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# Deprivation of Liberty Safeguards

## A guide for hospitals and care homes

Mental Capacity Act 2005

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**For recipient's use**

# Deprivation of Liberty Safeguards

## A guide for hospitals and care homes

Mental Capacity Act 2005

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## 1. About this booklet

The purpose of this booklet is to tell you about the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS). This is a new system that helps to protect people who are not capable of making care and treatment decisions for themselves. It comes into force on 1 April 2009.

The MCA DOLS apply to people in hospitals and care homes registered under the Care Standards Act 2000, whether they have been placed there by a primary care trust (PCT), a local authority or through private arrangements.

The guidance in this booklet is mainly for hospital and care home managers. It aims to help them understand their roles and responsibilities under the MCA DOLS. Other people who work in hospitals and care homes will also be affected by the MCA DOLS and will need to know about the new system.

This booklet should be used alongside the MCA DOLS Code of Practice, which explains in detail how MCA DOLS' processes and procedures work. This can be downloaded at:

[www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

Key terms used in the MCA DOLS legislation include:

- **supervisory body:** this refers to PCTs and local authorities
- **managing authority:** this is the person or body with management responsibility for the hospital or care home in which a person is being, or may be, deprived of liberty
- **standard authorisation:** this permits lawful deprivation of liberty and is issued by a supervisory body (see page 13)
- **urgent authorisation:** this permits lawful deprivation of liberty and is issued by a managing authority (see page 13)
- **relevant person:** this is the person who needs to be deprived of liberty

- **relevant person's representative:** this is the person who represents the relevant person (see page 25)
- **best interests assessor:** this is the person who assesses whether or not deprivation of liberty is in the person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm (see page 15)
- **advance decision:** this is a decision to refuse specified treatment made in advance by a person who has capacity to do so. The decision will then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment (see page 15)
- **donee of lasting power of attorney:** this is the person appointed under a lasting power of attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the lasting power of attorney (see page 15)
- **Independent Mental Capacity Advocate (IMCA):** this is a person who provides support and representation for a person who lacks capacity to make specific decisions in certain defined circumstances. The IMCA was established by the Mental Capacity Act and is not the same as an ordinary advocacy service (see page 16).

## Record-keeping requirements

Hospitals and care homes must keep detailed records as part of the MCA DOLS process. To help meet this requirement, and to make sure the administration of the MCA DOLS systems is as simple as possible, the Department of Health has developed a number of standard forms. If used without alteration, these ensure that hospitals and care homes comply with the required standards.

Altogether there are six forms that hospitals and care homes may need. These are available to download, together with accompanying guidance, at: [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772)

Standard forms for primary care trusts and local authorities are also available through the same link.

An overview of the MCA DOLS process can be found in the Appendix on page 30.

## 2. About the MCA DOLS

Some people living in hospitals and care homes cannot make their own decisions about their care or treatment because they do not have the ‘mental capacity’ to do so. These people need additional protection to ensure they do not suffer harm, especially in situations where delivering the necessary care requires their personal freedoms to be restricted to the point of actually depriving them of their liberty. People who need this additional protection may include those with severe learning disabilities, older people with the range of dementias or people with neurological conditions such as brain injuries.

The European Court of Human Rights (ECtHR) has ruled that the rights of people who are unable to make their own decisions, especially where they need to be deprived of liberty in their own best interests, need to be protected.

While we must deliver care without restricting people’s personal freedoms wherever possible, health and social care staff may believe that it is necessary to deprive someone of their liberty, in certain circumstances, in order to give them care or treatment that is in the person’s best interests and protects them from harm.

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS) exist to protect people who cannot make decisions

about their care and treatment when they need to be cared for in a particularly restrictive way. They set out a standard process that hospitals and care homes should follow if they think it will be necessary to deprive a person of their liberty to deliver a particular care plan that is in the person's best interests.

By following the MCA DOLS, hospital and care home staff can ensure that people are deprived of liberty only when necessary and within the law.

