Leicestershire Partnership NHS Trust

Deprivation of Liberty Act Safeguards Policy and Procedure

This policy describes the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interest for care or treatment and who lack capacity to consent to the arrangements made for their care or treatment.
THIS POLICY APPLIES TO ADULTS AGED 18 YEARS AND OVER

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Policy on a page

This policy describes the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interest of care or treatment and who lack capacity to consent to the arrangements made for their care or treatment.

THIS POLICY APPLIES TO ADULTS AGED 18 YEARS AND OVER

Summary and aim

The Deprivation of Liberty Safeguards (DoLS) were an amendment of the Mental Capacity Act (2005) (MCA). These safeguards came into force in April 2009 to protect the interests of an extremely vulnerable group, those who lack the capacity to consent to admission into a specific hospital or care home for care or treatment.

DoLS are in addition to, and do not replace, other safeguards in the MCA. This means that decisions made, and actions taken, for a person who is subject to a DoLS authorisation must fulfil the requirements of the MCA first, in the same way as for any other person.

The Supreme Court in A Reference by the Attorney General for Northern Ireland [2026] UKSC 16 confirmed that, for Article 5 ECHR purposes, lack of mental capacity does not automatically preclude a person from giving valid consent to care and residence arrangements. Decisions regarding deprivation of liberty must be based on an individualised, multifactorial assessment, taking account of the person's wishes, feelings, understanding, and lived experience. Where there is uncertainty regarding consent, formal deprivation of liberty safeguards should continue to be applied.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out Fundamental Standards. Of particular relevance to this policy are Standard 8 (General), Standard 9 (Person Centred Care) Standard 10 (Dignity and Respect) Standard 11 (Need for Consent) Standard 12 (Safe Care and Treatment), Standard 12 (Safe Care and Treatment), Standard 13 (Safeguarding) and Standard 17 (Good Governance).

The Trust is required to adhere to these standards.

Target audience

All staff working with adults and young people in transition within LPT.

Training

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as mandatory. All Trust staff in a clinical role must attend

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a training session when current compliance is due to expire. Refresher training must be completed via e-learning every 3 years.

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Key requirements

A person must meet a series of **six qualifying requirements** to be eligible under DoLS**:**
1) Over age of 18 years 2) lacks capacity 3) has a mental disorder as defined in the Mental Health Act 4) is not ineligible by virtue of Schedule 1A Mental Capacity Act (requiring treatment under the Mental health Act (1983) 5) No refusals 6) in the person's best interests.

Introduction and Purpose

This policy provides detail on how the legal obligations regarding Deprivation of Liberty Safeguards (DoLS) will be met by Leicestershire Partnership NHS Trust. (LPT)

The Deprivation of Liberty Safeguards apply to people **18 years and over** who**:**

- Are being cared for in a hospital or registered care home for the purpose of care and/or treatment.
- Lack the capacity to consent to these arrangements for their care/treatment
- Are not detained (or able to be detained) under the Mental Health Act (1983).
- Have a mental disorder.
-

Policy Requirements and Objectives

The Deprivation of Liberty Safeguards (DoLS) were an amendment of the Mental Capacity Act (2005) (MCA). These safeguards came into force in April 2009 to protect the interests of an extremely vulnerable group, those who lack the capacity to consent to admission into a specific hospital or care home for care or treatment.

DoLS are in addition to, and do not replace, other safeguards in the MCA. This means that decisions made, and actions taken, for a person who is subject to a DoLS authorisation must fulfil the requirements of the MCA first, in the same way as for any other person.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out Fundamental Standards. Of particular relevance to this policy are Standard 8 (General), Standard 9 (Person Centred Care) Standard 10 (Dignity and Respect) Standard 11 (Need for Consent) Standard 12 (Safe Care and Treatment), Standard 12 (Safe Care and Treatment), Standard 13 (Safeguarding) and Standard 17 (Good Governance).
The Trust is required to adhere to these standards**.**

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Process

The Deprivation of Liberty Safeguards were introduced to provide a legal framework around the deprivation of liberty. Specifically, they were introduced to prevent breaches of the European Convention on Human Rights (ECHR) such as the one identified by the judgement of the European Court of Human Rights in the case of HL v the United Kingdom (commonly referred to as the 'Bournewood judgment).

In June 2026 the Supreme Court issued a judgement whereby the 'Acid Test' from the Cheshire West Judgement was overturned. For a DoLS to be lawful the person must be physically able to and actively trying to leave for an application to be made. Should the person require any level of chemical or physical restraint this would also constitute a deprivation of liberty.
A Reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998

To prevent further similar breaches of the ECHR, the Mental Capacity Act 2005 has been amended to provide safeguards for people who lack capacity specifically to consent to treatment or care in either a hospital or a care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty, and where detention under the Mental Health Act 1983 is not appropriate for the person at that time. These safeguards are referred to in this policy as the Deprivation of Liberty Safeguards (DoLS).

All practical and reasonable steps should be taken to avoid a deprivation of liberty, but where deprivation of liberty is occurring, that is not itself a statement on the standards of care. Deprivation of liberty is a legal state of affairs and can exist in environments of the highest standard.

DoLS apply to:

- A relevant person in a hospital or care home who is over the age of 18.
- Who lacks capacity to consent to the arrangements for their care.
- For whom deprivation of liberty is a proportionate and necessary step to take in their best interests to keep them from harm.
- The person must be physically able to leave and actively trying to leave.
- They must require physical or chemical restraint in order to accept the care and treatment required as an inpatient.

This policy is relevant to all services for patients age 18 or over.

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Roles and Responsibilities

Roles and responsibilities including duties of relevant individuals and groups.

The Trust Board has a legal responsibility for Trust policies and for ensuring they are carried out effectively.

Trust Board Sub-committees have the responsibility for ratifying policies and protocols.

The Executive Safeguarding Lead within LPT is the Deputy Chief Nurse. The Executive Lead is responsible for ensuring a policy is in place.

Managers and Team Leaders

- To ensure their staff are appropriately trained regarding MCA and DoLS and to promote best practice in this area.
- Ensure that policies and procedures are followed and understood as appropriate to each staff member's role and function; and to appropriately report non-compliance with policy.
- Ensure compliance with conditions attached to DoLS authorisations.
- Ensure CQC Compliance Forms are completed and submitted.

LPT Clinical Staff

The primary responsibility for ensuring this policy is adhered to rests with those staff who are making decisions relating to a person who lacks capacity to consent to the arrangements for their care.

