



## Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Practice Guidance

**Purpose:** This practice guidance has been written to provide the procedural element of the Deprivation of Liberty Policy April 2019 to give detailed guidance to the Supervisory Body, Managing Authorities and Best Interest Assessors – these documents must be read and implemented together.

### Approved by

Adult Social Care Heads of Service Meeting  
26 March 2019

A handwritten signature in black ink, appearing to read 'Victoria Collins'.

Victoria Collins, Director of Adult Services

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<b>For use in ( service area)</b>	Supervisory Bodies and Managing Authorities
<b>For use by</b>	All staff
<b>Document Management and Distribution:</b>	
<ul style="list-style-type: none"> <li>- This policy will be added to the Adult Social Care Policy database and be published onto the Councils Intranet site.</li> <li>- It will also be added to the Milton Keynes Council website - Mental Capacity Web</li> <li>- <i>N.B. Printed copies of this document may not be the current approved version - please refer to the intranet for current policy versions</i></li> </ul>	

<b>Change History / Cancellations</b>	<b>Reason for obsolescence</b>
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Practice Guidance 2015	Updated and replaced by this version <b>N.B. the point of contact for all DoLS applications and management has changed to the DoLS team</b>
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Practice Guidance April 2013	Updated and replaced by 2015 version
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 Practice Guidance April 2012	Updated and replaced by 2013 version
Deprivation of Liberty Safeguards, Mental Capacity Act 2005 - Policy and Procedure April 2009	Updated and replaced by 2012 version

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**For definitions and acronyms used in this guidance please see Appendix 1**

#### **REFERENCES / RESOURCES:**

Mental Capacity Act 2005 Code of practice – [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

Deprivation of Liberty Safeguards – code of–conduct [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

[Milton Keynes Council webpages on Mental Capacity](#)

## Part A. Supervisory Arrangements And Authorisation Types

### Section 1. Supervisory Body Responsibilities in Milton Keynes

- 1.1 MKC is the Supervisory Body responsible to discharge statutory duties under the MCA DoLS legislation for a person who has ordinary residence in the Milton Keynes Borough area.
- 1.2 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.

Contact details are:

- Email [DoLS@Milton-keynes.gov.uk](mailto:DoLS@Milton-keynes.gov.uk)
  - Tel 01908 252913
  - Address: Civic.1 Saxon Gate East, Central Milton Keynes MK9 3EJ.
- 1.2.1 The office is staffed Monday – Friday 09.00-17.30 hours. Out of office hours, an answer phone is in operation and applications can still be emailed however a response will not be made until the next standard working day.

### Section 2. Applications and Authorisations standard documents

- 2.1 All DoLS Applications and Authorisations MUST be made in writing using nationally agreed standard forms:

<a href="https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance">https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance</a>	
Managing Authority use	Supervisory Body (SB) use
Form 1: Standard and Urgent Request	Form 3: BIA Combined assessments
Form 2: Further Authorisation Request	Form 3a: BIA No Deprivation
Form 7: Suspension of Standard Authorisation	Form 4: Mental Health Eligibility Capacity Assessments
Form 10: Review request	Form 5: Standard Authorisation Granted
	Form 6: Standard Authorisation Not Granted
	Form 8: Termination of Representative
	Form 9: Standard Authorisation Ceased
	Form 12: Notification to coroner

### Section 3. Standard Authorisations (SA) - granted by the Supervisory Body (SB)

- 3.1 MA's must have their own procedures in place which must identify:
- Whether a Deprivation of Liberty is occurring or may be occurring.
  - Whether they have taken all practical and reasonable steps to avoid a Deprivation of Liberty from occurring through reviewing the care plan, and risk assessments
  - What steps they should take to assess whether to seek authorisation.
  - What action they should take if they do need to request an authorisation.
  - How they should review cases where an authorisation is or may be necessary.
  - Who, within the care home or hospital should take the necessary action
  - Whether the relevant person needs an IMCA.
- 3.2 If a MA decides a request for a DoLS Authorisation is needed, they must make a written application to the SB using **FORM 1**
- Completed forms and relevant care plans, needs and risk assessments must be sent to the DoLS Team online, they must not be sent in the post as this delays the process and affects timescales. (Ref Contact details Section 1).
  - MA's should also phone ahead to inform the DoLS Team an application is on its way.
- 3.3 The MA must inform the relevant person, their family, friends, carers and any IMCA already involved that it has applied for a DoLS Authorisation, unless this is impracticable or impossible.
- 3.4 The MA must keep a written record of each SA request and the reasons for making the request.
- 3.5 Registered NHS Trusts and Care Homes are required, by law, to inform the Care Quality Commission (CQC) of all DoLS Applications and the outcome.

