1 Introduction

2 Rationale and purpose

3 Definitions

4 Scope

5 Policy Statement/Governing Principles

6 Procedures/Guidelines

   6.1 The Deprivation of Liberty Safeguards Service

   6.2 Applying for a Standard Authorisation (Managing Authority)

   6.3 Receiving a request for assessment for a Standard Authorisation
       ➢ IMCA
       ➢ Third Party Requests

   6.4 Assessment process for a Standard Authorisation
       ➢ Allocation of Assessors & Assessments

   6.5 Assessment Outcomes

   6.6 Process for Urgent Authorisation
       ➢ Managing Authority Responsibilities
       ➢ Supervisory Body Responsibilities
       ➢ Terminating & extending an Urgent Authorisation
       ➢ Planning Meetings

   6.7 Reviews and Ending the Authorisation
       Managing Authority Responsibilities
       Supervisory Body Responsibilities

   6.8 Appeals and Court of Protection and Complaints

   6.9 Out of Area Assessments
7 Information Sharing

8 Related Policies and Procedures

9 Website address for this policy and Standard Forms

10 Appendices
1 Introduction:

1.1 The Deprivation of Liberty Safeguards (DoLS) 2007 are an amendment to the Mental Capacity Act (MCA) 2005 and the DoLS Code of Practice is a supplement to the overarching MCA Code of Practice. They provide a legal framework to protect those who may lack the capacity to consent to arrangements for their treatment or care and where levels of restriction or restraint used in delivering that care are so extensive as to be depriving the person of their liberty. The safeguards apply where that person’s care is being delivered in a registered care home or hospital and has not been authorised under the Mental Health Act 1983. Copies of the MCA & DoLS Codes of Practice can be accessed through the Public Guardianship Office and Department of Health website respectively: www.guardianship.gov.uk


1.2 These safeguards will prevent arbitrary decisions to deprive a person of their liberty and provide a robust and transparent framework in which to challenge deprivation of liberty authorisations. The safeguards therefore protect the rights of vulnerable individuals.

1.3 The safeguards come into force in April 2009 and from this point onwards a Managing Authority (see definitions below) must seek authorisation from a Supervisory Body in order to lawfully deprive a person of their liberty. Where a request for a standard authorisation for deprivation of liberty is made, the Supervisory Body is responsible for conducting a number of assessments to determine whether the authorisation is to be granted. Where any assessment is negative, the authorisation cannot be granted.

1.4 The South Gloucestershire Local Implementation Network (LIN), a multi-agency forum of statutory & non-statutory partners has delegated responsibility for overseeing implementation of the Mental Capacity Act (MCA). The group was reconstituted to encompass responsibility for implementation of DOLS & the new MHA 2007.
2 Rationale and purpose:
2.1 This document provides a local framework for the implementation of the Deprivation of Liberty Safeguards within South Gloucestershire and aims to set out the processes and procedures that must be followed by those that have a duty of care towards a person who is, or may become deprived of their liberty. This includes both Managing Authorities and the Supervisory Bodies.

2.2 The Supervisory Bodies will deliver the duties required by the Deprivation of Liberty Safeguards through a combined service (jointly managed by South Gloucestershire County Council and NHS South Gloucestershire) in order to deliver a single care pathway.

2.3 The Deprivation of Liberty Safeguards Code of Practice, issued under sections 42 and 43 of the Mental Capacity Act 2005 on 26 August 2008 provides extensive guidance and information about the Act and how it works in practice. The Code of Practice should remain the main point of reference for staff working with deprivation of liberty issues.

2.4 This document does not replace the DoLS Code of Practice or seek to repeat the content or guidance contained within it. This document is intended to clearly outline the key responsibilities and procedures related to the implementation of the legislation within South Gloucestershire. The document aims to highlight the processes involved with requesting, assessing, granting and reviewing standard authorisations for deprivation of liberty from the perspective of both the Managing Authorities applying for the authorisation, and the Supervisory Body who assess and grant or refuse the authorisation. Staff should always use this document in conjunction with the main Code of Practice.
3 Definitions:

3.1 Managing Authority
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.

3.2 Supervisory Body
A primary care trust, local authority, Welsh Ministers or a local health board that is responsible for considering a deprivation of liberty request, commissioning the assessments and, where all the assessments agree, authorising deprivation of liberty. Within South Gloucestershire the Supervisory Bodies are South Gloucestershire Council and NHS South Gloucestershire.

3.3 Deprivation of Liberty
Deprivation of Liberty is a term used in the European Convention on Human Rights about circumstances when a person’s freedom is taken away. Case law is defining its meaning in practice. There is no simple definition of deprivation of liberty. See Ch. 2 of the DoLS Code of Practice for a more detailed understanding.

3.4 Restraint
The use or threat of force to help do an act, which the person resists, or the restriction of the person’s liberty of movement, whether or not they resist. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm.

3.5 Relevant Person
A person who lacks capacity and is, or may become, deprived of their liberty in a hospital or care home.

3.6 Standard Authorisation
An authorisation given by the 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.

3.7 Urgent Authorisation
An authorisation given by a Managing Authority for a maximum of seven days, plus a further seven days by a Supervisory Body in exceptional circumstances, 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.

3.8 Mental Capacity
Mental capacity is always referred to as time and situation specific. Where the term ‘lack of capacity’ is used throughout this document it refers specifically to the capacity to decide whether or not to consent to care or treatment that involves circumstances that amount to deprivation of liberty at the time at which that decision needs to be made. A legal definition is contained in Section 2 of the Mental Capacity Act 2005.

3.9 Registered Care Home
This includes both registered residential and nursing homes that can be managed by the county council or privately owned. The Managing Authority is the person registered under Part 2 of the Care Standards Act 2000 in respect of the care home.

3.10 Hospital
This includes both private & publicly funded hospitals. In the case of NHS hospitals the NHS Trust or authority that manages the hospital is the Managing Authority. In the case of independent hospitals the Managing Authority is the person registered under Part 2 of the Care Standards Act 2000 in respect of the hospital.

3.11 DoLS Service
This is a local term used to describe both the dedicated staff that make up the service comprising the DoLS Service Lead, DoLS Support Officer Best Interests Assessors (BIAs) and Mental Health Assessors. This service will co-ordinate & commission the DoLS assessment & review process on behalf of South Gloucestershire Council and NHS South Gloucestershire.

3.12 Code of Practice (CoP)
This refers to the Deprivation of Liberty Safeguards Code of Practice, which supplements the main Mental Capacity Act 2005 Code of Practice.

3.13 IMCA
Independent Mental Capacity Advocate –this is someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no one else to support them. An IMCA is not the same as an ordinary
advocate. The IMCA service was established by the Mental Capacity Act 2005. IMCAs appointed under DoLS are required to have additional DoLS specific training. See DoLS CoP 7.34 – 7.41 for details on the role of the DoLS IMCA.

3.14 BIA
Best Interest Assessor – This refers to the assessor responsible for conducting a range of assessments to ascertain whether an authorisation for deprivation of liberty will be granted (see section 6.4.4 below for the different assessments that can be conducted by the BIA). The BIAs are appointed by the Supervisory Body and work within the DoLS Service.

3.15 MHA
The Mental Health Assessor is a separate assessor to the BIA, who is responsible for undertaking some of the assessments at stage 2 of the assessment process that relate to the mental health of the relevant person. The MHA must conduct the mental health assessment, but may also be responsible for the eligibility assessment and mental capacity assessment where appropriate. The MHA must be a doctor who is either approved under section 12 of the Mental Health Act 1983 or is a registered medical practitioner with at least 3 years post-registration experience in the diagnosis or treatment of mental disorder. Both must undertake specific training in relation to DoLS. The MHA is appointed by the Supervisory Body.
4 **Scope:**

4.1 The policy applies to the following organisations and groups:

- South Gloucestershire Council
- NHS South Gloucestershire
- Hospitals and Registered Care Homes
- Carers
- Service Users
- Advocacy Providers
- Care Quality Commission (CQC)
- General Practitioners
- Voluntary Sector
- Police and Ambulance Services
- Independent and Voluntary Sector Providers

This is not an exhaustive list, but represents key stakeholders.

4.2 **The Deprivation of Liberty Safeguards and the processes contained within this policy document apply to all persons that meet the following criteria:**

- Where they are aged 18 or more years old
- Where they are lacking the capacity to consent to arrangements for their care or treatment
- Where they are receiving care or treatment within a hospital or care home
- Where they are receiving care or treatment in circumstances that amount to a deprivation of liberty
- Where they have a mental disorder but their detention is not already authorised under the Mental Health Act

4.3 A large number of these people will be those with significant learning disabilities, or older people who have dementia or some similar disability, but they can also include those who have certain other neurological conditions (for example as a result of a brain injury).

4.3 The policy does not replace the Deprivation of Liberty Safeguards Code of Practice 2008, the Mental Capacity Act 2005 or any policies on the use of restraint that are in use by South Gloucestershire Council, NHS South Gloucestershire, independent care homes or hospitals. All organisations should refer to their own
policies & procedures on restraint and use them in conjunction with this document.

4.4 The policy does not cover procedures for Managing Authorities to identify deprivation of liberty or any procedures prior to the submission of a request for a standard authorisation. These procedures will need to be produced internally for each care home or hospital unit. However key responsibilities for Managing Authorities are identified throughout the various stages identified in Section 6 – ‘Procedures/Guidelines’.

4.5 Managing Authorities may find it useful to refer to the checklist document ‘Managing Authority Responsibilities in the DoLS Process’ contained in Appendix A when producing the above-mentioned procedure. However, the use of both of this document is not a local mandatory requirement and homes are free to develop their own policy & procedure if they choose to do so.
5 Policy Statement / Governing Principles

5.1 The following principles will be adhered to by all those with a duty of care towards an individual who is, or may be deprived of their liberty. This includes the Managing Authority and Supervisory Body:

- Staff will carry out their duty to ensure optimum care for service users and patients that meets the needs of the individual and protects their Human Rights.

- Staff at all levels will work collaboratively with colleagues across organisations, to ensure efficient and consistent working practices, to ensure timely and effective communication and information sharing and to maximise efficiency of resources.

- Staff will adhere to the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards at all times and refer to the respective Codes of Practice whenever capacity, best interests and deprivation of liberty issues arise.

- Every effort will be made by those with a duty of care towards an individual to prevent deprivation of liberty. This includes both commissioners and providers of care.

- The dignity and well being of the relevant person will be paramount at all times. A personalised approach will be taken that maximizes freedom, minimises control and supports & encourages contacts with family, carers & friends.

- Staff will work in line with the information sharing policies of their employing agency, and in accordance with principle laid down by the local Information Sharing Protocol (see Appendix G), sharing and recording only that data which is necessary.
Staff will consider safeguarding within every aspect of their responsibilities. If any act or omission constitutes abuse (as defined by South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse) they must report this in accordance with the Policy & Procedure. This document can be found here:

http://www.southglos.gov.uk/Pages/Article Pages/Community Care - Housing/Older and disabled people/Safeguarding-vulnerable-adults.aspx

Staff will seek to engage anyone involved in caring for a person, anyone named by them as a person to consult and anyone with an interest in the person’s welfare, and ensure they are consulted in decision-making.

Every effort should be made to resolve disputes surrounding a decision to deprive a person of their liberty locally and informally. Both the Managing Authority and Supervisory Body should be willing to engage in constructive discussion.

Staff of both the Supervisory Body & Managing Authority will maintain succinct, systematic and accurate records, which demonstrate both good practice & safe practice within the law. This should not be limited to completion of Standard Forms and letters.

All organisations and services involved with deprivation of liberty should seek to develop good practice by monitoring and reviewing their processes as part of the organisation’s governance structure.

5.2 Responsibilities of South Gloucestershire Council and NHS South Gloucestershire in their role as Supervisory Bodies:

5.2.1 In South Gloucestershire, the statutory duties of the Supervisory Bodies will be discharged through a partnership arrangement governed by a Section 75 Agreement. The partnership arrangements will provide a service to meet the requirements of the Deprivation of Liberty Safeguards.
5.2.2 Responsibility for the statutory duties of a Supervisory Bodies cannot be delegated. However, functions of the duties may be sub-contracted where it is clear that the agent is acting on the Supervisory Bodies behalf. Within this agreement the Deprivation of Liberty Safeguards Service will be acting on behalf of South Gloucestershire Council and NHS South Gloucestershire in arranging and managing the required assessment and review processes.

5.2.3 The responsibility for granting or refusing an authorisation, setting the period of authorisation and attaching any conditions to the authorisation cannot be delegated under this arrangement and will therefore remain the responsibility of the relevant Supervisory Body, not the DoLS Service. NHS South Gloucestershire has a statutory duty to act as a Supervisory Body for those who may be deprived of their liberty within hospital environments. A similar duty is placed on South Gloucestershire Council in respect of registered care homes. Authorising signatories for South Gloucestershire Council will be any service manager and above within Community Care and Housing. Any of the executive directors will be authorising signatories for NHS South Gloucestershire.

5.2.4 Key responsibilities of Supervisory Bodies are as follows:

- To co-ordinate a dedicated interagency Deprivation of Liberty Safeguards Service to undertake the work related to deprivation of liberty.

- To ensure there is a clear referral pathway for all Managing Authorities for all issues relating to DoLS.

- To recruit assessors that have the necessary skills, qualifications and experience as outlined in the Code of Practice.

- To ensure there are sufficient numbers of assessors to undertake the volume of assessments required.

- To ensure all staff working as assessors or in any capacity within the DoLS Service receive adequate training to perform their role.
➢ To offer and deliver training in Deprivation of Liberty and Safeguarding to any staff working for a Managing Authority, Supervisory Body or any other person who may have a duty of care towards adults receiving care or health services.

➢ To ensure consistency and equality of access to, and outcomes from, Deprivation of Liberty Safeguards services.

➢ To have overall responsibility for granting or refusing authorisations for deprivation of liberty and to be responsible for signing authorisations.

➢ When giving authorisation for deprivation of liberty, to specify the duration of the deprivation of liberty, which cannot exceed 12 months.

➢ To attach appropriate conditions to the authorisation and make recommendations based on the best interests of the relevant person.

➢ To make this document available to all local authority and independent care homes, hospitals and relevant staff from the Supervisory Body and to ensure information pertaining to the procedures and processes contained within this document is communicated in a timely and effective manner.

➢ To record management information and use it to measure the effectiveness of the process outlined within this document and to assess the nature of the authorisations both granted and refused in light of the local population of South Gloucestershire.

➢ To use management information and reviews to develop good practice and communicate this information to relevant departments, such as those involved with commissioning care and support services.

➢ To enhance contract monitoring of care homes and hospitals through combined intelligent information arising from assessments of care plans and levels of restrictive practice.

➢ To provide Managing Authorities with Standard Forms for use when requesting a standard authorisation of deprivation of liberty and to ensure referral processes are effective.
To receive applications from Managing Authorities for standard authorisations of deprivation of liberty and to respond to applications within the timescales specified within the procedures section of this document.

To commission the required assessments of the relevant person to ascertain whether or not they meet the qualifying requirements for a standard authorisation to be given.

To give notice of the decision in writing to specified people, and to notify others by the most appropriate means.

Where an authorisation for deprivation of liberty has been granted by the Supervisory Body, to appoint a relevant person’s representative to represent the interests of the relevant person, including paid representation when required.

To respond to requests to review an authorisation for deprivation of liberty.

To ensure that DoLS have a recognised complaints procedure in place.

5.2.5 In practice many of these responsibilities will be devolved to the DoLS Service, which will provide an informal and formal first point of contact for Managing Authorities.

5.3 The following are the key responsibilities of care homes and hospitals in their role as Managing Authorities:

To adapt care-planning processes to ensure consideration is given to whether a person has the capacity to consent (in accordance with the MCA 2005) to the services which are to be provided and whether these are likely to result in a deprivation of liberty.

To consider before admitting a person to a hospital or residential care home in circumstances that may amount to deprivation of liberty, whether the person’s needs could be met in a less restrictive way. To ensure that any restrictions are the minimum necessary and in place for the shortest possible period.
➢ To take steps to help the relevant person retain contact with family, friends & carers. Where local advocacy services are available, their involvement should be encouraged to support the person & their family, friends & carers.

➢ To ensure clear and robust procedures are in place for staff to offer guidance and clarity on when a request for a standard authorisation would be required, and the procedures that should be followed in order to make an application to the Supervisory Body. This requires clear policy and guidance relating to the use of restraint and restrictive practices.

➢ To ensure that no person, except in unpredictable circumstances, is deprived of their liberty unless a standard authorisation has been applied for and granted by the Supervisory Body for that specific situation and remains in force.

➢ To obtain authorisation from the Supervisory Body in advance of the deprivation of liberty, except in urgent circumstances, in which case a standard authorisation must be obtained from the Supervisory Body within seven calendar days of the start of the deprivation of liberty (on request, the supervisory body can increase this period by a further seven calendar days in exceptional circumstances).

➢ To comply with any conditions attached to the authorisation.

➢ To ensure that applications for authorisation are not made as standard for all admissions to hospitals and care homes simply because the relevant person lacks the capacity to decide whether or not to be admitted. The referral process should be used appropriately and only when it is genuinely necessary for a person to be deprived of their liberty in their best interests.

➢ To maintain effective communication and co-operation with the BIA, MHA & Supervisory Body both during the assessment process and post authorisation.
➢ To monitor whether the relevant person’s representative maintains regular contact with the person, informing the Supervisory Body when this is not the case.

➢ To review the care plan on an ongoing basis giving consideration to the involvement of an advocacy service in the review. It should be noted that deprivation of liberty can be ended before a formal review.

➢ To maintain records.

➢ To issue Urgent Authorisation while applying for Standard Authorisation when required.

5.4 Managing Authorities must note that a failure to identify a potential deprivation of liberty might be construed as abuse (as defined by South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse, in particular possible institutional and/ or, psychological abuse and/ or, neglect). In such circumstances, if it is the opinion of the DoLS service that this omission may constitute abuse, they should discuss this with the Safeguarding Team to agree ongoing DoLS and safeguarding arrangements that ensure the relevant person is protected.
6 Procedures/ Guidelines:

6.1 The Deprivation of Liberty Safeguards Service

6.1.1 South Gloucestershire Council and NHS South Gloucestershire have developed an integrated service model for the implementation of the Deprivation of Liberty Safeguards and have appointed a specialist DoLS Service to respond to requests for standard authorisations from Managing Authorities.

