

Deprivation of Liberty Safeguards (DoLS) Policy and Procedures

Mental Capacity Act (MCA) 2005

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1. Introduction

1.1 This document is for staff in Merthyr Tydfil and Rhondda Cynon Taf County Borough Councils and Cwm Taf University Local Health Board, but is also relevant for independent hospitals and care homes, and **should be read in conjunction with both the Mental Capacity Act 2005 Code of Practice and the Deprivation of Liberty Safeguards Code of Practice 2008.**

A link to both of these codes is attached here:

<http://www.wales.nhs.uk/sites3/Documents/744/Code%20of%20Practice%20E.pdf>

<http://www.wales.nhs.uk/sites3/Documents/744/Code%20of%20Practice%20E1.pdf>

The Revised Standard DoLS forms can be found at;

<http://gov.wales/topics/health/nhswales/mental-health-services/policy/dols/?lang=en>

1.2 This document sets out the Cwm Taf Policy for the operation of the DoLS, and how these Safeguards link to the principles and requirements of the MCA 2005. It provides information about the specific roles and responsibilities in these processes, and how they should be applied when a resident or a patient is resident in, or is due to be resident in, a care home or hospital in a way that is, or may be, a deprivation of liberty. It also sets out the specific procedure for DoLS requests, assessments and Authorisations in the two Local Authorities and the Health Board.

1.3 The DoLS do not apply to people other than those identified within the above categories, for example; those living within their own home, a shared lives setting or a sheltered housing scheme. Should a person in such a setting currently be, or will be, deprived of their liberty then an application should be made to the Court of Protection for Authorisation directly from the Court.

1.4 To ensure consistency, the term “Relevant Person” is used throughout this document, as a term of reference for either the resident or patient. In addition the term “Managing Authority” is used wherever possible to refer to a care home or hospital where the Relevant Person is, or will be, accommodated and “Supervisory Body” is used wherever possible to refer to the Councils' or Health Board's functions in relation to the

Safeguards.

1.5 People who suffer from a disorder or disability of the mind and who lack the mental capacity to consent to the care or treatment they need, should be cared for in a way that does not limit their rights or freedom of action. In some cases members of these vulnerable groups need to be deprived of their liberty for treatment or care because this is necessary and in their best interests to protect them from harm.

1.6 The aim of the DOLS is to provide legal protection for those vulnerable people who are deprived of their liberty, but who are not detained under the Mental Health Act 1983, to prevent arbitrary decisions to deprive a person of liberty and to give rights to challenge deprivation of liberty Authorisations. This procedure is required to comply with Article 5, Human Rights Act 1998.

1.7 The five statutory principles underpinning the Mental Capacity Act 2005 apply to the operation of these Safeguards, principally the requirement to act in the best interests of the person lacking capacity to consent to the care or treatment and to locate the least restrictive option.

1.8 People who suffer from a disorder or disability of the mind and who lack the mental capacity to consent to the care or treatment they need, should be cared for in a way that does not limit their rights or freedom of action. However, it may be necessary to deprive people of their liberty in order to provide treatment and/or care because this is unavoidable in order to protect them from serious harm.

1.9 The aim of the DOLS is to provide legal protection for people who lack the ability to consent to their care arrangements in care homes and who are deprived of their liberty. DoLS provides the same safeguards for hospital who lack the ability to consent to their care arrangements in care homes and who are deprived of their liberty, but who are not or cannot be detained under the Mental Health Act 1983. Correct use of the DoLS will prevent arbitrary decisions to deprive a person of liberty and will give rights to challenge Deprivation of Liberty Authorisations. This procedure is required to comply with Article 5, Human Rights Act 1998.

1.10 The five statutory principles underpinning the Mental Capacity Act 2005 apply to the operation of these Safeguards, principally the requirement to act in the best interests of

the person lacking capacity to consent to the care or treatment and to locate the least restrictive option.

2. What is deprivation of liberty?

2.1 Prior to the Supreme Court's judgment in the so-called 'Cheshire West' case in March 2014 (P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents) P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council (Respondent), there was considerable debate about what constituted a deprivation of liberty. Since this case, the nature of deprivation of liberty is clearer and the threshold for deprivation of liberty has been established as low.

2.2 The judgment set out the criteria for deprivation of liberty as set out below. The Relevant Person must;

- lack mental capacity to consent to their accommodation in the care home or hospital for care and/or treatment.
- be subject to continuous supervision and control (this need not be constant, but will involve the Managing Authority being aware at all times of the Relevant Person's whereabouts and, at least to some extent, in control of what the Relevant Persons does and where s/he goes)
- not be free to leave the hospital or care home

Their residence in the hospital or care home must also be 'imputable to the state'. This means that their admission to the hospital or care home has been arranged by a public authority, such as a local Council or by the National Health Service or would have been made by one of these organisations had it not been privately arranged.

3. Mental Capacity

3.1 In accordance with the five statutory principles in the MCA 2005, the initial assumption must always be that a person has the capacity to make a decision, unless it can be established that they lack capacity.

3.2 Capacity is assessed in relation to an individual's capacity to make a particular

decision at the time it needs to be made and is judged on objective criteria, rather than on the basis of assumptions regarding age, appearance, condition or behaviour.

3.3 There is a two-stage test for capacity:-

The Diagnostic Test for Capacity

3.4 It is first necessary to ask: does the person have an impairment of, or a disturbance in the functioning of, their mind or brain and is the disturbance or impairment permanent or temporary? There does not need to be a formal medical diagnosis of such impairment. The decision as to whether the diagnostic test can be made 'on the balance of probability'.

3.5 If the answer to this question is “no” the person does not lack capacity as defined by MCA 2005 and this guidance does not apply to their situation.

The Functional Test for Capacity

3.6 If the answer to the question above is “yes”, it is then necessary for the Decision Maker to establish the impairment or disturbance mean that the person is unable to make the decision in question – in this case, whether they should receive care or treatment in a care home or hospital that involves depriving them of their liberty – at the time it needs to be made? The following questions need to be addressed;

- (i) Does the person have an understanding of what decision they need to make and why they need to make it?
- (ii) Is the person able to retain the information pertinent to the decision for sufficiently long in order to make a decision?
- (iii) Is the person able to understand, retain, use and weigh up the information relevant to the decision?
- (iv) Can the person communicate their decision by any means, including via an interpreter or with the help of a speech and language therapist or communication aids?

3.7 The decision as to whether somebody has capacity is made “on the balance of probabilities”. This means that, in order to determine that a person lacks

capacity to make a decision at the time it needs to be made, it is necessary to be able to demonstrate that it is more likely than not that the person lacks capacity. However if such a decision was ever challenged legally then the burden of proof rests with the decision maker, professional, care home or hospital to establish any lack of capacity. It is therefore important to follow 6.9 to 6.13 carefully.

Documenting capacity assessments

- 3.8 The first statutory principle of the MCA 2005 is that there is an assumption of capacity. It is therefore important for staff to record any reasons for considering that a person does not have capacity in relation to a specific decision.
- 3.9 Where there is evidence of impaired decision-making capacity, this evidence should be recorded.
- 3.10 The MCA Code of Practice states that “where assessments of capacity relate to day to day decisions and caring actions, no formal assessment procedures or recorded documentation will be required.” However, it goes on to state that the more important a decision is, the greater the need for clear recordings and that it is “good practice that a proper assessment of capacity is made and the findings of that assessment are recorded in the relevant professional records.”
- 3.11 It is important to note that the diagnostic test for capacity does not always involve the assessment of a patient by a doctor. An informal carer, paid carer, social worker or other decision maker may have available to them sufficient information to determine that a person suffers from a condition or a disability that affects their decision making ability. It is inappropriate to subject individuals to repeated medical or psychiatric assessments where there is sufficient information for the decision maker to determine their capacity.
- 3.12 All attempts to support a person to make the decision themselves should be recorded.

4. Best Interests

- 4.1 The fourth statutory principle of the MCA 2005 is that any act done for, or any decision made on behalf of a person who lacks capacity must be done, or made, in that person’s “best interests.”

