

## Deprivation of Liberty Safeguards, Mental Capacity Act 2005 - Policy

**Purpose: To set the policy for the Deprivation of Liberty Safeguards for Supervisory Bodies and Managing Authorities in Milton Keynes**

### Approved by

Adult Social Care Heads of Service Meeting  
12 March 2019



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<b>Effective from:</b>	April 2019
<b>Next Review Date:</b>	April 2022
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<b>For use in ( service area)</b>	Supervisory Bodies and Managing Authorities
<b>For use by (staff/public/partner organisations)</b>	All staff
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<b>Change History / Cancellations (Title / Date)</b>	<b>Reason for obsolescence</b>
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Policy April 2015	Updated and replaced by this version
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Policy April 2013	Updated and replaced by 2015 version
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 - Policy and Procedure. April 2012	Updated and replaced by 2013 version
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 - Policy and Procedure April 2009	Updated and replaced by 2012 version

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<b>Part A. Policy and Context</b>
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**Section 1. Introduction and aim.**

- 1.1 The Mental Capacity Act 2005 (MCA) was implemented in October 2007. The Mental Health Act 2007 included an amendment to the Mental Capacity Act to introduce additional Deprivation of Liberty Safeguards implemented from the 1st April 2009.
- 1.2 The Deprivation of Liberty Safeguards (DoLS) provide a legal framework to protect those who may lack capacity to consent to the arrangements for their treatment or care and where levels of restriction or restraint used in delivering that care are so extensive as to potentially 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.
- 1.2.1 These safeguards 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.
- 1.2.2 This policy should be read in conjunction with the Deprivation of Liberty Code of Practice issued by the Department of Health and the DoLS Practice Guidance 1st November 2011.
- 1.3 From 1<sup>st</sup> April 2009 a Managing Authority must seek authorisation from a Supervisory Body in order to lawfully deprive someone of their liberty (unless they are detained in hospital under the Mental Health Act 1983). Where a request for an Authorisation is made the Supervisory Body is responsible for conducting a number of assessments to determine whether the authorisation can be granted.

**Section 2. Policy Statement and Scope**

- 2.1 This policy aims to provide a local framework for the implementation of Deprivation of Liberty Safeguards within Milton Keynes and sets 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.
- 2.2 Milton Keynes Council is the Supervisory Body responsible to discharge statutory duties under the Mental Capacity Act for a person who has ordinary residence in the Milton Keynes Borough area. Only Milton Keynes Council can authorise DoLS requests for a person who has ordinary residence in the Milton Keynes Borough area.

- 2.3 Managing Authorities in Milton Keynes must apply to Milton Keynes Council for DoLS authorisations if they believe that a person in their care (aged 18 years or over) lacks capacity and the care or treatment they provide to that person is likely to deprive the person of their liberty.
- 2.4 The [Deprivation of Liberty Safeguards \(DoLS\) Code of Practice](#) provides extensive guidance and information about the Act and should remain the main point of reference for staff working with Deprivation of Liberty issues. This policy and the accompanying procedure document do not replace the DoLS Code of Practice.

### Section 3. Relevant Legislation and Documents.

#### 3.1 Law –

- Care Act 2014
- [Mental Capacity Act 2005 \(MCA\)](#). The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act but were included as an amendment through the Mental Health Act, 2007.
- The Mental Capacity, (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008 (effective from 3.11.08)
- The Mental Capacity, (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008 (effective from 3.11.08);
- The Mental Capacity, (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Amendment) Regulations 2008 (effective from 3.11.08)
- Health and Social Care Act 2012 Schedule 5

*N.B. Practitioners are expected to ensure that they are aware of and act according to case law as it develops.*

*N.B* In July 2018, the Government published a Mental Capacity (Amendment) Bill which will see DoLS replaced by the [Liberty Protection Safeguards](#). (LPS). Under LPS, there will be a streamlined process for authorising deprivations of liberty. This policy will be updated accordingly when these are implemented.

#### 3.2 Local Authority Circulars/Government Guidance.

- [Deprivation of Liberty Code of Practice. Department of Health. August 2008](#)
- [SCIE Report 62: Managing the transfer of responsibilities under the Deprivation of Liberty Safeguards: a resource for local authorities and healthcare commissioners.](#) November 2012

#### 3.3 Milton Keynes Corporate Policies and Standards. - none

#### 3.4 Milton Keynes Health and Social Care [Policies, Procedures and Standards](#)

- Mental Capacity Act Policy and Procedure
- Safeguarding Adults Policy and Procedure

### Section 4. Definitions

- 4.1 Definitions relevant to this policy and the accompanying procedure are attached as Appendix 1:

## Part B. Procedures

### Section 5. Practice Guide

- 5.1 The procedures for this policy have been documented in a separate Practice Guide.

