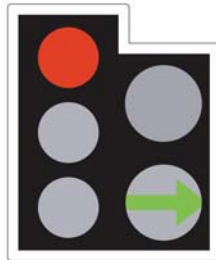


**The Mental Capacity Act 2005**  
**Deprivation of Liberty Safeguards**



**Policy**

**Devon County Council and Torbay Care Trust**

Practice Guidance for staff and professionals involved  
in providing support to adults in decision making



The guidance should be used in conjunction with a  
Code of Practice which can be downloaded from

[www.dh.gov.uk](http://www.dh.gov.uk)



Working together to stop abuse

## **Deprivation of Liberty Safeguards**

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## Introduction

The purpose of this document is to provide practice guidance to staff and professionals in relation to the Deprivation of Liberty Safeguards. It should be used in conjunction with DCC and Torbay Care Trusts joint guidance in relation to the Mental Capacity Act 2005 and both the Mental Capacity Act Code of Practice and the Deprivation of Liberty Code of Practice. Both can be downloaded from [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

1. **What are the Deprivation of Liberty Safeguards? Why were they introduced? (Code of Practice Chapter 1)**

From April of 2009, the Deprivation of Liberty Safeguards (DLS) were introduced as an amendment to the Mental Capacity Act 2005 (MCA). The DLS extends the powers of “restriction” provided by the MCA (section 5), to allow for the lawful “deprivation of liberty” of people living in a registered care home or hospital who lack capacity to consent to highly restrictive care plans that are proportionate and necessary in order to protect the person from harm.

The deprivation of liberty application process involves **6 assessments**. The *'qualifying criteria'* for each assessment must be met in order for the authorisation to be granted. There are professionals specifically trained and authorised to undertake these assessments. The assessments are;

1. **Age** - the person must be aged 18 or over
2. **Mental Health** – the person has a mental disorder within the meaning of the Mental Health Act (1983)
3. **Mental Capacity** – the person lacks the capacity to consent to the circumstances that would amount to them being deprived of their liberty
4. **Eligibility assessment** – the person’s status or potential status under the Mental Health Act
5. **No refusals** – a relevant advance decision has not been made
6. **Best Interests assessment** – The proposed restrictions must be in the person’s best interests, the least restrictive option, proportionate to the risks identified and will protect the person from harm.

The DLS were introduced to prevent breaches of the European Convention of Human Rights as highlighted by the Bournemouth case (*H.L Vs U.K*).

H.L. was admitted to hospital under common law in his “best interests”. His carers were unhappy with the decision and pursued the issue through the domestic courts to the European Court of Human Rights.

***The judgement of the European court noted that ;***

- H.L. had been deprived of his liberty without a procedure prescribed by law (*Article 5.1*)

- H.L had no means of applying to a court to see if the deprivation of liberty was lawful (*Article 5.4*)

The English Government made amendments to our laws to provide a legal process for depriving a person, under very specific circumstances, of their liberty. This means that where the qualifying criteria are met, people can receive the care and support they need whilst protecting their rights to appeal and representation. The Deprivation of Liberty Safeguards came into force on **1<sup>st</sup> April 2009**.

### **Guidance to Practice in Devon and Torbay**

- The statutory duties of the Supervisory Bodies will be discharged through partnership agreements. Within this agreement the Deprivation of Liberty Safeguards Service will be acting on behalf of both Supervisory Bodies, i.e. Devon County Council and NHS Devon and Torbay Council and Torbay Care Trust, in arranging and managing the assessment and review processes required by the Act.
- All staff are required to apply the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards 2008 at all times and refer to both Acts and their Codes of Practice whenever capacity, best interest and deprivation of liberty issues arise.

