



Policy:

NPCS 003 Mental Capacity Act 2005 Deprivation of Liberty Safeguards (DOLS)

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Summary of policy

This policy gives guidance in relation to the current law and statutory guidance regarding DOLS. It aims to help staff identify when a person may be being deprived of their liberty and outlines what steps staff should take if they believe a person is being deprived of their liberty but no legal authority is in place to authorise this.

The policy highlights the importance of ensuring that people's human rights are being considered, promoted and safeguarded. It also encourages arrangements for people's care and support to be delivered in a way which maximises independence and freedom whilst balancing the meeting of needs and managing of risk.

It should be noted that plans are afoot for the Deprivation of Liberty Safeguards to be replaced by the Liberty Protection Safeguards (LPS). This DOLS policy remains in force until it is rescinded and replaced by the LPS regime.

Target audience	All staff
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Keywords	DOLS, deprivation, liberty, standards, safeguards
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Storage & Version Control

Version 8 of this policy is stored and available through the SHSC intranet/internet. This version of the policy supersedes the previous version (V7 November 2017). Any copies of the previous policy held separately should be destroyed and replaced with this version.

Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
6.1	Initial draft	05/2017	<p>Policy amended on recommendation of internal audit:</p> <ul style="list-style-type: none"> • Flowchart clarified • Table – DoLS not granted added • Para 3.1 – definition of mental disorder • Pare 5.3 – managers duty to maintain DoLS register and nominate a deputy • Para 6.1 – rewording of the 6 requirements • Para 6.9.2 – amended guidance re death in state detention • Para 8 – clarification of training requirements and resources • Para 9 – audit and monitoring process developed
7	Ratification / issue	11/2017	<ul style="list-style-type: none"> • Clarifies what happens after a DoLS authorisation is not granted, and stipulates that a nominated deputy must be in place in the absence of the person normally responsible for actions undertaken in respect of this policy.
8	Routine review	10/2021	<ul style="list-style-type: none"> • Policy transferred to new SHSC policy template • Change of lead executive director • Summary of policy added to front page • Para 7.3 added to outline what steps need to be taken should there be a difference of opinion between professionals re. whether DOLS or Mental Health Act should be used • Para 7.12 updated with latest web address to the Local Authority DOLS team • Contents pages amended