### What is deprivation of liberty?

The ECtHR has said deprivation of liberty depends on the specific circumstances of each individual case. As a result, there is no single definition or a standard checklist that can be used to identify where people are being deprived of their liberty. However, a number of cases concerning deprivation of liberty have come before the ECtHR and the UK courts. The following list is based on the judgments in several of these cases and indicates what circumstances have led to the courts deciding that patients may have been deprived of their liberty:

- restraint was used to admit a person to a hospital or care home when the person is resisting admission
- medication was given forcibly, against a patient's will
- staff exercised complete control over the care and movements of a person for a long period of time
- staff took all decisions on a person's behalf, including choices relating to assessments, treatments, visitors and where they can live
- hospital or care home staff took responsibility for deciding if a person can be released into the care of others or allowed to live elsewhere



- when carers requested that a person be discharged to their care, hospital or care home staff refused
- the person was prevented from seeing friends or family because the hospital or care home has restricted access to them
- the person was unable to make choices about what they wanted to do and how they wanted to live, because hospital or care home staff exercised continuous supervision and control over them.

People are entitled to be cared for in the least restrictive way possible and care planning should always consider if there are other, less restrictive options available to avoid unnecessary deprivation of liberty. However, if all alternatives have been explored and the hospital or care home believes that it is necessary to deprive a person of their liberty to deliver the care or treatment they need, then there is a standard process they must follow to ensure that the deprivation of liberty is lawful and that they are protected.

### How do the MCA DOLS protect people?

The MCA DOLS introduce a standard process that hospitals and care homes must follow before they deprive a person of their liberty.

If people do need to be deprived of their liberty in their own best interests, the MCA DOLS protect them by providing:

- a representative to act for them and protect their interests
- rights of challenge to the Court of Protection against unlawful deprivation of liberty
- rights for their deprivation of liberty to be reviewed and monitored on a regular basis.

## Who is covered by the MCA DOLS?

The MCA DOLS apply to people in hospitals and care homes who meet all of the following criteria. A person must:

- be aged 18 or over
- have a mental disorder such as dementia or a learning disability
- lack the capacity to consent to where their treatment and/or care is given
- need to have their liberty taken away in their own best interests to protect them from harm.

## When should the MCA DOLS be used?

The MCA DOLS should be used for all people in hospitals or care homes who lack the capacity to make their own decisions and where personal freedoms need to be restricted in the patient's best interests, to the extent that they amount to a deprivation of liberty. The MCA DOLS should not, however, be used if a person meets the criteria for detention under the Mental Health Act 1983 and either is, or should be, detained under the terms of that Act.

The managing authority (the hospital or care home) must apply to the supervisory body (the PCT in the case of hospitals or local authority in the case of care homes) for authorisation of deprivation of liberty if a person who lacks capacity is:

- about to be admitted to the hospital or care home and the managing authority believes the person risks being deprived of their liberty
- already in the hospital or care home and is being cared for or treated in a way which deprives them of their liberty.

The supervisory body must first decide if the application is appropriate. If it is, the supervisory body will commission a series of assessments and either grant or refuse authorisation for deprivation of liberty as appropriate.

It is important to remember that depriving someone of their liberty in a hospital or care home should be a relatively rare occurrence. Therefore, only a small number of people should need MCA DOLS authorisation. **Before applying for an authorisation, the managing authority should ALWAYS think about providing care or treatment in ways which avoid depriving someone of their liberty.**

### How do the MCA DOLS relate to the Mental Capacity Act 2005 (MCA)?

The MCA DOLS do not replace other safeguards in the MCA. Instead, any action taken under the MCA DOLS must be in line with the five key principles of the MCA:

- 1 A person must be assumed to have capacity unless it is established that he lacks capacity.
- 2 A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- 3 A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- 4 An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- 5 Before the act is done, or the decision is made, regard must be had 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.

The MCA DOLS permit the hospital or care home to detain the person only in a specific hospital or care home. It is important to understand that an MCA DOLS authorisation does not, in itself, authorise care or treatment. Any care or treatment still needs to be carried out under the wider 'best interests' provisions of the MCA and follow the five key principles of the Act listed above.

Amelia didn't have a formal assessment before entering the care home. Her son says her level of confusion isn't bad, but from the beginning she is very distressed and difficult to calm and repeatedly tries to leave.

The matron wonders whether it is necessary to use the MCA DOLS to keep her safe.