### Section 4. Urgent Authorisations (UA) - granted by the Managing Authority (MA)

- 4.1 A MA can issue itself an Urgent Authorisation (UA) for DoLS where:

- It is required to make a request to the SB for a SA, but believes that the need for the relevant person to be deprived of their liberty is so urgent that deprivation needs to begin before the request is made, or
  - It has made a request for a SA, but believes that the need for the person to be deprived of their liberty is so urgent that this needs to begin before the request is dealt with by the SB.
- 4.2 The decision to issue itself a UA must be made at a senior level within the MA. It must not be issued unless there is reasonable expectation that the six qualifying requirements for a SA are likely to be met and all practical and reasonable steps have been taken to avoid deprivation.
- 4.2.1 The MA must as far as possible and practical, notify, take account of and record the views of anyone caring for the relevant person or any other interested party.
- 4.2.2 The MA must decide for itself the duration of the UA, but this cannot exceed seven days. When a MA has issued itself a UA, all of the assessments required for a SA must be completed during the time the UA is in force.
- 4.3 A UA must be in writing and cannot be given without a simultaneous SA request using **FORM 1**
- Completed forms and relevant care plans, needs/ risk assessments must be emailed to the DoLS Team, they must not be posted as this delays the process and affects timescales.
  - MA's should also phone the DoLS Team to inform it an application is on its way
- 4.4 The MA must keep a record of any UA given, including why it was decided to give a UA.
- 4.4.1 The MA should inform the person's family, friends, and carers about the urgent authorisation, so they can support the relevant person.
- 4.5 If there are exceptional reasons why the request for a SA cannot be dealt with within the seven day period of the UA, the SB may ask the MA to request an extension to the duration of the UA for a further seven days. The MA should not assume that an extension will be granted.
- 4.5.1 The MA should make a written application, to the DoLS Team, using **FORM 1**, at least one day before the UA expires and keep a copy for their records.
- 4.5.2 On receipt the DoLS Team will send the MA a letter of acknowledgement
- 4.6 As appropriate the MA must notify CQC. *Ref Section 3.5*

## Section 5. Unlawful Deprivation and Safeguarding

- 5.1 If anyone believes a person in a hospital or care home is being deprived of their liberty without proper authorisation they have a professional and moral duty to report this to the DoLS Team.
- 5.2 The DoLS process may identify a safeguarding issue or the Adult Safeguarding process may recommend an application for a DoLS authorisation i.e.
- If a MA makes a DoLS application and on assessment the care/support plan currently being applied is unacceptable and abusive a safeguarding alert will need to be made.
  - If following a DoLS assessment an authorisation was not granted but the MA continues with the care/support plan regardless, the BIA must raise a Safeguarding Alert.
  - If during the Adult Safeguarding process a potential DoL is identified, or likely to occur, the safeguarding officer must make an application. If the MA does not make the application in a timely manner (usually within 24 hours) the safeguarding officer must inform the DoLS Team. They may be required to complete **FORM 1**
- 5.3 It may be possible for the MA to resolve the matter informally with the concerned person by making some adjustments to the care arrangements so that a DoL may be removed. However, if the MA is unable to resolve the issue with the concerned person quickly, they should submit a request for a standard authorisation to the SB.
- 5.4 If after a concern is raised the MA does not apply for an authorisation the SB can be asked, orally or in writing, to decide whether there is an unauthorised DoL, the request should include:
- The name of the person they are concerned about
  - The name of the hospital or care home, and
  - Why they think that the person is deprived of their liberty
- 5.5 When the SB receives the request the DoLS team will liaise with the MA to request they complete and submit **FORM 1** to trigger an Urgent Authorisation *Ref Section 4*. If the MA does not agree to do this the concerned person should complete **FORM 1**