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Flowchart

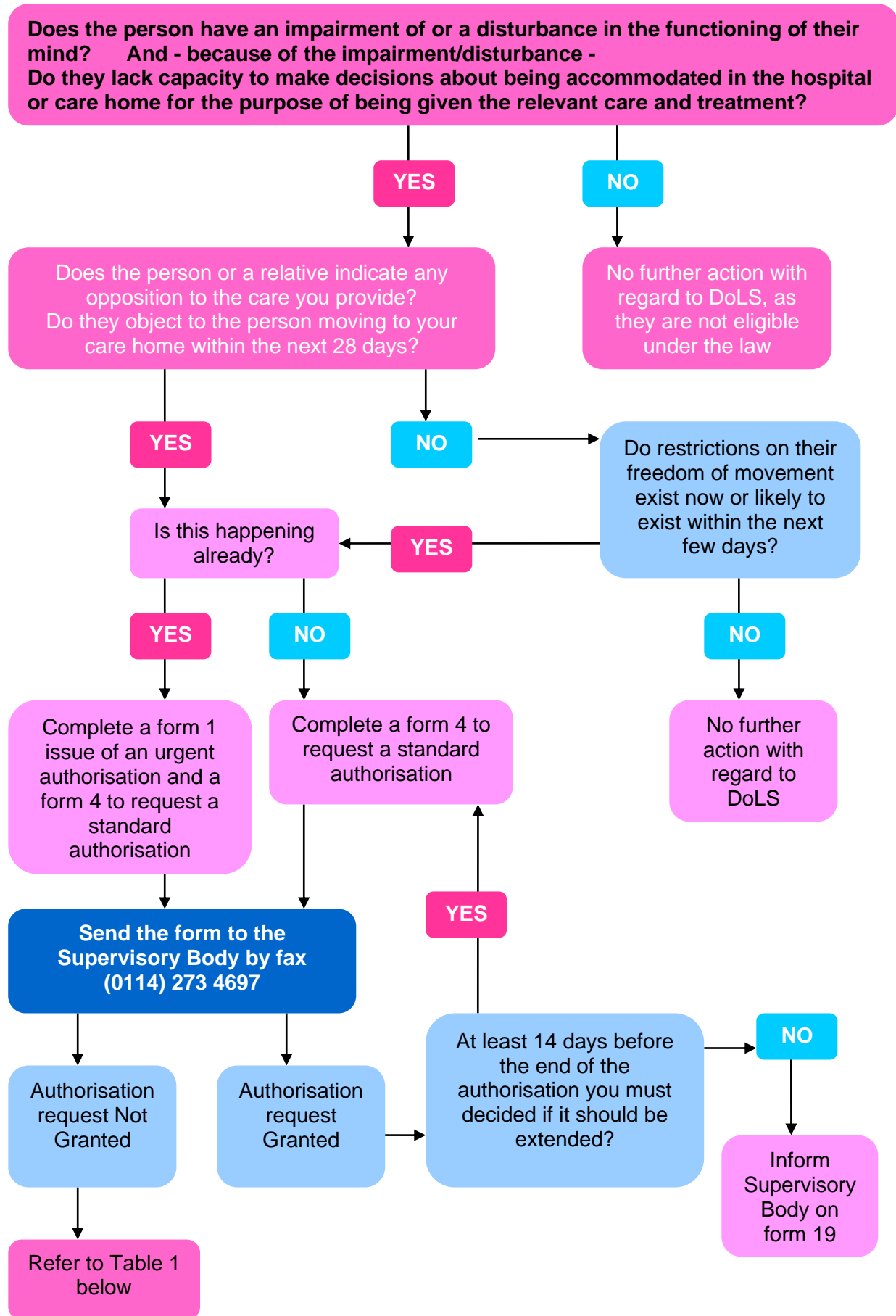


Table 1 - DoLS authorisation not granted

Reason for not granting	Action required
Assessment concluded that the care plan does not involve a deprivation of liberty	Continue with care plan Review for possibility of deprivation of liberty if there are any significant changes in future
Assessment concluded that the care plan could be amended so as not to involve a deprivation of liberty	Amend care plan in line with recommendations Review for possibility of deprivation of liberty if there are any significant changes in future
Qualifying requirements	
<p>Mental Capacity</p> <p>Assessment concluded that the person has capacity to consent to their care plan (which involves a deprivation of liberty) and DOES consent</p>	<p>Continue with care plan</p> <p>Monitor person’s continuing capacity to consent to this care plan and to any changes to the plan in future</p> <p>Person is free to leave</p>
<p>Mental Capacity</p> <p>Assessment concluded that the person has capacity to consent to their care plan (which involves a deprivation of liberty) and DOES NOT consent</p>	<p>Agree a care plan to which the person does consent and proceed.</p> <p>If not possible, review suitability of placement.</p> <p>Person is free to leave</p>
<p>Best Interests</p> <p>Assessment concluded that it is not in the person’s best interests to authorise the deprivation of liberty</p>	<p>Review care plan – amend if possible to remove deprivation of liberty and proceed in newly agreed best interests</p> <p>If not possible to amend the care plan, review suitability of placement</p> <p>Person is free to leave</p>
<p>Other qualifying requirements</p> <ul style="list-style-type: none"> • Age • Mental Health • Eligibility • No Refusals 	<p>Review care plan – amend if possible to remove deprivation of liberty</p> <p>If not possible to amend the care plan, review suitability of placement</p> <p>Person is free to leave</p>

1. Introduction

- 1.1 The aim of the Sheffield Health & Social Care NHS Foundation Trust (SHSC) Deprivation of Liberty Safeguards (DoLS) Policy is to clearly state an agreed approach to the appropriate and effective use of the Deprivation of Liberty Safeguards.
- 1.2 The Deprivation of Liberty Safeguards provide a legal protection to those vulnerable individuals who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Convention of Human Rights (ECHR).
- 1.3 On the 19 March 2014 the Supreme Court delivered its judgment in the cases of P&Q and Cheshire West which has had a significant impact in relation to deciding which legal framework is used to admit and provide care and/or treatment for individuals who may lack the capacity to consent to their admission, care and treatment in hospitals and care homes.
- 1.4 The new working definition of 'Deprivation of Liberty' (Acid Test) must now be applied and the use of any other definition or the exercise of any personal or professional discretion is highly likely to be unlawful.
- 1.5 There are three parts to the new 'Acid Test' and **all three** must exist together for the situation of the service user to be a deprivation of liberty. The three parts are:
 - the person lacks capacity to consent to the arrangements made for their care or treatment
 - the person is subject to continuous supervision **and** control **and**
 - the person is not free to leave
- 1.6 **Continuous supervision and control** refers to oversight even when the service user is not in the line of sight, it must amount to supervision and have a clear element of control.
- 1.7 **Free to leave** – the service user may not be asking to go or showing this in their actions but the important factor is how staff would react if they did try to leave or if a relative or friend asked to remove them.
- 1.8 Deprivation of Liberty will only apply to those service users who are resident or temporarily accommodated in a hospital or registered care home. The authority to deprive an incapacitated person of their liberty in any other setting can only be given by the Court of Protection. This situation is not covered by this policy. If a member of SHSC staff feels that a service user is being deprived of their liberty in a setting other than a ward or registered care home and/or if the service user is under the age of 18 years, then they should telephone the Sheffield Mental Capacity Act Support Team on 0114 273 6870 for advice about how to make the application.
- 1.9 This policy should be read in conjunction with the Mental Capacity Act 2005 and the Mental Capacity Act Code of Practice (2007), as well as the Deprivation of Liberty Safeguards Code of Practice (2008), which serves as an addendum to the Mental Capacity Act Code of Practice. It is not a substitute for the Act and the Codes of Practice, to which all professionals must adhere.

1.10 This policy assumes a knowledge and understanding of the Mental Capacity Act policy and it should be read in conjunction with other policies which include:

- Capacity to Consent to Care and Treatment Policy
- Safeguarding Adults Policy
- Mental Health Act 1983 (as amended)
- Records Management Policy
- Seclusion Policy
- Aggression and Violence: Respectful Response and Reduction

This policy is not a replacement for the Mental Capacity Act Code of Practice (2007) or the Deprivation of Liberty Safeguards Code of Practice (2008).

2 Scope

2.1 This policy gives guidance to practitioners on the identification of a potential deprivation of liberty and the process to be followed if it is identified that an unavoidable deprivation of liberty is occurring or is going to occur. It also outlines the processes and subsequent requirements where an authorisation, either standard or urgent, is given.

2.2 This policy represents the agreed Policies and Procedures of the Trust and applies to everyone in a paid, professional or voluntary capacity who is involved in the care, treatment or support of people over 16 years and under the care of the Trust. This includes staff employed by the Trust, social care and health staff who are either seconded to the Trust or work in partnership with the Trust and volunteers who are working within the Trust.

