorisation can be reviewed at any time. The review is carried out by the Supervisory Body.</td>
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5.2 During the time when an authorisation is in force, the Supervisory Body may carry out a review if there is a question about whether the person meets the requirements for deprivation of liberty to be authorised, the reason the person meets the qualifying requirements, or the conditions attached to the authorisation.

5.3 A review will involve reassessment of the qualifying requirements affected, e.g. if the request for review states that the person now has capacity to decide about their care then the mental capacity assessment would be repeated.

5.4 If the Supervisory Body is satisfied that there has been no change in circumstances affecting the issues for review described above, or if the only change is to the conditions and that change is not significant, then the review may be completed without further assessment.

5.5 The hospital or care home must monitor the person’s circumstances and request a review if there is a change affecting the issues above.

5.6 Managing Authorities must make a new request for authorisation before a standard authorisation expires. This should take place between 4 and 6 weeks before the expiry date in order to allow for the necessary processing time, without being so far in front that the assessments are not longer valid.

5.7 The person concerned or their representative may request a review at any time.

### 5.3 6. WHAT IF THE REQUEST FOR AUTHORISATION IS REFUSED?

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<tr>
<td>6.1</td>
<td>Supervisory Body</td>
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<tr>
<td>In this case the deprivation of liberty must not take place. If it is already taking place (i.e. under an urgent authorisation) then it must cease immediately.</td>
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6.2 The Care Plan will need to be revised so that deprivation of liberty does not take place.

6.3 Changes to the Care Plan may include:
- Reduction of restrictions
- Change in type of placement

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## Appendices

1. Summary of Urgent Authorisation Process
2. DoL Authorisation overview (from MCA Code of Practice)
Is there an immediate need for a person to be deprived of their liberty?

YES: Urgent Authorisation given by Managing Authority (a Standard Authorisation must be requested simultaneously)

NO: Managing Authority must apply to Supervisory Body for Standard Authorisation before the deprivation of liberty takes place

There must be a reasonable belief that the six qualifying assessments for Deprivation of Liberty are likely to be met

Urgent Authorisation normally only used in response to unforeseen needs. However, can be used in Care Planning to avoid delay (i.e. where the delay in transferring the person to rehabilitation would hinder progression of potential rehabilitation for the relevant person)

As far as possible and practical, when considering Urgent Authorisation, the views of the relevant person, anyone engaged in caring for them and anyone interested in their welfare, must be sought and taken into account. However, the ultimate judgement will be based on an assessment and decision of what is in the person's best interest. The decision maker for the Managing Authority, must show how they have reached their decision based on their professional judgement, taking into account the relevant factors OF THE CASE. This decision must be made at senior level within the Managing Authority

The Managing Authority must decide the period for which the authorisation is given (not exceeding 7 calendar days). This can be extended by the Supervisory Body in certain circumstances. The authorisation must be in writing using the urgent authorisation form.
The application must be sent without delay to the MCA Coordinator (see main procedure for contact details).
A copy should be kept with the Managing Authority.
The relevant person and ANY Independent Mental Capacity Advocate must receive a copy of the Urgent Authorisation.
The Managing Authority must inform family, friends and carers as far as possible and practical.

The Urgent Authorisation will terminate at the end of the period.
An application for extension of the period of the Urgent Authorisation can be made by the Managing Authority to the Supervisory Body (further extension can be up to seven days).

The Urgent Authorisation will terminate:-
- If notice is required by the Supervisory Body that the Standard Authorisation that has been applied for has been given
- If notification is received from Supervisory Body that Standard Authorisation will not be given (therefore Deprivation of Liberty will be unlawful)

Supervisory Bodies will inform the relevant person or their Independent Mental Capacity Advocate if Urgent Authorisation has ended.

A DH form is available for requests to extend the duration of the Deprivation of Liberty. The Managing Authority must keep a copy of this request and send to the MCA Coordinator without delay.

The Supervisory Body may only extend the duration of the Urgent Authorisation if:-
- The Managing Authority has made a request for Standard Authorisation
- There are exceptional reasons* why it has not been possible to make a Standard Authorisation and
- It is essential for the Deprivation of Liberty to continue while the Supervisory Body reaches its decision.

An Urgent Authorisation can only be extended once.

*Exceptional Reasons
It is for the Supervisory Body to decide what constitutes an exceptional reason.
An example of when an extension may be justified may be where:-
- It is not possible to contact a person whom the Best Interest Assessor needed to contact
- An assessment could not be relied upon without their input and
- Extension for a specified period would enable them to be contacted.

The Supervisory Body must notify the Managing Authority of the length of any extension granted and vary the original urgent request, so it states the extended period.

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