- Every effort will be made by those with a duty of care towards an individual to prevent a deprivation of liberty. This includes both commissioners and providers of care.
- We seek to ensure the dignity and well being of the relevant person will be paramount at all times. A personalised approach will be taken that maximises freedom, minimises control and supports & encourages contacts with family, carers & friends.
- In cases where there are issues of mental capacity **and** mental illness – consideration needs to be given to whether the Mental Health Act (1983) is the more appropriate response. *(See Eligibility Guidance DLS Code of Practice Paragraphs 4.40 – 4.57.)*

## 2) What is Deprivation of Liberty?

There is no SIMPLE definition of deprivation of liberty – practitioners are strongly advised to make themselves familiar with [Chapter 2 of the Code of Practice](#), which looks at both the nature and context of restrictions that **could** amount to deprivation of liberty. Case law is also influential in this matter and should be considered.

Before evaluating whether a deprivation of liberty is occurring the following principles need to be observed.

- First, that each situation must be **assessed individually** to take account of the person's circumstances. No two cases are identical – thus what constitutes a deprivation of liberty for one person may not apply to another.
- Secondly, the difference between deprivation of liberty and restriction is one of “**degree or intensity**”, not one of “nature or substance”.

The following headings are a useful starting point when considering “degree and intensity”.

1. The **TYPE** of restraint - is it physical? Chemical? Restricted access?
2. The **DURATION** of the restraint – immediate restraint to prevent harm is normally covered by Sec 5 of the MCA. However the **cumulative** effects of restraint may lead to a deprivation of liberty.
3. The **EFFECTS** of implementation - what are the implications for the individual? The code emphasises that the impact and consequence of restrictive care and treatment practices will be very different for individuals. So what might amount to restrictions within the meaning of sec 5 of the MCA for one person may in fact have far greater impact on another person and their liberty be at significant risk.

4. **IMPLEMENTATION.** How were the restrictions imposed? Are they as least restrictive as possible? Were they put in place by negotiation with the person's family or representative? Are there risk assessments in place and plans to review and monitor the restrictions on a regular basis? Have all other reasonable alternative options been considered?

3) **How and when can deprivation of liberty be applied for and authorised?**

The following guidance seeks only to offer a brief outline of the application and authorisation process. For a full explanation of process and responsibilities - practitioners **must** refer to the Deprivation of Liberty Safeguards (DLS) code of practice **chapter 3**.

**Definitions of 'Managing Authority' and 'Supervisory Body':**

DLS introduces the concepts of "Managing Authority" and "Supervisory Body" - working together; they are responsible for the DLS process.

**Managing Authority**

This is the care home or hospital where the proposed deprivation of liberty will take place. The hospital may be public or private. A care home is one registered under the Care Standards Act 2000. A summary of the key **responsibilities** required of a Managing Authority can be found in the code of practice under checklists in **chapter 11**.

## **Supervisory Body**

This is the organisation that receives the applications for authorisations for deprivation of liberty. It has the duty to arrange the required assessments and consider whether the criteria for a deprivation of liberty are met. A summary of key *responsibilities* for Supervisory Body's can be found in **chapter 11** checklists within the DLS code of practice.

In the case of a **Hospital**, the *Supervisory Body* is the PCT, (NHS Devon for Devon County or Torbay Care Trust for Torbay) where the hospital is located, **or** the PCT that commissioned the care.

In the case of a **Care Home** the *Supervisory body* is the local authority where the person is "ordinarily resident" See LAC (93)7. This generally means the local authority that funds the person's care home placement or where there is no statutory commissioner, the authority in whose area the care home is located. The code of practice offers further guidance on this in **chapter 3**. Contact details for all Supervisory Bodies in England can be found through the Department of Health web page

[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo15](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo15)

It is possible for PCTs and Local Authorities to have joint arrangements to administer the DLS process – this is the case in Devon and Torbay. Contact details for each Supervisory Body are set out below under arrangements for Devon and Torbay.

Applications should be made using the *standardised* Department of Health documents available at

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772)

We recommend using the versions *without* the colour backgrounds to ensure they are readable upon receipt by the Supervisory Body.

All Managing Authority's were sent cd's with copies of the documents on during the Spring of 2009. The DoH recommend these versions be updated with those available on their webpages, link as above.

#### **4. What is the assessment process for an authorisation of deprivation of liberty?**

##### **Application Process:**

The **Managing Authority** has responsibility to apply for an Authorisation to deprive an individual of their liberty. The application for authorisation is made to the **Supervisory Body**.

