

Policy and Procedure on Deprivation of Liberty

Purbeck View School

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1. Monitoring and Review

- 1.1. The Proprietor will undertake a formal review of this policy for the purpose of monitoring and of the efficiency with which the related duties have been discharged, by no later than three years from the date of approval shown above, or earlier if significant changes to the systems and arrangements take place, or if legislation, regulatory requirements or best practice guidelines so require.
- 1.2. The local content of this document will be subject to continuous monitoring, refinement and audit by the Head of Service.

Signed:



Jeremy Wiles
Group Executive Director – Children's Services
Date: August 2021



Paul Kniveton
Head of School
January 2022

2. Terminology

- 2.1. Our aim is to use consistent terminology throughout this policy and all supporting documentation as follows:

'Establishment' or 'Location'	This is a generic term which means the Children's Home/school/college. Purbeck View School is a school and home.
Individual	This means any child or young person under the age of 18 or young adult between the ages of 18 and 25. At Purbeck View School we have children and young people attending and/or residing between the ages of 7 – 19.
Head of Service	This is the senior person with overall responsibility for the school and home. At Purbeck View School this is the Head of School and the Registered Manager who are Paul Kniveton and Isabel Clark.
Key Worker	Members of staff that have special responsibility for Individuals residing at or attending the Establishment.
Parent, Carer, Guardian	Means parent or person with Parental Responsibility (PR)
Regulatory Authority	Regulatory Authority is the generic term used in this policy to describe the independent regulatory body responsible for inspecting and regulating services. At Purbeck View School this is Ofsted.
Social Worker	This means the worker allocated to the child/family. If there is no allocated worker, the Duty Social Worker or Team Manager is responsible.
Placing Authority	Placing Authority means the local authority/agency responsible for placing the child or commissioning the service
Staff	Means full or part-time employees of Cambian, agency workers, bank workers, contract workers and volunteers.

3. Purpose

- 3.1. The purpose of this Policy and Procedure is to inform managers and staff within Care and Education provisions about the operational delivery of the Mental Capacity Act 2005 including Deprivation of Liberty Safeguards (DoLS) and what approached should be used and steps taken where Deprivation of Liberty Safeguards don't apply.
- 3.2. This Policy aims to outline the responsibility and process where a deprivation of liberty assessment needs to be undertaken. The subject of deprivation of liberty is relevant to all settings where Individuals receive care and treatment, however consideration must also be given to other settings such as residential provisions where children are being educated and also looked after and/or cared for including those under or over the age of 16 where standard Deprivation of Liberty Safeguards wouldn't apply. Regardless of the type of the provision all managers and staff must give consideration to situation in which delivery of care arrangements/regime may amount to deprivation of liberty and must take immediate steps and seek further guidance from the local authority about DOL application.
- 3.3. The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The Liberty Protection Safeguards will deliver improved outcomes for people who are or who need to be deprived of their liberty. The Liberty Protection Safeguards have been designed to put the rights and wishes of those people at the centre of all decision-making on deprivation of liberty.
- 3.4. The Liberty Protection Safeguards will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.
- 3.5. People who might have a Liberty Protection Safeguards authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.
- 3.6. The Liberty Protection Safeguards are planned to come into force in April 2022 and until then services must follow this policy.
- 3.7. You can read about key changes in the [Government's update](#) published on 3rd of August 2021. However one of the key changes is about extending the scheme to and 16 and 17-year-olds.
- 3.8. Currently, when a 16 or 17-year-old needs to be deprived of their liberty, an application must be made to Court of Protection. Under the Liberty Protection Safeguards, Responsible Bodies will be able to authorise the

arrangements without a Court order. This will deliver more proportionate decision-making about deprivation of liberty and minimise potential distress and intrusion for young people and their families.

- 3.9. More information about Liberty Protection Safeguards including overview of the process and explanation about young people in education settings and social care setting including children's homes and Responsible Bodies can be downloaded from [here](#).
- 3.10. This policy affects all managers and staff.
- 3.11. For further information, please refer to Deprivation of Liberty Safeguards - Code of Practice to supplement the main Mental Capacity Act 2005 [Deprivation of liberty safeguards code of practice.pdf](#).
- 3.12. The aim is to implement the safeguards in respect of Individuals who lack capacity to make certain decisions regarding their care. The safeguards are designed to protect the interests of an extremely vulnerable group of Individuals and to:
 - Ensure people can be given the care they need that might involve restrictions imposed as part of the care regime in a lawful way that gives protection to the rights of Individuals,
 - Prevent arbitrary decisions that deprive vulnerable people of their liberty,
 - Provide safeguards for vulnerable people and provide them with rights of challenge against unlawful detention.