4.2 Chapter 5 of the MCA Code of Practice states that a person who is trying to determine the best interests of a person who lacks capacity to make a specific decision should:-

- a) Encourage participation
- b) Identify all relevant circumstances
- c) Find out the person's views, where possible
- d) Avoid discrimination
- e) Assess whether the person might regain capacity
- f) Ensure that decisions regarding life-sustaining treatment are not motivated by a desire to bring about the person's death.
- g) Consult others
- h) Avoid restricting the person's rights.

4.3 It is the decision maker's judgement as to what is in the best interests of a person who lacks capacity. The identity of the decision maker will vary with the type of decision being made. For most day to day care decisions this will be the family carer or paid carer. With regard to medical treatment, it will be the responsible health care professional and where an attorney or deputy has been appointed under a Lasting Power of Attorney or by the Court of Protection, it will be the Attorney or Deputy if the decision falls within the scope of their authority.

4.4 It is possible for a decision to be made by joint decision makers, for example when putting together a care plan for an individual who lacks capacity which involves input from different Health and Social Care staff. It is essential that clear recording identifies who is or are the decision makers with regard to specific decisions and the reasons for reaching the decision that the best interests of the person who lacks capacity are met.

4.5 In some situations, the decisions to be made are so serious or have long-term consequences for the person that a formal process of the best-interests decision-making process in relation to the specific decision should be made. This will entail full documentation: a formal best-interests meeting may be required. If this is done, the meeting should be minuted and all relevant parties will need to participate (including the relevant person and their family) and attend.

The least restrictive option

- 4.5 The fifth key principle of the Mental Capacity Act 2005 states that; “before an act is done or a decision is made (which has been assessed to be in the person’s best interests) regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is **'less restrictive of the person’s rights and freedom of action'**’.
- 4.6 Section 5 of the Mental Capacity Act provides legal protection for people who care for or treat someone who lacks capacity provided that the Act’s principles are followed and that action is taken in the incapacitated person’s best interests.
- 4.7 However as identified in Chapter 3 of this guidance , the Mental Capacity Act can only be used to restrain people to the extent that the restraint is:-
- a) necessary to protect the person who lacks capacity from harm and
 - b) in proportion to the likelihood and seriousness of that harm.
- 4.8 Section 5 of the Act does not give protection to decision makers for actions that deprive a person of their liberty, unless a standard and / or an urgent DoLS Authorisation is obtained. For details of how to obtain Authorisation, where necessary, when the person is a resident or patient where Cwm Taf Local Health Board or where Merthyr Tydfil or Rhondda Cynon Taff County Borough Council is the supervisory body see “The DOLS Procedure for Merthyr Tydfil and Rhondda Cynon Taf Local Authorities and Local Health Boards” in Appendix 1 of this guidance document.

5. The DoLS Process

- 5.1 This section provides an overview of the process that needs to be undertaken and includes references to the forms that should be used, by whom they should be used and the timescales required for the completion of actions by all those involved.

- 5.2 Whenever a Managing Authority (hospital or registered care home) identifies that a person who lacks capacity is being, or will be, deprived of their liberty, they must first Review the Relevant Person's care plan to assess if care can be given in a less restrictive way. By doing this it may be possible to prevent a deprivation of liberty occurring. If, after re-evaluating the care plan, it is determined that care cannot be given in a less restrictive way, then the Managing Authority (care home or hospital) must apply to the Supervisory Body (Local Authority or Local Health Board) for Authorisation of the deprivation of liberty. Where the Deprivation of Liberty Safeguards are applied to a person in a hospital, the Local Health Board in the geographical area of the hospital will usually be the Supervisory Body. For care homes, the Supervisory Body will be the Local Authority for the area in which the person is 'ordinarily resident' (see Social Services & Wellbeing Act (Wales), 2014, Code of Practice on Part 11 - <http://gov.wales/docs/dhss/publications/151218part11en.pdf> for help in deciding where the person is ordinarily resident). In the event that the Relevant Person is not ordinarily resident in the area of any local authority, the Supervisory Body will be the Local Authority for the area in which the care home is situated.
- 5.3 For disputes about place of ordinary residence please see the attached link below <http://www.legislation.gov.uk/wsi/2009/783/contents/made>.
- 5.4 The Deprivation of Liberty Safeguards **do not** introduce a new system for determining whether a person who lacks capacity to decide the matter for themselves should receive care and support or treatment, nor do they provide any new power to take and convey people to hospitals or care homes. They are solely about ensuring that there are appropriate safeguards in place when it is deemed that a person who lacks the capacity to decide the matter for him or herself is assessed as needing to receive care, support and/or treatment in their best interests in a hospital or care home, in circumstances that deprive them of their liberty.
- 5.5 There are two types of Authorisation: Standard and Urgent. A Managing Authority must request a standard Authorisation when it appears likely that, at some time during the next 28 days, the Relevant Person will be accommodated in a hospital or care home in circumstances that amount, or will amount, to a

deprivation of liberty. The request must be made to the Supervisory Body (using **Form 1**). Wherever possible, Authorisation should be obtained in advance. Where this is not possible, and the Managing Authority believes it is necessary to deprive someone of their liberty in their best interests immediately, they can issue themselves with an Urgent Authorisation and then seek a Standard Authorisation. An Urgent Authorisation can be for a maximum of 7 days but may be extended by the Supervisory Body for up to a further 7 days in exceptional circumstances upon application by the Managing Authority on **Form 1a**

5.6 Anyone with a concern, e.g. a family member or visiting professional, can apply to the Supervisory Body to trigger an assessment of whether a person is deprived of their liberty, if they have asked the care home or hospital to apply for Authorisation, but this has not been done. This would lead on to the full assessment process if the finding is that the person is deprived of their liberty. The request can be made on **Form 1b**, but can be received in any format by the Supervisory Body, including verbally.

5.7 When a Supervisory Body receives a request for Authorisation of a deprivation of liberty, they must obtain 6 assessments. These assessments must be completed within 21 days from the date the assessor is instructed by the Supervisory Body. If an Urgent Authorisation has been made by the care home or hospital, the assessor must complete the assessments within 5 days from the date of instruction by the Supervisory Body.

5.8 The assessments are:

Type of Assessment	Purpose of the assessment
<p>Age Assessment</p> <p>Anyone who is eligible to act as mental health assessor or a Best Interests Assessor (BIA).</p>	<p>The purpose of the assessment is to establish whether the Relevant Person is aged 18 or over.</p>

<p>No Refusals Assessment Mental Health Assessor or BIA</p>	<p>The purpose of this assessment is to establish whether there would be any conflict between a decision taken by a person with a Lasting Power of Attorney or a Court-appointed Deputy with health and welfare decision-making authority and the purpose of the Authorisation or whether there is an advanced decision in place that would conflict with a DoLS Authorisation.</p>
<p>Mental Capacity Assessment Anyone who is eligible to act as mental health assessor or BIA</p>	<p>The purpose of the assessment is to establish whether the Relevant Person lacks capacity to decide whether or not they should be accommodated in the relevant care home or hospital to be given care or treatment.</p>
<p>Mental Health Assessment Undertaken by a doctor who is either approved under section 12 of the mental health or believed by the Supervisory Body to be competent and experienced in the diagnosis and treatment of mental disorder</p>	<p>The purpose of the assessment is to establish whether the Relevant Person has a mental disorder within the meaning of the Mental Health Act 1983. This means any disorder or disability of mind, including learning disability.</p> <p>It is not an assessment to determine whether the Relevant Person requires mental health treatment but specifically to establish if a disorder exists.</p>
<p>Eligibility Assessment Anyone who is eligible to act as mental health assessor or a BIA</p>	<p>The purpose of the assessment is to clarify the Relevant Person's status or potential status under the Mental Health Act 1983 . For example a person would not be eligible for a DoLS Authorisation if they are detained as a hospital in- patient under the Mental Health Act 1983 or if the Authorisation, if given, would contradict a requirement of guardianship or a Community Treatment order. The Relevant Person would also not be eligible for DoLS if they are receiving treatment for mental disorder in hospital but are objecting to that treatment.</p>