It must be noted that the Deprivation of Liberty Safeguards only apply to people 18 years or older. Therefore, if a staff member thinks that someone under the age of 18 is or will be deprived of their liberty, they should telephone the Sheffield Mental Capacity Act Support Team on 0114 273 6870 for advice about the correct route through which to seek authorisation.

Deprivation of Liberty in the community is outside of the scope of this Policy and as such separate guidance will be issued.

3 Purpose

3.1 The purpose of this policy is to provide staff working in or with the Trust with guidance about the Mental Capacity Act 2005, Deprivation of Liberty Safeguards. It sets out the main provisions of the Act, identifies the duties placed on health and social care staff and provides a procedure to determine the circumstances in which the various processes described within the Deprivation of Liberty Safeguards should be followed.

4 Definitions

4.1 For those not familiar with DoLS there are a lot of different names, titles and terms used. A brief summary is given below:

Term	Summary
Managing Authorities	Under the Deprivation of Liberty Safeguards the term Managing Authority refers to any hospitals or care homes that are registered with the Care Quality Commission. Throughout this policy the term Managing Authority refers to Sheffield Health & Social Care NHS Foundation Trust (SHSC).
Supervisory Body	Supervisory Bodies are those organisations that authorise Deprivations of Liberty. In Sheffield, this function is carried out by Sheffield City Council.
Deprivation of liberty	A person is deprived of their liberty if their Article 5 right to liberty under the European Convention on Human Rights is breached. This can be authorised in several ways, one of which is through use of the Deprivation of Liberty Safeguards.
Deprivation of Liberty Safeguards (DoLS)	The DoLS is the legal framework set out within the Mental Capacity Act which authorises the deprivation of liberty of a person in a hospital or care home when the person lacks the capacity to consent to stay and is subject to continuous supervision and control , and not free to leave .

Term	Summary
Consent	Consent is the voluntary and continuing permission of a service user to be admitted to hospital and/or given a particular treatment, based on sufficient knowledge of the purpose, likely effect and risk of that treatment, including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not consent. Service users who lack capacity to consent cannot consent. Compliant acceptance of any intervention, including admission to hospital is not consent.
Capacity	Mental capacity is always referred to as time and decision specific. Where the term 'lack of capacity' is used throughout this document it refers specifically to the service user's capacity to consent to the arrangements made for their care and treatment.
Restraint	The Mental Capacity Act 2005 affords protection to health and social care staff who are obliged to use restraint to provide care or treatment to service users who lack capacity and who would be at risk of harm if they did not receive the necessary care or treatment. Under the Mental Capacity Act, health and social care staff will be protected from liability when applying restraint in these circumstances, as long as the restraint is necessary to prevent the incapacitated service user from coming to harm, it is proportionate to the likelihood and seriousness of that harm, and the degree of restraint applied does not amount to a deprivation of the persons liberty (without appropriate

	authorisation).
Authorisations	The authority to legally hold someone in a care home or hospital under DoLS. There are two types: urgent and standard authorisations.
Qualifying requirements	The service user must meet a series of requirements (legal criteria) to be placed under a standard DoLS authorisation.
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.
Urgent Authorisation	An authorisation given by a Managing Authority for a maximum of seven days, which may be extended by a maximum of a further seven days by a Supervisory Body. The urgent authorisation gives the Managing Authority lawful authority to deprive a service user of their liberty whilst the standard authorisation process is undertaken.
Best Interests	Anything done for or on behalf of a service user who lacks mental capacity must be done in their best interests. The Mental Capacity Act Code of Practice (2007) includes a best interests checklist.
Best Interest Assessor (BIA)	The best interest assessor is a specially trained professional who is responsible for conducting a range of assessments to ascertain whether an Authorisation for deprivation of liberty should be granted. The best interest assessor is appointed by the Supervisory Body.

Term	Summary
Independent Mental Capacity Advocate (IMCA)	An independent advocate for service users who lack capacity who can support and represent their views as far as possible. An IMCA will be appointed by the Supervisory Body for a person being assessed who has no friends or family appropriate to represent their views. A person subject to a Deprivation of Liberty authorisation and their Relevant Persons Representative have a statutory right to support of an IMCA appointed by the Supervisory Body free of charge
Relevant Person (service user)	The service user who is made subject to an urgent and/or standard authorisation under the Deprivation of Liberty process.
Relevant Person's Representative	Every service user under a standard DoLS authorisation has a representative appointed to support them. The role of the Representative is to maintain contact with the Relevant Person (service user), support that person and represent them in matters relating to the DoLS. They should also advise the person of their right of appeal via the Court of Protection and support them to challenge the arrangements. The Relevant Persons Representative may be a family member or friend (further details of who is eligible are given in the Deprivation of Liberty Safeguards Code of Practice (2008)). If no such person is available or forthcoming then the Supervisory Body will appoint a paid representative.
Mental Health	The mental health assessor is a Section 12 Approved Doctor