6.1.2 The DoLS Service will be located in the Community Care and Housing office at St. Luke’s Close, Emerson’s Green, and will consist of the following roles:

- **DoLS Coordinator** - will take overall responsibility for coordinating the DoLs Service, ensuring compliance with the regulations and monitoring service quality.

- **DoLS Support Officer** - will take day to day responsibility for administering all DoLs systems and processes, under the supervision of the DoLs Coordinator.

In addition to the above, other professionals will be drawn in under various contractual arrangements as follows:

- **Best Interest Assessors (BIAs)** - will carry out the BIA task as part of their substantive role.

- **Mental Health Assessors** – will undertake the MH and eligibility assessments as part of the DoLs assessment process.

- **DoLS IMCAs** – will provide advocacy for the relevant person and/or their representative at various stages in the DoLs process. They will also provide paid representation when required.
6.1.3 Please see Appendix E – DoLS Service Contact Details for details of where to send DoLS referrals or to contact for advice or support.

6.1.4 Informal DoLS enquiries can be made directly to the DoLS Service, for example, the Service is available for Managing Authorities to discuss any queries they may have about a potential application. The Service will also advise as to which is the relevant Supervisory Body.

6.1.5 All DoLS advice must be confirmed in writing, stating the information, which it was based on. It is still Managing Authorities responsibility to decide to take or not to take further actions regarding DoLS independent of advice given by the DoLS Service.
6.2 Applying for a Standard Authorisation (Managing Authority):
Appendix B outlines the DoLS process from DoLS identification to review. There are six different diagrams identifying six different processes, which will be referred to throughout the rest of this policy & procedure. Appendix B4 describes the Standard Authorisation process.

6.2.1 Managing authorities will need to ensure they have workable internal procedures in place to identify if authorisation for deprivation of liberty is required, or if it is necessary in exceptional circumstances to issue an urgent authorisation (see Section 6.6 below). Procedures should clearly identify who is responsible for taking action at this stage including signing applications. Appendix A offers guidance to Managing Authorities on what should be included in any local DoLS policy & procedure.

6.2.2 In addition Appendix C provides a list of DoH DoLS Standard Forms and letters. Managing Authorities must use these Standard Forms for all DoLS actions. Completion of the Standard Forms will ensure that key requirements are met.

6.2.3 Managing authorities will need to ensure every effort has been made to avoid deprivation of liberty. Appendix B1 identifies the issues & factors Managing Authorities will need to consider pre-application. The DoLS service will be available for discussion and advice if required recognising that it is the Managing Authorities who take final responsibility for the decision whether or not to make an application.

6.2.4 Where it is decided that an authorisation is required, the appropriate member of staff identified in the internal procedures should complete the standard application, Standard Form 4, which can be downloaded here: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772

Standard Form 4 should be sent, by secure fax or by post to the fax number or address in Appendix E

6.2.5 Once Standard Form 4 has been sent to the DoLS Service, the Managing Authority should, if judged appropriate/practicable, inform the family and carers of the relevant person that an
application for a standard authorisation has been made. The Managing Authority should also keep a copy of Standard Form 4 and clear written records of the reasons for the application.

6.2.6 If the relevant person is already subject to a DoLS authorisation and a move is planned to another care home or hospital, the Managing Authority must apply to the Supervisory Body for a new authorisation following the procedures outlined above.

6.2.7 If a Managing Authority receives a request from a third party to apply for an authorisation or any other concern that implies deprivation of liberty, or a request to change the care regime, the Managing Authority must normally respond to this request within 24 hours. Standard Letter 1 can be used for this, but the request can be oral or in any other format. Where the Managing Authority has been unable to resolve the 3rd party request, i.e. where there remains a disagreement with the 3rd party about whether or not there is a deprivation of liberty, they must submit an application to the DoLS Service following the procedures outlined above. Where the Managing Authority has failed to make an application, the Supervisory Body will accept a referral from the 3rd party. In all circumstances of unauthorised deprivation of liberty, the regulatory body will be notified. A record should be kept of third party requests that are resolved as well as those that progress.

6.2.8 Managing Authorities must note that a failure to identify a potential deprivation of liberty might be construed as abuse (as defined by South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse, in particular possible institutional and/ or, psychological abuse and/ or, neglect.

6.2.9 Where the Supervisory Body and the Managing Authority are the same organisation, it can act in both capacities. However, in such a situation, the BIA cannot be an employee of the Supervisory Body/Managing Authority, or provide services to it.

6.2.10 The Supervisory Body will respond to all 3rd party requests (written or verbal) by either referring the issue to the Managing Authority or starting a DoLS investigation.
6.3 Receiving a request for assessment for a Standard Authorisation:

6.3.1 Upon receipt of an application for a standard authorisation, the DoLS Service will initially acknowledge receipt of the referral. At the same time they will request any information that is missing from the application. If Standard Form 4 is both complete and valid the DoLS Service will contact the Managing Authority and discuss the assessment process.

6.3.2 The DoLS Service will consider whether the application is appropriate, complete or whether any additional information is required from the Managing Authority.

- If the Standard Form 4 is incomplete/invalid, the Supervisory Body will refer back to the Managing Authority for further information/necessary action. The application process will be restarted on receipt of the revised application/information.

- If the DoLS Service considers that the application has been made too far in advance this should be resolved with the Managing Authority and the application process should be stopped and a new application should be made at a more appropriate time.

6.3.3 From the date of receipt of the referral Standard Form, the DoLS Service will have **21 days in total in which to complete all assessments** and respond to the Managing Authority’s request. Standard Forms 28 and 29 will be used to appoint a Best Interests Assessor and Mental Health Assessor as required.

6.3.4 The Best Interest Assessor and or DoLS Coordinator will plan the order of assessments taking into account the circumstances of the case starting with assessments that are most likely to be negative & the least resource intensive. This will make the most prudent use of resources and be less potentially confusing for the relevant person and their carers. See section 6.4.4 below for details of the assessment process.

6.3.5 The DoLS Support Officer or Coordinator should use the DoLS Service Assessment Checklist included in Appendix D of this document or equivalent electronic system recording the date of receipt of the Standard Form, the intended date for the BIA to
commence assessment and the reason for appointing a particular BIA and MHA.

**IMCA:**
6.3.6 If the relevant person does not have somebody engaged in providing care or treatment (other than in a professional capacity or for remuneration) to support them, the DoLS Service will use Standard Form 30 to instruct an Independent Mental Capacity Advocate (IMCA). For details of the role & function of the IMCA see Sec 3.22 – 3.28 of the DoLS Code of Practice.

**Third Party Requests:**
6.3.7 The DoLS Service may receive referrals from a third party regarding an unauthorised deprivation of liberty – Standard DoLS Letter 2 and Appendix B2. The DoLS Service should keep a written record of the request.

6.3.8 The DoLS Service should consider the issue with the Managing Authority and decide whether to pursue the request further and appoint a BIA to assess whether there is an unauthorised DoL. Standard Form 16 should be completed at this stage. If a BIA is instructed they should complete an unauthorised DoL assessment in 7 days completing Standard Form 17.

6.3.9 Having received the BIAs report the Supervisory Body records its decision using Standard Form 18. The DoLS Service will give copies of the Supervisory Body decision to the 3rd party, the relevant person, the Managing Authority and any IMCA.

6.3.10 If the deprivation of liberty is occurring and is not already authorised the Managing Authority needs to issue itself an Urgent Authorisation, or cease the deprivation of liberty immediately. Refer to Chapter 9 of the Code of Practice for further details on Third Party requests.

6.3.11 If the deprivation of liberty does not cease immediately the DoLS Service will commence assessments as per a Standard Authorisation for deprivation of liberty and the procedures outlined in this document will be followed.
6.3.12 The DoLS service must also consider whether the failure to consider a request for assessment by the Managing Authority is an act or omission that constitutes abuse (as defined by South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse). If it is the opinion of the DoLS service that this act or omission constitutes abuse they must contact the Safeguarding Adults Team to agree ongoing DoLS and safeguarding arrangements that ensure the relevant person is protected.
6.4 Assessment process for a Standard Authorisation – See Appendix B4

6.4.1 Allocation of DoLS Assessors:

6.4.1.1 The DoLS Coordinator will be responsible for appointing the Mental Health Assessor and BIA. The choice of Assessor will be governed by:

i) ensuring compliance with regulations

ii) knowledge of the relevant person

iii) skills and specialist knowledge for the relevant persons needs

iv) expediency of resources

6.4.1.2 Reasons for appointing the Mental Health Assessor and BIA will be recorded. See Code of Practice 4.13 for details on how assessors should be selected, plus DoH BIA regulations gateway number 11240 published on 26.01.09 http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/DH_084948 The latter deals with both eligibility and conflicts of interest.

6.4.1.3 Each individual assessment should to be checked to ensure that eligibility requirements are met and that there is no direct funding connection.

6.4.2 Staff should refer to Section 4 of the Code of Practice for full guidance on each of the assessments, their purpose and how they should be conducted.

6.4.3 The Managing Authority must provide the BIA conducting assessments with any relevant assessments or care plans and enable access to and copies of any records held that assessors or IMCAs may consider relevant.
6.4.4 The Six DoLS Assessments
The following six assessments will normally need to be completed using the required DoH Standard Forms:

6.4.5 Standard Form 5 Age Assessment. This assessment is to establish if the relevant person is aged 18 or over.

6.4.6 Standard Form 6 Mental Health Assessment. This assessment must be conducted by a Mental Health Assessor. The purpose is to establish whether the relevant person is suffering from a mental disorder within the meaning of the Mental Health Act 1983, and to comment on the likely impact of an ongoing deprivation of liberty on the relevant person’s mental health.

6.4.7 Standard Form 7 Mental Capacity Assessment. This establishes whether the relevant person lacks the capacity to consent to the arrangements proposed for their care or treatment. This will be conducted by the BIA unless the relevant person is already known to the Mental Health Assessor, in which case, the Mental Health Assessor may conduct this assessment.

6.4.8 Standard Form 8 No Refusals Assessment. This establishes whether an authorisation for deprivation of liberty would conflict with other existing authority for decision making for that person, such as a valid and applicable Advance Decision to Refuse Treatment.

6.4.9 Standard Form 9 Eligibility Assessment. This establishes whether the relevant person is subject to a requirement under the Mental Health Act 1983 that may conflict with an authorisation under DoLS or whether their care should be provided under the Mental Health Act. In South Gloucestershire the MHA will generally complete both the Mental Health Assessment and the Eligibility Assessments unless the BIA is an AMHP and there are compelling reasons that the BIA should also complete the eligibility assessment.

6.4.10 Standard Form 10 Best Interest Assessment. This assessment establishes whether the proposed deprivation of liberty is in the relevant person’s best interests, is necessary to prevent harm to themselves and that the deprivation of liberty is proportionate to the likelihood and seriousness of the harm. This assessment must be conducted by the BIA.
6.4.11 **Standard Form 11 Equivalent Assessment.** An equivalent assessment is an assessment that has been carried out in the last 12 months, not necessarily for the purpose of a DoL authorisation, meets all the requirements of the DoL assessment, which the Supervisory Body is satisfied is accurate and of which the Supervisory Body has a copy. The Act states that where an equivalent assessment to any of the above six assessments has already been obtained, it may be relied upon instead of obtaining a fresh assessment.

6.4.12 **Additional duties during the assessment process**

6.4.13 The BIA should at this stage initiate identifying a **Relevant Person’s Representative**, although this person will not actually be appointed until an authorisation is approved and confirmed in writing. Standard Form 24 should be completed. The role of the Relevant Person’s Representative is to maintain contact with the relevant person and to provide independent representation and support to the relevant person in all matters relating to the deprivation of liberty safeguards, including triggering a review. The Code of Practice provides eligibility criteria for people who can be the relevant person’s representative. At the assessment stage the BIA must identify if there is anyone they would recommend to become the relevant person’s representative, and discuss the representative role with the people interviewed during the assessment process (even though some of these assessments may not lead to an authorisation being granted).

6.4.14 If the relevant person does not have anyone who could act as the relevant persons representative, the BIA should inform the Supervisory Body. The responsibility for ensuring a relevant person’s representative is appointed at the point of an authorisation being granted rests with the Supervisory Body who may delegate to the DoLS Coordinator. The Code of Practice provides detailed guidance on how the BIA should go about selecting the Relevant Person’s Representative. This should be done with due regard to the personal attributes and diverse qualities of the relevant person.

6.4.15 The BIA should maintain contact with the IMCA throughout the assessment stage and identify and attempt to resolve any potential disagreements that may emerge with the IMCA. The BIA should attempt, wherever possible, to discuss with the Managing Authority any possible recommendations they intend to
make in their report to ensure early remedial action in the event of an authorisation not being granted.

6.4.16 Assessors (BIA or MHA) will need to raise an alert via the CSO desk in line with South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse. If there are concerns that Institutional Abuse may be occurring, the assessor should discuss these with the Safeguarding Adults Team so that appropriate action may be taken.

6.4.17 Assessors (BIA or MHA) should inform the DoLS Coordinator /Supervisory Body if problems are anticipated that may mean the assessment is not going to be completed within the statutory time limits.
6.5 Assessment outcomes

6.5.1 If any of the assessments conclude that one of the requirements is **NOT** met, then the assessment process should stop immediately and authorisation may not be given. Standard Form 13 should be completed / checked by the DoLS Coordinator.

6.5.2 If all of the assessments are in agreement, Standard Form 12 should be completed / checked by the DoLS Coordinator.

6.5.3 After Standard Forms 12 or 13 have been completed / checked, the DoLS Coordinator will forward them to one of the authorising signatories from the relevant Supervisory Body, who has responsibility for signing the report and officially granting or refusing the authorisation. They must also consider any conditions and the duration of authorisation recommended by the BIA.

6.5.4 When authorisation is given a Relevant Person’s Representative should be appointed based on the BIA’s recommendations and the completion of Standard Form 24. This appointment should be confirmed in writing by completing Standard Form 25 which should be signed by the representative and copies sent to the following; the Managing Authority; the relevant person; the relevant person’s representative; the IMCA (if required); any other persons consulted by the BIA. The representative must be given information and support to assist them in their role and be provided with the means to contact an IMCA.

6.5.5 If there is any delay in appointing a representative, or a period between the termination of one representative and the appointment of another, the Supervisory Body should use Standard Form 30 to appoint an IMCA to support the relevant person until a representative has been appointed.

6.5.6 Where authorisation is not supported the report will need to recommend alternative actions (see Section 6.6.21 below for full details of alternative actions if authorisation is not granted).
6.5.7 **Recording and notifying relevant parties of the decision**

Once the Supervisory Body has signed the outcome report, it will need to be returned to the DoLS Service for recording and disseminating. The DoLS Coordinator and Support Officer will ensure the following:

- A copy of the Standard outcome Form is saved or scanned and indexed for SWIFT, and any other actions indicated by the SWIFT guidance for DoLS

- Written copies of the Standard Outcome Form are sent to the following: The Managing Authority; the relevant person; the relevant person’s representative; the IMCA (if required); any other interested persons consulted by the BIA.

- The relevant commissioning service of the Supervisory Body is informed of the outcome if required.

- The Managing Authority has information regarding the relevant complaints procedures of the Supervisory Body and how to appeal against the assessment process.

- The DoLS Checklist (Appendix D) or similar electronic system is completed and recorded.
6.6 Process for Urgent Authorisation

6.6.1 In exceptional circumstances, where deprivation of liberty needs to commence before a standard authorisation can be obtained, the Managing Authority can issue itself an urgent authorisation by completing Standard Form 1 which makes deprivation of liberty lawful for a short period of time – see Appendix B3. A request for a standard authorisation by completing Standard Form 4 must be made simultaneously with the issuing of an urgent authorisation. The Supervisory Body will need to undertake the same assessment process as for a standard authorisation, but within shorter timescales.

6.6.2 Managing Authority Responsibilities re Urgent Authorisations

6.6.2.1 Managing Authorities should have a procedure in place giving clear guidance to staff about the actions, responsibilities and timescales required for issuing urgent authorisations. This will need to include responsibility for signing urgent authorisations and deputising arrangements.

6.6.2.2 Managing Authorities should refer to the Code of Practice for clear guidance governing the circumstances in which an urgent authorisation can and cannot be issued. Any care or treatment provided under an urgent authorisation must comply with Section 6 of the Mental Capacity Act 2005 and the relevant people must be consulted before granting an urgent authorisation.

6.6.2.3 The Managing Authority should use Standard Form 1 to inform the Supervisory Body that it has issued an urgent authorisation. This Standard Form together with Standard Form 4 should be sent to the DoLS Service via the contact details listed in Appendix 5.

6.6.2.4 The Managing Authority will need to keep records of urgent authorisations issued and give written copies to the relevant person and any IMCA instructed. The relevant persons family, friends and carers should be notified in order to enable them to offer informed support to the person and the relevant person should be helped to understand the effects of the authorisation and their right to challenge via the Court of Protection (6.8 – 6.10 Code of Practice).
Supervisory Body responsibilities
6.6.3. Upon receipt of Standard Form 1 and 4 the DoLS Service will need to undertake the same assessment process as for a standard authorisation, but with a different set of timescales:

6.6.4 All assessments will need to be complete and an outcome report issued with a decision on whether the authorisation will be granted within the time period of the original urgent authorisation (unless this is extended).

Terminating an urgent authorisation
6.6.5 Once the assessment process is complete for the standard authorisation, the DoLS Service/Supervisory Body will need to complete Standard Forms 12 or 13. At this point the urgent authorisation ceases.

6.6.6 The urgent authorisation will cease at the end of the period it was issued, to a maximum of 7 days (unless the Managing Authority has applied to the Supervisory Body to extend the urgent authorisation – see below).

6.6.7 The Supervisory Body must inform all relevant parties that the urgent authorisation has ended. If possible, this notification should be combined with the notification of the outcome of the assessment process for the standard authorisation.

Extending the urgent authorisation
6.6.8 In exceptional circumstances where the standard authorisation cannot be dealt with within the period of the urgent authorisation, the Managing Authority can apply to extend the period of the urgent authorisation for a maximum of a further 7 days by completing Standard Form 2. If any assessor believes they won’t be able to complete in time they need to liaise with the Managing Authority at an early stage.

6.6.9 The Supervisory Body will need to determine whether or not to extend this urgent authorisation, and inform the Managing Authority of its decision by completing Standard Form 3. The relevant person and IMCA must also be informed where a request to extend an urgent authorisation is declined.
6.6.10 Where the Supervisory Body agrees to extend the period of urgent authorisation and completes part H of Standard Form 1 (the original Standard Form that was used for the application), the Managing Authority is responsible for informing the relevant person and any IMCA instructed of the extension, both orally and in writing and informing them of their rights and assist their understanding.