Prior to requesting an assessment for an MCA DOLS authorisation, the matron asks for a comprehensive assessment of her needs, including exploring Amelia's previous interests and preferences with her son. It appears that Amelia has a urinary tract infection and so has been more confused than usual. The GP prescribes antibiotics. Amelia's son spends some time with her every day for the rest of the week to help her settle in. She is shown the greenhouse as she has been a keen gardener; they discover that she still plays the piano and enjoys jigsaws. Over the course of the next two weeks she settles in and becomes quite content with the freedom she is able to maintain; therefore the matron takes the view that a request for a standard authorisation is not currently necessary.

### 3. What does a managing authority need to do?

For everybody in a hospital or care home who lacks capacity, the following questions should be asked:

- Does the care or treatment being provided take away the person's freedom to do what they want to do to such an extent that it amounts to a deprivation of their liberty?
- Do you believe that the care or treatment being provided is in the person's best interests?

If the answer to these questions is 'yes', you need to ask yourself whether the care or treatment could be given in a way which does not deprive the person of their liberty.

If the answer to this question is 'no', and the person cannot be cared for or treated any other way, the managing authority must apply to the supervisory body for authorisation to continue with the care programme and deprive the person of their liberty.

The supervisory body will then carry out a series of assessments to decide if it is right to deprive the person of their liberty.

There are two kinds of authorisations: standard authorisations and urgent authorisations.

- **Standard authorisations** follow the process outlined above. Managing authorities should apply for a standard authorisation before a deprivation of liberty occurs – for example, when a new care plan is agreed that would mean depriving a person of their liberty.
- **Urgent authorisations** can be made by managing authorities themselves – such as where a standard authorisation has been applied for, but not yet granted, and the need to deprive a person of their liberty is now urgent. Urgent authorisations can never be made without a simultaneous application for a standard authorisation to the supervisory body.

### Applying for standard authorisations

Managing authorities should apply to the supervisory body for a standard authorisation using the form available at:

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

The supervisory body will then begin the assessment process (see below) which must be completed within 21 calendar days.

A managing authority cannot apply for a standard authorisation more than 28 days before a deprivation of liberty is due to take place.

### Applying for urgent authorisations

Any decision to issue an urgent authorisation must be taken in the best interests of the patient in accordance with section 4 of the MCA. Where restraint is involved, the decision must comply with section 6 of the MCA.

There is a standard form available for managing authorities that require an urgent authorisation.

Urgent authorisations last for a maximum of seven calendar days. During that period, the necessary assessment process must be completed. Also, the managing authority must request a standard authorisation if it has not already done so.

In exceptional circumstances, an urgent authorisation can be extended by a supervisory body for an additional seven calendar days. The managing authority must inform the supervisory body when an extension is needed and only one such extension can be granted. There is a standard form for this purpose.

### How does the assessment process work?

The supervisory body commissions the assessments which are used to authorise a deprivation of liberty. The assessments are then carried out by a minimum of two trained assessors: the mental

health assessor and the best interests assessor. There are six assessments in all, which are:

- age assessment, which determines if the person is 18 years old or over
- mental health assessment, which decides whether the person is suffering from a mental disorder
- mental capacity assessment, which determines if a person lacks the capacity to consent to receive care or treatment in the particular hospital or care home making the application for deprivation of liberty
- eligibility assessment, which determines whether the person is, or should be, subject to a requirement under the Mental Health Act 1983 (in which case they are not eligible for this process)
- no refusals assessment, which determines if the person has refused treatment or made decisions in advance about the treatment they wish to receive; this assessment also determines if the authorisation conflicts with valid decisions made on the person's behalf by a donee of a lasting power of attorney or a deputy appointed for the person by the court
- best interests assessment, which determines if there is a deprivation of liberty and whether this is:
  - in the person's best interests
  - necessary in order to keep the person from harm
  - a reasonable response to the likelihood of the person suffering harm and the likely seriousness of that harm.

An authorisation will be granted only if all six assessments support the authorisation.

## Providing support throughout the assessment process

The managing authority must tell the supervisory body if the person involved has no family member or non-professional carer to support them through the assessment process. The supervisory body must then appoint an Independent Mental Capacity Advocate (IMCA), under section 39A of the Act, to support them. (This is often known as a section 39A IMCA.)

The supervisory body and the managing authority must work together to make sure the person and their representative:

- understand the MCA DOLS process
- know their rights and entitlements
- receive the right support once the authorisation process begins and after the authorisation has been granted or denied.