Assessor	<p>or a Registered Medical Practitioner (with at least 3 years post registration experience in the diagnosis or treatment of mental disorder) who has completed the necessary Mental Health Assessor training.</p> <p>The purpose of the mental health assessment is to ensure that the service user suffers from a mental disorder as defined by the Mental Health Act 1983, disregarding any exclusion for persons with learning disability,* in order to ensure that the deprivation is in accordance with Article 5 of the European Convention on Human Rights which required the individual in these circumstances to be of 'unsound mind'.</p> <p>*'Mental disorder' in respect of DoLS includes learning disability even if abnormally aggressive or seriously irresponsible conduct is absent: longer-term detention for treatment of LD under the MHA requires the presence of such conduct</p>
Mental Health Act Manager	The administration of DoLS within the Trust is the responsibility of the Mental Health Act Manager.
Appropriate Manager(Ward manager or Registered Manager)	<p>The appropriate manager will be responsible for the completion and submission of all DoLS documentation and informing the Mental Health Act Manager when applications are made to the Supervisory body and when authorisations are granted by the Supervisory Body. This will be achieved by way of completion of the Trust DoLS Register by the appropriate manager.</p> <p>The appropriate manager must also ensure that staff discuss/report any potential deprivation to them (or any person who may be fulfilling their duties in their absence) so that appropriate authorisation can be sought.</p>

Term	Summary
Review	A service user under a standard DoLS authorisation has the right to a review of the decision to hold them in a care home or hospital. For example they may ask for a review because they believe that they have regained their mental capacity regarding care and treatment.
Authorising Signatory	A senior manager of the Supervisory Body responsible for checking completed assessments from DoLS assessors and granting standard DoLS authorisations based on these.
Court of Protection	The court that governs the Mental Capacity Act including DoLS. It can make decisions regarding the service user's mental capacity and what is in their best interests
Code of Practice	This refers to the Deprivation of Liberty Safeguards Code of Practice (2008) which supplements the main Mental Capacity Act 2005 Code of Practice.

4.2 Rights and Protection

DoLS provides a series of rights and protective mechanisms for those affected by it. Many of these are required under the European Convention on Human Rights. It is important for assessors, care providers and others affected by DoLS to be informed and aware of them. The table below provides a summary:

Legal criteria	The legal criteria for DoLS set a minimum standard that must be met to deprive a person of their liberty. The criteria for DoLS are multi-faceted but one of the most important is the best interests assessment. This assessment means a number of factors are taken into account including the views of the service user concerned those of their family and less restrictive options.
Professional assessors	Health and social care staff who have undertaken specialist training to become DoLS assessors are responsible for assessing whether a service user meets the legal criteria for a standard DoLS authorisation.
Appeal	There are rights of appeal to the Court of Protection both before and after an authorisation has been given. Appeals can be made by the relevant person, their representative or others (subject to the discretion of the Court). Further details are given in the Deprivation of Liberty Safeguards Code of Practice (2008).
Review	A standard DoLS authorisation can be reviewed at any time and this can be requested by a number of different people for various reasons. A review means a professional assessor considers whether the legal criteria of the DoLS are still met.
Advocacy	Every service user under DoLS has the right to access an Independent Mental Capacity Advocate
Conditions	Every standard DoLS authorisation can have conditions attached that are agreed by the Best Interest Assessor and the Supervisory Body. These are legally binding. They can be appealed by the Managing Authority otherwise they must be acted upon. Failure of the Managing Authority to act on a condition directed to them could result in safeguarding procedures being initiated.
Informed of rights	As soon as possible after giving authorisation, the Supervisory Body must give a copy of the authorisation to: <ul style="list-style-type: none"> • The Managing Authority • The Relevant Person • The Relevant Person's Representative • An IMCA involved • Any person named by the Best Interest Assessor as somebody they have consulted in carrying out their assessment Managing Authorities must take all practical and possible steps to ensure the service user understands

	the effects of the authorisation and their rights around it.
Copies of assessments	Copies of all assessments must be given to the service user under DoLS and also their representative. This means both are able to see the reasons and evidence for the DoLS and if they are not satisfied, can challenge it.
Flexible duration	Rather than a standard duration for each individual under DoLS, the local authority can set a date that reflects the view of the assessor about the most appropriate (proportionate) duration. The maximum period that may be set for each standard authorisation is 12 months.
Care Quality Commission (CQC)	The inspectorate body for care homes and hospitals in England. It has specific responsibility for monitoring DoLS.

5 Detail of the policy

This policy aims to support staff to ensure people's rights to liberty and freedom are protected and to ensure that where deprivations of a person's liberty are needed they only take place in accordance with the law and statutory guidance.

The policy contains a requirement, set out in Annex B Mental Health Act Code of Practice, which explains what staff should do in the event of a professional difference of opinion between the use of DOLS and the Mental Health Act.

6 Duties

The Trust Board has ultimate responsibility and 'ownership' for the quality of care, support and treatment provided by the Trust. This includes the implementation of the Policy throughout the Trust and ensuring its effectiveness in the delivery of good practice with regard to the Mental Capacity Act Deprivation of Liberty Safeguards:

This is provided by:

6.1 Chief Executive

- Demonstrating strong and active leadership from the top; ensuring there is visible, active commitment from the Board and appropriate board-level review of good practice with regard to the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring there is a nominated Executive Director leading on the Board's responsibilities with regard to the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring there are effective 'downward' and 'upward' communication channels embedded within the management structures to ensure the communication of the need for all staff to understand and appropriately use the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring finances, personnel, training, care records and other resources are made available so that the requirements of this policy can be fulfilled;
- Expecting all health and social care staff to play a part in the responsibility for meeting the requirements of this Policy;
- Maintaining on-going accountability for good practice around the Mental Capacity

Act Deprivation of Liberty Safeguards through management roles and responsibilities.

6.2 Service Director

Senior Managers and Directors have responsibility for developing, implementing and improving the Trust's policies and procedures as an integral part of day-to-day operations. They have a duty to take all practicable measures to ensure that health and social care staff are suitably equipped to meet the Mental Capacity Act 2005 Deprivation of Liberty Safeguards and to ensure that all staff understand and comply with the policy and procedure.