Secondary responsibility lies with managers of services to ensure that all relevant staff members are aware of the requirements of this policy and the implications of it for their practice.

Mental Capacity Act Link Practitioners

Promote MCA and DoLS training.
Encourage colleagues to seek advice regarding MCA and DoLS through the LPT MCA and DoLS advice process: lpt.safeguardingduty@nhs.net.

1. Deprivation of Liberty Safeguards

1.1 The Deprivation of Liberty Safeguards will apply to people 18 and over who meet all the following eligibility criteria:

- Mental health assessment - They suffer from mental disorder as defined in Section 1 of the Mental Health Act 1983, namely a mental disorder is any disorder or disability of the mind, and this excludes dependence on alcohol and drugs. This includes all patients with learning disabilities.

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- Eligibility – the person must not be detainable under the MHA or If the proposed authorisation relates to a deprivation of liberty in a hospital wholly or partly for the purpose of treatment of a mental disorder, the relevant individual will be eligible unless:
  - They object to being admitted to hospital, or to some or all the treatment, **and** they meet the criteria for an application for admission under section 2 or section 3 of the Mental Health Act 1983.
- Age- they are over the age of 18.
- No Refusals **–** the care arrangements do not conflict with other existing.

1.2 Authority for decision-making for that person, such as an advance decision to refuse treatment or LPA

- Capacity- They have been found to Lack the capacity to give consent to the arrangements made for their care and treatment.
- Best Interests- it has been determined that their care (in circumstances that amount to deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights) is considered, after independent assessments, to be a necessary and proportionate response in their best interests to protect them from harm.

1.3 **DoLS cannot be used where:**

- The person is under 18 years of age.
- The person has made a valid and applicable Advance Decision refusing a necessary element of treatment for which they were admitted to hospital.
- The use of the safeguards would conflict with a decision of the person's attorney or Deputy of the Court of Protection.
- The patient lacks capacity to make decisions on some elements of the care and treatment they need but has capacity to decide about a vital element and has already refused it or is likely to do so.
- A DoLS authorisation cannot be used to force treatment or care on a person who has the mental capacity to a make a decision about the proposed treatment, care and the manner and location in which it is to be provided.

1.4 The Deprivation of Liberty Safeguards mean that the **'managing authority'** the relevant hospital or care home must seek authorisation from the **'supervisory body'** where there may be a DoLS occurring. LPT is the **managing authority** for any in-patient beds and the adult's Local Authority (where the normally reside) is the **supervisory body**.

1.5 Where the Deprivation of Liberty Safeguards is applied to a person in a hospital, the supervisory body will be the Local Authority where the person is ordinarily

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resident. Leicester City Council or Leicestershire County Council will be the supervisory body for most patients in LPT.

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2. Implementation

2.1 When an adult is admitted to hospital it is the responsibility of the in-patient areas to establish a local process to ensure that valid consent to admission is established. Where there is doubt regarding the adult's capacity to consent to admission the adult's capacity should be assessed in accordance with the MCA. Clinicians must establish whether the person lacks capacity to consent to the arrangements proposed for their care or treatment.

2.2 Clinicians must determine whether any restrictions or restraint will be required to provide the care or treatment. Any restrictions or restraint must be proportionate and necessary to prevent harm to the individual. The following steps should be followed by staff when providing care:

- Follow established good practice for care planning.
- Carry out an assessment of whether the person lacks capacity to accept or refuse the proposed treatment.
- Consider whether the person needs could be met in a less restrictive way. Any restrictions placed on a person must be kept to the minimum necessary and for the shortest possible period.
- Are there any less restrictive options for delivering care or treatment to avoid deprivation of liberty altogether?
- Ensure that the person can maintain contact with friends and family. Note that even if they have contact with friends and family, this will not mean that there could be no deprivation of liberty.
- What are the views of the relevant person, their family, or carers? Do any of them object to the measures?.
- Review the care plan on an ongoing basis and reduce levels of restrictions as soon as practical.
- Make sure that all decisions are taken and reviewed in a structured way and reasons for decisions are recorded.
- All practical and reasonable steps should be taken to avoid a deprivation of liberty, but a deprivation of liberty is not itself a statement on the standards of care. DoLS is a legal framework and can exist in environments of the highest standard.

3. Identification of a Deprivation of Liberty

3.1 Deprivation of liberty is determined on a case-by-case basis; therefore, there is no simple definition. Judgments of the European Court of Human Rights and the UK Courts inform decision making and when restraint may amount to a deprivation of liberty.
The Supreme Court in A Reference by the Attorney General for Northern Ireland [2026] UKSC 16 confirmed that, for Article 5 ECHR purposes, lack of mental

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capacity does not automatically preclude a person from giving valid consent to care and residence arrangements. Decisions regarding deprivation of liberty must be based on an individualised, multifactorial assessment, taking account of the person's wishes, feelings, understanding, and lived experience. Where there is uncertainty regarding consent, formal deprivation of liberty safeguards should continue to be applied.

If the person to be admitted is already subject to a DoLS authorisation in a Care Home, then it is very likely that the Trust will need to apply for DoLS authorisation in order to effect admission. Where possible this should be applied for in advance of the planned admission date and it is the admitting Clinicians' responsibility to ensure this is completed.

Other factors for consideration of a potential deprivation of liberty are:

- Restraint, including sedation, is used to admit a person to an institution where that person is resisting admission.
- The person actively objects to care and treatment as an inpatient
- Staff have to physically intervene to stop a person from leaving.
- It is important to remember that the above list is not exclusive, other factors may arise in the future in particular cases.

3.2 An additional factor in identification of a potential DoLS is the time frame. Courts have advised that "that the person is confined to a particular restricted place for a non-negligible period of time." We have concluded in most cases a non-negligible period of time will be **above 6 days** in an acute setting ward unless the restraints required amount to of a total and intense nature where case law has shown that several hours may meet the criteria. For case specific advice regarding DoLS please contact: lpt.safeguardingduty@nhs.net.

4. Interface between DoLS and the Mental Health Act (1983)

4.1 Schedule 1A of the Mental Capacity Act sets out the circumstances where the relevant person is **ineligible** for detention in a hospital under the MCA Deprivation of Liberty Safeguards. The effect of Schedule 1A, is that where a person is within the scope of the Mental Health Act and objects to admission or treatment wholly or partly for a mental disorder, the person will be ineligible for the Deprivation of Liberty Safeguards.