## What happens when a MCA DOLS authorisation is granted?

Not every assessment process will result in an authorisation. However, once a person in a hospital or care home has an MCA DOLS authorisation, a relevant person's representative (RPR) must be appointed to support them and look after their interests.

The managing authority (together with its supervisory body) must:

- make regular checks to see if the authorisation is still necessary
- remove the authorisation when it is no longer necessary
- provide the person's RPR with information about the care and treatment of the person who has an MCA DOLS authorisation.



Erik's care home is granted a standard authorisation to help meet his care needs legitimately.

His brother is appointed as his relevant person's representative for the standard authorisation. The staff tell Erik as clearly as possible what the authorisation means and explain his brother's role as his representative. They give him simple written information about it and provide copies for his brother. A copy of the authorisation is placed in Erik's file and his care plans are amended, making it clear that Erik's brother should now be involved in any major care decisions and care reviews.

There are conditions attached to the authorisation which relate to visits by Erik's other family members and these are incorporated into his care plans. The expiry date of the standard authorisation is noted in the diary so that the home can apply for a new authorisation before the current term expires.

The manager of the care home meets Erik's brother to check that he understands the nature and effect of the authorisation. The manager explains the complaints and appeals procedure in detail and tells him about the right to request a review or apply for termination of the standard authorisation.

### What happens if a request for an authorisation is turned down?

If an authorisation request is turned down, the managing authority must not deprive the person of their liberty and will need to take alternative steps. The steps will depend on the reason the authorisation was turned down.

- It may be appropriate for the person to be detained under the Mental Health Act 1983.
- If the person is under 18, the Children Act 1989 may be used for meeting their care requirements.

- There may be ways to support the person in a less restrictive manner that avoids a deprivation of liberty.
- Often, people make valid decisions about refusing care or treatment when they are still capable of doing so or there are valid refusals by attorneys or deputies appointed on their behalf. If the managing authority wishes to challenge these decisions, it can apply to the Court of Protection.
- If the deprivation of liberty is not in the person's best interests, the managing authority (together with the commissioner of care) needs to make sure that the person is supported in a way that avoids deprivation of liberty.
- If the person has the capacity to make decisions about their own care, the managing authority must help them to make their own decisions.
- If the relevant person is not being deprived of liberty, the managing authority should continue to support them without taking further action.

Jean has moved into a local care home because of her mild Alzheimer's disease. Her care is complicated by regular visits to her local pub, and on one occasion she returns home drunk.

After speaking with Jean's daughter, who lives at some distance, the care home manager decides that the only way to stop the drinking is to keep Jean from leaving the care home at any time.

The care home manager completes an urgent authorisation and requests a standard authorisation. Jean passes the age, no refusals, mental capacity, mental health and eligibility assessments, but the best interests assessor considers that the restrictions used to limit the alcohol misuse are disproportionate to the risk, and are not in Jean's best interests.

The best interests assessor asks the care home to immediately stop depriving Jean of her liberty, and suggests they urgently draw up a new care plan to manage the risk of excess alcohol use without being so restrictive. In his report, the best interests assessor suggests involving Jean's care manager in this process.

A new package of care is arranged which includes trips out and accompanied visits to the pub.

### When should a standard authorisation be reviewed?

The authorisation review is a formal process that takes a fresh look at the person who has been deprived of their liberty. A standard authorisation can be reviewed at any time.

The managing authority must make regular checks to see if the deprivation of liberty is still needed. A review must be triggered if there has been a change in the relevant person's situation that requires the deprivation of liberty authorisation to be altered, temporarily suspended or terminated altogether.

The supervisory body has to carry out a review if asked to by any of the following people:

- the relevant person
- the relevant person's representative
- any section 39A IMCA representing the individual.

The managing authority must also inform the supervisory body if there has been a change in the situation of a person who has been deprived of their liberty. This is especially important if the change in circumstances means that the person no longer meets one or more of the six qualifying requirements.

There is a standard form that a managing authority can use to request a review.

The reasons for a review may include:

- evidence that the person no longer meets either the age, no refusals, mental capacity, mental health or best interests authorisation requirements
- the fact that the person no longer meets the eligibility requirement because they are subject to detention or treatment under the terms of the Mental Health Act 1983 instead of the MCA DOLS
- changes in the person's situation
- the fact that the person still meets all six qualifying requirements, but for different reasons than those set out in the original authorisation.