<p>Best Interests Assessment</p> <p>Undertaken by the BIA who may be:</p> <ol style="list-style-type: none"> 1. an Approved Mental Health Professional 2. a Social Worker, registered with Social Care Wales 3. a first level nurse registered with the Nursing and Midwifery Council 4. a Registered Occupational Therapist 5. a Chartered Psychologist <p>The BIA may be employed by the Supervisory Body but must not have any present involvement in the Relevant Person's case</p>	<p>The purpose of the assessment is to establish if deprivation of liberty is occurring or is going to occur and if so, whether:</p> <ul style="list-style-type: none"> • It is in the best interests of the Relevant Person to be deprived of their liberty and • It is necessary for them to be deprived of liberty in order to prevent harm to him/herself and • Deprivation of liberty is a proportionate response to the likelihood of the Relevant Person suffering harm and the seriousness of that harm.
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5.9 In line with the provisions of the MCA 2005, anyone who does not have family or friends who can be consulted will have an Independent Mental Capacity Advocate (IMCA) instructed by the Supervisory Body to support and represent them during the assessment process. This IMCA is known as a Section 39(a) DoLS IMCA. The referral will be made on the IMCA Service's referral form, which can be found at;

<http://www.ascymru.org.uk/english/contact-us>

5.10 If any of the assessments conclude that the person does not meet the criteria for an Authorisation to be issued, the Supervisory Body must refuse the request for Authorisation. If this happens, the Supervisory Body must inform the Managing Authority, the Relevant Person, any IMCA instructed and all persons consulted by the Best Interests Assessor of the decision and the reasons for it. This will be done using **Form 6**. Copies of the completed assessments will be provided to the above parties.

5.11 Where it is decided that it is not in the Relevant Person's best interests to be deprived of their liberty in a particular home or hospital, steps will need to be taken by the care home or the hospital to find an alternative way of providing the

care that s/he requires, which is lawful.

- 5.12 If the Authorisation is for detention to enable life sustaining treatment or treatment believed necessary to prevent a serious deterioration in the person's condition, and there is a question about whether it may be lawfully granted, the person **may be detained** while a decision is sought from the Court of Protection.
- 5.13 The duration of any Authorisation will be assessed on a case-by-case basis, taking account of the individual's circumstances. If the Best Interests Assessor concludes that a deprivation of liberty is necessary and in a person's best interests to protect them from harm, they will be required to recommend the time period of the Authorisation, taking account of the possibility of circumstances changing. The maximum period for an Authorisation would be 12 months but Authorisations may often be for shorter periods.
- 5.14 If the Best Interests Assessor concludes that a deprivation of liberty Authorisation is necessary, they will also need to consider whether any conditions need to be set for the Managing Authority. Conditions are mandatory and must be implemented by the Managing Authority. If conditions cannot be met, then the Managing Authority must request a Part 8 Review of the Authorisation on **Form 10**. The Best Interests Assessor may also make recommendations to other professionals or agencies involved with the Relevant Person. These recommendations are not mandatory, but should be actively considered by the professionals or agencies to whom they are addressed.
- 5.15 If the Best Interests Assessor concludes that deprivation of liberty is necessary in a person's best interests to protect them from harm, they will be required to recommend who will be the best person to be appointed as the Relevant Person's Representative (RPR) in order to represent the person's interests.
- 5.16 The Relevant Person may choose their own RPR if they have the capacity to do so. Alternatively, if there is an Attorney or Deputy appointed with the appropriate authority, they may select a person to be the RPR. That person could be the Attorney or Deputy themselves.

- 5.17 Should the Relevant Person be unable to choose their own RPR or there is no attorney or deputy with the appropriate authority, then the Best Interests Assessor will consider whether there is someone among those they have consulted who would be suitable. If the Best Interests Assessor concludes that it is not possible to recommend an RPR, then the Supervisory Body will appoint a paid RPR.
- 5.18 If all the assessments conclude that the Relevant Person meets the criteria for an Authorisation to be issued, the Supervisory Body must grant a DoLS Standard Authorisation. The time period of a Standard Authorisation may not be longer than recommended by the best interests assessor although it could be reduced by the Supervisory Body and it may not be issued for a period exceeding 12 months.
- 5.19 Authorisation must be in writing using **Form 5** and include the purpose of the deprivation of liberty, the time period, any conditions attached and the reasons that each of the qualifying conditions are met.
- 5.20 The Supervisory Body must give a copy of the Authorisation to the Managing Authority, the Relevant Person, any IMCA instructed and all interested persons consulted by the best interests assessor. Copies of the assessments must also be provided to the Relevant Person, the Managing Authority and the RPR.
- 5.21 The role of the RPR is to keep in touch with the person, to support them in all matters concerning the Authorisation and to request a Review or to make an application to the Court of Protection if necessary. For details regarding who can undertake the role of the RPR see Chapter 12 of this document.
- 5.22 If there is no one available among friends or family, then the Supervisory Body will appoint a person, who may be paid, to act as the representative for the duration of the Authorisation.
- 5.23 Managing authorities have a duty to:
- Take all practical steps to ensure that the Relevant

Person and their representative understand what the Authorisation means for them and how they can apply to the Court of Protection or request a Review

- Monitor contact between the Relevant Person and their representative and alert the Supervisory Body if contact is not being maintained or if the representative is not thought to be acting in the person's best interests
- Ensure that any conditions attached to the Authorisation are met; and monitor the individual's circumstances as any change may require them to request that the Authorisation is Reviewed.

5.24 The Managing Authority can apply for a further Authorisation when the existing Authorisation expires using **Form 2**, in which case the procedures from Stages 1- 7 would be repeated. It is good practice for Managing Authorities to reassess the Relevant Person 28 days prior to the Authorisation expiring and reapply for a standard Authorisation if appropriate.

5.25 A Review may be carried out while an Authorisation is in place for the following reasons:

- The Managing Authority requests a Review because the person's circumstances have changed.
- The Relevant Person or their representative requests a Review.

5.26 The Supervisory Body must conduct a Review if asked to do so as above. Otherwise, the Supervisory Body can decide to carry out a Review at any time if it appears that one of the qualifying requirements may no longer be met. Assessments will be carried out for any of the criteria for Authorisation affected by any change of circumstances. The outcome of the Review may be to terminate the Authorisation, vary the conditions attached or change the reason recorded that the person meets the criteria for Authorisation. The Managing Authority, the Relevant Person and their RPR must be informed of the outcome of a Review.

5.27 The Relevant Person, or the person appointed as their RPR can at any time

request that an Authorisation be Reviewed by the Supervisory Body and also has the right to use the Supervisory Body's complaints procedure and/or make an application to the Court of Protection to challenge the decision to authorise the deprivation of liberty at any time.

5.28 Where an IMCA is instructed, they can provide support with a Review or with an application to the Court of Protection. Any other person involved may also apply to the Court of Protection for permission to challenge a decision to deprive someone of their liberty. Legal Aid is available for challenges by the person deprived of liberty or their representative to the Court of Protection.

6. Mental Health Act 1983 (MHA) or Mental Capacity Act 2005 (MCA)?

6.1 In hospital situations, DoLS cannot be used to provide treatment in circumstances where the person lacks mental capacity to consent to admission, care and treatment, is deprived of their liberty, when the purpose of the hospital admission is wholly or partly to provide treatment for mental disorder and the Relevant Person **objects** either to being in hospital at all or to the treatment. In these circumstances, the Relevant Person is 'ineligible' for DoLS. Therefore, if DoLS cannot be used because the Relevant Person is not eligible, it will be necessary to consider using the Mental Health Act to detain and treat the person. Some other examples of when DoLS cannot be used for the treatment of mental disorder in hospital are;

- (i) when it is not possible to give the person the care or treatment they need without doing something that would deprive them of their liberty and
- (ii) if the person needs treatment that cannot be given under the MCA (for example because they have made a valid advance decision to refuse an essential part of the treatment).
- (iii) when the person may need to be restrained in a way that is not allowed under the MCA
- (iv) If it is not possible to assess or treat the person safely or

effectively without treatment being compulsory, e.g. because the person is expected to regain capacity to consent, but might then refuse to consent.