There are two types of Authorisation for deprivation of liberty.

**Urgent Authorisation:** – (**Code of Practice Chapter 6**). Urgent Authorisations are issued by the *Managing Authority* using **form 1** of the Department of Health Standardised forms. This gives them authority to deprive an individual of their liberty – when the person is already in the circumstances that apply to the safeguards. It

lasts for up to 7 days. **In exceptional circumstances this can be extended for up to an additional seven day period** ([see paragraphs 6.20 -6.28 of the DLS CoP](#)). Its purpose is to give the Supervisory Body time to carry out the requisite assessments for a **Standard Authorisation**. **As such any Urgent Authorisation must be followed by a Standard Authorisation request to the Supervisory Body** ([DLS CoP 6.1](#)). A Standard Authorisation application is made using the DoH standardised **form 4**. A copy of the urgent authorisation document must be forwarded to the Supervisory Body also.

#### **Standard Authorisation -**

This is requested by the Managing Authority from the Supervisory Body.

A **Standard Authorisation** is granted if the criteria of the 6 qualifying assessments are met. Both Devon and Torbay's Supervisory Bodies have arrangements in place to commission assessments as prescribed by the law, from those professionals identified as appropriately trained and eligible to do so ([code of practice chapter 4](#)). The assessment process for a standard authorisation must be completed within 21 calendar days.

Outcomes must be communicated to the Managing Authority, the person and their representative. ([Code of Practice Chapter 5](#)).

A Standard authorisation may last for up to a year. **Conditions** should be attached to the Authorisation which seek to mitigate the effects of the deprivation of liberty or end it altogether. The

Managing Authority is responsible for ensuring those conditions are complied with.

### **What are the outcomes to the assessments likely to be?**

Assessments will either result in one of the following;

- an authorisation being granted with a specified timeframe and most likely with specific conditions attached
- an authorisation not being granted because;
  - the qualifying criteria were not met
  - the assessments identified a person was being deprived of their liberty but this was not in their best interests or a proportionate response to protect them from harm. This means the person is subject to an **unlawful** deprivation of liberty. The Managing Authority is responsible for taking immediate actions to ensure the deprivation of liberty ceases.

**Good Practice** – Where an unlawful deprivation of liberty is identified, the managing authority will be promptly contacted and advised. The Supervisory Body will consider whether a safeguarding adult alert is required. CQC, in their regulatory and monitoring function, will also be informed. It is likely that a range of organisations such as statutory commissioners and advocates will need to work with the managing authority to support them in providing care and support in a lawful manner.

## **Guidance to Practice in Devon**

### ***Devon County Council and NHS Devon Supervisory Body contact details:***

DLS Team  
Ground Floor Annexe  
County Hall  
Topsham Road  
Exeter  
Devon EX2 4QR

DLS Information Line 01392 381676

DLS Secure Fax line 01392 383327

[dols@devon.gov.uk](mailto:dols@devon.gov.uk)

All applications will be directed to the DLS Administrator (as per the above contact details). Due to short time scales we will accept faxed copies via our secure mailbox. However, when applications are faxed we also require that hard copies are sent either via post by next day delivery or hand delivered. All applications will be confirmed on receipt. We will also liaise with the managing authority involved about the arrangements for progressing the application process.

Devon offers a telephone **information service** in relation to The Mental Capacity Act and The Deprivation of Liberty Safeguards.  
**DLS Information Line – 01392 381676.** This line is staffed by

Safeguarding Officers who specialise in the MCA and DLS and is available during office working hours.

All DLS applications for a Devon Supervisory Body will be managed and coordinated via this central team.

### **Guidance to Practice in Torbay**

All applications to be delivered to the DLS Administrator.

Within Torbay the Central point of contact for DLS is

The DOL's Administrator  
Safeguarding Adults Team  
3<sup>rd</sup> Floor Union House.  
Union Street  
Torquay  
TQ1 3YA

DLS information line : 01803 219832 or 01803 219888

DLS Secure Fax : 01803 219863

DLS email: [dolstorbay@nhs.net](mailto:dolstorbay@nhs.net)

For all urgent applications, due to the limited timescales involved, we request that they are hand delivered or sent by post by next day delivery. Managing Authorities are requested to accompany the Urgent Authorisation with a Standard Authorisation application.