6.6.11 Both the Managing Authority and Supervisory Body must ensure that the use of urgent authorisations is recorded, monitored and audited as part of the organisation’s governance procedures.

6.6.12 **Responsibilities of the Managing Authority once the outcome report has been received**

6.6.13 If the Managing Authority receives Standard Form 12 stating that the authorisation has been granted, it must take all practical and possible steps to ensure that the relevant person understands the effects of the authorisation, their rights, the complaints procedures and consider any specific communication needs. Information should be provided to the relevant person, and to their representative, both orally and in writing.

6.6.14 Whether the authorisation is granted or not, the outcome report must be included in the relevant person’s records and be made known to all relevant parties.

6.6.15 The Managing Authority must make alternative arrangements for care where authorisation is not granted, based on the recommendations made in the outcome report and ensuring urgent action to prevent unlawful deprivation of liberty. The Managing Authority must comply with the Supervisory Body where a planning meeting is required to discuss where deprivation of liberty is occurring but not authorised (see Section 6.6.22 below).

6.6.16 The relevant person and their representative must be provided with information regarding how to appeal against a decision and how to access the Court of Protection.

6.6.17 Visits by the representative must be accommodated and details of visits are to be recorded in the relevant person’s records.

6.6.18 The MA must inform the Supervisory Body if the representative is not maintaining appropriate contact.
6.6.19 The MA must inform the Supervisory Body where the relevant person or their representative requests an IMCA noting only non-paid representatives are entitled to an IMCA.

6.6.20. The Supervisory Body can terminate the appointment of the Relevant Persons Representative by completing Standard Form 26 – ‘Notice of the pending termination of your appointment as a representative’ and Standard Form 27 ‘Termination of a representatives appointment’.

6.6.21 Actions to be undertaken by the Supervisory Body and Managing Authority where liberty is being deprived but the requirements for authorisation are not met
Where the Supervisory Body refuses authorisation for deprivation of liberty because one of the requirements are not met, but agrees that deprivation of liberty is occurring, the DOLS team will raise a Safeguarding Adults alert via the CSO desk in line with South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse. This is to make sure there is a process in place to ensure that any required de-restriction has taken place or to take action in relation to any other concerns.
6.7 Reviews and Ending the Authorisation
6.7.1 See Appendix B5 & B6. A standard authorisation can be reviewed at any time and will be undertaken by the DoLS service on behalf of Supervisory Body. Reviews will be conducted where any of the statutory grounds for review as stated in the Code of Practice are met, or where the Managing Authority, the relevant person or their representative requests a review. The Managing Authority can request a review by completing Standard Form 19. The relevant person or their representative can request a review by completing Letter 3 or 4 respectively.

6.7.2 Deprivation of Liberty can end before a formal review. An authorisation only permits deprivation of liberty; it does not mean that the person must be deprived where a change of circumstance no longer necessitates it.

6.7.3 Managing Authority Responsibilities following authorisation being granted
The Managing Authority must inform the DoLS Service of any of the following events:

- Where the deprivation of liberty is no longer necessary and the authorisation should cease.

- Where any circumstances have changed that may require a review.

- Where any circumstances have changed that may require review of the eligibility assessment and short term suspension of the authorisation (such as admission under the Mental Health Act 1983). Under these circumstances the Supervisory Body can suspend the authorisation. Standard Form 14 should be used to inform the Supervisory Body that an authorisation needs to be suspended.

- Where the relevant person becomes eligible again within 28 days following a suspension the Managing Authority needs to inform the Supervisory Body that a suspension of authorisation needs to be lifted by completing Standard Form 15. Under these circumstances the Supervisory Body will remove the suspension. If no notice is given in 28 days the authorisation will be terminated.
Where the Managing Authority identifies that the relevant person has regained capacity on a long-term basis and the authorisation will need to be terminated.

6.7.2.1 Where the deprivation of liberty may need to continue after expiry of the authorisation the Managing Authority needs to apply for a new standard authorisation using Standard Form 4 before the current authorisation expires.

6.7.2.2 The Managing Authority is responsible for suspending the authorisation where there has been a change in the eligibility requirement (such as admission under the Mental Health Act 1983) by completing Standard Form 14. The Managing Authority should inform the Supervisory Body when the temporary suspension should be lifted by completing Standard Form 15. The Managing Authority is also responsible for lifting this suspension where the relevant person becomes eligible again within 28 days following the suspension. If no notice is given by 28 days the authorisation will be terminated by completion of Standard Form 23 and appointment of the relevant person’s representative will be terminated by completing Standard Forms 26 & 27.

6.7.3 Supervisory Body Responsibilities

6.7.3.1 The DoLS Service must be aware of the statutory grounds for conducting reviews as stated in the Code of Practice. If the statutory grounds are met, the DoLS Service must carry out a review.

6.7.3.2 The DoLS Service must also conduct a review where it has been requested by the Managing Authority, the relevant person or the relevant person’s representative.

6.7.3.3 Where a Managing Authority applies to the DoLS Service again for re-assessment due to the imminent expiry of the current standard authorisation, the DoLS Service will need to re-institute the assessment process as outlined in sections, 6.3, 6.4 and 6.6 above.

6.7.3.4 Once a request for a review has been received, the DoLS Service should acknowledge receipt of the request and its plans for conducting the review, in writing and within 24 hours of the
request being received. Standard Form 20 should be used to inform the relevant person their representative and the Managing Authority of their intention to conduct a review.

6.7.3.5 DoLS Service will need to determine which of the requirements needs to be reviewed and whether any further action is required. Standard Form 21 should be used.

6.7.3.6 In general, the reviews should follow the same process as the standard authorisation for each of the qualifying requirements that need to be reviewed. The DoLS Service will have 21 days in total in which to complete the review.

6.7.3.7 Following the review assessors will need to forward their reports to the DoLS Support Officer.

6.7.3.8 The DoLS Coordinator will need to complete Standard Form 22 detailing the outcome of the reviews and required actions, before forwarding to one of the relevant Supervisory Body’s authorising signatories.

- Re-assessed requirements still support deprivation of liberty (Assessor reports (Form 5,6,7,8,9,or 10 depending on what has been re-assessed) and review results (Form 22)
- Varying the conditions attached to the authorisation through completion of Standard Forms 22 & Form 10
- Terminating the authorisation where deprivation of liberty is no longer required or where any requirement is no longer met by completing Standard Forms 23, 26 & 27 and 22.

6.7.3.9 A copy of the Standard Form 22 plus all re-assessed reports will need to be sent to the Managing Authority, the relevant person, their representative, any IMCA instructed and any other persons consulted during the review.

6.7.3.10 The DoLS Service will keep records of any information received by the Managing Authority relating to the review and record any outcomes of the review in the relevant person’s records.
6.8 Appeals and Court of Protection and Complaints

6.8.1 Managing Authority Appeals Once an authorisation has been granted or refused by the Supervisory Body, the Managing Authority itself cannot appeal against the decision. However, the Managing Authority can appeal against the assessment process if it believes there was a fault in the assessment process or negligence on the part of the assessor, or whether a change in the condition of the person requires a re-assessment. If unable to be resolved informally, the dispute will be investigated through the relevant Supervisory Bodies complaints procedures.

6.8.2 Complaints
6.8.2.1 Complaints should be dealt through the relevant Managing Authority or Supervisory Body complaints procedure. When a complaint involves a number of different agencies, guidance should be drawn from Appendix H - Protocol for Managing Customer/Patient Feedback.

6.8.3 Court of Protection
6.8.3.1 The Court of Protection, established by the Mental Capacity Act 2005, exists to allow anybody deprived of their liberty the right to speedy access to a court that can review the lawfulness of their deprivation of liberty. It is the responsibility of the Managing Authority to ensure that the relevant person and their representative is aware of their rights to apply to the court, both before the authorisation is granted and afterwards, and that they have the information required in order to make a referral to the Court. The relevant person and their representative should be made aware of the types of questions/issues they can take to the Court as stated in the Code of Practice. The Managing Authority and the Supervisory Body should endeavour to resolve any concerns through mediation, or their own complaints procedures before the relevant person or their representative refer the matter to the Court. The Managing Authority and Supervisory Body are required to comply with any conditions imposed by the Court following a hearing.
6.9 Out of Area Assessments

6.9.1 When deciding which Local Authority is responsible for assessing an individual living in a registered care home, the rules of ‘ordinary residence’ apply:

‘Where the DoLS are applied to a person in a care home...the Supervisory Body will be the Local Authority for the area in which the person is ordinarily resident. If the person is not ordinarily resident in the area of any Local Authority (for example, a person of no fixed abode), the Supervisory Body will be the Local Authority for the area in which the care home is situated’ (CoP 3:3).

6.9.2 In short, this means that a Local Authority placing a person outside their area will maintain responsibility for that person’s care; their place of ordinary residence does not change. To determine the place of ordinary residence, the principles and mechanisms under the National Assistance Act 1948 will apply.

6.9.3 In other words, the Local Authority which is paying for the person’s care in the home maintains the responsibility for assessing them under the DoLS procedures. If, therefore, South Gloucestershire Council places a person in a care home outside of South Gloucestershire, it remains responsible for receiving applications for their deprivation of liberty, commissioning the necessary assessments and, if appropriate, authorising the deprivation of liberty. Conversely, any person placed in a care home in South Gloucestershire by a different Local Authority, will need to have any potential deprivation of liberty assessed by that Authority.

6.9.4 Managing Authorities will need to know which Local Authority is responsible for commissioning the care anyone living in their home. If there has been no Local Authority involvement in placing the person in the care home (e.g. self-funders), the responsible Supervisory Body is the one in whose area the care home is located.

6.9.5 When there is a dispute about where the relevant person is ordinarily resident, the Supervisory Body will be the Local Authority for the area in which the care home is situated, until the matter is resolved.
6.9.5 As far as hospitals are concerned, the following rules apply:

- If a PCT commissions the care or treatment, that PCT is the Supervisory Body
- If the National Assembly for Wales or a Local Health Board commissions the care or treatment, the National Assembly are the Supervisory Body
- In any other case, the Supervisory Body is the PCT for the area in which the hospital is situated.

6.9.6 If Managing Authorities are unsure about which Supervisory Body is responsible in a particular instance, advice should be sought from the DoLS Service. The South Gloucestershire DoLS Service should always be informed of all external applications.

6.9.7 For out of area placements, when the relevant person is in a hospital or care home outside South Gloucestershire, but South Gloucestershire Council or NHS South Gloucestershire is the Supervisory Body, the processes and procedures outlined in Appendix F - Protocol for the Inter-Authority Management of Deprivation of Liberty Applications (ADASS – Currently DRAFT) should be used.

7.0 Information Sharing

7.1 All information shared and recorded during the DoLs process should be in accordance with Chapter 16 of the MCA Code of Practice and with the principles outlined in Appendix G - Avon, Gloucestershire & Wiltshire Information Sharing Agreement.

8.0 Related Policies and Procedures

- South Gloucestershire Safeguarding Adults Committee: Joint Policy and Procedures for Safeguarding Adults from Abuse
- Policy and Guidance on the Use of Restraint in Care Homes
- Mental Capacity Act 2005
- Section 75 Agreement
- Protocol for Managing Customer/Patient Feedback
9.0 Website address for this policy and Standard Forms

DOLS policy and procedures

http://www.southglos.gov.uk/Pages/ArticlePages/Community Care - Housing/Learning Difficulties and Disability/The-deprivation-of-liberty-safeguards.aspx

Standard Forms


10.0 Appendices:

Appendix A - Managing Authorities Responsibilities in the DoLS Process

Appendix B - Deprivation of Liberty Safeguards Process

Diagrams B1- B6:

- B1 Managing Authority DoLS Pre-application Evaluation
- B2 Unauthorised Deprivation of Liberty Reporting
- B3 Urgent Authorisation and Assessment Process
- B4 Standard Authorisation Assessment Process
- B5 Monitoring Authorised Deprivation of Liberty
- B6 Review of Standard Authorisation Qualifying Requirements

Appendix C - Department of Health Standard DoLS Standard Forms & Letters

Appendix D - DoLS Service Assessment Checklist

Appendix E - DoLS Service Contact Details
Appendix F - Protocol for the Inter-Authority Management of Deprivation of Liberty Applications

Appendix G – Information Sharing Agreement

Appendix H – Generic Managing Feedback Protocol

John White
Mental Health Coordinator (MCA)
10.02.09
### Appendix A: Managing Authorities Responsibilities in the DoLS Process

<table>
<thead>
<tr>
<th>DoLS Code of Practice Reference</th>
<th>Managing Authority Requirements in relation to DoLS</th>
<th>Record Keeping</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>REDUCE RISK OF DEPRIVATION OF LIBERTY</strong></td>
<td></td>
</tr>
<tr>
<td>2.7</td>
<td>- Make and review decisions in a structured way &amp; record effective care planning&lt;br&gt;- Assess capacity following MCA 2-stage test&lt;br&gt;- Consider least restrictive practice, apply for a minimum period necessary&lt;br&gt;- Help person retain contact with friends and carers&lt;br&gt;- Encourage use of advocacy&lt;br&gt;- Conduct regular care reviews &amp; consider including advocacy</td>
<td><strong>Must have an effective policy and procedures; Pre-application considerations process must be recorded (actions, decisions, and reasons for these decisions)</strong></td>
</tr>
<tr>
<td>MCA Section 6</td>
<td><strong>Ensure restriction and restraint is to prevent harm to the individual is necessary and proportionate</strong></td>
<td><strong>Effective care planning and restraint use protocol</strong></td>
</tr>
<tr>
<td></td>
<td><strong>APPLYING FOR STANDARD AUTHORISATION</strong></td>
<td></td>
</tr>
<tr>
<td>3.6</td>
<td><strong>Procedure in place to:</strong>&lt;br&gt;- Assess if deprivation of liberty is, or may be necessary in a particular case – in advance of the deprivation unless in urgent circumstances&lt;br&gt;- Steps to take to assess if authorisation is required&lt;br&gt;- Whether all steps have been taken to avoid deprivation of liberty&lt;br&gt;- Actions to request an authorisation&lt;br&gt;- How cases that may require authorisation are reviewed&lt;br&gt;&lt;strong&gt;Who&lt;/strong&gt; should take the actions (and sign related correspondence)</td>
<td><strong>Internal Procedure and Protocol required</strong></td>
</tr>
<tr>
<td>3.7-3.9</td>
<td><strong>Complete application in prescribed Standard Form</strong></td>
<td><strong>Standard Form 4</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3.11-3.13</td>
<td>Must be clear about who to send application to</td>
<td>Internal Policy and Procedure</td>
</tr>
<tr>
<td>3.14</td>
<td>Keep written record of request for authorisation + reasons</td>
<td>Personal records</td>
</tr>
<tr>
<td>3.15</td>
<td>Inform family &amp; carers of application unless impracticable/undesirable (determine criteria for this)</td>
<td>Internal Policy and Procedure</td>
</tr>
<tr>
<td>3.16</td>
<td>Notify SB if there is no-one to consult &amp; IMCA required</td>
<td>Standard Form 4</td>
</tr>
<tr>
<td>5.14-5.17</td>
<td>Where a person is already subject to a DoLS authorisation and a move is planned to another care home or hospital, apply to the SB for a new authorisation</td>
<td>Standard Form 4</td>
</tr>
<tr>
<td>9.1</td>
<td>On receiving a request by a 3rd party to apply for an authorisation or change the care regime, respond to a such a request within 24hrs</td>
<td>Standard Form 4 or other correspondence to show actions, decisions and reasons for the decisions re DoLS</td>
</tr>
<tr>
<td>9.2</td>
<td>Submit an application to the SB where they have not been able to resolve a 3rd party request to seek authorisation or alter the care regime</td>
<td>Standard Form 4</td>
</tr>
<tr>
<td><strong>ASSESSMENT PROCESS FOR STANDARD AUTHORISATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.64</td>
<td>Provide Best Interest Assessor (BIA) with any relevant assessments or care plans.</td>
<td>Records keeping</td>
</tr>
<tr>
<td>4.72</td>
<td>Discuss with BIA, alternative care plans</td>
<td>Records keeping</td>
</tr>
<tr>
<td>4.73</td>
<td>Include the BIA's report and recommendations in person’s records and make known to all relevant staff</td>
<td>Records keeping</td>
</tr>
<tr>
<td>4.75</td>
<td>Discuss with BIA during the assessment, the conditions they may recommend</td>
<td>Records keeping</td>
</tr>
<tr>
<td>3.23 &amp; 4.77</td>
<td>Enable access to and copying of, any record held by Health, LSSA or care home that assessors and IMCA consider relevant to their assessment</td>
<td>Internal Policy and Procedure</td>
</tr>
<tr>
<td>4.78</td>
<td>Record outcome of assessment identifying where authorisation is granted or where authorisation is declined</td>
<td>Internal Policy and Procedure and Records keeping</td>
</tr>
<tr>
<td></td>
<td>PROCESS FOR URGENT AUTHORISATIONS</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>Grant an urgent authorisation where urgently required whilst simultaneously applying for a standard authorisation</td>
<td>Standard Form 1</td>
</tr>
<tr>
<td>6.5</td>
<td>Ensure care provided under an urgent authorisation complies with Sec 6 MCA</td>
<td>Standard Form 1</td>
</tr>
<tr>
<td>6.6</td>
<td>Determine the period of urgent authorisation, not exceeding 7 days &amp; notify SB</td>
<td>Standard Form 1</td>
</tr>
<tr>
<td>6.7</td>
<td>Procedure in place defining actions; responsibilities and timescales when an urgent authorisation is required</td>
<td>Internal policy + Standard Form 1</td>
</tr>
<tr>
<td>6.8-6.9</td>
<td>Maintain written record of urgent authorisation. Give copies to relevant person, IMCA and records. Notify family, friends and carers and assist the person to understand their rights.</td>
<td>Internal policy and records keeping</td>
</tr>
<tr>
<td>6.10</td>
<td>Ensure use of urgent authorisations is recorded, monitored and audited as part of governance</td>
<td>Internal Policy and Procedure</td>
</tr>
<tr>
<td>6.11-6.15</td>
<td><strong>Identify a senior person</strong> who makes the decision to grant an urgent authorisation, having consulted with anyone engaged in the persons care, including staff, the relevant person, carers, family and record their views</td>
<td>Internal Policy and Procedure</td>
</tr>
<tr>
<td>6.17</td>
<td>Terminate urgent authorisation if informed by the SB that a standard authorisation will not be granted</td>
<td>Record that terminated and reason (i.e. Standard Form 13)</td>
</tr>
<tr>
<td>6.20-6.21</td>
<td>Apply to SB in timely manner, to extend the urgent authorisation in exceptional circumstances. Maintain record and inform relevant person</td>
<td>Standard Form 2</td>
</tr>
<tr>
<td>6.27-6.28</td>
<td>Provide the relevant person &amp; IMCA with a copy of varied urgent authorisation and orally &amp; in writing, inform them of their rights &amp; assist their understanding. Similarly, inform the person and IMCA where an extension is declined</td>
<td>Standard Form 1 (Section H)</td>
</tr>
<tr>
<td>9.13</td>
<td>Grant itself an urgent authorisation where investigation arising from a 3&lt;sup&gt;rd&lt;/sup&gt; party referral indicates deprivation of liberty and levels of restriction cannot be reduced</td>
<td>Standard Form 1</td>
</tr>
<tr>
<td></td>
<td>ASSESSMENT OUTCOME</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td>5.8</td>
<td>Take all practical and possible steps to ensure the person understands the effects of the authorisation and their rights. Provide information orally and in writing. Provide written information to the patients representative</td>
<td>Records keeping, Internal procedure</td>
</tr>
<tr>
<td>5.10-5.13</td>
<td>Ensure arrangements for providing care and treatment comply with the MCA</td>
<td>MCA policy</td>
</tr>
<tr>
<td>5.18-5.24</td>
<td>Make alternative arrangements for care where authorisation is not granted including where relevant assessment under the MHA, ensuring urgent action to prevent unlawful deprivation of liberty. Include commissioners BIA and family/carers in alternative care planning</td>
<td>DoLS policy and procedures to account for ‘Authorisation denied’ cases</td>
</tr>
<tr>
<td>5.22</td>
<td>Consider referral to Court of Protection where a refusal by a donee or attorney is disputed</td>
<td>Internal policy and protocol for the Court of protection referrals</td>
</tr>
<tr>
<td>7.4</td>
<td>Ensure relevant person and representative understand their rights, formal and informal complaints procedures &amp; consider any specific communication needs</td>
<td>Records keeping, Internal procedure, communication</td>
</tr>
<tr>
<td>7.25</td>
<td>Accommodate visits by the representative, recording their details in relevant person’s record</td>
<td>Records keeping, Internal procedure</td>
</tr>
<tr>
<td>7.26</td>
<td>Inform the representative of information/support to assist their role &amp; means to contact an IMCA</td>
<td>Records keeping, Internal procedure, Communication</td>
</tr>
<tr>
<td>7.27</td>
<td>Inform the SB if the representative is not maintaining appropriate contact. Use reviews to consider this &amp; records to Inform the decision</td>
<td>Records keeping, Internal procedure, communication</td>
</tr>
<tr>
<td>7.34</td>
<td>Inform the SB if there are no family/friends to support the person while awaiting a replacement representative to be appointed</td>
<td>Records keeping, Internal procedure, communication</td>
</tr>
<tr>
<td>7.37</td>
<td>Inform the SB where the relevant person or their representative requests an IMCA</td>
<td>Records keeping, Internal procedure, communication</td>
</tr>
<tr>
<td></td>
<td>REVIEWS AND ENDING THE AUTHORISATION</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Set out in Care Plan clear roles &amp; responsibilities for monitoring &amp; confirm under what circumstances a review is necessary</td>
<td>Internal Policy and Procedure and Records Keeping</td>
</tr>
<tr>
<td>8.8</td>
<td>End the practice of depriving liberty as soon as it is no longer necessary &amp; apply to the SB for a review</td>
<td>Standard Form 19</td>
</tr>
<tr>
<td>8.11-8.16</td>
<td>Inform the SB of change in circumstances that may require review</td>
<td>Standard Form 19</td>
</tr>
<tr>
<td>8.19</td>
<td>Inform the SB of circumstances that may require review of eligibility criteria and short term suspension of authorisation e.g. admission under MH Act</td>
<td>Standard Form 14</td>
</tr>
<tr>
<td>8.20</td>
<td>Ensure timely information to the SB if the person becomes eligible again within 28 period of the suspension (Standard Form)</td>
<td>Standard Form 15</td>
</tr>
<tr>
<td>8.21</td>
<td>Inform SB where eligibility criteria has changed as the person is objecting to mental health treatment in hospital.</td>
<td>Standard Form 19</td>
</tr>
<tr>
<td>8.23</td>
<td>Identify suitably qualified person to assess fluctuating capacity and whether regained capacity may be sustained. In such cases, end deprivation of liberty and seek termination of authorisation.</td>
<td>Internal Policy. Records keeping Standard Form 19</td>
</tr>
<tr>
<td>8.26</td>
<td>Determine whether deprivation of liberty may need to continue after expiry of authorisation and apply for a renewal authorisation.</td>
<td>Standard Form 4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>COURT OF PROTECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>Ensure the relevant person or someone acting on their behalf is aware of their rights to apply to the Court of Protection during the assessment process.</td>
</tr>
<tr>
<td>5.8 &amp; 6.9 &amp; 10.2-10.4</td>
<td>Ensure the relevant person or persons acting on their behalf are aware of their rights to apply to the Court where an urgent or standard authorisation is granted</td>
</tr>
<tr>
<td>10.5</td>
<td>Endeavour to resolve concerns through mediation/complaints procedure</td>
</tr>
<tr>
<td>5.22 &amp; 10.7-10.9</td>
<td>Procedure in place to obtain permission of the Court to make an application for a hearing</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>10.10</td>
<td>Comply with any directions imposed by the Court</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ADDITIONAL DUTIES</strong></td>
<td></td>
</tr>
<tr>
<td>11.4</td>
<td>Disclose information to inspection bodies as required</td>
</tr>
<tr>
<td>11.8</td>
<td>Review protocols and procedures &amp; use assessment/authorization data to inform policy decisions</td>
</tr>
</tbody>
</table>
Appendix B: Deprivation of Liberty Safeguards Process