- (v) When the Relevant Person's detention in hospital is for the protection of others
- (vi) If the person lacks mental capacity to decide on some elements of the treatment but has capacity to refuse a vital part of it, and they have done so

6.2 It is possible that there may occasionally be disagreements between the Mental Health Act and DoLS assessors as to the Relevant Person's eligibility for DoLS and the/or the need for detention under the Mental Health Act. In these circumstances, Cwm Taf University Health Board Mental Health Directorate's established process for escalation and resolution of differences in opinion should be utilised in order that the Relevant Person is not left without the necessary legal safeguards in place.

7. The Role of the DoLS Co-ordinator

- 7.1 On receipt of the application from the Managing Authority, the DoLS Co-ordinator checks the validity of the information provided in the application and will refer the application back to the Managing Authority if insufficient fundamental details are included. All assessments are to be completed within 21 days from instruction for a Standard Authorisation and 5 days from instruction for an urgent Authorisation. N.B. The timescale starts from the time that a DoLS Assessor is formally instructed by the DoLS Co-ordinator for the Supervisory Body.
- 7.2 On receipt of a completed application from a Managing Authority, the DoLS Co-ordinator will identify if the relevant person has someone to support them who is not engaged in providing care or treatment in a professional capacity or for remuneration. In practice this could be a relative or friend. If no one suitable can be identified, the DoLS Co-ordinator must instruct a Section 39A IMCA to support the Relevant Person.
- 7.3 The DoLS Co-ordinator will decide the priority of the DoLS request using the agreed prioritisation tool and the request will be placed on the DoLS waiting list.

When the request can be actioned, the DoLS Co-ordinator will contact assessors to undertake the six qualifying assessments. In the majority of situations the assessors (of which no less than two can be involved) will be a Best Interest Assessor and a Doctor approved under section 12 of the Mental Health Act 1983. If there are changes to the Relevant Person's circumstances that might mean that the original prioritisation of the case needs to be re-considered, the Managing Authority must inform the DoLS Co-ordinator.

- 7.4 In the event that an urgent Authorisation is in place and is accepted as being necessary by the DoLS Co-ordinator, the DoLS Co-ordinator will ensure that assessors are instructed immediately, so that they can be completed within the life of a 7 day urgent Authorisation. If there are exceptional circumstances, the Urgent Authorisation can be extended for up to a further 7 days by the Supervisory Body, on application by the Managing Authority on **Form 1a**.
- 7.5 The DoLS Co-ordinator will monitor the progress of the assessments, act as a point of contact for the care home or hospital, and will collate all the assessments for the Supervisory Body. On receipt, the DoLS Co-ordinator will scrutinise the assessments to ensure that they have been duly completed.
- 7.6 The DoLS Co-ordinator will present the assessments to the Supervisory Body's authorised signatory, who will decide on any conditions, duration of the Authorisation and the appointment of the Relevant Person's representative. Once the Authorisation is made on **Form 5**, the DoLS Co-ordinator will fax or email the Authorisation to the Managing Authority. This will be followed up by a paper copy, along with copies of the assessments to the Managing Authority, to the Relevant Person and their Representative and a copy of the Authorisation to all the consultees of the Best Interests Assessor.
- 7.7 The DoLS Co-ordinator will also send out notice of appointment to the Relevant Person's representative, with copies to the Relevant Person, the Managing Authority and to all consultees.

Valid Equivalent Assessments

- 7.8 The Act states that where a '**valid equivalent assessment**' to any of these

assessments has already been obtained, it may be relied upon instead of obtaining a fresh assessment. An example could be a recent assessment carried out for the Mental Health Act 1983. Any equivalent assessment used must be attached to the corresponding assessment form. **Assessment Forms 3, 3a and 4** are to be used for the purpose of recording the six assessments. The DoLS Co-ordinator will make the decision as to whether an assessment can be used as a valid equivalent.

7.9 An equivalent assessment is an assessment that:

- has been carried out in the preceding 12 months, not necessarily for the purpose of a deprivation of liberty Authorisation.
- meets all the requirements of the DoLS assessment (it is unlikely that all the requirements could be met for a Best Interests Assessment),

and

- The Supervisory Body accepts and sees no reason why it should no longer be accurate.

7.10 Great care should be taken in deciding to use an equivalent assessment and this should not be done routinely. It is necessary to record the reasons supporting a decision to use an equivalent assessment. However, where the required assessment is an age assessment, no time limit exists with regard to the use of an equivalent assessment.

8. The Authorised Signatory for the Supervisory Body

8.1 If all the assessments in the standard Authorisation assessment process indicate that the Relevant Person meets all the qualifying requirements, then the Supervisory Body must give a deprivation of liberty Authorisation. For this purpose **Form 5** will be used. Copies of all the assessments will be attached to this form prior to sending to the managing authority and other recipients.

8.2 Authorised signatories are appointed for the Supervisory Body who may attach conditions to the Authorisation. The Authorised Signatory for the

Supervisory Body may delegate this responsibility to another appropriate person to respond to requests in their absence.

8.3 The Supervisory Body must clearly outline the period of the Authorisation, which may not be longer than that recommended by the Best Interests Assessor.

8.4 As soon as possible after giving the Authorisation, the DoLS Co-ordinator will forward a copy of the Authorisation to :

- The Managing Authority
- The Relevant Person
- The Relevant Person's Representative
- Any Independent Mental Capacity Advocate (IMCA) instructed for the purpose in relation to the Relevant Persons detention
- Every interested person consulted by the Best Interests Assessor in their report as somebody consulted in carrying out their assessment

8.5 If any of the assessments indicate that any one of the qualifying criteria is not met, then the assessment process should stop immediately and Authorisation may not be given. The DoLS co-ordinator must forward a copy of the assessments, with notification on **Form 9** that an Authorisation cannot be given, to the:

- The Managing Authority,
- The Relevant Person,
- The section 39A IMCA

Anyone still engaged in carrying out an assessment must be contacted by the DoLS Co-ordinator and given notice that they are not required to complete the assessment.

9. The Role of the Best Interests Assessor

9.1 The first task that the BIA should undertake is to establish whether deprivation of liberty is currently occurring or is going to occur within the next 28 days, since there is no point in the assessment process proceeding further if deprivation of liberty is not an issue.

- 9.2 If the BIA considers that a deprivation of liberty is occurring or is likely to occur with 28 days this will initiate the beginning of a full best interests assessment. Once again, the Relevant Person should be involved as much as is possible and practical. Measures to assist the Relevant Person to participate within the decision-making process should be put in place.
- 9.3 The Best Interests Assessor will be required to liaise with any other assessors within the process.
- 9.4 Within the process of assessment, the BIA must involve the Relevant Person in the assessment process as much as is practical, and assist the Relevant Person to participate in decision-making. Appropriate support systems should be put in place by the BIA to enable a Relevant Person to participate in the process and this includes supporting the person with regards to difficulties with communication or language where applicable.
- 9.5 Within the process the BIA will need to consider:
- Whether any harm to the person could arise if the deprivation of liberty does not take place
 - What that harm would be
 - How likely that harm would arise – i.e. would the level of risk be sufficient to justify a step as serious as depriving a person of their liberty
 - What other care options are available which could avoid a deprivation of liberty
 - If a deprivation of liberty is unavoidable, what action could be taken to avoid it in the future.
- 9.6 In addition the BIA should, as far as is practical and possible, seek the views of:
- Anyone the Relevant Person has previously named as someone they want to be consulted
 - Anyone involved in caring for the person
 - Anyone interested in the person's welfare (for example, family carers, other close relatives, or an advocate already working with the person) and
 - Any deputy representing the Relevant Person

9.7 BIAs in taking into consideration all relevant views and factors are required to provide an independent and objective view of whether or not there is a genuine justification for a deprivation of liberty. In some cases a single organisation will be both the Managing Authority and the Supervisory Body and the Deprivation of Liberty Safeguards do not prevent it from acting in both capacities. However, the regulations state that the BIA should not be directly involved within the care provision of the Relevant Person or directly providing services to the Relevant Person.