For case specific advice regarding the interface between the Mental Health Act (1983) and DoLS please contact: lpt.safeguardingduty@nhs.net

5. End of Life Care and DoLS

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5.1 If a patient is in an LPT Hospital and being cared for at the end of their life the LPT clinicians providing care will need to establish whether the person's care amounts to a deprivation of liberty. This will be decided on a case-by-case basis by the person's clinical team.

5.2 There may be times when an adult loses consciousness as part of their condition. A deprivation of liberty will not occur if the following applies:

- A person is being treated for a physical illness and the same treatment would have been administered to a person who did not have a mental impairment.
- The person is free to leave (even if they have a mental impairment), their inability to leave is a result of their physical condition.

Where possible clinicians should seek the views of an adult who is approaching the end of their life and care plan for their end-of-life care. If an adult provides informed consent to their end-of-life care in the LPT hospital, then this would form a valid advance decision.

6. Authorisation of a Deprivation of Liberty

6.1 The in-patient area has responsibility for applying for authorisation of deprivation of liberty for any person who **MAY** come within the scope of the Deprivation of Liberty Safeguards.

There are two types of authorisation: standard and urgent. An LPT in-patient area must request a standard authorisation when it appears likely that, at some time during the next 28 days, an adult will be accommodated in the in-patent area in circumstances that amount of a deprivation of liberty. The request must be made in writing to the supervisory body (Local Authority) and a standard authorisation must be given within 21 days.

Whenever possible, an authorisation should be obtained in advance. Where this is not possible, and the in-patient area (managing authority) believes it is necessary to deprive someone of their liberty in their best interests before a Standard Authorisation process can be completed, a Form 1 should be completed (available on SystmOne or StaffNet).

An urgent/ request for a Standard Authorisation can be approved by either:

- The Patient's Consultant or Approved Clinician.
- The Duty Consultant.
- The Ward Manager.
- The Senior Registered Nurse in Charge.

6.2 Completing a Form 1

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LPT in-patient areas must complete the 'Urgent Authorisation' for themselves and the request for a Standard Authorisation, by fully completing a Form 1.

The following information must be provided:

- Your full contact details
- The Managing Authority's **full details**.
- Care Quality Commission Code (CQC).
- Personal details about the person being deprived of their liberty including equalities information.
- Medical details about the person being deprived of their liberty including their GP's details.
- How the person's care placement is being funded.
- Contact details for interested persons.
- Advance Decisions.
- Current care arrangements.
- Conditions that are currently being met to suggest that a deprivation of liberty is already happening.
- Any objections from the adult or interested parties.
- Any highly restrictive practices such as covert medications.

Send completed forms to the relevant Local Authority **AND** to:-
lpt.adult-safeguarding@nhs.net

6.3 **CQC Compliance**

The CQC must be informed when a Standard Authorisation (Form 3) is completed by the Local Authority OR a Standard Authorisation is terminated either due to a change in circumstances or patient discharge.

The CQC Compliance Form is available on SystmOne and on Staff Net. Completed CQC Compliance forms should be sent to:
lep-tr.compliance@nhs.net.

The person and their family must be notified about the application**.** This action must be recorded in the patient records.

6.4 **Care Planning and DoLS**

The adult's care plan should reflect that the patient has a request for a Standard Authorisation. The care plan must be updated to reflect the individual circumstances of the adult. The following steps should be followed by staff when providing care:

- Follow established good practice for care planning including person centred individualised care plans.

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- On-going assessment and review of the adult's ability to consent to the admission for the proposed care and treatment. There will be cases where an adult may regain capacity to consent to the admission and care or treatment.
- Consider whether the person needs could be met in a less restrictive way. Any restrictions placed on a person must be kept to the minimum necessary and for the shortest possible period. Why are they necessary? What aim do they seek to meet?
- Take proper steps to help the individual to maintain contact with family and friends.
- Review the care plan on an ongoing basis and reduce levels of restrictions as soon as practical.
- Are there any less restrictive options for delivering care or treatment to avoid deprivation of liberty altogether?
- Make sure that all decisions are taken and reviewed in a structured way and reasons for decisions are recorded.
- Care planning and decision making should be completed in line with the MCA.

6.5 **Monitoring of an application for a Standard Authorisation**

Once the Form 1 is submitted to the Local Authority. The Local Authority is then fully responsible for the completion of the assessments under DoLS. The local authorities will prioritise all assessments and will respond to requests using their prioritisation criteria.

7. Objection

7.1 The in-patient area should immediately inform the Local Authority **and** LPT Safeguarding Team: lpt.safeguardingduty@nhs.net if the adult begins to object to their admission, care or treatment.

Objection can be:

- Verbal objections must mean that the person is physically able to leave and it is believed that the person will attempt to leave.
- Behavioural: standing at exists, attempting to leave, physically resisting care and interventions.

8. Leicestershire Partnership NHS Trust Oversight

8.1 LPT Safeguarding Team will keep a record of the date the Form 1 is submitted to the Local Authority where the adult is normally resident.

The LPT in-patient areas should inform the LPT Safeguarding Team when a Standard Authorisation is granted and complete a CQC Notification.

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The LPT in-patient areas should inform the LPT Safeguarding Team (lpt.adult-safeguarding@nhs.net) if a Standard Authorisation includes any **Conditions.**

9. Local Authority Response to a Request for a Standard Authorisation

9.1 The Supervisory Body (Local Authority) makes arrangements for the assessments under DoLS to be undertaken. Clinical staff should support this assessment process but do not need to undertake the assessments themselves. Access to the medical records will be required by the assessors representing the Local Authority. The assessors are called Best Interest Assessors.

On completion of the assessment process, the Supervisory Body will either grant or deny the DoLS authorisation.

10. A Standard DoLS Authorisation is Granted

10.1 On receipt of any outcome of any DoLS assessment from the Local Authority the ward should send a copy of forms to lpt.adult-safeguarding@nhs.net and ensure that a CQC Notification when if a Standard Authorisation (Form 3) is confirmed.

The care plan should include ongoing review of the treatment plan and the need for a continuing DoLS order.