Person in need of care to prevent from harm to themselves

Unauthorised Deprivation of Liberty Reporting Process (Appendix B.1)

Managing Authority needs to apply to Supervisory Body for deprivation of liberty authorisation

Is it urgent?

Yes → Urgent Deprivation of Liberty Authorisation Process (Appendix B.3)

No → Standard Deprivation of Liberty Authorisation Process (Appendix B.4)

Is Standard Authorisation granted?

Yes → Monitoring Authorised Deprivation of Liberty Process (Appendix B.5)

No → Is Review required?

Yes → Review Process (Appendix B.6)

End of process
Appendix B.1: Managing Authority DoLS pre-application evaluation

Any 3rd party expresses concern over DoLS

A trigger for DoLS evaluation process:
- Case review;
- New admission;
- Change of care arrangements;
- Change of circumstances;

MA: Consider if application for deprivation of liberty is required

1. Does the person lack capacity to consent to care or treatment?
   - No
   - Yes

2. Is the person who lacks capacity at risk of deprivation of liberty now or within the next 28 days?
   - No
   - Yes

3. Less restrictive alternative care or treatment available?
   - No
   - Yes

4. Is the person 18 years of age or older?
   - No
   - Yes

5. Is the person subject to any of the powers of the MHA 1983 so they are ineligible for deprivation of liberty under MCA 2005?
   - No
   - Yes

6. Is the proposed deprivation of liberty required to provide treatment that the person has made a valid and applicable advance decision to refuse?
   - No
   - Yes

7. Is the proposed DoL for purpose of mental health treatment in hospital that the person objects to?
   - No
   - Yes

8. Does the attorney or deputy indicate they would object or refuse care or treatment arrangements?
   - No
   - Yes

DoLS Application for Standard Authorisation application may be required

Standard or Urgent deprivation of liberty process (Appendix B.3 or B.4)

Principles of MCA 2005 and DoLS
1. Presume capacity
2. Help and encourage people to have capacity
3. People are entitled to make unwise decisions
4. Decisions for person without capacity must be made in their best interests
5. Less restrictive options

Managing authority must record all actions and decisions in relation to DoLS

End
Appendix B.2: Unauthorised deprivation of liberty reporting

3rd party concern over unauthorised deprivation of liberty

Contact MA directly

Contact SB

Letter 1
Letter to MA concerning unauthorised dol

MA must respond to request within 24 hours

MA must resolve the issue with the 3rd party or apply for standard authorisation to SB

Letter 2
Letter to SB concerning unauthorised dol

SB considers the issue (with MA) and decide if best interest assessment is required

DoL Form No 16
Unauthorised deprivation of Liberty notice that a request has been received

End of process

Unauthorised dol assessment required?

Yes

BIA is appointed to perform unauthorised deprivation of liberty assessment

DoL Form No 17
Unauthorised deprivation of liberty assessor’s report

Does the report confirm dol?

Yes

MA must stop unauthorised deprivation of liberty and/or apply for standard authorisation if required

No

End

No

End

Standard or Urgent deprivation of liberty process (Appendix B.3 or B.4)
Appendix B.3: Urgent authorisation and assessment process

Managing authority grants themselves an Urgent Authorisation while simultaneously applying for Standard Authorisation

DoL Form No 1
Urgent Authorisation

DoL Form No 4
Request for a Standard Authorisation

Urgent Authorisation is valid until it expires (max 7 days) or until the outcome of standard authorisation assessment (whichever happens first)

The assessment process must finish within the period of Urgent authorisation and any extension granted

SB appoints assessors and IMCA if required and starts the assessment process

DoL Form No 28
Best Interest Assessor referral form

DoL Form No 29
Mental Health Assessor referral form

DoL Form No 30
IMCA referral form

DoL Form No 2
Request for extension of urgent authorisation

Managing authority must apply to SB for extension of urgent authorisation or stop deprivation of liberty

SB considers the request for extension and notifies MA of its decision

DoL Form No 3
SB's decision concerning request for extension of urgent authorisation

Is urgent authorisation extension granted?

Yes

Previous timescales are extended by the period of extension granted

No

Assessors perform required assessments

DoL Forms No 5 to 10
assessors reports

SB appoints the representative as recommended by the BIA or a professional representative

DoL Form No 25
Appointment of a representative

SB grants standard authorisation, informs all parties involved (providing copies of all assessments and details of the appointed representative).

DoL Form No 12
SB's decision Standard Authorisation granted

SB updates standard authorisation outcome record

DoL Form No 32
Record of assessments, authorisations and reviews

End of process

Previous timescales apply

Yes

Can assessment be completed in time while Urgent Authorisation is in force?

No

Managing authority must apply to SB for extension of urgent authorisation or stop deprivation of liberty

SB records reasons why equivalent assessment is used

No

DoL Form No 11
Record that an equivalent assessment is being used

SB's decision concerning request for extension of urgent authorisation

Yes

Is urgent authorisation extension granted (Form 3)?

No

Assessors perform required assessments

DoL Forms No 5 to 10
assessors reports

SB appoints the representative as recommended by the BIA or a professional representative

DoL Form No 25
Appointment of a representative

SB grants standard authorisation, informs all parties involved (providing copies of all assessments and details of the appointed representative).

DoL Form No 12
SB's decision Standard Authorisation granted

SB updates standard authorisation outcome record

DoL Form No 32
Record of assessments, authorisations and reviews

End of process
Appendix B.4: Standard authorisation assessment process

Person that needs to be deprived of liberty to prevent harm to themselves

Managing authority applies for Standard Authorisation → DoL Form No 4 Request for a Standard Authorisation

The assessment process must finish in 21 days from the receipt of valid and complete Form No 4

SB appoints assessors and IMCA if required and starts the assessment process

DoL Form No 28 Best Interest Assessor referral form → DoL Form No 29 Mental Health Assessor referral form → DoL Form No 30 IMCA referral form

Assessors perform required assessments

Assessments negative?

Yes: Managing authority issues itself an urgent authorisation and notifies the supervisory body → DoL Form No 1 Urgent Authorisation

Previous timescales no longer apply. The assessment process must finish before Urgent Authorisation expires

No: DoL Form No 20 Request for a Standard Authorisation

Has need for deprivation of liberty become urgent while assessments are under way?

Yes: Managing authority issues itself an urgent authorisation and notifies the supervisory body → DoL Form No 1 Urgent Authorisation

Previous timescales no longer apply. The assessment process must finish before Urgent Authorisation expires

No: DoL Form No 5 to 10 assessors reports

Assessors perform assessments on behalf of the supervisory body

DoL Forms No 5 to 10 assessors reports

SB appoints the person recommended by the BIA to be a representative or appoints a professional representative → DoL Form No 25 Appointment of a representative

SB updates standard authorisation outcome record

DoL Form No 32 Record of assessments, authorisations and reviews

End of process
Appendix B.5: Monitoring authorised deprivation of liberty

Managing authority monitors the following:
1. Representative’s visits and actions;
2. If the relevant person’s circumstances change;
3. If the relevant person regains capacity or their capacity fluctuates;
4. If the relevant person’s circumstances change so they no longer eligible for deprivation of liberty (conflict with MHA);
5. If the current authorisation is about to expire and a new authorisation is required.

End of process

Managing authority monitors the following:
1. Representative’s visits and actions;
2. If the relevant person’s circumstances change;
3. If the relevant person regains capacity or their capacity fluctuates;
4. If the relevant person’s circumstances change so they no longer eligible for deprivation of liberty (conflict with MHA).
5. If Standard authorisation expires in the next 28 days.

Are grounds for termination of the appointment of representative met?

Yes
Supervisory body reviews representative’s appointment

No

Are concerns over representative’s actions or performance?

Yes
Managing authority (or any 3rd party) informs Supervisory body of their concerns

No

Has person regained capacity and it’s likely to be long-term?

Yes

Managing authority must stop deprivation of liberty immediately and request a formal review of standard authorisation

No

Has eligibility requirements temporarily ceased to be met due to the conflict with MHA 2007?

Yes

Is it likely to be short-term only (less than 28 days)?

Yes

Managing authority must suspend authorisation and inform supervisory body

No

Any other changes in circumstances that may affect authorisation requirements?

Yes

Managing authority must request a formal review

No

Does Standard authorisation expire in the next 28 days?

Yes

Managing authority must continue to monitor authorised deprivation of liberty

No

Managing authority must re-apply for a new DoL authorisation 28 days before the current authorisation expires

End of process

New assessment process starts

Managing authority requests standard authorisation

End

Does deprivation of liberty have to continue?

Yes

Managing authority must request a formal review

No

End

Are the grounds for termination of the appointment of representative met?

Yes
Supervisory body notifies the representative and all parties concerned of pending termination of their appointment

No

DoL Form No 15 Notification that suspension is to be lifted

Has SB received Form 15 notification?

Yes

New assessment process starts

No

End

Managing authority (or any 3rd party) informs Supervisory body of their concerns

Supervisory body reviews representative’s appointment

SB notifies the representative and all parties concerned of pending termination of their appointment

DoL Form No 26 Notice to representative of the pending termination of appointment

DoL Form No 27 Termination of a representative’s appointment

SB terminates representative’s appointment and notifies all parties

End

Suspension will last for 28 days maximum or until re-called by managing authority

SB updates standard authorisation outcome record

DoL Form No 32 Record of assessments, authorisations and reviews

Managing authority must stop deprivation of liberty immediately and request a formal review of standard authorisation

DoL Form No 14 Suspension of a standard authorisation

Managing authority must notify supervisory body that suspension is to be lifted

End

Managing authority must request a formal review

Managing authority must notify supervisory body that suspension is to be lifted

Suspension last for 28 days maximum or until re-called by managing authority

Supervisory body terminates the standard authorisation

Has the person become eligible again within 28 days?

Yes

Managing authority must stop deprivation of liberty immediately and request a formal review of standard authorisation

No

Any other changes in circumstances that may affect authorisation requirements?

Yes

Managing authority must request a formal review

No

Does Standard authorisation expire in the next 28 days?

Yes

Managing authority must continue to monitor authorised deprivation of liberty

No

Does deprivation of liberty have to continue?

End

End

End

End

End
Appendix B.6: Review of standard authorisation qualifying requirements

DoL Letter 3 Request for a review from the relevant person

DoL Letter 4 Request for a review from the relevant person’s representative

DoL Form No 19 Request for a review by the managing authority

DoL Form No 20 Notice that a review is to be carried out

SB decides what qualifying conditions to be reviewed

DoL Form No 21 SB’s decision as to whether any qualifying conditions are reviewable

End of review process

DoL Form No 32 Record of assessments, authorisations and reviews

SB decided (or was requested to) carry out a review of existing DoL authorisation

DoL Form No 28 Best Interests Assessor referral form

SB: Arrange for a separate review assessment to be carried out for each of these requirements

DoL Form No 29 Mental Health Assessor referral form

Assessors perform required assessments

DoL Forms No 5 to 9 (as applicable) DoL Assessments

Are all re-assessed requirements still met?

SB terminates authorisation immediately and notifies all parties concerned

SB: Update authorisation record with review outcome

DoL Form No 22 SB’s decision following review

End of review process

DoL Form No 23 Standard authorisation has ceased to be in force

DoL Form No 26 Notice of pending termination of representative’s appointment

DoL Form No 27 Termination of a representative’s appointment

DoL Form No 28 Best Interests Assessor referral form

BIA reviews best interest assessment

DoL Form No 10 Best Interests Assessment

Is Best Interests requirement still met? (Form 10)

Yes

No

End of review process

What qualifying conditions do need to be reviewed? (Form 21)

Best interest assessment only

None

Age, No refusal, Mental capacity, Mental health or Eligibility requirements

Yes the reason DoL is still valid changed significantly from original assessment?

Yes

No

SB: Arrange for a new Best Interests Assessment if required

SB: Update authorisation record with review outcome

DoL Form No 32 Record of assessments, authorisations and reviews

SB: Update authorisation record with review outcome

DoL Form No 28 BIA review s best interest assessment

DoL Form No 23 BIA referral form

Assessors perform required assessments

DoL Forms No 5 to 9 (as applicable) DoL Assessments

Are all re-assessed requirements still met?