9.8 If the Best Interests Assessment supports a deprivation of liberty, the BIA must state what the maximum duration should be for each individual case; in any case this shall not exceed 12 months.

The BIA in supporting a deprivation of liberty should:

- Set out the reasons for selecting the period stated, and
- Take into account any available indication of how likely it is that the Relevant Person's circumstances will change, including the expected progression of illness or disability.

9.9 The underlying principle of any authorised deprivation of liberty is that it should be for the minimum period necessary. For the maximum 12-month period to apply the BIA will need to be confident that there are unlikely to be any changes within the person's circumstances that would affect the Authorisation within that timescale.

9.10 The BIA must provide a report that outlines their conclusion and details reasons for their decision. Family and friends may not be confident about expressing their views and it is the responsibility of the BIA to enable them to do so – using support to meet communication or language needs as necessary. The name and address of every interested person who has been consulted during the assessment must be detailed.

NOTE: If translators are required, independent translators must be instructed. Family members should not act as interpreters for other members of their family.

9.11 If a deprivation of liberty is not supported by the BIA, then their report should aim to be as useful as possible to the providers of care so that it can be referenced

when deciding on future action and care provision. A copy of the report should be included in the Relevant Person's care plan or case notes to ensure that the reported views regarding how a deprivation of liberty can continue to be avoided are made clear to the providers of care and relevant staff.

- 9.12 If it appears that the Relevant Person is being deprived of their liberty, the BIA will recommend someone to be appointed as the Relevant Person's Representative. Where the Best Interest Assessor is unable to appoint a RPR the Supervisory Body must ensure that a paid representative is appointed.
- 9.13 BIAs must provide a timely report detailing their findings and conclusions and outline valid reasons for their findings or decisions. For this purpose **Form 3 should be used.**

10. The Independent Mental Capacity Advocate (IMCA)

- 10.1 The Managing Authority must inform the appropriate Supervisory Body via the DoLS Co-ordinator and an IMCA must be instructed if there appears to be no appropriate person for the Best Interests Assessor to consult - other than people engaged in providing care or treatment for the Relevant Person in a professional capacity or for remuneration. When an IMCA is appointed when DoLS assessments are about to commence, the IMCA is known as a Section 39(a) IMCA: in this role, the IMCA will be required to meet with the Relevant Person, consider his/her wishes and views and, considering all the circumstances of the case, will provide the Supervisory Body with a report. This process must also be followed where the appointment of a RPR has ended. The appointment of the IMCA in this circumstance is known as a Section 39(c) IMCA and will end when a new representative is appointed.
- 10.2 Where a Standard Authorisation is in place and the RPR is not acting in a paid capacity, an IMCA may also be instructed. In this circumstance, the IMCA is known as a Section 39(d) IMCA.
- 10.3 An IMCA instructed at this initial stage of the DoLS process has additional rights and responsibilities compared to an IMCA more generally instructed under

the Mental Capacity Act 2005. IMCAs in this context have the right to:

- Give information or make submissions to assessors, which assessors must take into account in carrying out their assessments
- Receive from the Supervisory Body any copies of any deprivation of liberty assessments that are undertaken
- Receive a copy of the outcome of the Authorisation of deprivation of liberty, if authorised.
- Be notified by the Supervisory Body if they are unable to authorise an application for a deprivation of liberty.
- Apply to the Court of Protection for permission to take the Relevant Person's case to the Court in connection with a matter relating to a DoLS Authorisation granted by a Supervisory Body.

10.4 An IMCA will need to familiarise themselves with the circumstances of the person to whom the DoLS are being applied, and to consider what they may need to tell any of the assessors during the course of the assessment process. They will also need to consider whether they have any concerns about the outcome of the assessment process.

10.5 Differences of opinion between an IMCA and the BIA should ideally be resolved while the assessment is still in progress. Where there are significant disagreements between an IMCA and one or more of the Assessors that cannot be resolved between them, the authorised signatory for the Supervisory Body should be informed by the DoLS Co-ordinator before the assessment is finalised. The authorised signatory for the Supervisory Body should then consider what action might be appropriate. The objective should be, wherever possible, to resolve differences of opinion informally in order to minimise the occasions on which it is necessary for an IMCA to make application to the Court of Protection.

11. The role of the Relevant Person's Representative (RPR)

11.1 Once a Standard Authorisation has been granted, a RPR must be appointed by the Supervisory Body as soon as possible to represent the person who has been deprived of their liberty.

11.2 The role of the RPR, once appointed, is:

- to maintain contact with the Relevant Person and visit him/her regularly, and
- to represent and support the Relevant Person in all matters relating to the operation of the Deprivation of Liberty Safeguards, including, if appropriate, triggering a Review, using an organisations' complaints procedure on the person's behalf or making an application to the Court of Protection.

Note: This is a crucial role in the DoLS process, providing the Relevant Person with representation and support that is independent of the Commissioners and providers of the services they are receiving. Following from the judgment in Re. AJ (DoLS), 2015, a person should only be appointed as RPR if willing to make an application to the Court on the Relevant Person's behalf.

The Managing Authority's responsibilities toward the RPR

11.3 Immediately after a Standard Authorisation has been issued, the Managing Authority must take all practical and appropriate steps to ensure that the Relevant Person and their RPR understand:

- the effect of the Authorisation
- their right to request a Review
- the formal and informal complaints procedures that are available to them
- their right to make an application to the Court of Protection to seek a variation or termination of the Authorisation, and
- their right to request the support of an IMCA.

11.4 In providing information to the Relevant Person and their RPR, the Managing Authority should take account of the communication and language needs of both the Relevant Person and their RPR. Provision of information should be seen as an ongoing responsibility rather than a one-off activity.

Who can be a Relevant Person's Representative?

11.5 To be eligible as a Relevant Person's Representative, a person must be:

- 18 years of age or over and
- be willing to be appointed, and
- able to keep in contact with the Relevant Person

11.6 The person must not be:

- prevented by ill health from carrying out the role of RPR
- financially interested in the Relevant Person's Managing Authority
- a close relative of a person who is financially interested in the care home or the hospital
- employed by the Managing Authority if the Managing Authority is a care home or not involved in caring for the Relevant Person if the Managing Authority is a hospital
- employed to work in the Relevant Person's Supervisory Body in a Role that is, or could be, related to the Relevant Person's case.

11.7 The appointment of a RPR is in addition to, and does not affect, any appointment of an attorney or deputy. The functions of the Representative are in addition to, and do not affect, the authority of any attorney, the powers of any deputy or any powers of the Court.

11.8 There is no presumption that a RPR should be the same as the person who would be their nearest relative for the purposes of the Mental Health Act 1983, even where the person is likely to be subject simultaneously to an Authorisation under this procedure and a provision of the Mental Health Act 1983.

11.9 In many cases, the RPR will be a family member or close friend, but where a suitable and eligible family member or friend cannot be identified, the Supervisory Body must appoint a paid RPR. In hospital settings, the local IMCA service provides a paid RPR service. Where the Supervisory Body is a Local Authority, the Paid RPR is provided by Mental Health Matters, who are based in Bridgend. The

contact details for this service can be found at Appendix 1.

12. What if an application for a DoLS Authorisation is refused?

12.1 The Managing Authority is responsible for ensuring that the Relevant Person is not deprived of their liberty without an Authorisation being approved by the Supervisory Body.

12.2 The commissioners of care are also responsible for ensuring that any care and support commissioned is in compliance with the Code of Practice for the Mental Capacity Act 2005, and doesn't include an unauthorised deprivation of liberty.

12.3 The options available for consideration by both Managing Authorities and commissioners of care if a request is turned down will depend on the reason why the Authorisation has not been given.