**Part C Operational Issues****Section 6. Roles and Responsibilities**

- 6.1 Milton Keynes Council as the Supervisory Body will receive requests from Managing Authorities and respond to these requests within the mandated deadlines under the DoLS regulations.
- 6.2 The DoLS Team is a team of specialist workers within the Adult Social Care Service responsible for receiving, responding to and managing DoLS related work,
- 6.3 Milton Keynes Council will ensure that there are sufficient accredited and trained medical practitioners (Section 12 doctors) to undertake mental health, eligibility and, where relevant, mental capacity assessments.

**Section 7. Recording Requirements.**

- 7.1 There are nationally agreed National Forms which must be used for Applications and Authorisations in Milton Keynes.
- 7.2 All recording must be attributable to the person completing it. (Electronic sign-off is permissible).
- 7.3 The DoLS Team will maintain records of applications and authorisations (given, and refused). This will form the minimum data set for statutory reporting purposes. Records will be held on the Adult Social Care Records system.

**Section 8. Resource Implications.**

- 8.1 The resource implications of carrying out, administering and monitoring DoLS assessments are monitored by the Head Assessment and Safeguarding.

**Section 9. Training Implications.**

- 9.1 Milton Keynes Council will commission a programme of training to ensure that there are sufficient staff accredited to carry out Best Interests Assessments which is updated at least annually. It will also monitor training for other staff, as appropriate, to support their knowledge of DoLS.

**Part D. Quality Standards, Monitoring and Review****Section 10. Quality Standards.**

- 10.1 All processes must be completed within the statutory timeframes specified in law and guidance.

**Section 11. Equality Impact Assessment**

- 11.1 It is probable that the procedures within this policy will be most applicable for disabled and older service users where issues of capacity are more frequent. All requests for authorisation will be considered on an individual basis and will identify particular situations and the action to be taken specific to the individual.
- 11.2 Appropriate and proportionate use DoLS powers will be ensured through the process of Best Interests Assessment, the Approval Panel, and Review process.

**Section 12. Monitoring and Review**

- 12.1 The overall effectiveness of this policy will be monitored by the Head of Assessment and Safeguarding
- 12.2 The MA's DoLS processes will be monitored as part of Milton Keynes Council contract review process, and may also be inspected by the Care Quality Commission

## Appendix 1 Definitions

**Best Interests Assessor (BIA)** – Assessors will be from one of the following disciplines and with relevant experience who has completed **specific accredited training** to carry out Best Interests Assessments under DOLS:

**Capacity**- mental capacity is always referred to as time and situation specific. Where the term 'lack of capacity' is used in this document it refers specifically to the capacity to decide whether or to consent to care or treatment that amount to a deprivation of liberty at the time at which that decision needs to be made.

**DoL – Deprivation of Liberty** – Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. It can only be taken away in certain circumstances and only if legal processes are used.

**DoLS – Deprivation of Liberty Safeguards:** The Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

**Host Authority (HA)** – the local authority in the geographic locality of the registered care home or hospital in which the relevant person is receiving care or treatment but where the local authority is **not** also the supervisory body

**Independent Mental Capacity Advocate (IMCA)** – An independent and paid advocate who must be instructed to be involved in the DoLS authorisation process where the relevant person has no appropriate family or support network and where only professional / remunerated staff are involved in the assessment process.

**Managing Authority (MA)** – The person/body with management responsibility for the hospital/registered care home where the person is, or may become deprived of, their liberty.

**Relevant Person (RP)** – The person who is, or may become, deprived of their liberty

**Relevant Person's Representative (RPR)** – This will usually be a close relative or friend of the relevant person. It may also be a donee of a Lasting Power of Attorney or a Deputy appointed by the Court of Protection. Where a Relevant Person's Representative cannot be identified the supervisory body will appoint a paid Relevant Person's Representative via an advocacy contract with an independent advocacy service provider.

**Restraint** - Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm Someone is using restraint if they: *Ref: Mental Capacity Act Section 6(4)* "Use force, or threaten to use force, to make someone do something that they are resisting. Or; -Restrict a person's freedom of movement, whether they are resisting or not. "

**Section 12 Doctor** – A doctor trained under Section 12 of the Mental Health Act to undertake assessments of mental illness under the Act. Section 12 doctors will be required to undertake separate and specific accredited training prescribed by the Royal College of Psychiatrists to carry out assessments under DOLS.

**Signatory** – a senior manager of a local authority responsible for checking and authorising completed DoLS assessments

**Supervisory Body (SB)**– The local authority that has statutory responsibility for conducting assessments and reviews under the legislation.

**Standard Authorisation (SA)** - An authorisation given by the SB after the 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 (UA)** - An authorisation given to the MA for a maximum of seven days, which may be extended by a maximum of a further seven days by the Supervisory Body. The Urgent Authorisation gives the Managing Authority lawful authority to deprive a person of their liberty while the Standard Authorisation process is undertaken.