SB terminates authorisation immediately and notifies all parties concerned

DoL Form No 22 SB’s decision following review

End of review process

DoL Form No 23 Notice of pending termination of representative’s appointment

DoL Form No 27 Termination of a representative’s appointment

DoL Form No 32 Record of assessments, authorisations and reviews

SB: Update authorisation record with review outcome
## Appendix C - Deprivation of Liberty Safeguards Forms and Letters

<table>
<thead>
<tr>
<th>Form/letter</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>URGENT AUTHORISATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>Form 1</td>
<td>For the giving of an urgent authorisation by a managing authority</td>
</tr>
<tr>
<td>Form 2</td>
<td>Managing authority request for an extension in the duration of an urgent authorisation</td>
</tr>
<tr>
<td>Form 3</td>
<td>Supervisory body’s decision regarding a request for an extension of an urgent authorisation</td>
</tr>
<tr>
<td><strong>REQUESTS FOR A STANDARD AUTHORISATION</strong></td>
<td></td>
</tr>
<tr>
<td>Form 4</td>
<td>Managing authority request for a standard authorisation</td>
</tr>
<tr>
<td>Assessment forms</td>
<td></td>
</tr>
<tr>
<td>Form 5</td>
<td>Age assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 6</td>
<td>Mental health assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 7</td>
<td>Mental capacity assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 8</td>
<td>No refusals assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 9</td>
<td>Eligibility assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 10</td>
<td>Best interests assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 11</td>
<td>Record by supervisory body that an equivalent assessment is being used</td>
</tr>
<tr>
<td><strong>Recording the outcome of the request</strong></td>
<td></td>
</tr>
<tr>
<td>Form 12</td>
<td>Supervisory body gives a standard authorisation</td>
</tr>
<tr>
<td>Form 13</td>
<td>Supervisory body declines a request for a standard authorisation</td>
</tr>
<tr>
<td><strong>SUSPENSION OF STANDARD AUTHORISATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>Form 14</td>
<td>Managing authority notifies the supervisory body that a standard authorisation should be suspended because the eligibility requirement is no longer being met</td>
</tr>
<tr>
<td>Form 15</td>
<td>Managing authority notifies the supervisory body that the eligibility requirement is again met and the suspension of the standard authorisation is lifted</td>
</tr>
<tr>
<td><strong>UNAUTHORISED DEPRIVATION OF LIBERTY</strong></td>
<td></td>
</tr>
<tr>
<td>Letter 1</td>
<td>Letter for a person to send to a managing authority concerning a possible unauthorised deprivation of liberty</td>
</tr>
<tr>
<td>Letter 2</td>
<td>Letter for a person to send to a supervisory body concerning a possible unauthorised deprivation of liberty</td>
</tr>
<tr>
<td>Form 16</td>
<td>Record of supervisory body action on receipt of notification of a possible unauthorised deprivation of liberty</td>
</tr>
<tr>
<td>Form 17</td>
<td>Unauthorised deprivation of liberty assessor’s report</td>
</tr>
<tr>
<td>Form 18</td>
<td>Supervisory body’s decision following the receipt of an unauthorised deprivation of liberty assessor’s report</td>
</tr>
</tbody>
</table>
**PART 8 REVIEW OF A STANDARD AUTHORISATION**

| Letter 3 | Letter to a supervisory body from a person subject to a standard authorisation requesting a review of the standard authorisation |
| Letter 4 | Letter to a supervisory body from a person subject to a standard authorisation’s representative requesting a review of the standard authorisation |
| Form 19 | Request for a review of a standard authorisation from the managing authority to the supervisory body |
| Form 20 | Supervisory body notifies relevant interested parties that a review is to be carried out |
| Form 21 | Supervisory body records its decision as to whether any qualifying requirements are reviewable |
| Form 22 | Supervisory body’s decision following receipt of review assessments |

**STANDARD AUTHORISATION CEASED TO BE IN FORCE**

| Form 23 | Supervisory body gives notice that a standard authorisation has ceased to be in force |

**RELEVANT PERSON’S REPRESENTATIVE**

| Form 24 | Best interests assessor action in respect of the selection of a relevant person’s representative |
| Form 25 | Supervisory body action in respect of the appointment of a relevant person’s representative |
| Form 26 | Supervisory body gives a relevant person’s representative notice of the pending termination of their appointment |
| Form 27 | Supervisory body terminates a relevant person’s representative’s appointment |

**MENTAL HEALTH ASSESSOR AND BEST INTERESTS ASSESSOR REFERRAL FORMS**

| Form 28 | Best interests assessor referral form |
| Form 29 | Mental health assessor referral form |

**IMCA REFERRAL AND REPORT FORMS**

| Form 30 | IMCA referral form |
| Form 31 | IMCA report form |

**RECORD OF DEPRIVATION OF LIBERTY SAFEGUARDS ACTIVITY**

| Form 32 | Record of assessments, authorisations and reviews |
Appendix D: DoLS Service Assessment Checklist

Staff should use this checklist to track the assessment process. Please refer to the Deprivation of Liberty Safeguards Interagency Policy and Procedures for guidance relating to the procedures and timescales for standard authorisations, urgent authorisations and 3rd party requests.

Relevant person: __________________________________________________

Managing Authority: ________________________________________________

Computerised ID number: ___________________________________________

Date the request is received:__________________________________________
Section 1 Referral Process

Standard Authorisations: Initial referral
(please see separate sections for 3rd party requests and urgent authorisations)

<table>
<thead>
<tr>
<th>Standard Authorisation Referral Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request for standard authorisation received (Form 4)</td>
<td></td>
</tr>
<tr>
<td>Receipt acknowledgement sent</td>
<td></td>
</tr>
<tr>
<td>Form referred back to Managing Authority</td>
<td></td>
</tr>
<tr>
<td>Reason: <strong>Incomplete / Invalid / Too far in advance</strong></td>
<td></td>
</tr>
<tr>
<td>(delete as appropriate)</td>
<td></td>
</tr>
</tbody>
</table>

Urgent Authorisations: Initial referral

<table>
<thead>
<tr>
<th>Urgent Authorisation Referral Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urgent Authorisation received (Form 1)</td>
<td></td>
</tr>
<tr>
<td><strong>Date of expiry of Urgent Authorisation</strong></td>
<td></td>
</tr>
<tr>
<td>Request for Standard Authorisation received (Form 4)</td>
<td></td>
</tr>
<tr>
<td>Receipt acknowledgement sent</td>
<td></td>
</tr>
<tr>
<td>Request to extend Urgent Authorisation received (Form 2)</td>
<td></td>
</tr>
<tr>
<td>Managing authority informed of decision to extend by ___ days / NOT to extend (delete as appropriate) – Form 3.</td>
<td></td>
</tr>
<tr>
<td><strong>Extended expiry date of urgent authorization</strong></td>
<td></td>
</tr>
</tbody>
</table>
3rd Party Requests: Initial request

<table>
<thead>
<tr>
<th>3rd Party Referral Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>3rd party request received (verbal or in writing)</td>
<td></td>
</tr>
<tr>
<td>Acknowledgement of the request sent</td>
<td></td>
</tr>
<tr>
<td>Notification of the action in respect of the 3rd party request sent (Form 16)</td>
<td></td>
</tr>
</tbody>
</table>

**If the matter is to be pursued:**
- Best Interest Assessor is appointed to perform unauthorised deprivation of liberty assessment
- Unauthorised deprivation of liberty assessment completion deadline

Name of 3rd Party _____________________________

Name of BIA, if instructed ______________________________

Name of the IMCA, if instructed:_________________________

**Unauthorised deprivation of liberty assessment outcome: (Forms 17 and 18)**
- Deprivation of liberty is NOT occurring ☐ (no further action)
- Deprivation of liberty is occurring ☐ (choose actions below)

**If deprivation of liberty is occurring:**
- a) Deprivation of liberty is already authorised ☐ (specify expiry date)
  ________________
- b) Deprivation of liberty must cease immediately (will be followed up by the BIA) ☐ (date of planned re-visit)
  ________________
- c) Commence assessment process as per Standard Authorisation request ☐ (date of commencement)
  ________________
### Main DoLS assessment contacts

<table>
<thead>
<tr>
<th>Main contact from Managing Authority</th>
<th>Name, position and contact details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main contact from Supervisory body</td>
<td></td>
</tr>
<tr>
<td>IMCA instructed</td>
<td></td>
</tr>
<tr>
<td>Best interests assessor appointed</td>
<td></td>
</tr>
<tr>
<td>Mental health assessor appointed</td>
<td></td>
</tr>
</tbody>
</table>

DoLS Service contacted the Managing Authority and agreed on preliminary assessment plan

Date: _______________________________
<table>
<thead>
<tr>
<th>Requirement assessment</th>
<th>Requirement met</th>
<th>Date completed</th>
<th>Completed by</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Age assessment (Form 5)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental health assessment (Form 6)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental capacity assessment (Form 7)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No refusals assessment (Form 8)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eligibility assessment (Form 9)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Best interest assessment (Form 10)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 3: Outcome process

Authorisation is granted (Form 12) …………………………………………

Standard authorisation is granted until: Date: _______________________

OR

Authorisation is NOT granted (Form 13)………………………………………

Outcome report (Form 12 or Form 13)

<table>
<thead>
<tr>
<th>Outcome report</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcome report is given to DoLS Coordinator</td>
<td></td>
</tr>
<tr>
<td>Outcome report is given to dedicated senior manager for approval</td>
<td></td>
</tr>
<tr>
<td>Outcome report signed</td>
<td></td>
</tr>
<tr>
<td>Outcome recorded on the database</td>
<td></td>
</tr>
<tr>
<td>Outcome report (and accompanying reports) is sent to:</td>
<td></td>
</tr>
<tr>
<td>a) Managing authority;</td>
<td></td>
</tr>
<tr>
<td>b) Relevant person;</td>
<td></td>
</tr>
<tr>
<td>c) Relevant person’s representative (if applies);</td>
<td></td>
</tr>
<tr>
<td>d) IMCA;</td>
<td></td>
</tr>
<tr>
<td>e) Commissioning service;</td>
<td></td>
</tr>
<tr>
<td>f) Other persons consulted during the assessment process</td>
<td></td>
</tr>
</tbody>
</table>

Information given to Managing Authority about the Complaints procedure

Outcome/recommendation

Outcome report is approved and signed by (name and position):

__________________________________________

Relevant Person’s Representative Appointed (name and contact details):

__________________________________________

Planning Meeting Required? Yes [ ] No [ ]

Date: __________________________


Appendix E:

South Gloucestershire DoLS Service Contact Details

For all enquiries relating to DoLS, please use the contact details below, asking for the DoLs service.

Address: DOLS Team  
South Gloucestershire CC&H Department  
PO Box 2083  
The Council Offices  
Thornbury  
South Gloucestershire BS35 9BR

Telephone: 01454 868 007  
Minicom: 01454 866 400  
Fax: 01454 865 828  
Email: DOLSteam@southglos.gov.uk

Lines are open 8.30am – 5.30pm Mon – Thurs  
and 8.30am – 4.30pm on Fridays

For data security reasons, no personally identifiable information should be sent by email.
Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications

Report Author: Emmet Perry
Senior Manager, Adult Safeguards
Essex County Council
## Contents

<table>
<thead>
<tr>
<th>Heading</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>1</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>2</td>
</tr>
<tr>
<td>Background/Definitions</td>
<td>3</td>
</tr>
<tr>
<td>Scope and Aims of the Protocol</td>
<td>4</td>
</tr>
<tr>
<td>Principles</td>
<td>4</td>
</tr>
<tr>
<td>Key Responsibilities</td>
<td>5</td>
</tr>
<tr>
<td>Determining Ordinary Residence/Responsible Supervisory Body</td>
<td>5 &amp; 6</td>
</tr>
<tr>
<td>PCT – Determining Responsibilities as Supervisory Bodies</td>
<td>7</td>
</tr>
<tr>
<td>Requests for DoLS Authorisations</td>
<td>7</td>
</tr>
<tr>
<td>IMCA Service</td>
<td>8</td>
</tr>
<tr>
<td>Paid Representatives</td>
<td>9</td>
</tr>
<tr>
<td>Request from Supervisory Bodies/PCTs for Assessments</td>
<td>9</td>
</tr>
<tr>
<td>Process Requirements/Agreeing Terms/Conducting Assessments</td>
<td>10</td>
</tr>
<tr>
<td>Assessments &amp; Reporting/When Assessment Criteria Not Met</td>
<td>11</td>
</tr>
<tr>
<td>Where Managing Authority &amp; Supervisory Body are the Same</td>
<td>12</td>
</tr>
<tr>
<td>Reviews of DoLS Authorisations</td>
<td>12</td>
</tr>
<tr>
<td>Record Keeping &amp; Information Sharing</td>
<td>12</td>
</tr>
<tr>
<td>Urgent Requests for Authorisation</td>
<td>12</td>
</tr>
<tr>
<td>Cost Recovery</td>
<td>12 &amp; 13</td>
</tr>
<tr>
<td>Disputes, Complaints and Litigation</td>
<td>14</td>
</tr>
<tr>
<td>Dispute between Supervisory Body &amp; Host Authority</td>
<td>14</td>
</tr>
</tbody>
</table>

## Appendices

- Pan-London Procedure for Managing DoLS Applications A
- Letter from Commissioning Authority to Managing Authority with details of Key Contact Person B
- E-mail from Supervisory Body requesting Host Local Authority to carry out DoLS Assessments C
- E-mail response to the Supervisory Body's request to the Host Local Authority D
- Service Level Agreement between Supervisory Body and Host Local Authority E
Acknowledgements

The report author would like to thank members of the original working group: Kate Burke (Essex), Greg Slay (West Sussex), Carol Wilkinson (East Sussex) and Paula Hallam (Hampshire) and a particular thanks to Oliver Mills, Managing Director, Adult Social Services Kent County Council for kindly agreeing to sponsor this project.

I would also like to thank Nick Pavitt, (Essex CC legal section), Penny Rogers (Essex CC MCA Consultant), Maggie Goff & Steve Chamberlain (London Development Centre), Linda Metcalfe (Nottingham) and Sylvia Manson (Northamptonshire Teaching PCT) for their invaluable help and advice during the draft stages of the report. Additionally, I am grateful to the ADASS Mental Health Network for their peer review, the ADASS Ordinary Residence Reference Group and everyone else who responded to the document for their assistance and comments.
1. Parties to the Protocol
This protocol was ratified by the Association of Directors of Adult Social Services (ADASS) on 24th February 2009 and is intended for adoption by all Councils with Adult Social Services Responsibilities in England. The protocol is also available for use by Primary Care Trusts (PCTs) and Local Authorities in Wales.

2. Background
The Mental Capacity Act 2005 (MCA) was introduced in part in April 2007 and fully implemented in October 2007. The Mental Health Act 2007, which received Royal Assent in July 2007, included an amendment to the MCA to introduce additional Deprivation of Liberty Safeguards from 1st April 2009.

The Deprivation of Liberty Safeguards provides additional protection for the most vulnerable people living in residential homes, nursing homes or hospital environments. There will be a requirement, enshrined in law from 1st April 2009, that care will always be provided in a way which is consistent with the human rights of people lacking capacity who are not otherwise protected or safeguarded through the use of the Mental Health Act or Court of Protection powers.

Local Authorities (in the case of residential/nursing homes) and Primary Care Trusts (in the case of hospitals) will assume primary responsibility as the new statutory Supervisory Bodies under the DoL Safeguards. In operational terms this means that Local Authorities and PCTs will receive requests from Managing Authorities (residential/nursing homes and hospitals) and be required to organise, complete and respond to requests for authorisations within the mandated deadlines under the DoL regulations.

3. Definitions.
This protocol will apply the following definitions.

‘Supervisory Body’ – The Local Authority or Primary Care Trust which has statutory responsibility for conducting assessments and reviews under this legislation.

‘Host Authority/Host PCT’ – The Local Authority or Primary Care Trust in the geographic locality of the Care Home or Hospital in which the relevant person is receiving care but where that Local Authority or PCT is not also the Supervisory Body.

‘Relevant Person’ – The person who is, or may become, deprived of their liberty in a hospital or care home.
4. **Scope and Aims of the Protocol**

This protocol aims to outline the responsibilities and actions to be taken by Local Authorities in circumstances where a person is classified as ordinarily resident in one local authority (the Supervisory Body) but is residing in a care home in another local authority (the Host Local Authority) and deprivation of liberty assessments need to be undertaken.

The protocol can be extended to Primary Care Trusts, in circumstances where a PCT is funding the treatment of a patient in an out-of-county hospital or nursing home. In such circumstances, the funding PCT is the Supervisory Body and it may choose to adopt all or some of the principles and processes outlined in this document.

This protocol does not restrict the ability of any Local Authority or PCT to come to local, individual arrangements for the management of inter-authority deprivation of liberty requests. The need for a separate Pan-London procedure is one significant example of this *(see Appendix A)*.

Where Local Authorities or PCTs choose to make individual arrangements, they will not be able to rely on any provisions within this protocol that are inconsistent with the individual arrangements they have agreed. This protocol encompasses arrangements and processes for:

- Undertaking deprivation of liberty assessments
- Commissioning paid representatives.

5. **Principles**

The principles underpinning this protocol are:

- Appropriate and transparent arrangements for the management of inter-authority relationships should be developed and agreed, as a matter of good governance and to improve outcomes for the relevant person.

- Suitable arrangements should be established and agreed to allow for the recovery of costs in circumstances where one Supervisory Body arranges for another Local Authority or PCT to act on its behalf.

- Supervisory Bodies should establish arrangements to encourage timely consideration of requests for deprivation of liberty authorisations and reviews. Host Local Authorities or PCTs should establish arrangements to encourage timely responses to requests.

- Supervisory Bodies must establish arrangements to ensure that the legislative requirements are met in relation to assessments and reviews.
6. **Key Responsibilities**

- The responsible Supervisory Body retains responsibility for Deprivation of Liberty authorisations. This responsibility cannot be delegated.

- The responsible Supervisory Body retains ultimate responsibility for ensuring that all acts undertaken by another party on its behalf, as part of the deprivation of liberty assessment process, meet statutory requirements.

- Where a Host Local Authority or PCT acts on behalf of a responsible Supervisory Body, the Host Local Authority or PCT is responsible for ensuring its actions are communicated to all relevant parties.

- The responsible Supervisory Body is responsible for putting in place effective monitoring and review processes. Any request for a Host Local Authority or PCT to undertake this on their behalf must be negotiated in writing, detailing the requirements and parameters of responsibility. The Supervisory Body retains ultimate responsibility for deciding on whether or not a DoL authorisation should be granted.

7. **Determining Ordinary Residence/Responsible Supervisory Body**

Where the Deprivation of Liberty Safeguards are applied to a person in a care home, the Supervisory Body will be the Local Authority for the area in which the person is ordinarily resident.

However, if the person is not ordinarily resident in the area of any Local Authority (for example a person of no fixed abode), the Supervisory Body will be the Local Authority for the area in which the care home is situated.

To determine the place of ordinary residence, the principles and mechanisms under the National Assistance Act 1948 will apply.