The supervisory body makes the arrangements necessary to review any or all of the six qualifying requirements as required.

The supervisory body must also inform the managing authority, the relevant person, the RPR and any section 39A IMCA involved about the outcome of the review.

The outcome of a review may bring an authorisation to an early conclusion. If the relevant person does not meet any one of the six requirements, the authorisation must be ended immediately.

### Short-term suspensions of standard authorisations

It may be necessary to suspend an authorisation for a short period of time. This could happen, for example, if the relevant person fails to meet the eligibility requirement because they are temporarily subject to provisions under the Mental Health Act 1983. In such cases, the managing authority must tell the supervisory body, which will suspend the MCA DOLS authorisation. There is a standard form for the managing authority to use for this purpose.

If the relevant person becomes eligible for an MCA DOLS authorisation again within 28 days, the managing authority must tell the supervisory body, which will reinstate the authorisation. Again, there is a standard form for the managing authority to use for this purpose.

If the managing authority does not let the supervisory body know that the person is eligible again within the 28 days, then the authorisation will cease automatically at the end of this period. The managing authority would then need to seek a new authorisation if deprivation of liberty was to continue.

A person may no longer meet the eligibility requirement if they begin to object to their treatment. In such cases, they may be more appropriately detained under section 2 or 3 of the Mental Health Act 1983 and the managing authority should request a review immediately.

Samir was only 45 when he had a stroke, leaving him with considerable nursing needs, cognitive impairment, and impulsive and sometimes violent behaviour. He was detained using a standard authorisation as he met all the criteria for authorisation.

Over the course of a year, Samir improves considerably. He stops hitting out at staff, and his awareness and judgement become better. As a result, his wife is confident that she can look after him and the care home (the managing authority) works with her to organise trips out.

At a regular care review, Samir's keyworker asks whether it is still necessary or in his interests to have the standard authorisation in place, and queries whether he even still meets the mental capacity or mental health criteria for the authorisation.

The care home manager writes to the supervisory body to request a review. The review finds that although Samir still meets the mental capacity criteria, he no longer meets the mental health or best interests criteria. The standard authorisation is terminated. The supervisory body compliments the care home staff on the way they are working with Samir and his wife to free up the restrictions on his liberty.

### What happens when an authorisation ends?

Deprivation of liberty authorisations should last for the shortest time possible and are valid for a maximum of 12 months. The duration of an authorisation will vary from person to person depending on their individual circumstances. Typically, the best interests assessor will recommend the period of time required for a specific authorisation.

When an authorisation comes to an end, the managing authority cannot lawfully continue to deprive someone of their liberty. However, if the managing authority thinks that the person involved still needs to be deprived of their liberty for their own protection, they can request a new standard authorisation.

A new authorisation process will then be triggered. However, the relevant person may not need an IMCA at the time of assessment as they will already have an RPR in place.

### Unauthorised deprivation of liberty

The managing authority must make every effort to decide if a person in a hospital or care home is being deprived of their liberty. However, if a member of staff, family member, carer, or any other third party suspects unauthorised deprivation of liberty, the law entitles them to tell the managing authority. If the managing authority fails to satisfy their concerns, the person can ask the supervisory body to investigate. Standard letters are available for this purpose.

Margaret suffers from a chronic psychotic mental illness; she is suspicious of others, reclusive, and severely neglects herself. She is living in squalor, having refused all care.

After assessment and treatment in hospital under the Mental Health Act 1983, doctors feel that she is likely to remain unwell in the long term. Margaret still lacks insight into her mental illness and its effects, and insists on leaving hospital in order to return home. The doctors feel that she needs to move to a care home, so she has trial leave there but repeatedly requests permission to leave.

The hospital team discusses a standard authorisation with staff from the care home at a Care Programme Approach meeting. They agree that Margaret will stay in hospital under the Mental Health Act, while the care home (the managing authority for Margaret's placement) requests a standard authorisation from the local authority to commence on the day she is discharged from the Mental Health Act. The standard forms are completed, copied for Margaret's records, and sent with all relevant background paperwork to assist the best interests assessor. As there is no obvious next of kin or other person to consult, the care home notify the local authority that an IMCA will be required to represent Margaret's interests.