- If the BIA concluded that the person was not in fact being, or going to be, deprived of liberty, no action is likely to be necessary.
- If the BIA concludes that the proposed deprivation of liberty was not in the person's best interests, the registered person of the Managing Authority (in conjunction with the commissioner of the care) will need to consider how the care plan could be changed to avoid a continuing deprivation of liberty. Additionally, careful consideration should be given to the reasons submitted in the BIA's report and it may be helpful to discuss any outstanding matters that arise with the BIA. Where appropriate, matters should be discussed with the Relevant Person, family and carers. If the person is not yet a resident in the care home or hospital, the revised care plan may not involve admission to that facility.
- If the Mental Capacity Assessor concludes that the person has capacity to make decisions about their care, the Managing Authority will need to consider, in conjunction with the Supervisory Body, how to support the person to make such decisions.
- If the person does not have a mental disorder, the care plan will need to

be modified to avoid a deprivation of liberty.

- Where there is a valid refusal by an attorney or deputy or an applicable and valid advance decision, alternative care arrangements will need to be made. If there is a question about whether the attorney or deputy is acting in the Relevant Person's best interests, a decision may be sought from the Court of Protection.
- If the person is under 18, the relevant Local Authority's Children's Services should consider proceedings under the Children Act 1989 and application to the Court of Protection if the young person is aged between 16 and 17 years of age. In hospital settings, use of the Mental Health Act should also be considered by the relevant clinicians.

12.4 Where the BIA comes to the conclusion that the best interests requirement is not met, but if it appears to the BIA that the Relevant Person is already being deprived of their liberty, the BIA must inform the DoLS Co-ordinator and explain in their assessment why they have reached that conclusion. The Supervisory Body will need to liaise with the Managing Authority in order to ensure that a deprivation of liberty is not permitted to continue when a Standard Authorisation cannot be granted. The person's care plan and the provision of care must be reviewed immediately and the changes made as soon as possible. The steps taken to end the deprivation of liberty should be recorded in the care plan. Where possible it will be important to involve the Relevant Person, family, friends and carers in speedily deciding how to prevent the unauthorised deprivation of liberty from continuing.

12.5 It is the responsibility of the Registered Manager of the Managing Authority to comply with the law in this situation and it will need to keep the person's care under review to ensure that unlawful deprivation of liberty does not arise in future.

12.6 Should the Supervisory Body have continuing doubts about the matter, it should alert the relevant commissioners of care and Inspectorate who can be contacted at the following addresses

Care and Social Services Inspectorate Wales
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ
Website: <https://cssiw.org>
Telephone Number 0300 7900126

Healthcare Inspectorate Wales
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ
Website: <http://hiw.org.uk>
Telephone Number: 0300 0628163

13. Instructing a Section 39(c) or Section 39(d) IMCA

- 13.1 A person who is being deprived of their liberty will be in a particularly vulnerable position during any gaps in the appointment of a RPR, since there may not be anyone to represent their interests or to apply for a Review on their behalf. In these circumstances, if there is not anyone who can support and represent the person (other than a person engaged in providing care and treatment for the Relevant Person in a professional capacity or for remuneration), the Managing Authority must notify the Supervisory Body, who must instruct an IMCA to represent the Relevant Person until a new RPR is appointed.
- 13.2 At any time when the Relevant Person does not have a RPR, it will be particularly important for Supervisory Bodies to consider exercising their discretion to carry out a Review if there are any significant changes to the person's circumstances.
- 13.3 In Cwm Taf, the IMCA Service is provided by Advocacy Support Cymru. Their website is <http://www.ascymru.org.uk/>. See Appendix 1 for contact details.

- 13.4 It is the responsibility of the Supervisory Body to instruct an IMCA if the Relevant Person or their RPR requests one. This task will be undertaken by the DoLS Co-ordinator. The intention is to provide extra support to the Relevant Person or a family member or friend acting as their Representative if they need it, to make use of the Review procedures or apply to the Court of Protection. If the person already has a paid 'professional' RPR, the need does not arise and so an IMCA would not be provided.
- 13.5 The role of the IMCA is to explain the Authorisation to the Relevant Person and any interested party and why it has been granted, why it is considered that the person meets the criteria for Authorisation, how long it will last and how to trigger a Review or challenge in the Court of Protection. The IMCA can provide support with a Review or with an application to the Court, for example to help the person to communicate their views.
- 13.6 The IMCA will have the right to make submissions to the Supervisory Body on the question of whether a qualifying requirement is Reviewable or to give information, or make submissions, to any Assessor carrying out a Review assessment. Both the Relevant Person and their Representative must be told about the IMCA service and how to request an IMCA.
- 13.7 An IMCA must be instructed if the person or their Representative requests this provision. A request may be made more than once during the period of the Authorisation. For example, help may be asked for at the start of the Authorisation and then again later in order to request a Review.
- 13.8 In addition, if the Supervisory Body has reason to believe that a Review or application to the Court might not be done without the support of an IMCA, then they must instruct an IMCA. For example, if the Supervisory Body is aware that the person has selected a Representative who needs support with communication, it should consider whether an IMCA is needed.

14. Requests from a third party for an application for an Authorisation for a deprivation of liberty.

- 14.1 The DoLS include a procedure for responding to situations where an individual believes that someone in a care home or hospital is being deprived of their liberty but without proper Authorisation. If an individual raises such concerns the Managing Authority should respond to the request to apply for a Standard Authorisation or change the care regime within a reasonable time.
- 14.2 If the Managing Authority does not then request a standard Authorisation “within a reasonable period” the individual may ask the Supervisory Body to decide whether or not there is an unauthorised deprivation of liberty. The individual may do this using **Form 1b**. However, the Supervisory Body will receive requests in any format.
- 14.3 When the request is received by the DoLS Co-ordinator, the Relevant Person’s details and the minimum data must be recorded. If it is felt that the request is not vexatious or the issue has not already been decided by the Supervisory Body or there have been changes in the Relevant Person’s circumstances since the issue regarding deprivation of liberty was last decided, then DoLS assessments will be required. A Best Interests Assessor will be commissioned to undertake a report of the situation and will need to record their findings.
- 14.4 The Supervisory Body will inform the following of the outcome of the report:
- Relevant Person
 - Managing Authority
 - Any IMCA
 - Person making the request

and will include information that a request had been received to consider whether or not there is an unauthorised deprivation of liberty and the decision as to whether or not the request is declined.

- 14.5 If the Relevant Person is subject to an unauthorised deprivation of liberty, the following steps must be taken:
- The Managing Authority is deemed to have requested a Standard Authorisation in relation to the Relevant Person.

- The Managing Authority therefore must provide the Supervisory Body with the information that is required whenever such a request is actually made. It must now complete **Form 1** and fax it to the appropriate Supervisory Body.
- The Best Interests Assessor, Section 12 doctor, IMCA and the six assessments will be arranged by the DoLS Co-ordinator on behalf of the Supervisory Body as the completed **Form 1b** will have triggered a request for a Standard Authorisation.

15. Reviews

15.1 The Managing Authority must set out in the care plan clear roles and responsibilities for monitoring the DOLS Authorisation and confirm under what circumstances a Review would be necessary. For example, if a person's condition is changing frequently, then their situation should be reviewed more frequently. In addition, the Supervisory Body must carry out a Review if requested to do so by the Relevant Person, their RPR, or the Managing Authority. The Supervisory Body may also carry out a Review at any other time. There are no restrictions on when a Review can be requested.

15.2 In general, the grounds for requesting a Review are;

- The Relevant Person's circumstances have changed from those which formed the basis of the original application.
- The person is ineligible because they now object to receiving mental health treatment in hospital
- There has been a change in the Relevant Person's situation and, because of the change, it would be appropriate to vary the Authorisation.

NOTE: A Standard Authorisation only permits deprivation of liberty: it does not mean that a person has to be deprived of liberty. **If a care home or hospital identifies that deprivation of liberty is no longer necessary then they must end it immediately, by adjustment of the care regime or whatever other change is appropriate.** They should then apply to the Supervisory Body to apply to discharge the Authorisation. While this Review is happening, the person concerned should no longer be subject to deprivation of liberty.