For all other standard authorisation applications we request that they are sent 1<sup>st</sup> class post

**Please note:**

Applications by e-mail will only be accepted from a secure NHS e-mail address due to the confidentiality of the information contained in the Deprivation of Liberty Safeguards application process.

We are happy for other managing authorities to contact us by telephone and or via this e-mail address to advise us that they have sent an application in the post and we will send/make contact to confirm when the application is received.

**5. Safeguards for the person involved:**

As described in the first part of this guidance, the safeguards were designed to ensure the 'relevant person' (person to who the safeguards may apply) has access to appeal any deprivation of their liberty and a legally robust process to ensure they are only deprived of their liberty in the right circumstances. The people involved in such situations are most likely to be amongst the most vulnerable in our society and need advocacy and support to ensure their rights and *best interests* are preserved, (*see MCA Code of Practice chapter 5 for best interests*). The safeguards therefore place a duty on the Supervisory Body to ensure the relevant person has a suitable *representative* to support them during the assessment phase and any period of authorisation, where it is given.

## **6. What is the role of the Relevant Person's Representative?**

### *Code of Practice Chapter 7*

The role of the Relevant Person's Representative (RPR,) is an essential safeguard within the Deprivation of Liberty Safeguards process. The RPR can be an unpaid family member, friend or carer. The representative is identified and recommended by the best interest assessor (BIA) appointed by the Supervisory Body to carry out one of the 6 assessments that comprise the safeguards process. There is detailed criterion regarding an individual's eligibility to act as a RPR, (*code of practice chapter 7*). They need to be able to advocate for the relevant person, represent what is in their best interests and what their wishes would most likely be. The RPR can make a complaint or appeal to the Court of Protection on behalf of the relevant person.

Where the relevant person is either unbefriended or does not have a friend, family member or carer able to take on the representative role, the Supervisory Body must appoint an Independent Mental Capacity Advocate (IMCA) for the assessment phase and a Paid Representative as and when the authorisation is granted. The appointment of an IMCA can also be undertaken by the Supervisory Body where there is a gap in a Relevant Persons Representative being appointed.

Unpaid representatives can request the support of an IMCA to assist with issues relating to the Deprivation of Liberty Authorisation.

### Good Practice

Good practice indicates that the Best Interest Assessor should begin to identify representatives as soon as the assessment process commences. In determining the most appropriate representative for the role, the Best Interest Assessor will discuss the requirements with all those involved in the assessment process.

### Guidance to practice in Devon and Torbay

Devon and Torbay adheres to the guidance covered within **Chapter 7** of the DLS Code of Practice.

In the circumstances of the Best Interest Assessor being unable to identify an eligible person to act as the relevant person's representative, they must inform the Supervisory Body via the central Safeguarding Adults DLS service who will action the appointment of an IMCA or Paid Representative via one of the advocacy organisations identified / contracted to provide this function.

Currently, the IMCA service is jointly contracted by Torbay Care Trust and Devon County Council through Living Options and Age Concern. The Supervisory Body within each area will jointly monitor service provision through quarterly contract monitoring meetings .

[www.livingoptions.org/division.php?division=imca\\_service](http://www.livingoptions.org/division.php?division=imca_service)

Within Devon and Torbay the following Advocacy services have been identified as able to act as Paid Representatives. Each service will operate within the terms and conditions as set out in the Devon Adult and Community Service Directorate 'Deprivation of Liberty Safeguards Relevant Persons (paid) Representative Service Spot Purchasing Agreement. This agreement will be reviewed on a .....