## 4. Roles and responsibilities

### What is the role of the relevant person's representative?

As soon as a standard authorisation has been granted, the supervisory body must appoint a relevant person's representative (RPR) to represent the person who has been deprived of their liberty. The RPR provides independent support, acting only in the best interests of the person involved, rather than in the interests of commissioners or service providers.

The RPR is usually a family member or someone known to the person deprived of liberty. If the person has no family member, friend or carer, the supervisory body has to appoint a representative, who can be paid as appropriate.

The managing authority has a responsibility to ensure that both the RPR and the relevant person:

- understand what the deprivation of liberty authorisation means
- are aware of their right to request a review at any time
- have information about the formal and informal complaints procedures
- understand that they have the right to challenge the deprivation of liberty through the Court of Protection
- understand that they are entitled to the support of an Independent Mental Capacity Advocate (IMCA), unless they are a paid representative.

The RPR must stay in touch with the person deprived of their liberty in order to fulfil their statutory role. If the RPR does not keep in regular contact, then the rights of the relevant person to review or appeal their deprivation of liberty may not be sufficiently protected.

The managing authority should monitor this closely. If there is any doubt that the RPR is supporting the person effectively, the authority must:

- talk to the RPR about these concerns and attempt to resolve issues informally
- if an informal resolution is unsuccessful, raise the issues with the supervisory body.

William is sad to see his wife Elaine leave their home and move into the nursing home. He agrees with the use of the standard authorisation, though, as she would have been a risk to herself and others if she had been allowed more freedom. He is pleased to be appointed as her RPR by the supervisory body. This allows him to carry on caring for Elaine and to ensure that the restrictions used to keep her safe are really in her best interests.

Unfortunately, William then has a stroke himself, and is only rarely able to visit, having moved to live near his daughter. John, the care home manager, considers that William's lack of regular contact means that he is unable to carry on representing his wife's interests. John talks to William about this, but William says that his ill-health prevents him from visiting.

John informs the supervisory body about his concerns. William agrees that he should be kept up to date by copies of the care plans. The supervisory body appoints an IMCA as an alternative relevant person's representative, as no other suitable person can be immediately identified.

## What is the role of the IMCA?

The relevant person and their representative have the right to be represented by an IMCA as part of the MCA DOLS process.

If the person has no family member or carer to support them through the assessment process, the managing authority must tell the supervisory body and an IMCA must be appointed at once, under section 39A of the Act.

The person and the RPR also have a statutory right of access to an IMCA once a deprivation of liberty has been authorised, under section 39D of the Act (this is known as a section 39D IMCA). A relevant person with a 'paid' representative has no such right since it is assumed that the 'paid' representative would meet their advocacy support needs.

Once a RPR has been appointed, there may be less for the IMCA to do. However, the IMCA can still:

- apply to take the person's case to the Court of Protection
- be retained by the supervisory body if it believes the relevant person's rights would be better protected.

## What is the role of the Care Quality Commission?

The Care Quality Commission (CQC) will monitor MCA DOLS operations. The CQC will have the power to visit hospitals and care homes and interview the people involved in each case. They will also be able to access and view all relevant records to ensure that people are being adequately protected.

## What is the role of the Court of Protection?

If a person, or their representative, does not agree with the decision to deprive them of their liberty, the new system gives them the right to appeal against the decision in the Court of Protection. This provides a forum for solving problems related to the Mental

Capacity Act in general and gives people the right of appeal in MCA DOLS cases to ensure compliance with the rulings of the ECtHR.

The person who is likely to be deprived of their liberty, or somebody acting on their behalf, can appeal to the Court of Protection before the authorisation process is completed. The Court of Protection will decide whether to proceed before an authorisation decision has been made.

If an urgent authorisation has been granted, the Court of Protection can:

- determine if the urgent authorisation should have been granted
- determine how long the authorisation should be in place
- examine the reasons why the urgent authorisation has been granted.

After a standard authorisation has been granted, the Court of Protection has powers similar to those listed above. However, it can also determine whether the person meets one or more of the MCA DOLS qualifying requirements or if the standard authorisation should be subject to any specific conditions.

The following people have an automatic right of access to the Court of Protection once an urgent or standard authorisation has been granted:

- the person deprived of their liberty
- their representative
- the donee of a relevant lasting power of attorney
- a deputy appointed by the Court of Protection to act for the person concerned.