## Part B. Response to Authorisation Applications and the Assessment Process

### Section 6. Supervisory Body Response to Authorisation Applications

- 6.1 The DoLS Team will check the DoLS inbox throughout the day for requests and to:
- Check information received is complete and correct and dates for a UA expiring and the SA starting are correct. (A UA is for a maximum of 7 days and expires at midnight on the 7th day and the SA starts at 12.01 on the 8th day).
  - Contact the MA regarding necessary changes
  - Alert the manager DoLS (or person covering) that an application is received.
  - Upload /record relevant information into the electronic Social Care records system.
- 6.2 The DoLS manager (or person covering) must:
- Select a BIA taking into account: If the BIA is already involved in a case / specific needs of the relevant person i.e. disability /communication needs and
  - Allocate the Request for Authorisation on the electronic Social Care Records system

### Section 7. Role of the Best Interests Assessor.

- 7.1 The allocated BIA will contact the MA and visit to view relevant paperwork, They will meet the relevant person to complete the **Age Assessment**, and if they have capacity to decide the arrangements for their own care or treatment. This should be recorded on the **Mental Capacity Assessment** documents on the electronic Social Care records system.
- 7.2 The BIA should decide if the relevant person's circumstances appear to amount to a DoL and complete the **No Refusals Assessment**.
- 7.3 If a full assessment is required then the BIA must
- Contact the relevant person's representative. **Ref Section 18**
  - Complete the **Best Interest Assessment** Form
  - Arrange for a Mental Health Assessor and specify when these reports will be needed.
  - Maintain contact with any 39a IMCA and consider a joint visit. It is the responsibility of the BIA to incorporate the views of the 39a IMCA in their Best Interest report.
  - Send copies of the completed assessment to the 39A IMCA as soon as they are available.
  - Prepare and collate relevant information to facilitate authorisation by the signatory.

### Section 8. Selection and Role of the Mental Health Assessor

- 8.1 If a BIA decides that they require a Mental Health Assessor (Section 12 Doctors with specialist DoLS training) they will contact the Mental Health Assessors regarding availability.
- 8.2 The Mental Health Assessor will undertake the **Mental Health Assessment** and **Eligibility Assessment**. They may undertake the Mental Capacity Assessment (e.g. if already involved with the relevant person).
- 8.3 The Mental Health Assessor may ask the BIA to accompany them on the assessments which must be recorded on **FORM 4** (and possibly **FORM 3/ 3a**).
- 8.3.1 BIA's must provide the appropriate Forms and arrange for completed forms to be input to the electronic Social Care records system unless the Mental Health Assessor has access to do this his/herself.

### Section 9. Stopping The Assessment Process

- 9.1 If any assessment concludes that one of the requirements is not met, the assessment process should stop immediately. The authorisation process should continue but the authorisation cannot be granted. This applies where there is no Deprivation of Liberty.
- 9.2 As soon as they are aware one of the requirements is not met the BIA must inform.
- The other assessors
  - The section 39a IMCA
  - The Managing Authority
  - The DoLS Team
- 9.3 The Authorisation will still go ahead and the signatory should know the reasons why the assessment has stopped.
- 9.4 The BIA will need to complete **FORM 3a** and inform the MA.

## Part C. Independent Mental Capacity Advocates and Paid Representatives

### Section 10. Statutory Basis for Instructing an IMCA

- 10.1 There are statutory requirements to instruct an IMCA to represent and support the relevant person through the assessment process.
- Section 39a - Before the assessment process for SA or UA if the relevant person has no one to consult apart from professionals and other people who are paid to provide care or treatment
  - Section 39c – To fill any gaps between appointing a person’s representative, by acting as an RPR
  - Section 39d – The relevant person or their unpaid representative requests an IMCA to help them exercise their powers in relation to DoLS
  - Section 39d – Where the SB believes that instructing an IMCA will help to ensure that the person’s rights are protected
- 10.2 The role of an IMCA is to provide support to the relevant person, or a family member or friend acting as their representative if they need it, to help them to :
- Understand the effect of the authorisation
  - Know how to trigger the review process
  - Make a challenge in the Court of Protection
- 10.3 In Milton Keynes, seAp are commissioned to provide IMCA and Paid Representative support.