10.2 A patient held under DoLS may be kept in hospital for the proposed treatment and care until:

- The course of treatment is completed, and the patient no longer needs to remain in hospital and can return to their normal place of residence- ward must inform Supervisory Body.
- Arrangements have been made for on-going care to continue in another location eg. Care Home or Specialist Hospital.
- The DoLS is judged to no longer be required. The clinical team must inform the Supervisory Body.
- The DoLS expires. If continuing treatment and care is required and this would mean that the person continues to be deprived of their liberty, then an extension to the Standard Authorisation will be required. DoLS Form 2 should be completed again and sent off to the DoLS Supervisory Body as above.

OR

- The person's mental capacity returns and they are able to make their own decision about continuing with treatment and care. In this circumstance the

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DoLS is no longer valid, even if the person decides to leave hospital or refuses to comply with treatment and care against medical advice.

- A DoLS Authorisation is specific to the Managing Authority that applied for the authorisation. Therefore, it is permissible to transfer a patient who is held under a DoLS to another ward within the same location and belonging to the same provider, however any movement should be undertaken in the person's best interest. A move to another building or provider requires a new application.

10.3 If a Standard Authorisation is granted by the Local Authority the Local Authority should lead the process of ensuring that a soon as possible and practical after the adult and their representative 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 variation termination of the authorisation.
- Their right, where the relevant person does not have a paid 'professional representative, to request the support of an Independent Mental Capacity Advocate (IMCA). LPT should support this process.

10.4 A DoLS Authorisation is specific to the Managing Authority that applied for the authorisation. Therefore, it is permissible to transfer a patient who is held under a DoLS to another ward within the same building and belonging to the same provider however, any movement should be undertaken in the person's best interest. If an adult under a Standard Authorisation the new in-patient area should inform the Local Authority of the move via a Form 10. A new DoLS application would be required to transfer a patient between LPT sites. Questions and queries regarding DoLS at LPT should be sent to:- lpt.safeguardingduty@nhs.net.

10.5 **Conditions**

A Standard Authorisation can have Conditions attached. Conditions are designed to minimise restrictions. If a Standard Authorisation has Conditions attached the LPT in-patient area should adhere to the Conditions. **The ward should inform LPT Safeguarding Team of any Conditions.** lpt.adult-safeguarding@nhs.net.

10.6 **Renewal of a Standard Authorisation: Form 2**

A Standard Authorisation is granted for a specified period of time. The LPT in-patient area is responsible for the completion and submission of a **Form 2** Request for Renewal to the relevant Local Authority and to: lpt.adult-safeguarding@nhs.net.

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This must be completed 28 days before the expiry date of the current Standard Authorisation.

If a renewal is granted, then the CQC form should be completed in order to inform the CQC of the new period of a Standard Authorisation via lep-tr.compliance@nhs.net.

10.7 **Suspension of Authorisation DOLS Form No 7**

Where an adult is under a Deprivation of Liberty Authorisation, but his/her condition now means that he/she needs to be detained under the Mental Health Act 1983, the clinician must notify the Supervisory Body. The Supervisory Body will suspend the authorisation. The clinician will use Form No 7.

A copy of **DOLS Form No 7** must be given to the adult and their representative and placed in the person's healthcare records.

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A notification of suspension can be approved by either:

- The Patient's Consultant or Approved Clinician.
- The Duty Consultant.
- The Ward Manager.
- The Senior Registered Nurse in Charge.

Lifting of Suspension of Authorisation: **DOLS Form No 7.**

10.8 If the adult becomes eligible for the safeguards again within the next 28 days, a **Form 7 (page 2) should be submitted to the Local Authority**. The Supervisory Body will remove the suspension. If no such notice is given by this Trust to the relevant Local Authority within 28 days, the authorisation will be terminated.

A notification that suspension has been lifted can be approved by either:

- The Patient's Consultant or Approved Clinician.
- The Duty Consultant.
- The Ward Manager.
- The Senior Registered Nurse in Charge.

A copy of **Form No 7** must be given to the adult, their representative and placed in the person's healthcare records.

10.9 The LPT in-patient area is responsible for the completion and submission of a Form 7 and must inform LPT Safeguarding Team lpt.adult-safeguarding@nhs.net.

11. Increase in Restrictions

11.1 A **Form 10** should be submitted to the Local Authority if an adult in an LPT in-patient setting is already under a DoLS Authorisation and the circumstances of care have changed and restrictions increase. Examples of changes where a review request would be required are use of covert medication or reduced time off the unit.

Covert medication must trigger a review of the DoLS authorisation. The ward staff must notify the supervisory body immediately using DoLS Form 10. The Supervisory Body will give notice of their decision regarding a review using page 3 and 4 of **DoLS Form 10.**

Please ensure that covert medication is given in line with the LPT Covert medications Policy.

Any queries regarding increases in restrictions should be sent to:

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lpt.safeguardingduty@nhs.net.

Patient on a Standard Authorisation Discharged
A **Form No 10** must be completed where the patient is discharged.

11.2 **Transferred to another LPT site**
A **Form No 10** must be completed and sent to the supervisory body when a patient moves from one LPT Hospital site to another LPT Hospital site. This is because the original authorisation concerns detention at that particular hospital even though this Trust as the Managing Authority is the same. If it is known that deprivation of liberty is likely to continue at the site of transfer, the receiving ward must complete a **Form No 1** and apply for authorisation.

A request for review can be approved by either:
- The Patient's Consultant or Approved Clinician.
- The Duty Consultant.
- The Ward Manager.
- The Senior Registered Nurse in Charge.

LPT Safeguarding should be informed of a request for a review of a Standard Authorisation via lpt.adult-safeguarding@nhs.net

12. Death of a Patient under a Standard Authorisation: Form 12

12.1 Under the Health and Social Care Act 2008, all service providers must notify the Care Quality Commission about changes, events and incidents affecting the service or the people who use it.

12.2 A death of a person under DoLS (request of an Urgent or Standard Authorisation or a Standard Authorisation). The death of a patient under a DoLS should be reported via an eIRF. This should state that the patient has died under a DoLS. A CQC Notification is required:

12.3 Section 48(2A) of the Coroners and Justice Act (2009) as amended in 2017 states that "a person is not in state detention at any time when he or she is deprived of liberty under section 4A(3) or (5) or 4B of the Mental Capacity Act 2005'. For deaths occurring since 3rd April 2017 to which section 48(2A) applies, there is no mandatory and automatic requirement for a coroner's investigation on "state detention" grounds if the person was subject to a deprivation of liberty authorised under the MCA 2005. When a person dies, the death should be treated as with any other death outside the context of state detention. It need only be reported to the coroner where one or more of the other requisite conditions for reporting to the coroner are met.