- 15.3 The Supervisory Body must carry out a Review (known as a part 8 Review – as it is covered with Chapter 8 of the DOLS Code of Practice) if one is requested by the Relevant Person, by their RPR or by the Managing Authority.
- 15.4 The Supervisory Body may itself decide to carry out a Review without any request being made for one. Notification that a Review is to be carried out must be sent out. Whether because a request has been received or because the Supervisory Body itself has decided to conduct one. Having given notice that a Review is to be held, the Supervisory Body must then decide whether any of the qualifying assessments are Reviewable. In essence what must be decided is whether evidence exists that the Relevant Person may no longer meet the criteria for being deprived of their liberty under DoLS. In general a Review should be carried out if it is possible that the Relevant Person no longer meets one or more qualifying assessments.
- 15.5 With one exception, the Supervisory Body must arrange for fresh assessments to be carried out for each qualifying requirements that appears to be Reviewable. The exception is where it has been decided that the Best Interests requirement is Reviewable on the sole ground that there has been a change in the person's circumstances, as a result of which the conditions of the Standard Authorization need varying. In this situation the Supervisory Body may vary the conditions without requesting a Best Interests re-assessment.
- 15.6 Where the Supervisory Body arranges fresh assessments relating to one or more of the qualifying requirements, the assessments are recorded using the same forms that are used to assess a Relevant Person following a request for a Standard Authorisation (**Forms 3, 3a and 4**).
- 15.7 The Supervisory Body will use **Form 5** to record its decision following the receipt of the Review assessments.
- 15.8 Any termination of the Standard Authorisation should be recorded by the Authorised Signatory for the Supervisory Body using **Form 9**.
- 15.9 The reasons why a Standard Authorisation will cease to be in force are that:
- The care home or hospitals gives notice to the Supervisory Body

that the Relevant Person has ceased to meet the eligibility requirement because the Relevant Person has been detained under the Mental Health Act. If this occurs, the Supervisory Body can suspend the Authorisation for a maximum of 28 days. Once 28 days have elapsed, the Authorisation will terminate.

- The Standard Authorisation has expired.
- A Review of the Standard Authorisation has been completed and the Review concluded that the Relevant Person no longer meets the requirements for being deprived of their liberty under DoLS.
- Following a change in the place where the person was deprived of liberty, the Standard Authorisation has been replaced by a new Standard Authorisation and has therefore ceased to exist.
- The Court of Protection or another applicable court has made an order that the Standard Authorisation is invalid or that it shall no longer have effect.
- The Relevant Person has died.

15.10 Once a Standard Authorisation comes to an end, the Managing Authority cannot lawfully continue to deprive a person of their liberty. If they consider that a person will still need to be deprived of liberty after the Authorisation ends, they need to request a further application using **Form 2** to begin immediately after the expiry of the existing one, recognising that the process to complete a further Authorisation can take up to 21 days.

15.11 Once commenced, the process for re-application follows the same process for requesting the previous Authorisation, with the same assessment processes needing to take place. However, the need to instruct an IMCA will not usually arise because most people at this stage will already have a person appointed to represent their interests.

16. Record Keeping

16.1 It is essential that full records of assessments and decision making, including the identity or identities of decision maker(s) are kept and that the relevant forms are retained on the recording systems used by the Supervisory Bodies and on the Relevant Person's records within the Managing Authority. This will also

include those forms which were completed and where the application for a deprivation of liberty was not authorised.