4. Policy

- 4.1. If a person has mental capacity it means they are able to make decisions for themselves. When a person lacks mental capacity, it means that they are unable to make a particular decision or take a particular action for themselves, at the time the decision or action needs to be taken.
- 4.2. A person may lack capacity to make some decisions for themselves, but will have capacity to make other decisions (this could be about being able to decide what to wear or eat, but not being able to make a decision about financial matters).
- 4.3. A person may lack capacity to make a decision for themselves at a certain time, but may be able to make that decision at a later date. This could be because they have an illness or condition that means their capacity changes.
- 4.4. Some people may always lack capacity to make some types of decisions, while others may learn new skills that enable them to gain capacity and make decisions for themselves.
- 4.5. The law says that when someone lacks mental capacity, they are unable to do one or more of the following:
 - Understand information given to them
 - Retain that information for long enough to be able to make a decision
 - Weigh up the information available to make a decision
 - Communicate their decision
- 4.6. The Mental Capacity Act (2005) is the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves. It introduced a number of laws to protect these individuals and ensure that they are given every chance to make decisions for themselves.
- 4.7. The underlying philosophy of the Mental Capacity Act is to ensure that any decision made or action taken, on behalf of a person who lacks the capacity to make that decision or take that action themselves, is made in their best interests.
- 4.8. This Policy upholds the principles as described in Chapter 1 of the MCA Code of Practice.
- 4.9. Cambian Group will deliver services to individuals within the legal framework of the MCA 2005 and in accordance with the MCA Code of Practice and the DoLS Code of Practice. Locations must adapt their care planning processes to incorporate consideration of whether a person has capacity to consent to the services

which are to be provided (including any aspect of the care that may amount to a deprivation of liberty) and whether their actions, including any aspect of the care plan, are likely to result in a deprivation of liberty.

Examining Capacity

- 4.10. Where practicable at the time of pre-admission assessment, or at the admission stage if otherwise not possible, the capacity of every individual (who is 16 years old and over) to consent to the placement should be assessed, including any care/treatment proposed. Regardless of any doubt concerning capacity, a mental capacity assessment should be conducted. This role is often carried out by the Individual Social Worker or other nominated by LA professional, however Registered Manager should liaise with relevant Social Workers to agree on who and when by relevant capacity assessments will be carried out.
- 4.11. The admission and proposed care and treatment should be explained to the Individual. Where the individual may have difficulty in understanding the information relevant to the care and treatment, attempts should be made to explain by using visual/aids suitable to the Individual's level of understanding that might enable them to obtain a better understanding of the proposed admission.
- 4.12. Staff are to maintain an awareness of the individual's capacity and, in particular, if any circumstances indicate a change in capacity. Regular checks of capacity are to be made if an Individual capacity to make decisions appears to fluctuate. If a change is noted then this is to be recorded in the Individual's care plan/placement plan and the Registered Manager is to be immediately informed.

Gillick Competency and Fraser guidelines

- 4.13. When practitioners are trying to decide whether a child is mature enough to make decisions, they often talk about whether the child is 'Gillick competent' or whether they meet the 'Fraser guidelines'. The Gillick competency and Fraser guidelines help people who work with children to balance the need to listen to children's wishes with the responsibility to keep them safe.
- 4.14. This [Gillick-competency-factsheet](#) outlines key findings from a 1985 judgement by the House of Lords on a legal case which **looked specifically** at whether doctors should be able to give contraceptive advice or treatment to under 16-year-old girls without parental consent.
- 4.15. Adults working or volunteering with children in any context need to consider how to balance children's rights and wishes with their responsibility to keep children safe from harm. Key issues to bear in mind include:
 - The child's safety is paramount. Child protection concerns must always be shared with the relevant agencies, even if this goes against the child's wishes.
 - Underage sexual activity is a possible indicator of child sexual exploitation and children who have been groomed may not realise they are being abused.
 - Sexual activity with a child under 13 is a criminal offence and should always result in a child protection referral.