12.4 The Local Authority is responsible for the DoLS and will need to be informed by the ward. The death of the patient will require a formal review of the DOLS

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authorisation by the Supervisory Body**.** This is done using a **Form 12** should be sent to the Local Authority.

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A Form 12 can be completed by:

- The Patient's Consultant or Approved Clinician.
- The Duty Consultant.
- The Ward Manager.
- The Senior Registered Nurse in Charge.

A CQC Compliance form should be completed and submitted to: lep-tr.compliance@nhs.net.

13. Relevant Person's Representative (RPR)

13.1 Where an authorisation is granted, a RPR is appointed based on the BIA's recommendations. Notification of the appointment of the will made on the **Form 3**. This role is to support the person with any matters relating to the deprivation of liberty.

Specifically, the role is to ensure that the person under a DoLS is supported to raise any objections to the placement. This would initially be to the Local Authority and if necessary, the Court of Protection. If a patient is objecting to the placement or care LPT staff should inform the nominated Relevant Person's Representative. This information is contained in the Form 3. If this information is unavailable inform the relevant Local Authority DoLS Team. Objection can be verbal or behavioural. It does not matter whether the person understands the objection what matters is their objection. They have a legal right to appeal their deprivation of liberty.

If an adult does not have any friends or family to be their Relevant Person's Representative the Local Authority will request an IMCA fulfils that role. This is to ensure that the person subject to a deprivation of liberty is visited regularly and any objections are raised on their behalf.

Visits by the relevant person's representative must be facilitated at all reasonable times. If there are any concerns about the frequency of contact by the RPR, it is best to resolve those concerns informally. If those concerns cannot be resolved, the clinician should inform the relevant Local Authority and lpt.safeguardingduty@nhs.net.

14. Challenges

14.1 A decision to deprive a person of their liberty may be challenged by the adult, or by their representative, by an application to the Court of Protection. Managing Authorities and Supervisory Bodies should always be prepared to try to resolve disputes locally and informally.

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14.2 **A Standard DoLS Authorisation is Refused**

If following assessment, the application for a Standard Authorisation is refused or cannot be granted because the qualifying criteria have not been met, then the treatment and care plan should be reviewed again to see if less restrictive alternatives can be put in place. The patient may consent to remain in hospital and undergo treatment.

Alternatively, consideration could be given to whether a different treatment option or care location can be arranged which would be acceptable to the patient eg. change of antibiotics to allow administration to take place in the community, a less invasive or aggressive therapy, transfer to a facility closer to family.

If the patient refuses all options presented then clinical staff should take steps to reduce the risks of discharge eg. liaison with GP, social care and other community services, liaison with others (with the consent of the person) or as part of a best interest decision.

14.3 If the person has the capacity to refuse care and treatment or seek discharge, then they should be free to leave. The guidance regarding "unwise decisions" should be followed and assistance should be offered regarding care in treatment in the planned discharge destination. These arrangements should be made with the consent of the adult.

If there are concerns about the patient's safety senior clinical advice should be sought alongside urgent advice from the LPT Safeguarding Team: lpt.safeguardingduty@nhs.net.

14.4 **Unauthorised Deprivations of Liberty**

If staff are concerned that an unauthorised deprivation of liberty has occurred or is likely to occur within the Trust then a senior clinician should review the situation as a matter of urgency, steps must be taken to ensure any deprivation of liberty is made within a lawful framework. To achieve this, it may be necessary to apply an Urgent Authorisation.

Any deprivation of liberty identified where a **Form 1** has not been submitted to the relevant Local Authority **must** be reported as an incident using your incident reporting systems. This is because a deprivation of liberty without the application for a Standard Authorisation is unlawful and is a breach of the Article 5 of the Human Rights Act (1998). LPT Safeguarding oversee in-patient Safeguarding Adult referrals and so any unlawful DoLS should be referred to lpt.safeguardingduty@nhs.net LPT Safeguarding Team will make a decision in line with LLR Safeguarding Adults Thresholds as to whether a Section 42 Enquiry is required.

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All unlawful deprivations of liberty will be reported to the Trust Board, and the CQC.

If there is a concern that a deprivation of liberty may be occurring without an Urgent or Standard Authorisation in a non-LPT inpatient setting (Care Home or Hospital) then LPT staff should discuss the concerns with the most senior available staff member in that provider setting (Care Home or Hospital). This should lead to an agreement that an immediate application for a Standard Authorisation is made by the provider and a Safeguarding Adult's referral. If there is a difference in professional opinion then this should be escalated to lpt.safeguardingduty@nhs.net to ensure resolution for the adult.

14.5 **Community Deprivations of Liberty**

The Supreme Court has held that a deprivation of liberty can occur in domestic settings where the State is responsible for imposing such arrangements. This will include a placement in a supported living arrangement in the community or some community placements. DoLS in such placements are authorised by the Court of Protection.

In community settings such as supported living placements a Community DoLS may be required. The placement should have a DoLS in place, authorised by the Court of Protection. If there is a concern that a deprivation of liberty is occurring in the community (supported accommodation, shared living or any other accommodation) then LPT staff should discuss the concerns with the most senior available staff member in that provider setting or the adult's social worker. This should lead to an agreement that an immediate application for the authorisation of the deprivation of liberty is made by the provider as well as a Safeguarding Adult's referral.

If there is a difference in professional opinion, then this should be escalated to lpt.safeguardingduty@nhs.net to ensure resolution for the adult.

14.6 LPT staff must co-operate with the Local Authority in the in relation to the planning of or on-going management of Community DoLS arrangements. If the Local Authority requires information regarding a community deprivation of liberty related to an LPT patient this information should be provided within the requested timescales.

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15. MCA and DoLS Advice

15.1 StaffNet provides information on MCA and DoLS.

15.2 Legal advice regarding MCA or DoLS can only be requested by the LPT Safeguarding Team with agreement from the Lead Practitioner for Safeguarding Adults and MCA**:** lpt.safeguardingduty@nhs.net.

Consent

Clinical staff must ensure that consent has been sought and obtained before any care, intervention or treatment described in this policy is delivered.