6.3 Team, Ward and Departmental Managers

The Appropriate Manager is responsible for:

- Ensuring their staff are informed of the Deprivation of Liberty Safeguards and receive sufficient training and support to undertake their role.
- Ensuring that when a service user is identified as being deprived of their liberty the appropriate documentation is completed and an application is submitted to the Supervisory Body.
- Ensuring that register of service users subject to DoLS is maintained
- Ensuring that a nominated deputy undertakes all duties with regard to making DoLS applications, recording onto the register and adhering to, or appealing against, conditions as necessary.

The appropriate manager must also undertake to, or ensure that a nominated deputy undertakes to:

- Take all steps to minimise the restrictions imposed on a person.
- Ensure that an application for the authorisation of a deprivation of liberty for any person who may come within the scope of the Deprivation of Liberty Safeguards and comes under their area of responsibility is made.
- Ensure that an urgent authorisation is granted where a deprivation of liberty is apparent.
- Ensure the deprivation of liberty authorisation is reviewed, remains current and is ended when appropriate.
- Take all practical and possible steps to ensure the service user understands the effects of the authorisation and their rights around it.
- Ensure that conditions associated with a Deprivation of Liberty Authorisation are adhered to (or appealed against) if this is felt necessary:
 - In cases where the Appropriate Manager feels that there is an issue with a condition made on an authorisation and wishes to appeal that condition, it is the responsibility of the Appropriate Manager (Ward Manager or Registered Manager) to submit a written appeal which will be considered by the Supervisory Body.
 - If there has been a change to the relevant person's care, as a result of which it would be appropriate to vary the conditions to which the standard authorisation is subject, (whether by amending or omitting an existing condition, or by adding a new condition), the Appropriate

Manager (Ward Manager or Registered Manager) must bring this to the attention of the Supervisory Body using Form 19.

- Ensure appropriate advocacy and representation is provided wherever necessary.

6.4 Individual Employees

All staff within the scope of the policy are responsible for its implementation within their area of accountability. It is each individual's responsibility to ensure they make themselves aware of this guidance and receive sufficient training and information about the DoLS to undertake their role. Staff must keep all service users in their care under review for potential deprivation of liberty situations. If a deprivation of liberty is identified, this must be escalated immediately to an appropriate manager.

6.5 Managing Authority – SHSC to:

- Ensure the DoLS are implemented effectively within the Trust by providing systems which support the safeguards and monitor compliance;
- Ensure authorisations for deprivation of liberty are sought from the Supervisory Body in all instances where a person is considered to be deprived of their liberty;
- Ensure appropriate records are kept;
- Inform all relevant parties, including the service user, regarding the application details and outcome of the DoLS process.

7 Procedure

The question of whether care given by staff amounts to a deprivation of a service user's liberty is ultimately a legal question and only the courts can determine the law. Further legal developments (changes in case law) may occur and healthcare and social care staff need to keep themselves informed of developments that may have a bearing on their practice.

When a service user is about to be admitted or has been admitted to one of the Trust's inpatient wards or registered homes, and it is identified that they lack capacity to consent to their admission and also make an informed decision about their proposed care and treatment whilst being under the care of the Trust, then they are at risk of being deprived of their liberty.

7.1 What is a Deprivation of Liberty?

In addition to meeting the 'acid test', there are 6 requirements which need to be met as follows:

- The age requirement – the person must be aged 18 or over.
- The mental health requirement – the person must be suffering from a mental disorder within the meaning of the MHA 1983, disregarding any exclusion for persons with learning disability.
- The mental capacity requirement - The person must lack the capacity to decide whether or not to be accommodated in the hospital/care home for the purpose of being given the relevant care or treatment.
- The best interests requirement – it must be in the person's best interests to become subject to DoLS, and DoL must be a necessary and proportionate response to the risk of harm, its likelihood and seriousness

- The eligibility requirement – The person must not be ineligible for DoLS (this will be of significance and require consideration of the Mental Health Act for those receiving treatment for a mental disorder);
- The 'no refusals' requirement – There is a refusal if:
 - a) the person has made a valid and applicable Advance Decision (MCA ss24-26) to refuse the treatment for mental or physical disorder for which the DoLS is sought; Or
 - b) placing the person in the hospital or care home would conflict with a valid decision of a donee of Lasting Power of Attorney (LPA), or a deputy appointed by the Court of Protection.

7.2 Identifying possible Deprivation of Liberty

Initially staff must review the situation regarding the service user's capacity to consent to the regime of care and treatment that is being proposed/delivered.

Where it is established that the service user lacks capacity the assessor must then establish whether the person is or will be under continuous supervision and control and not free to leave.

This assessment must be fully documented and the clinical team will have to decide under which legal framework the care and treatment is being delivered:

- DoLS 2005, or
- MHA 1983

Where it is agreed that a service user will be deprived of their liberty within the next 28 days and the Deprivation of Liberty Safeguards is the most appropriate legal framework then the appropriate manager (ward manager or registered manager) must complete a standard authorisation application (form 4) and submit this to the Supervisory Body.

The Managing Authority must consult with the person, their family or friends and any IMCA already involved, unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health or safety.

If the service user is considered to be deprived of their liberty with immediate effect then the Trust must also grant itself an urgent authorisation. This is done by submitting the joint Form 1 and Form 4 to the Local Authority DoLS team (see point 6.7).