APPENDIX 1: CONTACT DETAILS FOR IMCA AND PAID RPR

Cwm Taf IMCA Service & Cwm Taf University Health Board Paid RPR Service

Advocacy Support Cymru

Charterhouse 1

Links Business Park

Fortran Road

St Mellons

Cardiff CF3 0LT

E Mail: info@ascymru.org.uk

Tel : 029 2054 0444

Fax : 029 2073 5620

Rhondda Cynon Taf & Merthyr Tydfil County Borough Councils Paid RPR Service

Mental Health Matters Wales

Union Offices

Quarella Road

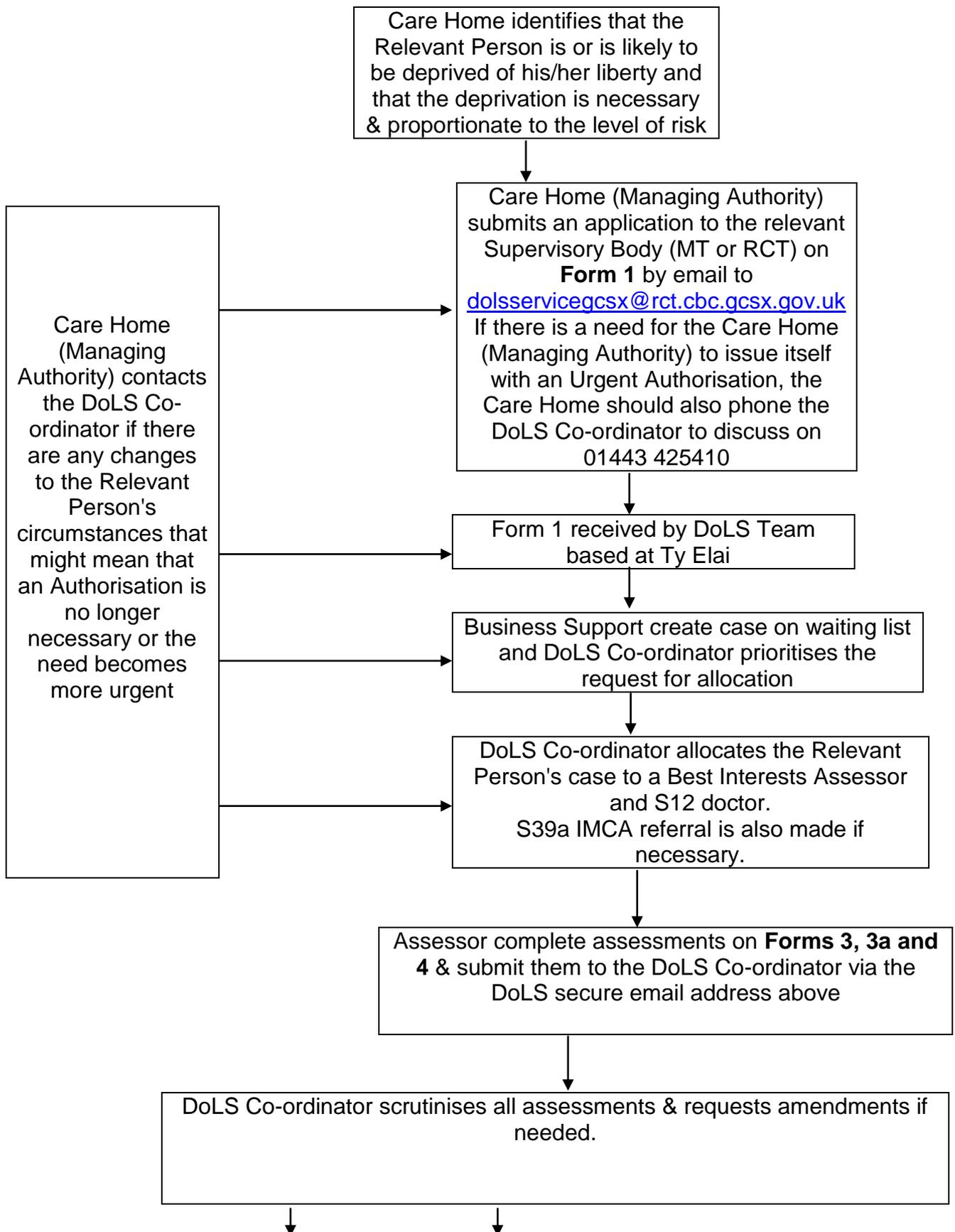
Bridgend

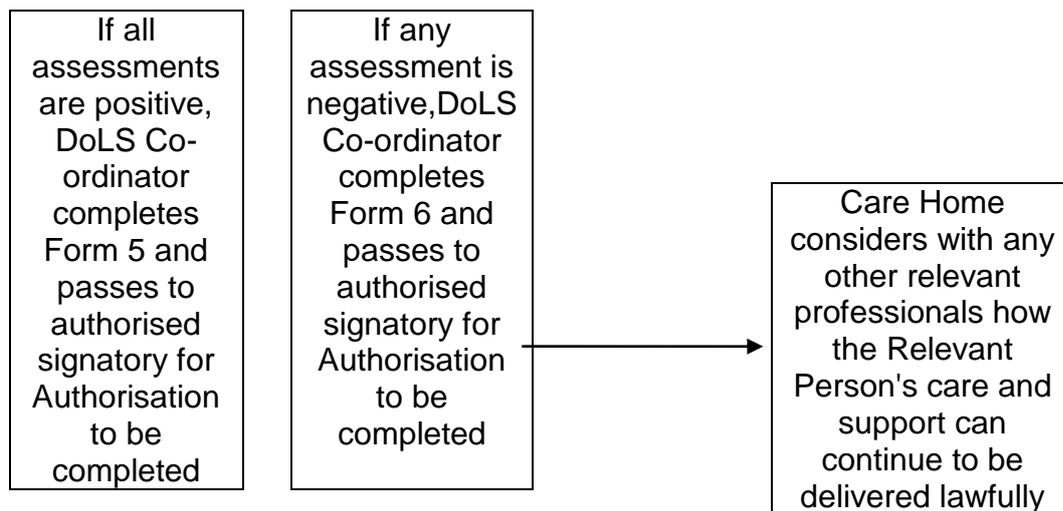
CF31 1JW

Tel: 01656 651450 or 01656 767045

Fax: 01656 768775

**APPENDIX 2: MERTHYR TYDFIL & RHONDDA CYNON TAF COUNTY
BOROUGH COUNCILS DEPRIVATION OF LIBERTY SAFEGUARDS
FLOW CHART FOR APPLICATIONS**





Care Home notes Representative details, conditions and recommendations and implements them. All DoLS documents are kept on relevant person's records and care plans are amended as required. Care Home ensures that the relevant person understands the DoLS Authorisation as far as is possible.

Care Home ensures that it monitors relevant person's circumstances to ensure that the deprivation of liberty is still necessary and informs the Supervisory Body of any changes that might affect the validity of the Authorisation

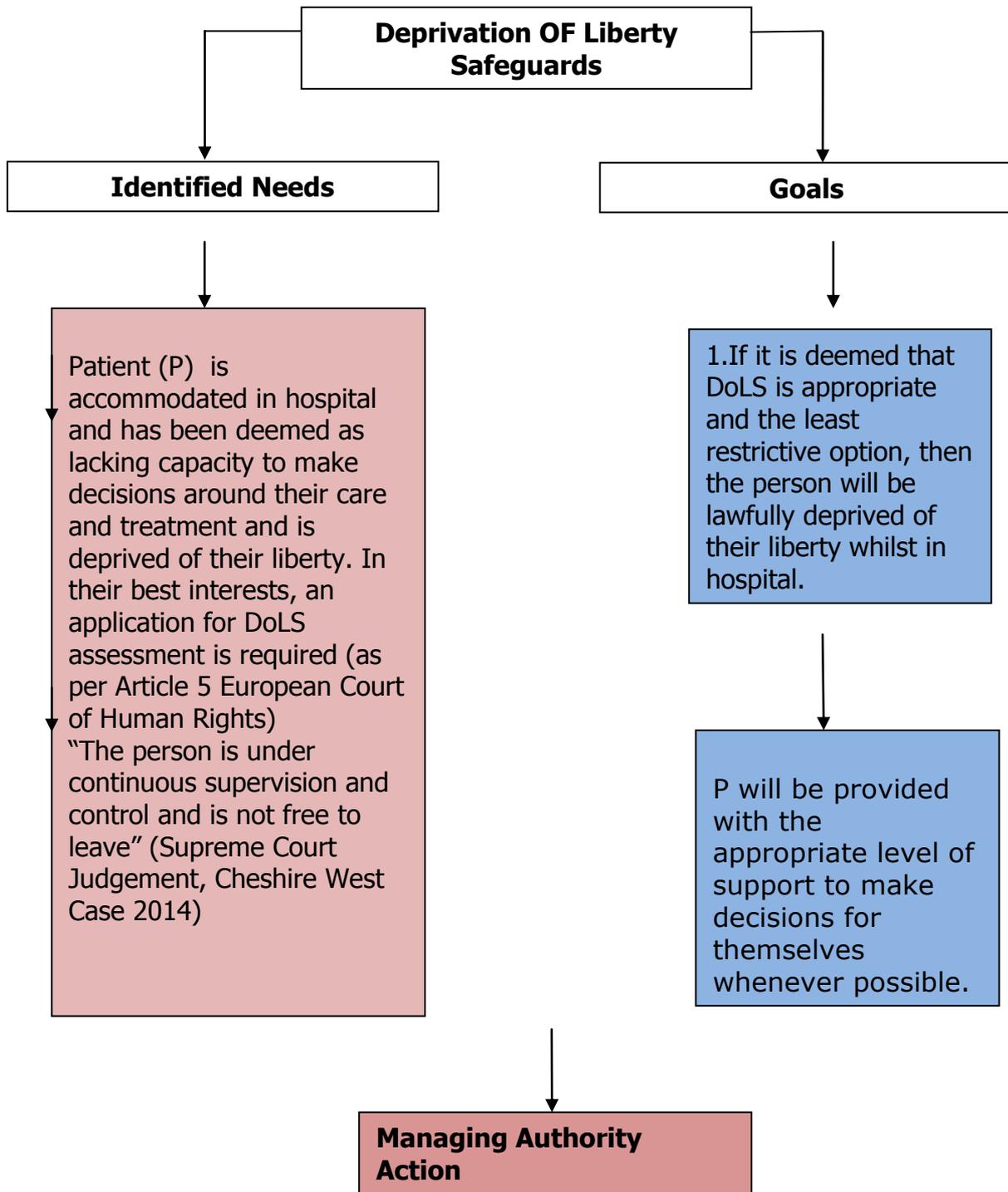
Care Home, Relevant Person or Representative requests a Part 8 Review of the Authorisation if any of the qualifying requirements are no longer met or there is a dispute as to whether this is the case

DoLS Co-ordinator instructs relevant Assessors to undertake a Review. Review Documentation is received & Form 5 amended or Form 9 (end of Authorisation) is completed.

DoLS Authorisation continues until Care Home request further Authorisation or ends

APPENDIX 3: CWM TAF UHB DEPRIVATION OF LIBERTY SAFEGUARDS

FLOW CHART FOR APPLICATIONS



1. After checking eligibility criteria, a DoLS application via Form 1 (available on the intranet) will be made by The Managing Authority (the ward) to the Supervisory Body (the UHB) via e-mail to:- CTT_DoLS@wales.nhs.uk (CTT_)

A copy should be filed in the front of P's medical notes behind a red card regarding DoLS info along with an ALERT sticker which should be attached to the front cover of the notes. These are held with the Ward Clerks. The Managing Authority need to decide if the application is urgent (which will cover the patient for 7 days and can be authorised by themselves), or a standard which is authorised by The Supervisory Body.

2. The Managing Authority should ensure that the patient/family/carers are informed of the DoLS application and process.



3. Ensure a referral for IMHA is made if required for support or IMCA if there are no family members/friends/carers available or they are not considered suitable to act in their best interests. If P only has paid carers an advocate will be required.



4. When P has been assessed and an urgent or standard authorisation is granted, this paperwork (Form 5 and all other assessments) should be filed in P's medical notes when received by the Managing Authority. These should be filed behind the red insert on P's medical file.



5. The Managing Authority should ensure that any conditions or recommendations in the DoLS authorisation are met and that P's Relevant Person Representative keeps in contact and is updated as necessary. (The details of this person is on the Form 5)



6. If there are any changes in P's mental or physical health, or if there are any plans to transfer or discharge P which may affect the DoLS authorisation, then the Managing Authority should inform the Supervisory Body as soon as possible. Likewise if P passes away The Supervisory Body and The Coroner for the relevant authority must be informed whether there is an urgent authorisation or full authorisation in place.