### Section 11. Process for Instructing Section 39a IMCA

- 11.1 The BIA is responsible for deciding if a 39a IMCA is needed and must advise the SB by emailing the DoLS Team.
- 11.2 The notification periods to instruct a 39a IMCA are within:
- 2 working days of receipt of the application for a SA
  - 24 hours of receipt of the application for a UA
- 11.3 The DoLS Team on behalf of the SB make a referral to the IMCA provider giving the following information.
- Relevant person’s name
  - Relevant person’s DOB
  - Contact details for the care home/hospital
  - Type of authorisation
  - IMCA role required 39a
  - Name and contact details of the BIA
- 11.4 The BIA must then immediately liaise with the IMCA by email, specifying when the IMCA report is required and attaching the relevant referral form (Form 1 or 2):
- 11.5 The IMCA service will allocate a worker within a working day and will email the DoLS Team with the name and contact details of the 39a IMCA.
- 11.6 The IMCA must submit a report to the DoLS Team including all information he/she considers relevant to the case.
- 11.6.1 In order to ensure that the IMCA’s view is included in the BIA report, it may be necessary, particularly with UA’s to give the BIA written summary which is followed by the full written report.

### Section 12. Process for Instructing Section 39c IMCA

- 12.1 A person who is being deprived of their liberty must have someone to represent their interests at all times. This is the role of the Relevant Person Representative (RPR). If the RPR has to give up their position for any reason, and it is not possible to appoint a new RPR immediately, a 39C IMCA must be instructed immediately to support the relevant person.
- 12.2 As soon as the MA has been made aware that a RPR has to give up their position they must contact DoLS Team with the following information.
- Relevant person’s name
  - Relevant person’s DOB
  - The name and contact details of the RPR

- The circumstances why they believe the RPR needs to give up their position.
- 12.3 The DoLS Manager will consider the circumstances and decide if a 39c IMCA needs to be instructed. If so he/she will advise the DoLS CLO to make a 39C IMCA referral
- 12.6 The IMCA provider will allocate an IMCA within 24 hours and will contact the DoLS Team with the name and contact details of the 39C IMCA.

### **Section 13. Appointment of IMCA Provider as Paid Representative**

- 13.1 A paid representative may need to be appointed when:
- A 39a IMCA was appointed during the assessment process
  - The BIA was unable to select an eligible person as the representative
- 13.2 As soon as the BIA identifies the need for a paid representative they should record this in relevant section of **FORM 3**.and submit the form to DoLS team  
DoLS Team submit request to signatory for authorisation  
If agreed DoLS team will source a paid representative via the commissioned service.
- 13.3 The IMCA service will nominate a Paid Representative.

### **Section 14. Differences of opinion between an IMCA and an Assessor**

- 14.1 Differences of opinion between an IMCA and an assessor should ideally be resolved while the assessment is still in progress. Where there are significant differences between the IMCA and one or more of the assessors that cannot be resolved between them, the SB should be informed before the assessments are completed.
- 14.2 In such circumstances either party can contact the DoLS Manager who may convene a meeting between all of them to discuss the matter and hopefully resolve the matter informally in order to minimise the need for the IMCA to make an application to the Court of Protection.

## Part D. The Authorisation Process

### Section 15. Authorisation Responsibilities

- 15.1 The DoLS Team co-ordinates the authorisation process for Milton Keynes Council
- 15.2 The role of authorising a DoL is delegated to a number senior managers and commissioners on a rota basis.
- 15.3 The DoLS CLO is responsible for ensure that paperwork is submitted to the designated signatory

### Section 16. Standard Authorisation Granted

- 16.1 If all the assessments conclude the relevant person meets the requirements for authorisation, and the SB has written copies of all of the assessments, it must give a SA **FORM 5** and
  - Set the period of the authorisation, which may be no longer than that recommended by the Best Interest Assessor
  - Decide whether or not to attach any recommendations made by the BIA in their report as conditions to the authorisation. Where the signatory does not the attach conditions recommended by the BIA it may be necessary for the matter to be discussed with the BIA
  - Ensure the appointment of a representative for the relevant person. **Ref Section 18**
 The DoLS Team will notify the MA and ALL other parties in writing that the authorisation has been granted and send **FORM 3** and **FORM 5** to relevant people

### Section 17. Standard Authorisation not granted

- 17.1 The SB cannot give a SA if any of the requirements are not fulfilled. In these circumstances the signatory must complete **FORM 6** (standard authorisation not granted)
- 17.2 The signatory must consider what further action is appropriate to ensure that an unlawful Deprivation of Liberty is not allowed to either continue or commence.
- 17.3 The DoLS Team will notify the MA in writing that the authorisation has not been granted and send **FORM 6** and **FORM 3a** to relevant people.