In addition, the Managing Authority must always consult the Supervisory Body when:

- There is a need to restrict access of family and/or friends to the person
- The placement is opposed by family and/or friends
- A request by family and/or friends to have the person discharged to their care has been denied

7.3 Differences of opinion regarding detention under the Mental Health Act or Mental Capacity Act

It is possible that situations may arise when the circumstances of an individual means that either the DOLS regime, or the Mental Health Act, could be used to give appropriate authority to deprive a person of their liberty.

Separate guidance regarding whether the Mental Health Act or Deprivation of Liberty Safeguards may be more appropriate exists on SHSC intranet (Document title: Guidance on When to Consider Detention under the Mental Health Act or Deprivation of Liberty under a DoLS authorisation?).

If both regimes apply to an individual, those involved in assessing need to review the individual's circumstances together and collectively consider the views of others regarding which regime is most appropriate. The purpose of this discussion is to reflect upon each other's opinion and determine if these dialogues become persuasive to deciding. If not already done, assessors should consider accessing support from managers and case specific supervision. Advice from legal advisors, at an early stage, is recommended where there are disagreements.

The overarching principle is that individuals whose liberty is being deprived with no authorisation being in place should not be caught up in the middle of disputes. If the respective Mental Health Act and DOLS assessors cannot reach agreement, then the matter may need to be referred to the Court of Protection. Early legal advice and support in these events is again strongly encouraged.

7.4 The Deprivation of Liberty Safeguards (DoLS) Assessment

Once the standard authorisation application has been submitted to the Local Authority DoLS team they will arrange for the service user to be assessed by a Mental Health Assessor and a Best Interest Assessor.

These individuals will determine whether the service user meets the requirement of the DoLS. During the assessment the assessors may ask to examine and take copies of:

- Any health or social care records which relate to the person, and
- The person's Care Plan

The assessor/s will also need to consult with a senior member of staff and other staff on duty who know the service user. They will also consult with the service users family/ significant others. Therefore it is important that where an application under the DoLS is submitted, that the appropriate manager ensures that the service user and their family/ significant others are fully aware that the standard authorisation application has been submitted.

7.5 Assessment Outcome

Where all the requirements are met the Supervisory Body will grant an authorisation. This Authorisation will give details of the purpose and duration and any conditions which may relate to it.

Conditions: where there are conditions attached to the authorisation, it is the Appropriate Manager's responsibility to ensure that they are met and that the Supervisory Body is kept informed on progress.

Where an Authorisation is refused by the Supervisory Body the service user's care plan will need to be reviewed **immediately in order to ensure that the trust is supporting the service user in a way that is legally appropriate and defensible**. If appropriate a request for an assessment under the Mental Health Act should be made.

It is the responsibility of the Appropriate Manager (Ward manager or Registered Manager) to inform CQC about Deprivation of Liberty Authorisations. The trust requires that they do this once the outcome of the application has been agreed. They should do this using the following web link:

<https://www.cqc.org.uk/content/notifications-nhs-trusts>

Staff should always use this web link to access forms, rather than relying on locally saved copies (in case changes are made to the templates).

It is the responsibility of the Appropriate Manager (Ward manager or Registered Manager) to ensure that the date of which the notification is made to CQC is entered onto the trust DoLS Register.

It is the responsibility of the Trust as the Managing Authority to ensure that all practicable steps are taken to ensure that the service user and their representative understand the effects of the Authorisation and their rights. Appropriate information must be given to the person both orally and in writing. Written information must also be given to the Relevant Person's Representative.

7.6 Ending an Authorisation

When a service user who is subject to an Authorisation under the DoLS either:

- no longer meets any of the requirements; or
- is due to be discharged from the care of the Trust,

then the relevant manager (Ward Manager or Registered Manager) **must** ensure that any restrictions on the service user are ceased and complete a Form 19 and send this to the Supervisory Body who will arrange for the authorisation to be reviewed and ended.

If the service user is moving on to the care of another service in which they will be deprived of their liberty, it is the responsibility of the receiving service to apply for an authorisation for the new setting. An authorisation is specific to the setting in which it is made and cannot be moved between settings.

7.7 Continuation of Deprivation of Liberty Safeguards

Where it is expected that the service user will remain under the care of the Trust when the Standard Authorisation is due to expire, it is the responsibility of the Trust (Appropriate Manager) to ensure that a new Form 4 is submitted to the Supervisory Body 28 days before the current authorisation expires.

7.8 Procedure for Urgent Authorisation

An urgent authorisation cannot be granted unless an application for a standard authorisation is made at the same time. Therefore, the clinical team must reasonably believe that the service user will meet the requirement of a standard authorisation.

In this case the appropriate manager should complete the joint Form 1 and 4 which should be submitted to the DoLS Team.

The maximum period the Trust can grant itself an urgent authorisation is seven days during which time the assessments carried out by the Mental Health Assessor and the Best interest Assessor should be completed.

Applications going out of timescale

Due to the high volume of applications being made, it is possible that applications will go out of timescale before assessors visit. In this circumstance, the Sheffield Supervisory Body advises that the Managing Authority should continue to act in the person's best interests and keep the care plan under review to ensure any care or treatment is provided in the least restrictive way. The Managing Authority must contact the Supervisory Body if the person's situation changes significantly.

7.9 Requesting the Extension of an Urgent Authorisation

In exceptional circumstances where the assessments have not been completed within the seven day period, the urgent authorisation can be extended by the Supervisory Body for a further seven days.

Where it has not been possible for the assessors to complete the assessments within the seven day period then the DoLS team will contact the managing authority to advise them to make an application for an extension to the urgent authorisation.