The sections below identify the responsible Supervisory Body for the purposes of any deprivation of liberty assessment and are intended to provide broad guidance only. When determining ordinary residence issues, Local Authorities should have regard to the Act, LAC (93)7 and the ADASS National Protocol on Ordinary Residence (currently under development).

**Local Authority Commissioned Placements**

In circumstances where a Local Authority arranges for an individual to be placed in a care home in another authority’s area, the commissioning Local Authority is the relevant Supervisory Body (and therefore the responsible Supervisory Body) for the purposes of any deprivation of liberty authorisation referral.

**PCT/LA Jointly Funded Care Home Placements**
In circumstances where an individual is placed in a care home in another authority’s area under a PCT/LA jointly funded arrangement, the commissioning Local Authority will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

**PCT Commissioned Care Home Placements – within Home Local Authority**

In circumstances where the Responsible Commissioner PCT (see Section 8 below) places a person in a care home within its own local authority, the PCT’s home Local Authority will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral. **Note:** the PCT’s home Local Authority is defined as the Local Authority area for which the PCT is responsible and not the area where the PCT’s headquarters is physically located, if this is different.

**PCT Commissioned Care Home Placements – outside Home Local Authority**

In circumstances where the Responsible Commissioner PCT places a person in a care home located outside of the PCT’s home Local Authority, the Local Authority in which the care is located (Host Local Authority) is currently deemed to be the relevant person’s place of ordinary residence. The Host Local Authority in these circumstances will be the responsible Supervisory Body. This situation will however change with the introduction of Section 148 of the Health and Social Care Act 2008 in July/August 2009.

Under Section 148 of the H&SCA 2008, where the Responsible Commissioner PCT places a person in a care home located outside of their home Local Authority, the Responsible Commissioner PCT’s home Local Authority (and not the Host Local Authority) will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

**Individuals who Fund their own Support**

In circumstances where an individual arranges to go into a care home which is located outside of their existing local authority, without any local authority having taken responsibility for the arrangements, the local authority in which the care home is located (Host Local Authority) will be the relevant Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

**Individuals with No Settled Residence**

In circumstances where an individual has no settled residence or fixed abode the local authority where they present themselves will normally accept responsibility for provision of social services and will be the relevant Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

**Where there is a Dispute**

Any unresolved questions about the ordinary residence of the relevant person will be handled by the Secretary of State. Until a decision is made, the Host Local Authority (the Local Authority in which the care home of the relevant person is located) must act as the Supervisory Body. When the decision is
made, the Local Authority of ordinary residence must assume responsibility as the Supervisory Body. **Note:** The Secretary of State may decide that it is the Host Local Authority which, in any event, is deemed to be the responsible Supervisory Body.

8. **PCT – Determining responsibilities as Supervisory Bodies**

The PCT defined as the Responsible Commissioner for the relevant person’s hospital care will be the responsible Supervisory Body for the purpose of the DoL regulations.

Notwithstanding the conditions of Section 148 of the Health and Social Care Act 2008 (see Section 7 above), the general principles for establishing the responsible commissioner for NHS treatment of an individual patient (as set out under regulation 3(7) of the Functions Regulations) are as follows:

- Where the patient is registered on the list of NHS patients of a General Practitioner (GP) practice, the responsible commissioner will be the PCT that holds the contract with that GP practice.

- If a patient is not registered with a GP practice, the responsible commissioner will be the PCT in whose geographic area the patient is ‘usually resident’.

- If a patient is unable to give an address, the responsible commissioner will be determined in accordance with the Functions Regulations as the PCT in which he/she is present, which will usually be the PCT where the unit providing the treatment is located.

In any other case, for example care that is commissioned privately, the Supervisory Body is the PCT for the area in which the relevant hospital is located.

Where Supervisory Body responsibility is not immediately obvious or where it may be shared, any ensuing dispute should be resolved locally ideally at PCT level, using the general principles contained within this protocol. In cases that cannot be resolved at PCT level, the Strategic Health Authority should be consulted and should arbitrate where necessary.

9. **Requests for Standard Deprivation of Liberty Authorisations**

The relevant managing authority has responsibility for applying for an authorisation of deprivation of liberty for any person who may come within the scope of the deprivation of liberty safeguards criteria.

Managing authorities will make a written request for deprivation of liberty authorisations to the relevant Supervisory Body.

Upon receipt of an application for authorisation of deprivation of liberty, the Supervisory Body must, as soon as is practical and possible:
Consider whether the request is appropriate and should be pursued, and

Seek any further information that it requires from the managing authority to help it with the decision.

In situations where there is uncertainty in identifying the correct Supervisory Body, the local authority which received the application must act as the Supervisory Body until a decision is reached. After the decision is made, the local authority of ordinary residence must become the responsible Supervisory Body.

Dealing with an authorisation request should not be delayed because of uncertainty about which Supervisory Body is responsible.

All Supervisory Bodies should have a procedure in place that identifies the action they should take, who should take it and within what timescale.

Supervisory Bodies should nominate a Key Contact Person responsible for receiving and processing all DoL authorisation requests. This person should also be responsible for dealing with any query relating to DoL cross boundary issues.

It is strongly recommended that all Supervisory Bodies should identify their existing placements in out-of-area care homes and confirm with each home that they are the responsible Local Authority (Supervisory Body). Details of the responsible local authority’s Key Contact person should be supplied to the care home in the event that the care home may wish to make a DoL authorisation referral (in their capacity as managing authority). This approach should also apply in the case of all future placements made in out-of-area care homes – (a template letter which can be used for this purpose has been included as Appendix B).

PCTs similarly should identify their existing out of county hospital admissions and provide contact details for their Key Contact Person for Deprivation of Liberty referrals (Appendix 2 can be adapted for this purpose).

10. Independent Mental Capacity Advocacy Service
The requirement to appoint Independent Mental Capacity Advocates (IMCAs) within the DoL regulations is met according to the wider provisions of the Mental Capacity Act 2005 i.e. where the relevant person is receiving care and not where the relevant person is ordinarily resident, if this is different.

Under the Mental Capacity Act resource allocation, funding for the commissioning of an IMCA service was provided exclusively to Local Authorities. The Local Authority in which the relevant person’s placement is located is therefore responsible for providing an IMCA service if required. This
is the position irrespective of whether the relevant person’s ordinary residence is elsewhere or the relevant person is placed in a care home or hospital.

11. **Paid Representatives**
The involvement of a representative for the relevant person is provided for under the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person’s Representative) Regulations 2008. The expectation is that a representative will normally be a family member, friend, carer, Donee or Deputy (see Section 3 of the Regulations). Where it has not been possible to appoint a representative from any of these categories, the Supervisory Body may select a person to be the representative under Section 9 of the Regulations. In this event, the person would be performing the role in a professional capacity.

If the Supervisory Body wishes to arrange for the Host Local Authority or PCT to appoint paid representatives on its behalf, it will do so following the processes outlined in this protocol. The paid representative is required to spend a minimum of 26 hours per annum working with or on behalf of the individual whose liberty has been deprived. The cost of this service will need to be factored in as an additional cost to the standard Assessment/Review costs outlined in Section 20 below.

12. **Request from Supervisory Bodies for another Local Authority or PCT to undertake Assessments**

*LAC(93)7 establishes that*: “the Local Authority where the person is ordinarily resident can arrange for the assessment and the provision of services to be carried out on its behalf by the Local Authority of the moment”.

The duty of the responsible Supervisory Body to authorise or decline DoL requests cannot be delegated but the responsible Supervisory Body may arrange for another body to undertake one or more deprivation of liberty assessments on it’s behalf. This protocol provides for circumstances where the responsible Supervisory Body wishes to appoint assessors or paid representative from the Host Local Authority or PCT. However, Supervisory Bodies are at liberty to commission assessors or appoint paid representatives from other bodies provided they meet regulatory requirements. Such arrangements fall outside the scope of this protocol.

The Local Authority or PCT to which the request has been made is not under any obligation to accept the request. The Supervisory Body will remain the body with statutory responsibility for:

- establishing a system for receiving and processing applications from Managing Authorities.
- commissioning suitably trained staff/services to undertake and co-ordinate the various assessments relating to each application within the required timescales.
commissioning a suitably trained DoL IMCA and Representative service

establishing an authorisation system which will consider the outcome of DoL applications.

complying with a range of statutory responsibilities in communicating the outcome of each authorisation to a range of defined parties.

Ensuring the recommendations made by the Best Interests Assessor are followed, such as:

• determining the length of the deprivation of liberty
• identifying a person’s representative (as defined in the ‘Deprivation of Liberty Safeguards’)
• agreeing any other conditions which should be imposed

12. Process Requirements

If a Supervisory Body wishes to arrange for deprivation of liberty assessments or the appointment of paid representatives to be carried out on its behalf by another Local Authority or PCT, the Supervisory Body must make a formal, written request to the other Local Authority or PCT. The formal request will be in a prescribed form [see Appendix C].

In terms of continuity in the assessment process, when considering whether to accept a request, the Host Local Authority or PCT should have regard to its capacity to undertake any possible reviews and communicate capacity issues to the Supervisory Body.

It is good practice for communication to be conducted in a timely manner, to ensure that Supervisory Bodies can meet their statutory obligations. Where the responsible Supervisory Body wishes to engage the services of the Host Local Authority or PCT, negotiations should be initiated by the Supervisory Body as soon as possible following receipt of an authorisation referral. The Host Local Authority or PCT will be required to confirm whether or not they are in a position to carry out the necessary assessments and/or provide the services of a paid representative. In the case of a standard authorisation request, this confirmation should be made within three working days of receipt of the authorisation referral and within 24 hours of an urgent authorisation request [see Appendix D].

13. Agreeing Terms for Conducting Assessments

Following agreement by a Local Authority or PCT to conduct one or more assessments on behalf of a Supervisory Body, the parties must come to a formal agreement, which establishes:

• The assessments to be conducted
• The responsibilities of each of the parties
• Key contacts within each organisation and reporting arrangements
• Procedures within the Supervisory Body for granting authorisations, attaching conditions and setting the period of any authorisation.
• Procedures to follow where the assessment criteria are not met
• Costs and payment arrangements

This formal agreement will be in a standard format [see Appendix E].

14. Conducting Assessments and Reporting
The Local Authority or PCT which has agreed to conduct one or more assessments on behalf of the Supervisory Body will undertake the assessments according to the formal agreement between the parties and in accordance with statutory requirements and relevant best practice.

Assessors will follow the standard reporting procedures of the Host Local Authority or PCT.

On completion of the relevant assessments, the nominated key contact person within the Host Local Authority or PCT will forward the assessment documentation to the nominated key contact person within the Supervisory Body.

This must be done by the sixth day (from receipt of the original referral) in the case of an Urgent Authorisation and no later than the eighteenth day (from receipt of the original referral) in the case of a Standard Authorisation referral.

When the Supervisory Body has made a decision on the authorisation request, their key contact person is required to report back to the Host Local Authority/PCT key contact person on the outcome.

The Supervisory Body is responsible for informing the Managing Authority, the relevant person and their representative of the outcome of the authorisation request.

15. Where Assessment Criteria are Not Met & Authorisation is Declined
Where assessors determine that the DoL criteria are not met, they must inform the Supervisory Body immediately. The Supervisory Body is responsible for informing the Managing Authority that authorisation has been declined and the reasons for this.

Where the assessors have found that Deprivation of Liberty is occurring but the assessment criteria are not met, the Supervisory Body is responsible for ensuring alternative care arrangements are made so that the relevant person is not unlawfully deprived of their liberty.
16. **Where the Managing Authority and the Supervisory Body are the Same Organisation**  
Where a Local Authority or PCT is both the Supervisory Body and Managing Authority, the best interests assessor cannot be an employee of the Supervisory Body/Managing Authority or providing services to it.

In such circumstances, the Supervisory Body/Managing Authority can arrange for the best interests assessments to be carried out on its behalf by a best interests assessor employed by another Local Authority or PCT.

In such circumstances, the Supervisory Body/Managing Authority should follow the principles and processes outlined in this protocol when arranging for the assessment to be carried out on its behalf.

17. **Reviews of Deprivation of Liberty Authorisations**  
In circumstances where a review of an authorisation is required and the Supervisory Body wishes to arrange for the review to be carried out on its behalf by another Local Authority or PCT, the principles and processes outlined in this protocol should be followed.

In terms of continuity, it is best practice for the same Local Authority best interest assessor to review the relevant person, unless there are exceptional circumstances to suggest otherwise.

18. **Record Keeping and Information Sharing**  
In circumstances where a Local Authority or PCT performs an assessment on behalf of a Supervisory Body, both organisations should retain copies of relevant documents and information, in line with the Data Protection Act (1998), Caldicott Principles and organisational policy.

19. **Urgent Requests for Authorisation**  
Wherever possible, applications for deprivation of liberty authorisations should be made before the deprivation of liberty commences. However, where a deprivation of liberty unavoidably needs to commence before a standard authorisation can be obtained, an urgent authorisation can be given which will make the deprivation of liberty lawful for a short period of time.

The Local Authority or PCT to which the request is made should endeavour to prioritise the urgent request or where they are unable to meet the request, inform the Supervisory Body at the earliest opportunity.

20. **Cost Recovery**  
When a Local Authority/PCT agrees to undertake work on behalf of a Supervisory Body, it incurs costs that must be recovered. The differing demographics and organisational structures of organisations means that:

- Actual costs are highly variable
Some authorities have large numbers of people residing in care homes that are not ordinarily resident in the authority. It is likely they will receive proportionately more requests to carry out assessments on behalf of other Supervisory Bodies.

Some authorities/PCTs have placed large numbers of people in care homes or hospitals located in other authorities. It is likely they will make proportionately more requests to Host Local Authorities/PCTs to carry out assessments on their behalf.

Any cost recovery arrangement seeking to take into account the individual circumstances of Local Authorities & PCTs could be extremely time consuming and expensive.

**Governing Principles and Aims**

- The principles of fairness and equity must be balanced against the need to develop a consistent and straightforward method of calculating charges for services.
- Standardised costs reduce the risk of Local Authorities & PCTs with lower costs becoming overwhelmed by a disproportionate number of requests by other Local Authorities & PCTs possibly seeking to reduce their own costs.

From the various options considered, it was agreed to adopt a standard schedule of costs. This schedule would govern charging by all Local Authorities & PCTs for tasks related to deprivation of liberty assessments. The schedule would be updated at agreed times, to take account of changing costs. The DH DoL Impact Assessment on costs of assessment activity has been adopted as a national standardised cost, as follows:

“For planning purposes, the core estimate is that an assessment would cost approximately £600. This would cover the costs of all necessary associated procedures and paperwork. Costs would be higher (in the region of £1000) where an authorisation is given because of the extra work involved (e.g. appointment of a representative), and a lower cost (in the region of £500) where an authorisation is not given. The figure of £600 represents an average cost across both categories”.

The schedule includes set charges for four separate levels/types of activity:

- **Partial Assessment (£200)** – where a DoL assessment has been started but terminated early in the process e.g. the relevant person was assessed as having capacity.

- **Full Assessment (£600)** – where the range of DoL assessments have been carried out whether or not these led to an authorisation being given.

- **Review (£200)** – as defined under the DoL regulations.

- **Paid Representative (£520)** – This is calculated on the basis of the required 26 hours per annum at £20 per hour. A pro rata cost can be applied if the paid representative is not required for the whole year.
The standard costs schedule provides for consistency and is relatively easy to administer. However, it is acknowledged there is a risk that some Local Authorities with higher than average actual costs may be disadvantaged by this approach.

21. Disputes, Complaints and Litigation

The Supervisory Body remains accountable for any dispute, complaint or litigation that may arise in relation to the Deprivation of Liberty Safeguards process and any assessments they may have commissioned from the Host Authority.

The Host Authority may be asked to assist the Supervisory Body in investigating complaints/disputes but the Supervisory Body maintains accountability for any complaints and will utilise their organisations complaints process. Similarly, the Supervisory Body is liable for any litigation in relation to how they have complied with their statutory duties.

22. Dispute between Supervisory Body and Host Authority

Where a dispute arises between the Supervising Body and the Host Local Authority/PCT, the party which wishes to raise an issue or concern should do so as soon as reasonably practical.

In the case of disputes relating to financial payment, all payments agreed to in the formal written agreement should be paid in full by the agreed date. Any reimbursement due will be paid following resolution of the dispute.

The issue or concern should be communicated via the key contacts within each organisation and should be in writing. The document should set out the nature of the issue or concern, the resolution sought and a proposed timeline for response and resolution.

On receipt of the document outlining the issue, concern or complaint, the key contact should acknowledge receipt.

The key contact will take responsibility for co-ordinating the response to the issue raised. This will include investigating the issue and informing relevant staff and any other relevant stakeholders.

If the issue cannot be resolved, the matter will be escalated in accordance with the standard dispute resolution arrangements in each organisation.
Appendix A

Procedure for Pan London Management of Deprivation of Liberty Applications

As outlined in the main body of this document, there is an expectation that host Local Authorities will be requested by the relevant Supervisory Bodies to carry out assessments on their behalf.

The London region has a large number of local authorities, relatively short distances between boroughs and an unequal distribution of care homes and care home residents between authorities.

The majority of the region’s registered care homes are located within the outer London authorities. Therefore many residents of the inner London boroughs are placed in outer London. This makes the principle of “reciprocity” more complex in the London context.

This pan-London protocol is designed to maximise equity of resource allocation across the capital, reduce the burden and complexity of cross-charging for assessments and provide clarity on availability of assessors.

Proposal

Assessments

Where a resident is placed in a registered care home located within a London authority, the responsible Supervisory Body will accept responsibility for arranging assessments and providing the Best Interest Assessors regardless of location of the care home. However, the Host Local Authority would be expected to co-operate with the process by providing details of local Mental Health Assessors, who may be less willing to travel. The costs of Mental Health Assessors would be met by the responsible Supervisory Body.

Where a resident is placed in a registered care home located outside London, the national Protocol for the Inter-Authority Management of Deprivation of Liberty Applications will apply.

IMCA services

The Supervisory Body retains responsibility for arranging involvement of an IMCA where required, although again the Host Local Authority would be expected to provide details of the local IMCA service.

Paid Representatives

The Supervisory Body retains responsibility for the appointment of paid representatives.
Where the Managing Authority and the Supervisory Body are the Same Organisation or there is a potential conflict of interest with using assessors employed by the Supervisory Body

In this circumstance, the national protocol (section 16) applies.