### Section 18. Appointment of the Relevant Person's Representative

- 18.1 The Relevant Person's Representative (RPR) provides crucial independent support, acting only in the Best Interest of the person rather than that of commissioners or service providers.
- 18.2 The SB must as soon as possible and practical after a SA is authorised, appoint a RPR for every person to whom they give a SA.
- 18.3 The BIA is responsible for identifying and appointing the RPR ensuring that any proposed person meets RPR eligibility criteria and obtaining the relevant persons consent to the appointment.
  - 18.3.1 The DoLS Team will ensure a consent form is sent to and a signed version returned
- 18.4 If there is no eligible RPR the BIA must make a request for the SB to source a Paid representative **Ref Section 13**

### Section 19. Monitoring the Authorisation.

- 19.1 The SB has a duty to monitor any case on an ongoing basis to consider if the relevant person's circumstances change and they no longer need to be deprived of their liberty.
- 19.2 The MA has a duty to advise the SB if circumstances change which may affect the Authorisation such as level of deprivation or hospital admission.
- 19.3 If a MA decides that an Authorisation is no longer necessary they must end it immediately by adjusting the care regime, or implementing whatever other change is appropriate, and request that the SB undertake a review by contacting the DoLS Team by **FORM 10**.

## Part E. Review and Ending an Authorisation.

### Section 20. Basis for Holding a Review

- 20.1 Standard Authorisations can be reviewed at any time in response to a request.
- 20.1.1 The MA must complete **FORM 10**, and send this with the relevant person's care plan and risk assessments, to DoLS Team.
- 20.1.2 The relevant person or representative can request a review by writing to DoLS Team .
- 20.2 A review **must** be held when the relevant person
- No longer meets DoLS qualifying requirements or the reason(s) they now meet the qualifying requirement/s is/are different from the reason/s given at the time the SA was given.
  - Has a change of circumstances and the MA believes they no longer amount to a DoL.
  - Has a change of condition or circumstances, so that it would be appropriate to amend an existing condition or add a new condition
  - They, their representative, or any other party want to challenge the Authorisation
- 20.3 The SB has decided as good practice it will use its discretionary powers to instigate a review at the mid-point where the authorisation period is 6 months or greater.

### Section 21. The Review Process

- 21.1 When a review request is received the DoLS Team will ask the signatory to authorise the request. If agreed the DoLS manager will then allocate a BIA to carry out the review.
- 21.2 In general, the review process should follow the SA process and use equivalent assessments if applicable, the BIA must record this decision on **FORM 3**
- 21.3 If any requirement is not met, an authorisation must be ended immediately. The DoLS manager must then consider if any further action to ensure an unlawful DoL is not allowed to continue.
- 21.4 If a requirement is still met, the BIA must check whether the reason the requirement is met has changed from that stated on the Authorisation.
- 21.5 The BIA will prepare the paperwork for the signatory Panel with a recommendation for continued authorisation or ending of the authorisation.
- 21.6 Following the signatory decision the DoLS Team the following:
- [DoLS Form 10](#) (decision following receipt of review assessment)
  - DoLS Form 9 (standard authorisation ceases to be in force)
  - DoLS Form 8 (change of Representative)
- 21.7 The DoLS Team will notify other relevant parties in writing notify them of the decision and send copies of the paperwork to the relevant people involved.

### Section 22. Process when an authorisation is due to end

- 22.1 The DoLS Team will send a reminder letter to the MA six weeks prior to the end of the authorisation to prompt them to request a renewal. If there is no response after 14 days the DoLS will contact the MA again. .
- 22.1.1 If an authorisation is still required the MA will need to request a SA. The process for assessment is the same as for 'new' applications,
- 22.1.2 If authorisation is no longer required the MA must notify the SB in writing.

### Section 23. Ending an authorisation

- 23.1 The MA is responsible for notifying the SB of any changes that may affect an authorisation. An authorisation can be terminated for the following reasons:
- Following a review when the relevant person's condition or circumstances have changed, such that they no longer meet the requirements for the DoLS.
  - 28 day period of suspension for the authorisation has ended
  - The relevant person has moved from one care setting to another, or has died.
- 23.2 When an authorisation is terminated, the SB must also give notice in writing to the RPR that their role is ended.

Appendix 1 - Definitions and Acronyms
---------------------------------------

**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.