7.10 Notification of the Death of a Service User subject to DoLS

7.10.1 Care Quality Commission

The death of any service user who is subject to DoLS, is reportable to the Care Quality Commission (CQC), as set out in in the registration requirements arising from the Health and Social Care Act 2008 (and defined in the CQC's Fundamental Standards Legislation (November 2014).

All necessary CQC notifications will be processed through the Clinical Governance and Effectiveness Team.

7.10.2 Coroners

Section 178 of the Policing and Crime Act 2017 gives effect to the recommendation in the report of the Chief Coroner that cases involving the death of a person subject to DoLS be removed from the category of "in state detention".

With a death occurring on or after 3rd April 2017 any person subject to a DoLS is no longer 'in state detention' for the purposes of the Coroners and Justice Act 2009, however if the DoLS has not been formally authorised, the person may still be deemed to be in state detention.

Staff are advised to refer to current published guidance at the time of a person's death if they were subject to DoLS or an application had been made and not yet granted.

7.10.3 Appropriate Manager Responsible

In the event of a service user's death, the Appropriate Manager (Ward manager or Registered Manager) must:

- Complete an incident form clearly indicating if the service user has a DoLS authorisation in situ;
- Update the trust DoLS Register with date of death;
- Notify the Supervisory Body DoLS Team via using the secure file transfer <https://anycommssheffield.avcosystems.com> of the person's name, date of birth and date of death. A guide on how to use the secure file transfer will be located on the trust intranet under MCA/MHA: Deprivation of Liberty section.
- Complete any necessary notification forms sent to them from the Clinical Governance and Effectiveness Team.

Upon receipt of the incident form, the Clinical Governance and Effectiveness Team will:

- Send the appropriate CQC notification forms to the appropriate manager for completion;
- Send the completed notification forms to the CQC;
- Notify HM Coroner of SHSC's interest in the service user and of the DoLS authorisation.

7.11 The Relevant Person's Representative

Every service user under a standard DoLS authorisation has a representative appointed to support them.

The role of the Representative is to maintain contact with the Relevant Person (service user), support that person and represent them in matters relating to the DoLS. They should also advise the person of their right of appeal via the Court of Protection and support them to challenge the arrangements.

Where it has not been possible to appoint a relevant person's representative at the time of the authorisation being granted, the service user will be assigned a Paid Representative by the Supervisory Body, at no cost to them.

Both the Relevant Person and their Relevant Person's Representative have a statutory right to support from an Independent Mental Capacity Advocate appointed by the Supervisory Body free of charge.

7.12 Forms (and letters)

The forms that trust staff will need in relation to Deprivation of Liberty can be found on the links below:

<https://www.sheffield.gov.uk/home/social-care/dol-mca>

Staff should always use these web links to access forms, rather than relying on locally saved copies (in case changes are made to the templates).

The forms that SHSC staff will need to complete for submission to the Care Quality Commission in relation to Deprivation of Liberty can be found on the link below:

<https://www.cqc.org.uk/content/notifications-nhs-trusts>

Staff should always use this web link to access forms, rather than relying on locally saved copies (in case changes are made to the templates).

Deprivation of Liberty Safeguards (DOLS) – Forms for CQC		
Deprivation of liberty applications and outcomes	There is a standard CQC form for notifying applications to deprive a person of their liberty under the Mental Capacity Act 2005, including the outcome of the applications. NHS providers can use this form to tell CQC about applications by a hospital to a 'supervisory body', or to the Court of Protection for any other setting.	Used by care homes and hospitals NOTE: The trust requires that notifications to CQC are made once the outcome of the application is confirmed i.e. whether refused or accepted.

8 Development, Consultation and Approval

- *Policy Author*
 - Jamie Middleton, Head of Mental Health Legislation
- *Guidance followed*
 - Mental Health Act Code of Practice 2015 / Mental Capacity Act 2005
- *Groups and individuals consulted:*
 - Members of Mental Health Legislation Operational Group
- *Any changes made as a result of the consultation process:*
 - No changes to the updated policy were proposed or recommended
- *Which governance group verified the document?*
 - Mental Health Legislation Operational Group 21.9.21

9 Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
Review whether the DOLS framework remains in place/has been replaced by Liberty Protection Safeguards	Receipt of statutory guidance from DHSC; if replaced then this policy needs to be stood down and replaced by Liberty Protection Safeguard policies	Head of Mental Health Legislation	1.4.22	Head of Mental Health Legislation	Head of Mental Health Legislation	Head of Mental Health Legislation
Ongoing review of incident reports in respect of non compliance	Reporting to Mental Health Legislation Operational Group	Head of Mental Health Legislation/Mental Health Operational Group	Ongoing	Mental Health Legislation Operational Group	Mental Health Legislation Operational Group	Mental Health Legislation Operational Group

10 Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and remove old version		Within 1 week of ratification	
Make Mental Health Legislation Operational Group aware of new policy	Head of Mental Health Legislation	29.11.2021	

11 Dissemination, Storage and Archiving (Control)

- The Trust will ensure that the policy is circulated to SHSC staff using the Trust's intranet site (Jarvis)
- Training delivered to staff in respect of Deprivation of Liberty Safeguards will make reference, and signpost, staff to this policy
- Previous versions of this policy are to be considered as being superseded and replaced by this version.

12 Training and Other Resource Implications

Training in relation to the Mental Capacity Act and Deprivation of Liberty Safeguards is already provided to SHSC staff. The addition in this version regarding what actions to take in the event of a difference of opinion will however be incorporated into the refreshed Mental Capacity Act/Deprivation of Liberty Safeguards training.