## 5. Further sources of information and guidance

If you want to find out more about what MCA DOLS means for you or your organisation, visit our website at:

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

You can contact the team in writing at:

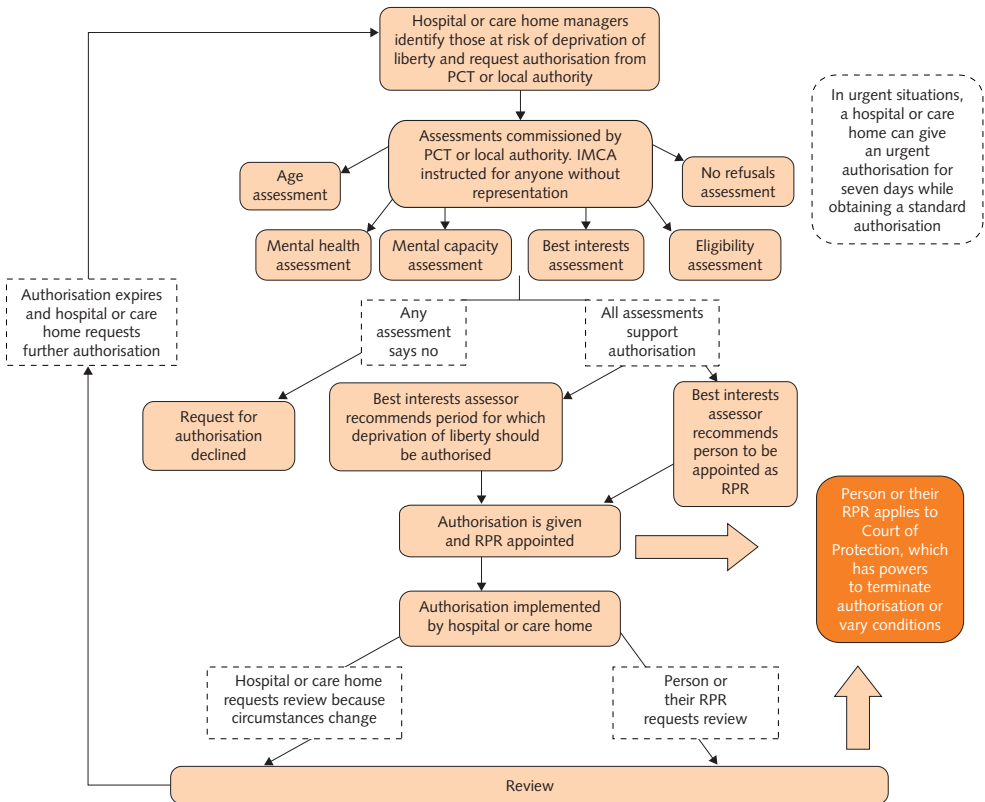
MCA DOLS Implementation Programme  
Department of Health  
Wellington House, Room 124  
133–155 Waterloo Road  
London SE1 8UG

Email: [dols@dh.gsi.gov.uk](mailto:dols@dh.gsi.gov.uk)

Information on the Mental Capacity Act Deprivation of Liberty Safeguards is brought to you by the following organisations:



## Appendix: An overview of the MCA DOLS process



Other booklets in this series include:

- OPG601** Making decisions... about your health, welfare or finances. Who decides when you can't?
- OPG602** Making decisions: A guide for family, friends and other unpaid carers
- OPG603** Making decisions: A guide for people who work in health and social care
- OPG604** Making decisions: A guide for advice workers
- OPG605** Making decisions: An Easyread guide
- OPG606** Making decisions: The Independent Mental Capacity Advocate (IMCA) service
- OPG607** Deprivation of Liberty Safeguards: A guide for primary care trusts and local authorities
- OPG609** Deprivation of Liberty Safeguards: A guide for relevant person's representatives

Making decisions booklets are available to download at:  
[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

If you want to find out more about what the Deprivation of Liberty Safeguards (DOLS) mean for you or your organisation, the DOLS Code of Practice, which explains in detail how the DOLS' processes and procedures work, can be downloaded at: [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

Or you can visit the website at:  
[www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm](http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm)

Making decisions booklets are available in English, Welsh and Braille formats. There is also an Easyread booklet and Easyread Audio version. Contact the Office of the Public Guardian for more information.

- OPG608** Deprivation of Liberty Safeguards: A guide for hospitals and care homes

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