Prevention of Deprivation of Liberty

- 4.16. The best approach to dealing with a potential deprivation of liberty situation is to try to prevent it happening in the first place. This may be possible through good care planning and communication. Effective care plans should seek to maximise the relevant individuals opportunity for choice and deliver care in the least restrictive way. The involvement of the relevant individual's family, friends and carers will be crucial to this process.

Contact with family friends and carers must be encouraged and maintained as much as possible, unless there are concerns about the contact which must be thoroughly and openly assessed.

- 4.17. All Cambian locations encourage and facilitate the use of advocacy services. An individual must have the benefit of regular care plan reviews which must consider the current circumstances, with a view to minimising the level of necessary restriction and maximising the individual's involvement and capacity.

Deprivation of Liberty (DOL) and Acid test

- 4.18. There is no single definition of deprivation of liberty, however we have used definition from the Article 5 of the Human Rights Act - see Appendix 1 Definitions. In 2014 the Supreme Court handed down their judgment in the landmark cases of P v Cheshire West and Chester Council and P and Q v Surrey County Council.
- 4.19. 'Acid test' definition - see appendix 1 Definitions, interpretation of 'not free to leave' which is one of two components of the acid test has been subject to various professional discussions and disputes.
- 'Not free to leave' - If a person is not free to leave the place where they are being cared for, they may be deprived of their liberty. It is important to note that this can be hypothetical. The person may not be physically able to leave by themselves, but the question is still the same – if they tried to leave, would they be stopped? If the answer is yes – i.e. they did not consent to this care and are not free to leave – then they are being deprived of their liberty.
 - 'Continuous supervision and control' - The ECtHR case-law indicates strongly that the requirement for continuous supervision and control cannot and should not be interpreted as requiring 24 hour monitoring and/or that the person is to be physically accompanied over a continuous 24 hour period. In other words, if the individual is subject to such monitoring or such degree of accompaniment, then the necessary degree of continuity or completeness will be satisfied. But it is capable of being satisfied even if the supervision and control is 'lighter touch.'

The Supreme Court clarified that factors which are NOT relevant to determining whether or not there is a deprivation of liberty for such people include:

- The person's compliance or lack of objection,
- The reason or purpose behind a particular placement, and
- The relative normality of the placement (whatever the comparison is made with).

Deprivation of Liberty Safeguards (DoLS)

- 4.20. The safeguards were introduced in 2009 (as part of the Mental Capacity Act) and apply to people in England & Wales who have a mental disorder that causes them to lack capacity to consent to the arrangements made for their care or treatment (CQC registered care home or hospital), but for whom receiving care that amounts to a deprivation of liberty may be necessary to protect them from harm and appears to be in their best interests.
- 4.21. Individuals who may be subject to Deprivation of Liberty Safeguards are people who are 18 years and above who have an impairment in the functioning of their mind or brain. This may include those affected by the following conditions/diagnoses and as a result of the impairment the person must be assessed as lacking

capacity to consent to the care regime that involves steps that may constitute a deprivation of the Individual's liberty:

- Learning disabilities
- Dementia
- Autism
- Brain or Neurological injury/conditions

4.22. DoLS do not apply to people detained under the Mental Health Act 1983, nor do they apply to people (whether or not detained) receiving psychiatric care in hospital to which they object or would object if they could.

Person responsible for providing treatment and care

- 4.23. Within a hospital setting the treating clinician is the individual responsible for providing individual treatment and care.
- 4.24. Within a care home without nursing this role will be carried out by the Senior Leadership Team (SLT), usually Head of Care/Registered Manager who is part of SLT and who is registered with CQC/CIW/Ofsted.