13 Links to Other Policies, Standards (Associated Documents)

- Mental Capacity Act 2005 Code of Practice
- Advance Decisions to Refuse Treatment/Advance Statements
- Aggression and Violence: Respectful Response and Reduction
- Consent to Care and Treatment Policy
- Mental Health Act 1983 Code of Practice (2015).
- Safeguarding Adults Policy

14 Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Head of Mental Health Legislation	Jamie Middleton	271 8110	jamie.middleton@shsc.nhs.uk

Appendix 1

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

NO – No further action is required – please sign and date the following statement.
I confirm that this policy does not impact on staff, patients or the public.

I confirm that this policy does not impact on staff, patients or the public.

Name/Date:

YES, Go to Stage 2

Stage 2 Policy Screening and Drafting Policy - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
Age	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Disability	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Gender Reassignment	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Pregnancy and Maternity	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and

			the Mental Capacity Act, 2015
Race	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Religion or Belief	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Sex	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Sexual Orientation	No	No further action identified.	Due consideration given in developing policy, particularly in relation to the Mental Health Act 1983 Code of Practice, 2015 and the Mental Capacity Act, 2015
Marriage or Civil Partnership	No		

No changes made.

<p>Impact Assessment Completed by: Jamie Middleton, Head of Mental Health Legislation 14.10.21</p>

Appendix 2

Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
Engagement		
1.	Is the Executive Lead sighted on the development/review of the policy?	✓
2.	Is the local Policy Champion member sighted on the development/review of the policy?	✓
Development and Consultation		
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	N/A
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	✓
5.	Has the policy been discussed and agreed by the local governance groups?	✓
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	✓
Template Compliance		
7.	Has the version control/storage section been updated?	✓
8.	Is the policy title clear and unambiguous?	✓
9.	Is the policy in Arial font 12?	✓
10.	Have page numbers been inserted?	✓
11.	Has the policy been quality checked for spelling errors, links, accuracy?	✓
Policy Content		
12.	Is the purpose of the policy clear?	✓
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	✓
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	✓
15.	Where appropriate, does the policy contain a list of definitions of terms used?	✓
16.	Does the policy include any references to other associated policies and key documents?	✓
17.	Has the EIA Form been completed (Appendix 1)?	✓
Dissemination, Implementation, Review and Audit Compliance		
18.	Does the dissemination plan identify how the policy will be implemented?	✓
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	✓
20.	Is there a plan to i. review ii. audit compliance with the document?	✓
21.	Is the review date identified, and is it appropriate and justifiable?	✓

INFORMATION ABOUT INTERESTED PERSONS AND OTHERS TO CONSULT

Is there sufficient information to allow DoLS assessor to contact interested parties?

(If no contact details provided there should be a clear reason as to why not e.g. the person has no family)

Place a X in one box below

	Yes	No
Family member and/or friend		
Anyone named by the person as someone to be consulted about their welfare		
Anyone engaged in caring for the person or interested in their welfare – e.g. Social Worker, CHC Nurse.		
Any donee of a Lasting Power of Attorney granted by the person		
Any Deputy appointed for the person by the Court of Protection		
Any IMCA instructed for the person under the Mental Capacity Act 2005		

Comments:

(Note to auditor: You should record here any comments as to why you judged that information was insufficient).

WHETHER IT IS NECESSARY FOR AN INDEPENDENT MENTAL CAPACITY ADVOCATE (IMCA) TO BE INSTRUCTED

Place a X in one box below

	Yes	No	Unable to tell
There is evidence that the correct decision about whether or not an IMCA is needed has been made. (Note to auditor: This judgement will be made by looking at the comments section in relation to this question).			

Comments:**IS THERE A VALID AND APPLICABLE ADVANCE DECISION?**

Place a x in one box below

	Yes	No	Unable to tell
There is evidence that the managing authority has appropriately taken into account any valid and applicable advanced decision to refuse treatment or is not aware of any such decision. (Note to auditor: This judgement will be made by looking at the comments section in relation to this question).			

Comments:

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IS IT CLEAR WHETHER THE PERSON IS SUBJECT TO SOME ELEMENT OF THE MENTAL HEALTH ACT (1983)?

Yes		No		Place a x in one box
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If the answer is Yes, is the element of the MHA is clearly specified?

Yes		No		Place a x in one box
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Comments:

For applications which include URGENT AUTHORISATIONS are all of the following indicated as being applicable? (Note to auditor : if no to any response then the managing authority should not have granted an urgent authorisation)

Place a x in one box below		
	Yes	No
The person is aged 18 or over		
The person is suffering from a mental disorder		
The person is being accommodated here for the purpose of being given care or treatment.		
The person lacks capacity to make their own decision about whether to be accommodated here for care or treatment		
The person has not, as far as the Managing Authority is aware, made a valid Advance Decision that prevents them from being given any proposed treatment		
Accommodating the person here, and giving them the proposed care or treatment, does not, as far as the Managing Authority is aware, conflict with a valid decision made by a donee of a Lasting Power of Attorney or Personal Welfare Deputy appointed by the Court of Protection under the Mental Capacity Act 2005		
It is in the person's best interests to be accommodated here to receive care or treatment, even though they will be deprived of liberty		
Depriving the person of liberty is necessary to prevent harm to them, and a proportionate response to the harm they are likely to suffer otherwise		
The person concerned is not, as far as the Managing Authority is aware, subject to an application or order under the Mental Health Act 1983 or, if they are, that order or application does not prevent an Urgent Authorisation being given		
The need for the person to be deprived of liberty here is so urgent that it is appropriate for		

that deprivation to begin immediately before the request for the Standard Authorisation is made or has been determined		
Were all of the above marked as applicable?		