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Appendix One: Definitions

Terminology: Descriptor

Authorisations	The authority to legally hold someone in a hospital under the DoLS. There are two types; urgent and standard authorisations.
Authorising Signatory	A senior manager of a Local Authority responsible for checking completed assessments from DoLS assessors and granting standard authorisations based on these.
Best Interests Assessor (BIA)	A health or social care professional with an additional qualification to undertake the assessments to consider whether A deprivation of liberty would be in the relevant person's best interests.
Community DoLS	DoLS do not apply to a person in supported living or their own home. A Court of Protection application will be required if a person is deprived of liberty in those settings.
Court Appointed Deputy	A person appointed to act and make decisions on behalf of someone who lacks capacity to make those decisions.
Court of Protection	The court that governs the Mental Capacity Act including the DoLS. It can make decisions regarding a person's mental capacity and what is in their best interests.
Deprivation of liberty	The term used in Article 5 of the European Convention on Human Rights which states that everyone has the right to liberty and it can only be taken away in certain circumstances and only if legal processes are used.
Deprivation of Liberty Safeguards (DoLS)	The legislation that provides the procedures and rules governing a deprivation of liberty in hospitals and care homes. Deprivations of liberty anywhere else are authorised by the Court of Protection.
Eligibility assessments	A person must meet a series of **six qualifying requirements** to be eligible under DoLS**:** 1) Over age of 18 years 2) lacks capacity 3) has a mental disorder as defined in the Mental Health Act 4) is not ineligible by virtue of Schedule 1A Mental Capacity Act (requiring treatment under the Mental health Act (1983) 5) No refusals 6) in the person's best interests.

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Independent Mental Capacity Advocate (IMCA)	A specialist advocate who can represent the patient and their best interests if they have no family/friends to speak on their behalf. There is a statutory duty to refer to an IMCA in certain situations.
Lasting Power of Attorney	A legal document that allows one person to give another person authority to make a decision on their behalf.
Managing Authority	A manager of a home registered under Part 2 of the Care Standards Act 2000, or an NHS hospital establishment such as Leicestershire Partnership NHS Trust.
Mental Capacity	The ability to make a specific decision at the time the decision needs to be made.
Mental Health Assessor	A medically trained professional appointed by the Supervisory Body to consider whether the relevant person is suffering from any disorder or disability of mind that would cause doubt around the person's ability to consent to their admission to a hospital or care home for the proposed care and treatment.
Relevant person	The person who is or may be the subject of the Deprivation of Liberty regime and may be either a patient in a hospital or a resident in a care home.
Relevant Person's Representative (RPR)	Everyone under a standards DoLS authorisation has an independent representative appointed to support them to appeal the deprivation of liberty. This can be a friend, family member. It is critical that this person will agree to take any objection forward on behalf of the person deprived or their liberty.
Review	A person under a standard DoLS authorisation has the right to a review.
Supervisory Body	Supervisory Bodies are those organisations that can authorise a DoLS. This will be the Local Authority where the patient is ordinary resident.

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Appendix Two: Governance

Version control and summary of changes

Version number	Date	Description of key change
1	10.04.2012	Draft 1 circulated to members of committee for consultation and comments.
2	24.05.2012	Revisions made to draft policy, contents reviewed by Safeguarding Committee.
3	12.6.2012	Comments from policies group – revisions – formatting, abbreviations and definitions.
4	16.09.2013	Notification to CQC following DoLS application revised form. Hyperlink updated and divisional leads informed of changes. Change in supervisory body.
5	25.04.2014	Disaggregation of DoLS team to separate city and county teams 1.4.14 the contact numbers have been updated.
6	13.04.2015	Reflection of new case law and updated forms for authorisation of a DoLS.
7	06.07.2016	Review of hyperlinks and contact details to ensure updated. Streamlining of appendices. Review of policy against LLR Interagency Policy to ensure consistency.
8	01.03.2017	Duties and responsibilities updated (section 5). Flowchart and process for applying for a DoLS updated (section 6).
8.1	01.04.2017	Referral to Coroner removed in line with recent changes to legislation. Quick Reference Guide added as Appendix 1. Admission flowchart added as Appendix 2.
8.2	13-Jun-2017	Statement in relation to review of Modern Slavery Act included. Review of roles and responsibilities updated and clarified.
9	9-Jan-2018	Policy re-written to ensure legislation is accurately reflected in local procedures and to incorporate developments on Ulysses. Circulated for comments.
10	May 2021	Policy reviewed and re-written to make policy more accessible to staff
10.1	August 2021	Amendments to Email addresses within Policy and Appendices
11	Feb-2022	Policy review. Reformatted Appendices. Amendment of email addresses to NHS.net

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Version number	Date	Description of key change
11.1	Mar-2022	Updated CQC details
11.2	Jan-2024	15.1 Queries to be sent to Safeguarding Duty Team. 18.3 Amendment to Email address
11.3	July 2026	7.1 Removal of ACID TEST to replace with AGNI ruling

Responsibilities

Responsibility	Title
Executive Lead	*Michelle Churchard-Smith*
Policy Author	*Natalie Asser*
Advisors	*Members of the LPT Safeguarding Group*
Policy Expert Group	*LPT Safeguarding Group*

Governance

Governance Level	Name
Level 1 Assurance Oversight	*LPT Quality & Safety Committee*
Level 2 Delivery Group for policy approval and compliance monitoring	*LPT Safeguarding Group*

Compliance Measures

KPI	Where will this be reported and how often
Staff responsible for the completion of DoLS forms will access training.	LPT Directorate Level Safeguarding Committees. Bi-annually.
Staff knowledge and confidence in DoLS procedures.	Trust Safeguarding Group. Annually.
Statistical data relating to the DoLS.	Trust Safeguarding Group. Quarterly.

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Training Requirements

There is a need for training identified within this policy. In accordance with the classification of training outlined in the Trust Learning and Development Strategy this training has been identified as mandatory. All Trust staff in a clinical role must attend a training session when current compliance is due to expire. Refresher training must be completed via e-learning every 3 years.

The Governance Group responsible for monitoring the training is the Trust Safeguarding Group.

Training is recognised as a critical control measure in minimising risks associated with healthcare delivery. Ensuring that staff possess the appropriate knowledge and skills significantly reduces the potential for errors, omissions, and unsafe practice.

Managers

- Assess the training needs of staff to ensure they are equipped to meet the expectations set out within this policy.
- Facilitate staff access to all relevant training required for safe and effective compliance with this policy.
- Ensure all staff complete mandatory and role-essential training in line with Trust policy.
- Where gaps in available training are identified, collaborate with the policy author or subject matter expert to develop and agree a training or development plan.