South West Advocacy

PO Box 148

Bideford

North Devon

EX39 9BA

TEL: 0845 388 6971/ 07527 986 251

Vocal Advocacy

Foxhole

Dartington Estate

Totnes

TQ9 6EB

TEL: 01803 868300

Living Options

ISCA House

Haven Road

Exeter

EX2 8DS

TEL: 01392 459222

Age Concern Torbay  
Sandwell House  
4 Dendy Road  
Paignton  
TQ4 5DB TEL: 01803 841834

7) **When should an Authorisation be reviewed? And what happens when it ends?**

*(Code of Practice Chapter 8.)*

When an authorisation is granted, the Managing Authority has a responsibility to monitor the circumstances and compliance with any conditions on an ongoing basis. The Managing Authority must also advise the relevant person of the granting of the authorisation and their rights.

A standard Authorisation can be reviewed at *any* time. Any review will be undertaken by the Supervisory Body. Review processes will generally follow the same process as those for a Standard Authorisation request.

**Statutory grounds exist for undertaking reviews they include:-**

- 1) If a review is requested by the Relevant Person, their representative or the Managing Authority.
- 2) A Supervisory Body can also decide to undertake a review at any time.
- 3) A review must be undertaken if the Relevant Person no longer meets the *eligibility criteria*. For example, the degree of

restrictions are no longer necessary or further assessment work has identified a less restrictive option.

- 4) The reasons the relevant person now meets the criteria are different from those reasons stated on the Standard Authorisation
- 5) A change in the relevant persons circumstances make it appropriate to amend, delete or add a condition to the Standard Authorisation.

The process for a review follows that of a standard authorisation application. However, the Supervisory Body has an obligation to identify which of the qualifying criteria need to be reviewed.

When a Standard Authorisation ends the Managing Authority can no longer *lawfully* deprive the relevant person of their liberty. If the Managing Authority were to consider that the person will still need to be deprived of their liberty after the authorisation ends, they need to request a further standard authorisation to begin immediately after the expiry of the existing authorisation (*Code of Practice 8.26.*)

### **Guidance to Practice in Devon and Torbay**

Both organisations adhere to the guidance outlined in the Code of Practice in relation to its responsibility as both a Managing Authority and a Supervisory Body. The Central DLS service will manage the review process assuring that any necessary re-assessments are undertaken.

The central DLS service will notify all relevant parties of the outcome of the review process as specified by the *Code of Practice Para' 8.18*.

In Circumstances where a person is classified as ordinarily resident in one local authority (the Supervisory Body) but is residing in a care home in another local authority ( the host authority) and where deprivation of liberty assessments need to be undertaken, the ADASS 'Protocol for the inter-Authority Management of Deprivation of Liberty Safeguards Applications' will be implemented.

**8. What happens if someone thinks a person is being deprived of their liberty without authorisation?**

*(Code of Practice Chapter 9)*

If someone thinks a person is being deprived of their liberty without authorisation, they should draw this to the attention of the [Managing Authority](#), where possible or appropriate, in the first instance.

If the outcome to such contact is not satisfactory or further consideration of the circumstances is required, contact with the relevant Supervisory Body should be made, (see above for contact details for both Devon and Torbay Supervisory Bodies).

Where such contact is received by either Supervisory Body, immediate arrangements for a preliminary assessment will be made to determine whether an unlawful deprivation of liberty is occurring.

**Guidance to Practice in Devon and Torbay.**

*(Code of Practice 5.24)*

In Devon the central Deprivation of Liberty Information line is available during normal working hours: **01392 381676** to assist with information relating to process in light of the above circumstances and any other issues relating to the MCA and DLS.

In Torbay, the central Deprivation of Liberty information line is available during normal working hours: **01803 219832 / 01803 219888** to assist with information relating to the MCA and DLS.

A perceived failure of a Managing Authority to identify a potential deprivation of liberty could mean an allegation of abuse (as defined by Devon and Torbay's Multi Agency Safeguarding Adults Policy and Procedures) in particular possible institutional and/ or, psychological abuse and/ or, neglect.

Consideration of making a safeguarding adult alert and sharing information with CQC, will also be given by the Supervisory Body when considering issues relating to an unlawful deprivation of liberty or the alleged failure to act on behalf of a Managing Authority.

9) **What is the Court of Protection and when can people apply to it?**

*(Code of Practice Chapter 10)*

The Court of Protection deals with particularly complex or high consequence decisions or disputes in relation to the Mental Capacity Act. Its remit is to make decisions in relation to financial, health and social care decisions in relation to those adults who lack capacity.