Each London Borough should develop individual arrangements to ensure that alternative assessors are available in these circumstances. This may involve reciprocal agreements with neighbouring boroughs, use of independent practitioners, etc.
[Name & Address of Care Home]

Dear Owner/Registered Manager,

As you will be aware, the Deprivation of Liberty Safeguards will come in to effect on 1\textsuperscript{st} April 2009. Under these regulations, it is a statutory duty for all Managing Authorities (Care Homes) to apply to the appropriate Supervisory Body for authorisation if they need to deprive any resident of their liberty.

It is our understanding that the Supervisory Body responsible for agreeing any authorisation under the Deprivation of Liberty Safeguards, will be the commissioning (placing) authority in the case of out of county placements.

From the 1\textsuperscript{st} April 2009 therefore, if you feel that anyone within your care home who has been placed by [Commissioning LA] meets the Deprivation of Liberty criteria, can you please refer the matter in the first instance using the appropriate form to : [insert contact details of Commissioning LA Key Contact Person]

For more information of the Deprivation of Liberty, you can visit the Department of Health website on - www.dh.gov.uk.

Yours sincerely
Appendix C

*Suggested form of wording for a standard e-mail requesting the Host Local Authority to carry out a Deprivation of Liberty Assessment:*

Dear [Host Authority Key Contact Person]

Re: Deprivation of Liberty Assessment Request

Mr/Mrs [resident’s name] is resident at [name & address of care home].

As the Local Authority responsible for commissioning [resident’s name] care (and therefore the responsible Supervisory Body), it has come to our attention that he/she requires a deprivation of liberty assessment.

This is a [Standard/Urgent] Authorisation request.

In accordance with the ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications, can you please advise whether you can arrange for the appropriate assessments to be carried out on behalf of [name of the responsible Supervisory Body].

Also in line with the protocol, I look forward to your response by [within three working days of this request in the case of a standard authorisation or within 24 hours of an urgent authorisation request]

Regards

[Supervisory Body Key Contact Person]
Suggested form of wording for a standard e-mail in response to the Supervisory Body’s request to the Host Local Authority to carry out a Deprivation of Liberty Assessment:

Dear [Supervisory Body Key Contact Person]

Re: Deprivation of Liberty Assessment Request

Thank you for your e-mail dated [insert date] requesting this Authority to carry out the required deprivation of liberty assessments on [resident’s name] who currently resides at [name & address of care home].

We can confirm that we are able/unable to carry out the assessment on behalf of [name of Supervisory Body].

The terms of our engagement on this occasion will be formalised using the service level agreement contained within the ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications. We look forward to receiving this at your earliest convenience.

OR

We are sorry we are not in a position to assist your Authority on this occasion but hope that you are able to make alternative arrangements in relation to this matter.

Regards

[Host Authority Key Contact Person]
Agreement for undertaking assessments under the ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications

THIS AGREEMENT is made the ...... day of .......... 200

BETWEEN:

(1) [insert name of Host Local Authority/PCT] ('the Service Provider)

and

(2) [insert name of Responsible Supervisory Body] ('the Client')

RECITALS

(1) The Client wishes to commission from the Service Provider a Deprivation of Liberty Assessment service in accordance with............... 

(2) The Service Provider has appropriate skills, background and experience for providing such assessments and make recommendations.

(3) The Service Provider is willing to provide the Services (as defined below) and the Client wishes to receive the Services, all subject to the provisions of this Agreement.
NOW IT IS AGREED as follows:

1 Definitions

In this Agreement, the following words shall have the following meanings:

'Services' means (a) the provision deprivation of liberty assessments of advice and recommendations to the Client by the Service Provider (b) the subsequent operation of that function.

'Completion Date' means (date) or such other date as the Parties may agree.

'Fee' means £(amount).

'Reports' means all reports, documentation, presentations, software in whatever format that the Service Provider shall or may create or deliver to the Client as part of the Services provided by the Service Provider.

'Specification Document' has the meanings given in Clause 2.2 and the document attached to this Agreement as Schedule 1.

2 Services

2.1 The Service Provider shall provide the Services to the Client, subject to the provisions of this Agreement.

2.2 At the commencement of the Services, the Service Provider shall submit to the Client a specification for the Services. The specification shall specify the Services to be undertaken, the time estimates for
the provision of the Services and the fees payable ('Specification Document').

2.3 On receipt of the Specification Document the Client will sign a copy and return that copy to the Service Provider to signify the Client's agreement as to the Services to be provided and the fees payable to the Service Provider. The Client acknowledges and agrees that no Services will be provided until the Service Provider has received the signed copy of the Specification Document.

2.4 The Specification Document may be varied, or added to, from time to time, in writing and signed by both Parties. The changes shall be clearly identified, together with the additional or different level of fees to be paid by the Client.

3 **Performance of Services**

3.1 The Parties shall agree the time and place (if not specified in the Specification Document) for Performance of services subject to the availability of the Service Providers staff and agents

4.2 The Service Provider shall use reasonable endeavours to complete the Services by the Completion Date or meet such other dates as agreed by the Parties.

5 **Fee and payment**

5.1 Payment of the Fee for the Services shall be made within 30 days of the date of invoice.

5.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Client.
6 The Client's obligations

6.1 The Client acknowledges and agrees that for the Service Provider to be able to provide the Services the Client shall:

6.1.1 co-operate with the Service and its subcontractors as the Consultant and/or its subcontractors reasonably require;

6.1.2 provide to the Service Provider and its subcontractors such information and documentation as the Service Provider and/or its subcontractors reasonably require;

6.1.3 make available to the Service Provider and its subcontractors the facilities, resources, working space and staff as specified in the Specification Document and/or as the Consultant and/or its subcontractors reasonably require from time-to-time; and

6.1.4 instruct the Client's staff and agents to co-operate and assist the Service Provider and its subcontractors.

6.2 The Service Provider may charge the Client for any additional reasonable costs and expenses incurred by the Service Provider caused by the Client's instructions or failure to provide instructions.

7 Reporting requirements

7.1 The Specification Document shall specify the Reports that are to be produced during or on completion of the Services ('Reports').

7.2 Where required in the Specification Document to provide Reports, the Service Provider shall supply one copy of the Reports to the Client. The Service Provider grants to the Client a non-exclusive licence (without the right to sub-licence) to use the Reports for the
Purpose. The Service Provider shall own all copyright, database and other intellectual property rights in the Reports.

8 Protection of confidential information

8.1 Each Party ('Receiving Party') shall keep the Confidential Information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the Confidential Information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Clause 8, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

8.2 The obligations of Clause 8.1 shall not apply to any information which:

8.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Providing Party;

8.2.2 is, or becomes, publicly available through no fault of the Receiving Party;

8.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

8.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
8.2.5 is required to be disclosed by order of a court of competent jurisdiction.

8.3 This Clause 8 shall survive termination of this Agreement for a period of ten years.

9 Warranties, liability and indemnities

9.1 The Service Provider warrants that it will use reasonable care and skill in performing the Services.

9.2 If any part of the Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Client the Service Provider will re-perform the relevant part of the Service.

9.6 The Client shall indemnify and hold harmless the Service Provider from and against all Claims and Losses arising from loss, damage, liability, injury to the Service Provider employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by the Service Provider, its employees or consultants, or supplied to the Service Provider by the Client within or without the scope of this Agreement. ‘Claims’ shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and ‘Losses’ shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.7 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the
fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

AGREED by the Parties through their authorised signatories:

For and on behalf of (name)  
Signature:  
Print name:  
Job Title:  
Date:  

For and on behalf of (name)  
Signature:  
Print name:  
Job Title:  
Date:
A series of six assessments must be completed for an Authorisation to be granted. The assessments must be separately undertaken by:

(i) a Best Interests Assessor who has completed a training approved by the Secretary of State and who has professional indemnity insurance and

(ii) a s.12 approved Dr who has additionally completed a DoLS training approved by the Royal College of Psychiatry or

(iii) a GP with three years specialist training in mental health and who has additionally completed a DoLS training approved by the Royal College of Psychiatry

The assessments that must be completed are:

<table>
<thead>
<tr>
<th>Assessment</th>
<th>Conducted by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age Assessment</td>
<td>BIA</td>
</tr>
<tr>
<td>No Refusals</td>
<td>BIA</td>
</tr>
<tr>
<td>Mental Capacity</td>
<td>BIA</td>
</tr>
<tr>
<td>Eligibility</td>
<td>S12 Dr / GP / AMHP</td>
</tr>
<tr>
<td>Mental Health</td>
<td>S12 Dr</td>
</tr>
<tr>
<td>Best Interests</td>
<td>BIA</td>
</tr>
</tbody>
</table>

The costs of Assessments and Reviews are estimated as being:

**Partial Assessment (£200)** – where a DoL assessment has been started but terminated early in the process e.g. the relevant person was assessed as having capacity.

**Full Assessment (£600)** – where the range of DoL assessments have been carried out, whether or not these led to an authorisation being given.

**Review (£200)** – as defined under the regulations.

**Paid Representative (£520)** – This is calculated on the basis of the required 26 hours per annum at £20 per hour. A pro rata cost can be applied if the paid representative is not required for the whole year.

The time scale for these assessments – are 7 days for an Urgent Assessment or 21 days for a Standard Assessment. There are extensions to these timescales for April 2009 only where the timescales are effectively doubled – 14 days for an urgent assessment and 42 days for a standard assessment.

Where an authorisation is granted, a Representative must be appointed - this could be a family member or friend of the individual whose liberty is being
deprived, but they must be both willing to undertake the responsibilities of a Representative and suitable to be appointed. Where there is no willing or suitable friend or family member who can be appointed as a Representative, then the Supervisory Body must appoint a Paid Representative who must spend a minimum of 26 hours per annum working with or on behalf of the individual whose liberty has been deprived.

On completion of the relevant assessments, the nominated key contact person within the Host Local Authority or PCT will forward the assessment documentation to the nominated key contact person within the Supervisory Body.

This must be done by the sixth day (from receipt of the original referral) in the case of an Urgent Authorisation and no later than the eighteenth day (from receipt of the original referral) in the case of a Standard Authorisation referral.
Information Sharing Principles

Agreed principles, standards and framework for information sharing protocols.

July 2007

Avon IM&T Consortium
## Avon IM&T Consortium

### Document status: current

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 – 1.5</td>
<td>26th February 2002</td>
<td>Issued for sign up to organisations</td>
</tr>
<tr>
<td>2.0 – 2.5</td>
<td>7th March 2003</td>
<td>Reviewed and updated – issued for stakeholder consultation</td>
</tr>
<tr>
<td>2.6</td>
<td>23rd May 2003</td>
<td>Comments incorporated from stakeholder consultation prior to issue for signature</td>
</tr>
<tr>
<td>2.7</td>
<td>31st Jan 2005</td>
<td>Initial revisions following review group – Jan 2005</td>
</tr>
<tr>
<td>2.8</td>
<td>11 March 2005</td>
<td>Incorporating review group comments, prior to signatory (existing &amp; potential) and patient group consultation.</td>
</tr>
<tr>
<td>3.0</td>
<td>27 May 2005</td>
<td>Incorporate comments from wide consultation – issue for organisational sign up</td>
</tr>
<tr>
<td>3.2</td>
<td>April 2007</td>
<td>Revised following comments and discussion during stakeholder workshop, prior to issue for comment</td>
</tr>
<tr>
<td>3.3</td>
<td>May 2007</td>
<td>Revised following consultation with stakeholders, prior to issue to relevant organisations and groups representing interests of individuals/members of public</td>
</tr>
<tr>
<td>4.0</td>
<td>July 2007</td>
<td>Incorporate final stakeholder &amp; representative group comments, prior to active distribution</td>
</tr>
</tbody>
</table>

### July 2007


If you need further copies of this document please telephone Adam Tuckett on 0117 900 2410

If you need this document in a different format please telephone Adam Tuckett on 0117 900 2410

http://www.avon.nhs.uk/imtconsortium/confidentiality/default.htm
1 Purpose & Overview:
To set key principles and standards for sharing information in any form including verbal, paper, electronic, audio and visual. To establish a framework for creating specific information sharing protocols and to be a tool to measure existing protocols against these principles and standards. Organisations are invited to adopt these principles and standards as their baseline approach to information sharing. The aim is to promote a consistent approach to the sharing of information that will benefit individuals and services whilst protecting the people that information is about. It has been developed from a core ‘sharing agreement’ used across the Avon, Gloucestershire and Wiltshire area since 2003.

2 Sharing information within the legal activities of organisations
Sharing information must always be within the legitimate activities undertaken by an organisation in providing a service to the public, set out in their legal powers (vires). Below is a table of general purposes for which information can be legally shared by most organisations. If a purpose is not listed it does not mean that information cannot be shared. ‘Second level’ sharing protocols should add relevant detail of the legal powers organisations have to undertake activities that require sharing of information:

- Assuring and improving the quality of care / treatment
- Auditing accounts
- Clinical audit
- Contracting for services
- Delivering care and treatment
- Equipping the courts with required information
- Investigating complaints and potential legal claims
- Performing assessments, including common assessment frameworks for children/young people and adults, for treatment and services
- Prevention & detection of crime and the apprehension and prosecution of offenders, including terrorism
- Managing and planning services
- Monitoring and protecting public health
- Risk management
- Teaching and training
- Where emotional, physical, sexual, psychological, financial, material or discriminatory abuse/neglect is suspected, crime committed or regulations breached.

3 How much identifying information is required?
Any activity to share data must first consider if ‘identifying information’ is required and if so to what degree. Information can generally be put into two categories, depending on what it is being used for.

- Information shared to benefit the individual or others, usually requiring clearly identifiable data.
- Information shared for the benefit of the public or sections of society. Such information is often used to inform decision making or planning. It may range from completely anonymous statistics to raw datasets that include items of data that relate to a greater or lesser degree to individuals' identities.

The starting point will be that a ‘privacy-friendly’ approach will be adopted by any process for sharing information; therefore the inclusion of any data that might identify an individual must be justified and agreed as both necessary and proportionate to achieve the purpose(s).

3.1 Sharing clearly identifiable data
Sharing of personal/sensitive information must be done ‘fairly’ and ‘lawfully’. The legal basis for sharing is set out in the Data Protection Act (1998), common law duty of confidentiality and the Human Rights Act (1998). In simple terms ‘lawful’ sharing requires consent from the individual, unless there is:

- A legal duty to share information set out in specific legislation, such as the Children Act (1989, 2004), Road Traffic Act (1988) and others.
- A legal power to share information where sharing without consent can be justified by a robust public interest, or in the vital interests of an individual.

Legal duties, robust public interests and vital interests are related to conditions in the Data Protection Act (1998) and are recognised practice in the common law of confidentiality.
In addition sharing must be ‘fair’ by ensuring the subject is aware of what is being shared and for what purpose. Only in situations where informing the subject is likely to cause them or others significant harm/distress, or prejudice actions or outcomes of a situation, can this principle be set aside.

‘Second level’ sharing protocols developed in relation to these core principles will detail how information is to be shared ‘fairly and lawfully’ by consideration of each of the following options, documenting and justifying the approach to be taken:

- **Use of explicit consent**, unless it is not legally required and is judged by all parties involved to be clearly impractical. (*It is legally required for sharing sensitive information where no other condition in schedule 3 of the Data Protection Act (1998) such as ‘medical purposes’, ‘vital interests’ or ‘legal duty’, can be applied.*)
- **Use of implied consent**, where explicit consent is not being used and the subject is fully informed of the activity and has raised no objections.
- Reference to specific legislation which sets a **duty to share**, related to the purposes covered by the specific protocol.
- Reference to specific **legal powers** relevant to the purposes for sharing, including consistent approaches to justify public or vital interests to sharing without consent.

‘Second level’ sharing protocols will detail processes for informing subjects about what is being shared and why. Where necessary they will include potential justifications for not informing subjects. These must be related to appropriate provisions in the Data Protection Act (1998) such as ‘Crime & Disorder exemptions’ (section 29(3)) and ‘Statutory Instruments/modification orders where allowing access would be likely to cause serious harm to the physical or mental health or condition of the subject or any other person’.

Note – The Data Protection Act does not apply to information on deceased individuals but general principles of common law and Human Rights should still be applied.

**3.2 Sharing data for planning, developing services that includes some identity factors**

Information is classed as ‘personal’ and subject to the Data Protection Act if it relates to a living individual who can be identified from those data, or from other information, which is in the possession of, or is likely to come into the possession of the data controllers.

Any second level sharing protocol sharing statistical information for planning purposes should not include any identifying information such as name, identity number, date of birth and addresses without robust and documented justification for each item of data.

Where information relating to ages of individuals is required, consideration will be given to using age brackets. If age brackets are not appropriate, the smallest amount of data on the date of birth will be used that will satisfy the purpose. Often the year of birth will suffice.

Where a purpose requires information on addresses of individuals, a part postcode will be used, unless more accurate location information is required, however full postcodes can only be used where the data extract does not contain small numbers.

Any extraction of data that includes potentially identifying information and especially where the extraction features small numbers of cases (counts of less than 5 records), should be referred to the Data Protection leads of the organisations concerned to ensure, that the data in either raw or combined state does not identify individuals, or if identification is at all possible, that compliance with Data Protection principles is in place.

**3.3 Anonymous data – shared for planning, developing services**

Following a decision being made about use of identifying information, if the data to be exchanged does not in anyway identify individuals and cannot be combined with any other data that would lead to the identity of individuals, then, provided the organisations sharing the information are acting within the range of activities they are legally set up to do (their ‘vires’), information can be shared. In situations where data is to be shared on an ongoing basis, especially where the sharing will be relatively frequent, then a specific exchange agreement is required. Please refer to the ‘processes for information sharing’ in section 8.

**4 Organisational responsibilities (Data Protection Compliance & ‘Caldicott’):** All organisations sharing data must ensure that they have adequately addressed all of the following responsibilities and be prepared to assure sharing partners of their compliance, when entering into a sharing agreement.
• Organisations must actively inform individuals of how their information may be used and to whom it may be disclosed by provision of literature and through contact with staff. It must highlight their rights to access, withhold and correct information and provide details of the process for individuals to access their records.

• Organisations must complete and maintain a Data Protection notification detailing all sources, subjects, purposes and disclosures relevant to their business and partnerships under any agreement.

• Organisations must maintain the accuracy and clarity of data they supply to aid usefulness and consistent interpretation. Where necessary, partner organisations will be informed of any changes to the data they have received and also notify the source of any error they discover.

• Organisations must ensure that collection and sharing of information is necessary and proportionate to the purpose(s), and neither excessive or inadequate.