Staff

- Maintain compliance with all mandatory and role-essential training as required by Trust policy.
- Identify any personal learning needs necessary for the safe and effective implementation of this policy, and work with your manager to agree an appropriate training plan to meet these needs.

Relevant training currently available to equip staff to deliver the requirements of this policy

Training topic title	Source of training e.g. ulearn, CPD
Level 3 - Child and Adult Safeguarding Training (Whole Family Approach)	1 day training bookable on uLearn

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Crown Mental Health Act 1983 (as amended). TSO. London

Department of Health (2009) Reference guide to consent for examination or treatment. Stationary Office.

The Ministry of Justice (2008) Deprivation of Liberty Code of Practice. TSO. London.

Department of Constitutional Affairs (2007) Mental Capacity Act 2005 Code of Practice. TSO. London

Department of Health (2015). Mental Health Act Code of Practice. TSO. London.

Richards, S and Mughal, A (2015) Deprivation of Liberty(DoLS) Handbook. Bookwise. London.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
Nursing and Midwifery Council (2015).Professional standards of practice and behaviour for nurse and midwives. Nursing and Midwifery Council. London.

Case Law

Cheshire West and Chester Council v P [2014] UKSC 19
https://www.supremecourt.uk/cases/docs/uksc-2012-0068-judgment.pdf

R (Ferreira) v HM Senior Coroner for Inner South London and others [2017] EWCA Civ 31 (Arden and McFarlane LJJ, Cranston J)

LPT Policy and Procedures

Consent to Treatment https://www.leicspart.nhs.uk/wp-content/uploads/2020/02/Consent-to-Examination-or-Treatment-Policy-exp-Feb-23.pdf

Covert Medication Policy https://www.leicspart.nhs.uk/wp-content/uploads/2020/04/Covert-Administration-of-Medicines-Policy-exp-Apr-22.pdf

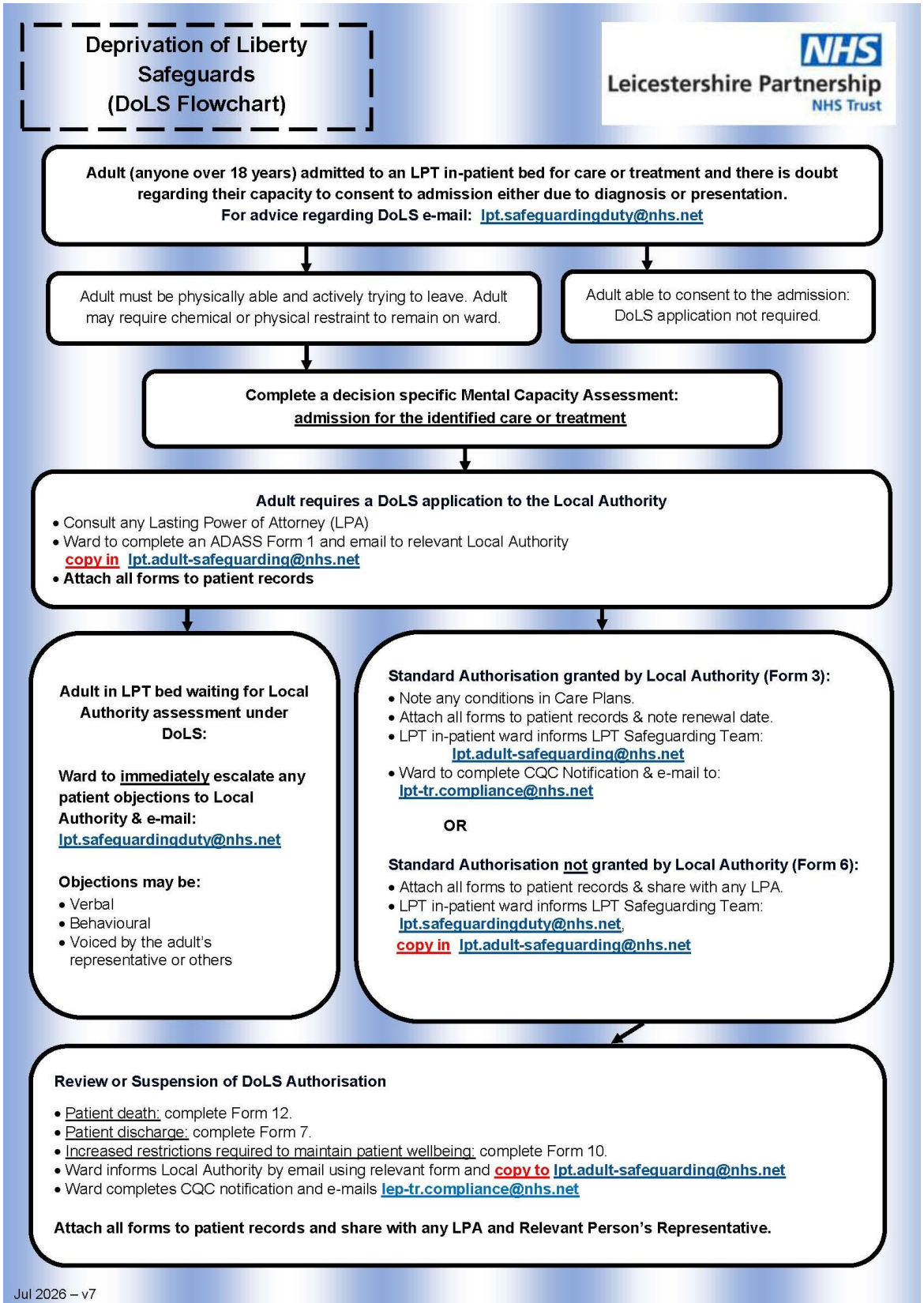
Medication Management https://www.leicspart.nhs.uk/wp-content/uploads/2020/04/Covert-Administration-of-Medicines-Policy-exp-Apr-22.pdf

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Appendix Three

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Appendix Five

Deprivation of Liberty Safeguards (DoLS) Forms Guide

ADASS (The Association of Directors of Social Services) provide us with the forms for DoLS. There are several Forms that we use for different situations. The aim of this guide is to help you to identify which form to use, for when and when.