**In relation to Deprivation of Liberty Safeguards**

To comply with European Convention of Human Rights anybody deprived of their liberty must have speedy access to court to challenge the lawfulness of their detention. The Court of Protection fulfils this purpose. The Mental Capacity Act provides for a new Court of Protection to make decisions in relation to the property and affairs and healthcare and personal welfare of adults (and children in a few cases) who lack capacity. The Court also has the power to make declarations about whether someone has the capacity to make a particular decision.

The Court has the same powers, rights, privileges and authority in relation to mental capacity matters as the High Court. It is a superior court of record and is able to set precedents

More information about the court can be found at

[www.publicguardian.gov.uk/about/court-of-protection.htm](http://www.publicguardian.gov.uk/about/court-of-protection.htm)

## **The Law**

### **Applications**

#### **Before an Authorisation is given;**

Applications can be made to the court before an Authorisation is given – this may be to challenge whether the person has capacity, or whether the proposed action is lawful (it is in their best interests).

#### **After an Authorisation has been given:**

The person or their representative may challenge the Authorisation with regard to the following issues;

- Does the person meet the qualifying requirements?
- The period of the authorisation
- The purpose of the authorisation
- Any conditions that have been set.

\*NB Challenge can be made to both Urgent and Standard Authorisations.

#### **Dealing with disagreements or disputes;**

The DLS *Code of Practice 10.5* encourages disputes to be settled informally or by using the Supervisory Body's or Managing Authority's complaints procedures.

## **Making Applications to the Court**

Guidance on court procedures is available on the website of the office of the Public Guardian,

[www.publicguardian.gov.uk/about/rules-and-regs.htm](http://www.publicguardian.gov.uk/about/rules-and-regs.htm).

### ***Remember!***

Any application to the court would be done in conjunction with advice and support of the County/Trust Solicitor.

The following have an ***automatic right of access*** to the Court of Protection and can make an application;

1. The Person who lacks or is alleged to lack capacity.
2. The donor of a Lasting Power of Attorney or their donee
3. A Deputy appointed by the court
4. Anyone named in an existing court order
5. The person's appointed Representative.

## **Orders the Court can make;**

The court may;

- Vary or terminate a Standard or Urgent Authorisation.
- Direct the Managing Authority (in the case of an Urgent Authorisation) or the Supervisory Body (in the case of a Standard Authorisation), to vary or terminate the Authorisation.

**How do we deal with situations where the person involved is at risk of being deprived of their liberty but they live in a setting other than a care home or hospital?**

Currently the DLS safeguards only operate in hospital and residential/nursing home settings. For those people who lack capacity and are deprived of their liberty in other settings application should be made to the Court for an order regarding welfare matters. If possible, any application should be made before any deprivation of liberty takes place to ensure that the detention is legal.

**Guidance to Practice in Devon and Torbay;**

Discuss with your line manager in the first instance. Further advice or information can be accessed in Devon through the DLS Information line **01392 381676**. In Torbay, contact the Safeguarding Adult 'Single Point of Contact on **01803 219888**. Consideration of factors such as least restrictive options, best interests and capacity will need to be established and clarified. Any application to the Court will need to be made by the County or Trust Solicitor.

**10) How will the safeguards be monitored?**

Within England the Care Quality Commission (CQC) will confer the responsibility for the inspection process of the operation of DLS; they will report annually to the Secretary of State for Health

summarising their activity and findings. They will look at the DLS protocols and procedures in place within the managing authorities and the Supervisory Bodies

**Guidance to Practice in Devon and Torbay.**

*(See Code of Practice Chapter 11)*

The DLS administrator will collate all applications for DLS authorisations and their outcomes (both authorised or not.) This Information, including the number of contacts received via the central service, will be forwarded to South West Development Centre.

On a quarterly basis figures will be reported as is a statutory requirement to the DOH via Devon County Council and Torbay Care Trusts management information teams.