CQC registered care homes and hospitals

- 4.25. Sometimes when a person lacks capacity to make a decision about their care and support arrangements, it may be necessary for the Registered Manager to request an authorisation to legally deprive a person of their liberty. This could be because, for a person's own safety, it may be necessary to restrict their freedom (by stopping them from leaving the place where care or treatment is being provided), however deprivation of liberty must not be used as a form of punishment and should be imposed for the shortest period necessary.
- 4.26. The care home or hospital is known as the 'Managing Authority' and must seek authorisation from the local authority known as the 'Supervisory Body' before the deprivation of liberty arrangements begin or as soon as the managing authority suspects that a DoL assessment may be required. Before granting an Authorisation the Supervisory Body must be satisfied that the following assessments are completed and provide the required information:
- Age (is the person aged 18 or over)
 - Mental Capacity (does the person lack capacity to consent to the arrangements proposed for their care at the relevant point in time?)
 - Deprivation of Liberty Assessment
 - Best Interests Assessment (to establish that a Deprivation of Liberty, if it occurs, will be in the person's best interests and will be the most proportionate response to the likelihood of harm)
 - Eligibility (to establish the relevant person's status, or potential status under the Mental Health Act 1983).
 - No refusals (to establish whether the arrangements would be prevented by an existing decision making authority)
- 4.27. Where it becomes apparent following admission to the facility that a person may require assessment under the DoLS that Managing Authority may grant an Urgent Authorisation (at the same time as applying for a Standard Authorisation) which lasts for 7 days allowing for the assessment process to take place. This can be extended for a further 7 days by the local authority if there are exceptional reasons why the assessment cannot be completed in the 7 day period. Registered Managers should liaise with the Supervisory Body to make sure that the process runs smoothly. Registered Managers must monitor if the response from the Managing Authority has been received and in case it hasn't – seek explanation immediately.
- 4.28. The maximum period for a Standard Authorisation that can be given is 12 months, though the Best Interest Assessor should only recommend authorisations for as long as the person is likely to meet all the qualifying requirements. The assessor will need to be confident that there is unlikely to be any change to the person's circumstances within the timescales. The Managing Authority should request a review if any of the qualifying

requirements come into doubt and/or if the Authorisation is close to expiry. It is suggested that the period of notification for reassessment in the event of expiry be clarified with the supervisory body be clarified

- 4.29. If there is nobody appropriate to consult, other than people engaged in providing care or treatment for the relevant person in a professional capacity or for remuneration, the Managing Authority must notify the Supervisory Body when it submits the application for the Deprivation of Liberty Authorisation. The Supervisory Body must then instruct an IMCA to represent the person. It is particularly important that the IMCA is instructed quickly if an Urgent Authorisation has been issued.

Provisions other than CQC registered care homes and hospitals

- 4.30. The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other **settings** the Court of Protection can authorise a deprivation of liberty.
- 4.31. It is being suspected that nationally there are likely to be a number of children and young people with disabilities in for example foster homes, children's homes, residential special schools, boarding schools and elsewhere, who are potentially deprived of their liberty without lawful authority. They have rights under article 5 of the European Convention on Human Rights not to be deprived of their liberty without legal authorisation. However, **the Deprivation of Liberty Safeguards** only apply to people who are 18 and over and who live in CQC registered care home or hospital. Cambian Group is fully committed to ensuring that there are no children or young people being deprived of their liberty without legal authorisation and will seek advice from relevant authorities on individual cases.
- 4.32. It is settled law that parental responsibility continues up to and until a child's 18th birthday. The principle that parental responsibility extends to children aged 16 or 17 was accepted by the Court of Appeal in *Re W (A Minor) (Medical Treatment: Court's Jurisdiction)* [1992] 4 All ER 627 but that doesn't mean it extends in all regards.
- 4.33. Local Authorities are under a duty to consider whether any children in need or children looked after are subject to restrictions amounting to deprivation of liberty. It is the provider's responsibility to identify potential deprivation of liberty circumstances and refer each case to relevant local authority for an assessment and for them to make a decision about whether or not any of the cases referred meet criteria for court application.

Residential Education

- 4.34. Depending upon type of registration, individual circumstances and age of the children and young people - individual cases where care arrangements may amount to deprivation of liberty must be referred to local authority for an assessment and further guidance.
- 4.35. Where an Individual is in the school from the age of 16, receives care in circumstances that may amount to a deprivation of liberty in respect of which the person lacks capacity to consent, the issue must be raised as a matter of urgency with relevant local authority including the Commissioner to see whether care can be delivered in less restrictive way and, if not - the Commissioner should make an application to the Court for an authorisation.

Age, accommodation and other specific circumstances

- 4.36. If a child under 16 is not under a formal care order, parents can authorise deprivation of liberty in the exercise of parental responsibility, for instance, in a hospital, or NHS facility or day care or with a private foster carer, regardless of the child's personal mental capacity. This applies in everyday situations where parental responsibility is not being questioned.
- 4.37. The recent Supreme Court Case of *Re D* (September 2019) has confirmed that parents **cannot consent to the deprivation of liberty of a young person aged 16 or 17**. A court order – usually from the Court of Protection – will be required to authorise the deprivation of liberty, which should be sought by the local authority arranging the placement. The case has also raised some question about whether parents can consent to the deprivation on liberty of children under 16, but as the Courts have not yet expressly ruled on it, it is safe for the time being to continue to rely on parental consent. If a particular situation is a cause for concern (for example involving a competent young person actively refusing accommodation that amounts to a deprivation of liberty) it should

be discussed with the local authority and, if concerns persist raised with relevant Managing Director (Education, Residential Care or fostering).