If you need any advice about these forms email: lpt.safeguardingduty@nhs.net

DoLS Forms used by LPT

ADASS FORM	**Used by LPT**
Form 1: Standard **and Urgent Authorisation Request**	In-patient setting completes a Form 1 when an adult is admitted and the adult: 1. **Lacks the capacity to consent to care and treatment.** 2. **Is physically able to leave and actively trying to leave** 3. **Requires chemical or physical restraint to accept care and treatment.** **Urgent: self-authorisation of a deprivation of liberty for up to 7 days.** **Standard: a further 7 days while waiting for an assessment.** **LPT should complete both an Urgent and Standard Authorisation.**
Form 2: Further Authorisation Request	An adult in an LPT in-patient setting is already under a DoLS Authorisation, this is ending and the adult still meets the criteria for a DoLS.
Form 7: Suspension of a Standard Authorisation	An adult in an LPT in-patient setting is already under a DoLS Authorisation, this is ending as the adult has been discharged or regained the capacity to make the decision about admission for care or treatment.
Form 10: Review	An adult in an LPT in-patient setting is already under a DoLS Authorisation and the circumstances of care have changed. Examples of changes where a review request

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	would be required are use of covert medication or reduced time off the unit.
Form 12: Notification of death whilst deprived of liberty.	This form is sent to the Local Authority when a patient has died and is under a Form 1 Standard or Urgent Authorisation or a Form 5 Standard Authorisation.

CQC Notification	https://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form This form should be completed whenever LPT receive a DoLS authorisation from the Local Authority. The CQC Notification must be submitted to: lep-tr.compliance@nhs.net

DoLS Forms used by the Local Authority

ADASS FORM	Used by Local Authority
Form 3 Best Interest Assessment	Completed by a Best Interest Assessor following the submission of a **Form 1** to the Local Authority by the in-patient setting. A ward or in-patient setting will receive a copy of this form following the assessment.
Form 3a No Deprivation	A ward or in-patient setting will receive a copy of this form following the completion of a Form 3 where no deprivation of liberty is identified.
Form 5: DoLS Standard Authorisation granted.	A ward or in-patient setting will receive a copy of this form following the completion of a Form 3 where a deprivation of liberty is authorised.
Form 6: Standard Authorisation not granted.	A ward or in-patient setting will receive a copy of this form following the completion of a Form 3 where a deprivation of liberty is not authorised.

Submitting DoLS applications to the Local Authority

Applications should be sent to the Local Authority where the person is ordinarily resident when they were at home. You can submit forms either online (County) or via secure e-mail.

Leicester City DoLS Team

Email: dols@leicester.gov.uk Phone: 0116 454 6010

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se

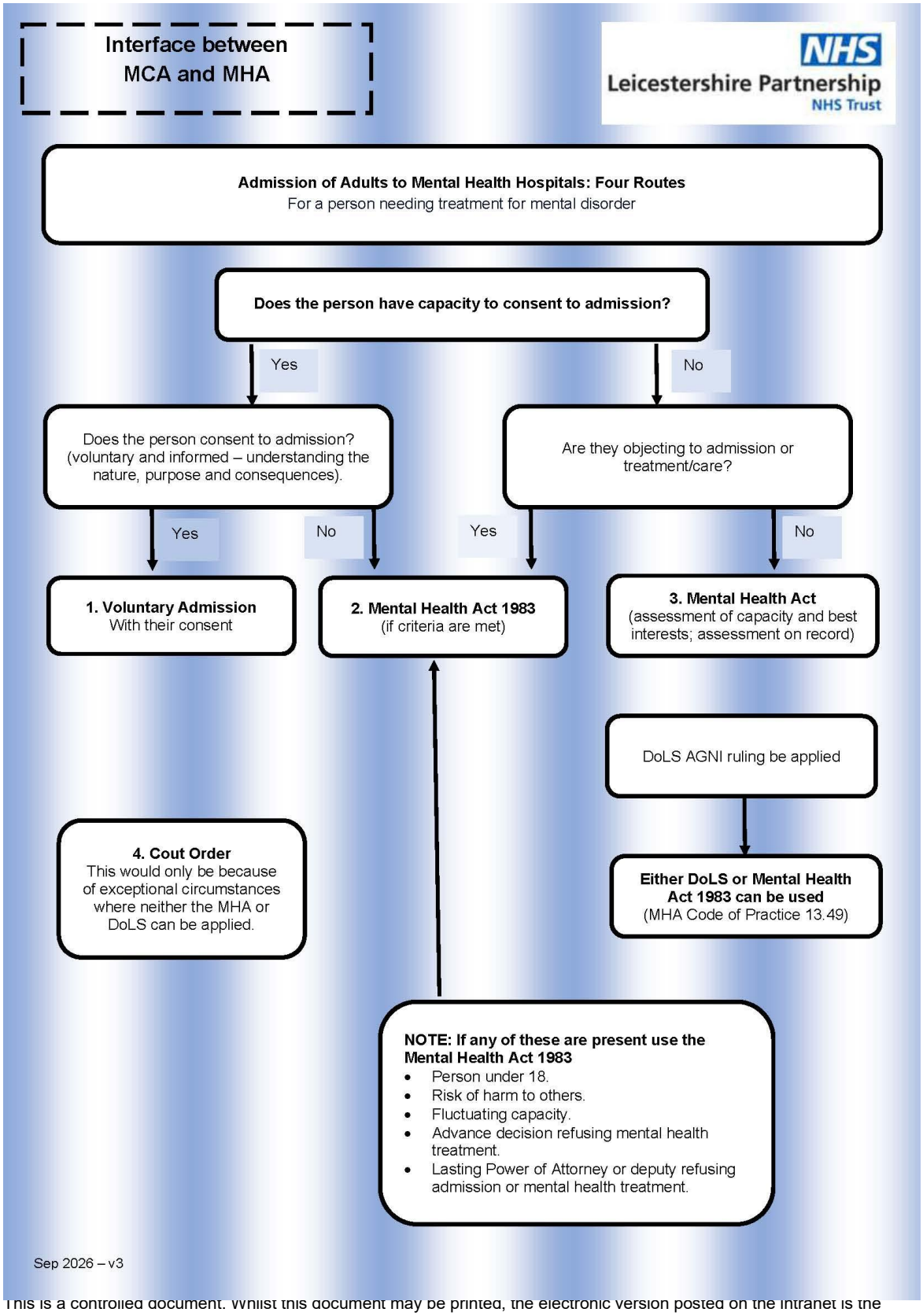
Leicestershire and Rutland DoLS Team

Email: dols.team@leics.gov.uk Phone: 0116 305 7853

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