Additionally Care Quality Commission have a monitoring remit, details of which can be found within CQC's guidance document via the attached link <http://www.cqc.org.uk/>

**11) What happens if there is a failure in the system?**

It is important for any system failures to be reported through appropriate incident reporting process; so that the Managing Authorities and Supervisory Bodies can keep their protocols and procedures under review.

## **Guidance to Practice in Devon**

Any failure to follow DLS should be reported to the DLS team without delay. The central service will notify the Care Quality Commission where appropriate, as the body responsible for monitoring DLS and regulating registered provider services. Where it is alleged that a vulnerable adult may be at risk of abuse, the central DLS team will raise an alert in accordance with Devon and Torbay's multi-agency safeguarding adult procedures. More information on these can be found

Within Devon: [www.devon.gov.uk/safeguarding-adults](http://www.devon.gov.uk/safeguarding-adults)

Within Torbay: <http://www.torbaycaretrust.nhs.uk/aboutus/make-decisions/safeguardingadults/Pages/Default.aspx>

Or <http://icare/Operations/SafeguardingAdults/Pages/default.aspx>

The DLS team will monitor incidents which have not been dealt with appropriately under the Act and collate the relevant information and report to the MCA Sub-Group to Devon's Multi-Agency Safeguarding Adult Board and ACS Senior Management Team. Within Torbay this information will be reported to the Systems and Process Sub-Group to Torbay's Multi Agency Safeguarding Adults Board. Outcomes will be identified and shared amongst the multi-agency partnership and Workforce Development staff to inform future learning/training and service delivery.

## **12) Deprivation of Liberty Safeguards Training and Accreditation**

A wide range of staff, organisations and stakeholders need to have a good working knowledge of the Mental Capacity Act 2005, in order to be able to apply the Deprivation of Liberty Safeguards to practice. It is a requirement of the law that the act must be used when required. As such, training on the Mental Capacity Act and Deprivation of Liberty Safeguards is available to all staff including those of partner agencies and the private sector.

### **Guidance to Practice in Devon**

Within Devon, training is available for statutory, independent sector and voluntary organisations involved in the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards. Opportunities include e-learning, workshops and more detailed sessions combining MCA, DLS and Safeguarding Adults. Further information on training opportunities can be found at [www.devon.gov.uk/mentalcapacityact](http://www.devon.gov.uk/mentalcapacityact)

Devon will ensure that all Best Interest Assessors will have undertaken accredited courses, be directed to maintain a portfolio of professional practice specific to this area of work and will provide BIA's with updated training as per the statutory requirements.

BIA training opportunities will be offered to 'Eligible' staff within Devon County Council and partner agencies. Currently provision is for 3 places per financial year. This may change to reflect the needs of the service.

Mental Health Assessors are commissioned by NHS Devon. The statutory requirements for training and updating learning are provided through that contract and evidenced as part of the monitoring activity undertaken.

### **Guidance to Practice in Torbay**

Within Torbay, training will be provided for all statutory, independent sector and voluntary organisations involved in the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards.

For the Managing Authorities DLS will be incorporated into the Safeguarding Adults and Mental Capacity Act 1 day Alerters training.

Additional DLS awareness training will be included in the 1 day Mental Capacity Act Foundation training course which is accessible to all multi agency professionals within Torbay at Band 4 and above.

Places on these training courses can be accessed via Torbay care Trust training dept. For further information:

Tel: 01803 210574

Email [training.torbaycaretrust@nhs.net](mailto:training.torbaycaretrust@nhs.net)

Torbay Care Trust will ensure that all Best Interest Assessors will undertake accredited courses, be directed to maintain a portfolio of

professional practice specific to this area of work and will provide BIA's with updated training as per the statutory requirements.

Torbay Care Trust will ensure that the appropriate training for Mental Health Assessors is clearly identified in the Contract with the Commissioning provider – this is currently Devon Partnership Trust – and it will be their responsibility to ensure that their practitioners have completed the necessary training to facilitate the task.

### **13. Information sharing:**

The act places requirements upon *Managing Authorities* and *Supervisory Bodies* to share information with certain parties when they are undertaking statutory activity under the act. (See Good Practice point 2 for guidance on who this may include.) The code details these circumstances in the various sections relating to the differing aspects of the act.