• Organisations must maintain the confidentiality of data in any form, during collection, transmission and storing with appropriate security arrangements, improving to general compliance with ISO27000.

• Organisations will apply relevant regulations to the retention & disposal of records, only keeping information for as long as is necessary in relation to the original purpose(s) for which it was collected.

• Organisations will ensure all staff are educated to manage information appropriately in line with these principles and organisational policy on the collection and uses of information, supported by terms of employment. Information should only be accessed and shared where there is a ‘need to know’, justified either by consent or another legal basis for sharing the information.

• Organisations will ensure that any 3rd parties providing a service to them agree and abide by these principles by inclusion in contracts/agreements.

• Organisations will have processes/systems for recording wishes/restrictions on information expressed by individuals.

• Organisations in receipt of a ‘Freedom of Information’ request that covers personal data, such as staff information, provided by another organisation, will discuss the situation with the other organisation prior to disclosure and aim to develop a consensus view on any potential exemptions.

5 Review:
This set of principles will be reviewed every two years, or at the request of any organisation using the document if there is a concern over the document’s fitness for purpose.

6 Indemnity & non compliance:
At the level of principles and standards adopted by organisations there will not be any indemnity between organisations relating to actionable situations arising from information sharing. The need for indemnity should be assessed in second level protocols. Organisations will complete a compliance statement (overleaf) that should be provided to any sharing partner on request. Should a partner have concerns over the level of compliance, they should address these with the relevant organisation. The organisational ‘data controllers’ are responsible for assessing the risk of sharing information with any organisation where compliance is limited. This assessment should be based on the risk to information from sharing compared with the risk to the fulfilment and quality of the purpose information is to be shared for. Any serious disputes should be referred to the office of the Information Commissioner.

7 Processes for information sharing – ‘Second level sharing protocols’
Each service/initiative basing sharing on these principles, is responsible for creating procedure documentation detailing how information will be shared securely, and how the principles have been applied including how sharing can be audited. Where required this will be a specific ‘Second level’ protocol, with appropriate guidance and process documentation.

These will feature the following:
• The legal framework relating to the purpose(s) for sharing information.
• The perceived benefits, to any party, from the sharing of information.
• Reference to the level of identity used in the sharing of data and where necessary assessing the level of identity from combined sets of data.
• Where any level of identifiable data is shared, the legal basis for sharing information, in relation to the initiative, based on consent or other legal justifications for sharing.
• How data subjects will be informed of the sharing of data unless legal exemptions are applicable.
• Agreed purposes for the use of information and a process for agreeing further purposes
• Clear documentation of the relevant processing conditions in the Data Protection Act that apply to
  the partner agencies sharing information for the specified purposes
• A commitment to accuracy and completeness of data exchanged, including a process for informing
  all relevant parties of any inaccuracies identified
• Agreement to the process for exchange, taking account of threats and vulnerabilities in the
  proposed communication methods and ensuring adequate and agreed safeguards to protect the
  information during transit and storage are in place.
• Agreement to the period of retention of data – with reference to organisational retention schedules
  and the longest applicable period, unless there is reason for destruction of copies of data.
• A process for managing breaches of security, inappropriate disclosure of data and loss of data

8 Organisational compliance statement
The following activities must be undertaken to comply with responsibilities set out in this document. Each
organisation using this document is required to indicate whether relevant activities are in place or in
development. In completing the statement, reference should be made to appropriate organisational policy,
process and guidance documentation. Completion should be by the Organisation’s nominated Data
Protection Officer/Information Governance lead.

Organisational responsibilities (including Data Protection Compliance):

<table>
<thead>
<tr>
<th>Responsibility area</th>
<th>In Place?</th>
<th>In Progress/target date?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keeping subjects informed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Active provision of information to patients/service users of the uses to which information about them may be put and to whom it may be disclosed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Publicise and implement processes to provide access to records to subjects on request</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provide choice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Have policy covering consent to use information and respond to any specific requests made by subjects with regard to handling their information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protect information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Have documented policy and processes to check the accuracy and clarity of data both with the subject and on information systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Protect the confidentiality and security of data in any form, during collection, storage and sharing with appropriate security arrangements (moving to general compliance with ISO27000 Information Security Management standard) – via relevant policy, process and staff guidance on handling information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Documented policy and process relating to retention and disposal of information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Ensure contractual arrangements with staff (employment terms), contractors and other suppliers/individuals handling identifiable information contain reference to confidentiality/non disclosure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Provide education and training accessible to all staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ Complete and maintain a Data Protection notification detailing all sources, subjects, purposes and disclosures relevant to their function and partnerships under any agreement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Organisation Name & contact point:
Protocol for Managing Customer/Patient Feedback

<table>
<thead>
<tr>
<th>Date</th>
<th>January 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim review date</td>
<td>April 2009</td>
</tr>
<tr>
<td>Full review date</td>
<td>January 2010</td>
</tr>
</tbody>
</table>
Introduction
Sometimes a concern or complaint crosses over boundaries between the NHS and a local authority. Where this happens, people who use services should not have to worry about who to approach with complaints about different aspects of the service that they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved. The purpose of this protocol is to set out the arrangements for the successful handling of cross boundary issues within the boundaries of the Great Western Ambulance Trust and Avon & Wiltshire Mental Health Partnership Trust boundaries including the following organisations (the West Country health and social care organisations):

- Great Western Ambulance Service
- Avon & Wiltshire Mental Health Partnership Trust
- South Gloucestershire PCT
- South Gloucestershire Council
- Bristol PCT
- Bristol City Council
- University Hospitals Bristol
- North Bristol NHS Trust
- B&NES PCT
- B&NES Council
- Royal United Hospital Bath
- Royal Hospital for Rheumatic Diseases
- North Somerset PCT
- North Somerset Council
- Weston Area Health Trust
- Wiltshire PCT
- Salisbury NHS Foundation Trust
- Wiltshire County Council
- Great Western Hospitals NHS Foundation Trust
- Swindon PCT
- Swindon Borough Council
- Gloucestershire PCT
- Gloucestershire County Council
- Gloucestershire Hospitals Foundation Trust
- 2gether Foundation Trust for Gloucestershire

This protocol has been developed to formally record the agreement between the West Country health and social care organisations on how to process customer/patient feedback. As such it is produced for those members of staff in these organisations who have responsibility for managing feedback and is not intended as a public document. The aim of this protocol is to ensure that the customer/patient does not need to know ‘who does what’ but has confidence that
their feedback will be appropriately managed. Literature specifically designed for customers/patients has been developed and produced.

This protocol has been developed in accordance with the Local Authorities’ Social Services Complaints (England) Regulations 2006 and the National Health Service (Complaints) Amendment Regulations 2006. These regulations came into force from 1st September 2006.

From April 2009 the Department of Health will introduce new complaints regulations following the Making Experiences Count consultation. This protocol has been developed with the principles of Making Experiences Count in mind. It will be reviewed in April 2009 when the new regulations are published.
Problem solving
Both the NHS, through the Patient Advice and Liaison Service (PALS), and the local authorities have been developing a more customer/patient focussed way of dealing with complaints. Both services offer an opportunity for people to raise issue or concerns that can be resolved without invoking the complaints process. It is important that each organisation has robust mechanisms to record feedback and to ensure that learning from issues is fed back into the organisation.

Differences between procedures
It is important to recognise that until April 2009 there are still differences between the complaints procedures of health and social care partners. Therefore, consideration needs to be given on a case-by-case basis as to the best way of responding. The following chart simply highlights the feedback processes within health and social care (all days given are working days).

<table>
<thead>
<tr>
<th>NHS Complaints Procedure</th>
<th>Adult Statutory Social Care Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare Commission</td>
<td>Stage 3 Review Panel (Final response from Director)</td>
</tr>
<tr>
<td>Up to six months after PCT formal response</td>
<td>30 days with a further 15 days for the Director’s response</td>
</tr>
<tr>
<td>Stage 2 Investigation (Response from Head of Service)</td>
<td>25 days (up to a max. of 65 days)</td>
</tr>
<tr>
<td>Informal (Response/action from local staff)</td>
<td>Stage 1 Local Resolution (Response from relevant Manager)</td>
</tr>
<tr>
<td>10 – 20 days</td>
<td>10 – 20 days</td>
</tr>
<tr>
<td>Patient Advice and Liaison Service (PALS)</td>
<td>Problem solving</td>
</tr>
</tbody>
</table>
Making a Complaint

“Where a complaint crosses a boundary, people who use services should not have to worry about who to approach with a complaint about different aspects of the service that they receive. Instead, the complaint can be made in its entirety to any one of the bodies involved.”¹

Each organisation has a duty to publicise their complaints procedures and provide details as to how to make a complaint. Provision must be made for complainants to make their complaint in the most appropriate format for them, this may be verbally or in writing.

In some circumstances an advocate may provide support to the person making the complaint and the health and social care organisations publish the arrangements by which Advocacy Services may be contacted.

Receiving the Complaint

The guidance gives different timescales for acknowledging the complaint; depending on whether it is solely for the other body to respond or where it is for both. Once a complaint is received, it should be acknowledged within two working days and permission from the complainant to share the complaint with the other body should be sought at this time.

If the complaint is solely for the other organisation then the Complaints/PALS Manager should seek permission from the complainant to pass the complaint onto the relevant organisation on their behalf.

If the complaint is received by one body and it includes elements for another body it will be necessary to alert the complainant to this within the acknowledgement letter. Where this is the case then the lead organisation should write and advise the complainant of this, copying in the other.

The flowchart at appendix 2 sets out the steps to be taken.

Consent and Information Sharing

We will seek consent from the complainant to share information with the other body within acknowledgement. Once consent is received, the information will be passed to the other body within five working days.

¹ ‘Learning from Complaints’ Department of Health 2006
Information should be shared between organisations via secure methods. In some instances it may be necessary to email the information, particularly where a joint response is required. Therefore consent to share information via email will be obtained from the complainant at the same time as seeking their consent to share information with the other body.

In the event that consent is denied, the complainant will need to be informed that separate complaints must be made to those agencies involved and that this is the responsibility of the complainant.

**Agreeing the issues and the complaint plan**

Where there are elements of complaints for both bodies there will be close co-operation and discussion between Complaints/PALS Managers in identifying which issues are for which organisation. These elements need to be clearly identified and recorded as part of the outline complaint plan².

There may be some elements of a complaint that can be resolved quickly at a local level with the complainant’s agreement. This would be agreed with the complainant during a conversation about the complaint plan and would then be referred to in the final response.

From initial discussions with each other the Complaints/PALS Managers will need to agree the following:

- Which body will discuss the complaint plan with the complainant, thereby acting as the lead? (Please refer to appendix 1 for guidance with this).
- Who will be the named point of contact for the complainant?
- Will there be a joint response or is there a need for separate responses?
- What are the timescales for completion of response? (This may be a factor where the complaint is at different stages within the two complaints procedures)
- What are the milestone deadlines for sharing information during the investigation process?
- Are there any elements that may be more appropriately dealt with by other routes eg legal proceedings, Safeguarding or disciplinary procedures.

The complainant will need to be formally informed as to which body will be responding to which elements of complaint and the timescales for completion.

---

² The complaint plan is an important element of the proposed regulations and adoption of this approach reflects the group’s commitment towards the new way of working.
Responding to the Complainant

If possible a coordinated response should be sent to the complainant. The lead body will send the response which will incorporate the other organisation’s response wherever appropriate.

If one organisation is having difficulty meeting the agreed timescale this should be discussed at the earliest opportunity. The lead will then contact the complainant to agree an extension with them.

In the case of a joint response, a draft response needs to be shared with the appropriate ‘Officers’ for signing off. Each body will agree to the draft but only one ‘Officer’ needs to formally sign. The response will make it clear that it is on behalf of the other organisation as well. Please refer to the diagram on page 4 as to who this would be at the appropriate stage.

However where the complaints are to be responded to separately a draft copy should be provided to the other responding body to ensure that all elements have been covered.

Whether provided jointly or separately the response needs to clearly explain the next step in the complaints process for each body should the complainant remain dissatisfied.

Where national guidance or policy is implicated in a response, the relevant document should be quoted.

A copy of the final response(s) should be passed to all other responding bodies.

Each organisation is responsible for the implementation and monitoring of any learning that comes from the complaint.
Factors to Determine the Lead Organisation

The following factors should be taken into account when determining which organisation will take the lead role with any cross boundary complaint:

- The organisation that manages integrated services
- The organisation that has the most serious complaints relating to it
- If a disproportionate number of the issues in the complaint relate to one organisation compared to the other organisation(s)
- The organisation that originally receives the complaint (should the seriousness and number of complaints prove roughly equivalent)
- If the complainant has a clear preference for which organisation takes the lead
- If the complainant has an established relationship with one of the agencies
- The organisations can agree separately from the above should other factors be pertinent. For example, if the impact on the individual organisation's governance arrangements.
Appendix 2

FLOWCHART: MANAGING CROSS BOUNDARY COMPLAINTS

Complaint received

Is another body involved?

<table>
<thead>
<tr>
<th>Is another body involved?</th>
<th>Joint response required?</th>
<th>Joint response required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Acknowledge within 2 workings days and process under own procedure</td>
<td>Acknowledge and seek consent to share with other body within 5 working days</td>
<td>Acknowledge and seek consent to share with other body within 5 working days</td>
</tr>
<tr>
<td>Identify and separate out issues for each body. Agree milestones and timescale for response.</td>
<td>Decide which body will lead. Inform complainant of areas of responsibility and timescale for response.</td>
<td>Decide which body will lead. Inform complainant of areas of responsibility and timescale for response.</td>
</tr>
<tr>
<td>Agree who will inform complainant of action and timescale for response</td>
<td>Draft responses shared between agencies.</td>
<td>Draft responses shared between agencies.</td>
</tr>
<tr>
<td>Send response to complainant and other responding bodies</td>
<td>Send response to complainant and other responding bodies</td>
<td>Send response to complainant and other responding bodies</td>
</tr>
</tbody>
</table>
## Customer Feedback Journey Map: Handling complaints across NHS and Adult Social Care

<table>
<thead>
<tr>
<th>Customer expectation</th>
<th>Broad Process</th>
<th>Quality Standards</th>
</tr>
</thead>
</table>
| Customer makes a complaint to one organisation but the complaint is also about another organisation | Customers will generally phone the number they were last provided with and may make a couple of calls until they are put in touch with the PALS / Complaints Service for whichever organisation they contact | \- Complaint acknowledged within two working days  
- Issues, expectations and outcomes broadly agreed  
- Consent sought to share complaint with other organisation  
- Customer advised that they will receive confirmation of who will be handling their complaint and of the timescales |
| Doesn’t want to have to make two separate complaints | Customer gives consent for one organisation to make contact with the other organisation to discuss complaint | \- Consent received complaint shared with other organisation within five working days  
- Agree lead and one point of contact for customer  
- Agree complaint plan with other organisation and customer  
- All receive copy of complaint plan |
| Expects a response to the complaint | One response is provided, where possible | \- Any extensions required should be agreed with other organisation and customer  
- Copies of draft responses exchanged between organisations  
- Response to customer within agreed timescales  
- Copy provided to all organisations involved |
| Wants to know what to do next if they don’t like the outcome | Customer informed of next steps if they remain dissatisfied | \- Response includes concluding paragraph advising what to do next and who to contact  
- Response also includes information about any action from the complaint  
- Each organisation is responsible for implementation and monitoring of any learning from the complaint |
## Complaint Plan

**Date Complaint Received:**

### Enquirer Details

<table>
<thead>
<tr>
<th>Name:</th>
<th>NHS/Ref No. (if known)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>Ethnicity</td>
</tr>
<tr>
<td></td>
<td>Date of Birth/Age</td>
</tr>
<tr>
<td>Telephone:</td>
<td>Permission given for details to be shared as necessary?</td>
</tr>
<tr>
<td></td>
<td>Yes/No</td>
</tr>
<tr>
<td>Mobile Phone:</td>
<td>Consent to paper/electronic record? Yes/No</td>
</tr>
<tr>
<td></td>
<td>OK to leave answerphone message? Yes/No</td>
</tr>
</tbody>
</table>

### Service User Details (if different to above)

<table>
<thead>
<tr>
<th>Name:</th>
<th>NHS No. (if known)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>Ethnicity</td>
</tr>
<tr>
<td></td>
<td>Date of Birth/Age</td>
</tr>
<tr>
<td>Telephone:</td>
<td>Permission given by service user for their details to be shared as necessary? Yes/No</td>
</tr>
<tr>
<td></td>
<td>Consent to paper/electronic record? Yes/No</td>
</tr>
<tr>
<td>Mobile Phone:</td>
<td>OK to leave answerphone message? Yes/No</td>
</tr>
</tbody>
</table>
## Monitoring data about complainant

### Ethnicity:

<table>
<thead>
<tr>
<th>Category</th>
<th>Subcategories</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>British, Irish, Other White</td>
</tr>
<tr>
<td>Mixed</td>
<td>White &amp; Black Caribbean, Black &amp; Black African, White &amp; Asian, Other Mixed</td>
</tr>
<tr>
<td>Asian/Asian British</td>
<td>Indian, Pakistani, Bangladeshi, Other Asian</td>
</tr>
<tr>
<td>Black/Black British</td>
<td>Black Caribbean, Black African, Other Black</td>
</tr>
<tr>
<td>Chinese</td>
<td></td>
</tr>
<tr>
<td>Other ethnic category</td>
<td></td>
</tr>
<tr>
<td>Not stated</td>
<td></td>
</tr>
</tbody>
</table>

### Age group:

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Subcategories</th>
</tr>
</thead>
<tbody>
<tr>
<td>under18</td>
<td>19 - 30, 31 – 50, 51 – 65, 65 and over, Not stated</td>
</tr>
<tr>
<td>Not stated</td>
<td></td>
</tr>
</tbody>
</table>

### Do you consider yourself to be disabled?:

<table>
<thead>
<tr>
<th>Option</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No, Not stated</td>
</tr>
</tbody>
</table>
1. Discuss the content of the complaint with the complainant to clarify issues raised

Details of issues clarified with complainant

Requiring comment/input from

2. Discuss the complainant’s expected outcome from raising their concerns

Detail the outcome expected (is this achievable?)

By whom
<table>
<thead>
<tr>
<th></th>
<th>3. How does the complainant wish to be responded to?</th>
<th>Written reply</th>
<th>Email</th>
<th>Meeting</th>
<th>Verbal reply</th>
<th>Other (state)</th>
<th>By whom</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Agreed timescale to respond to the complainant</td>
<td>Verbal response</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Written response</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Meeting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>5. Identified lead/s</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Who should be involved?