#### **Good Practice guidance:**

In addition to the directions in the *code of practice*, the following good practice principles on information sharing may assist but should **not** override the directions given in the code of practice. If you have any queries about information sharing, discuss with your line manager in the first instance.

- 1) Is the disclosure covered by the Data Protection Act 1989?

- 2) Is the request being made by a formally authorised representative such as an LPA, EPA, Deputy, IMCA, Court of Protection appointed visitor?
- 3) Is the disclosure legal?
- 4) Is the disclosure justified having balanced the person's Best Interests and the public interests against the person's right to privacy?
- 5) Do I have the information required?
- 6) Am I satisfied that the person concerned lacks the **Capacity** to agree to the disclosure?
- 7) Am I satisfied that the person making the request for the information is: - Acting in the Best Interests of the person concerned?

### **Guidance to Practice in Devon.**

An information sharing protocol has been developed to formalise the arrangements for information sharing between Devon County Council, NHS Devon and Devon Partnership Trust. This document can be viewed at [www.devon.gov.uk/mentalcapacityact](http://www.devon.gov.uk/mentalcapacityact)

### **Guidance to Practice in Torbay.**

Further information regarding 'sharing information' can be accessed via the Information Governance Team on 01803 210509.

## **Mental Capacity Act Deprivation of Liberty Safeguards**

### **Appendix of additional information**

1. DCC and NHS Devon Deprivation of Liberty Safeguards Factsheet  
[www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm](http://www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm).

DCC and NHS Devon Deprivation of Liberty Safeguards Factsheet  
– accessible version  
[www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm](http://www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm)

Torbay Care Trust Mental Capacity Act and Deprivation of Liberty  
Safeguards Fact Sheets  
-accessible versions  
<http://icare/Operations/SafeguardingAdults/Pages/default.aspx>

<http://www.torbaycaretrust.nhs.uk/aboutus/make-decisions/safeguardingadults/Pages/Default.aspx>

2. DCC and NHS Devon DLS process flowchart

[www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm](http://www.devon.gov.uk/index/socialcarehealth/adult-protection/mentalcapacityact/mcadeprivationofliberty.htm)

Torbay Care Trust DLS process flowchart.

<http://icare/sites/PoliciesAndProcedures/Pages/default.aspx>

<http://www.torbaycaretrust.nhs.uk/aboutus/make-decisions/safeguardingadults/Pages/Default.aspx>

3. Department of Health information booklet for Hospitals and Care Homes, Local Authorities and NHS and people who use service and their friends and relatives; accessed at [www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo7](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm#jumpTo7)

4. Independent Mental Capacity Advocacy provider – Living Options and Age Concern Devon.

[www.livingoptions.org/division.php?division=imca\\_service](http://www.livingoptions.org/division.php?division=imca_service)

Phone number **0845 231 1900** or [imca.devon@nhs.net](mailto:imca.devon@nhs.net)

5. Other useful websites and sources of information
  - a. MCA and DLS Code of Practice  
[www.publicguardian.gov.uk/mca/code-of-practice.htm](http://www.publicguardian.gov.uk/mca/code-of-practice.htm)
  - b. Office of the Public Guardian  
[www.publicguardian.gov.uk/index.htm](http://www.publicguardian.gov.uk/index.htm)
  - c. Devon County Council Safeguarding Adults  
[www.devon.gov.uk/safeguarding-adults](http://www.devon.gov.uk/safeguarding-adults)
  - d. Torbay Care Trust Safeguarding Adults, Mental Capacity Act 2005 and Deprivation of Liberty Safeguards.  
<http://www.torbaycaretrust.nhs.uk/aboutus/make-decisions/safeguardingadults/Pages/Default.aspx>
  - e. Devon County Council Mental Capacity Act and Deprivation of Liberty Safeguards  
[www.devon.gov.uk/mentalcapacityact](http://www.devon.gov.uk/mentalcapacityact)
  - f. Social Care Institute for Excellence (SCIE)  
[www.scie.org.uk/publications/mca/index.asp](http://www.scie.org.uk/publications/mca/index.asp)