Accommodating children

- 4.38. Children accommodated under section 17 or section 20 of the Children Act - the court will not need to make any declaration as to the lawfulness of the child's care regime (even if the child is not free to leave), because the regime has not triggered article 5 'process' protection. If a child under the age of 16 is under a care order or accommodated under section 20 as a prelude to child protection proceedings, then notwithstanding a parent's consent, the High Court must be used for the lawful imposition of the regime in human rights terms.
- 4.39. Children under interim care order or a care order - it is already decided that the local authority who has parental responsibility for a child, **could not consent** to the confinement of a child under 16, which would otherwise amount to a deprivation of liberty. In all cases, the local authorities responsible for care planning, commissioning and best interests decision making, as well as funding, need to be the ones referring cases to Court.

Section 20 concerns

- 4.40. Where a child is NOT looked after, the exercise of parental responsibility may amount to valid consent to a child's confinement, unless there are safeguarding concerns where different consideration may apply e.g. application to a family court. However not all children accommodated under section 20 should be seen as having parents whose exercise of parental responsibility has been or is currently being questioned.
- 4.41. All such children count as 'looked-after' children, but the scope for section 20 duties does not merely cover those at risk of parental abuse or neglect – it extends to inability to provide suitable accommodation or care. It is unlikely that many disabled children's residential placements are properly seen as admitted under section 17 of the Children Act, when a duty could be regarded as having been triggered. A child aged under 16 could be placed in a specialist setting such as Children's home which is part of a specialist education, with the agreement of his or her parent, under section 20, and parental responsibility would not have changed or been called into question. The parent's consent to the details of the care plan involving deprivation of liberty would still be valid but each case should be carefully considered with the local authority which should have relevant details about particular arrangements.

Post 16

- 4.42. Any young person over the age of 16 has rights to consent to a care, treatment and accommodation by local authority and this should form basis of best practice arrangements.
- 4.43. A young person 16 or over, not under a care order lacking capacity to consent and being deprived of their liberty, the commissioners must apply to the Court of Protection for authorisation. This is because the Mental Capacity Act's coverage of 16 and 17 year old, even though they remain children, rejects parents' ability to consent to that which is otherwise not authorised.
- 4.44. A young person 16 or over, lacking capacity to consent or refuse accommodation under section 20, his/her parental responsibility holder(s) need to consent to the section 20 arrangement for it to be lawful. They would (logically) be agreeing with arrangements that amount to a deprivation of liberty as parents, but they cannot **(since the Supreme Court case of Re D in September 2019)** consent to it in reliance on parental authority. Such a situation would be a clear case for using the streamlined Re X type of application to the Court of Protection provided for by the new rules of court for an over 16-year-old.
- 4.45. If a capacitated young person of 16 or 17 does not agree with the s20 confinement arrangement, and the regime or treatment amounts to, (or the proposed treatment would require) deprivation of liberty, the arrangement would have to be authorised by the High Court. In another way – the regime proposed under s20 accommodation care plan needs to be consented to by any 16 or 17 year old if it satisfies the acid test: the parents cannot agree to the regime, as part of agreeing to the accommodation under sec 20.
- 4.46. A young person 16 or over, under a care order of a full or interim nature, other than a capacitated young person positively and freely consenting to the regime – this is outside the zone of parental responsibility and Court of Protection application is required, even if the parents are in agreement. However close the parents are to their child and however co-operative they are with treating clinicians,

the parent of a 16 or 17 year old young person may not consent to their confinement which, in the absence of a valid consent, would amount to a deprivation of that young person's liberty.

Deprivation of Liberty and Restraint

- 4.47. Whilst the DoLS authorise the detention, they do not authorise the care and treatment, which must be delivered in accordance with the MCA. The Mental Capacity Act Section 5 provides that a person shall not be liable for an act in connection with care or treatment, if it is reasonably believed that the individual lacks capacity, reasonable steps having been taken to ascertain this, and the act carried out is reasonably believed to be in the individual's best interests. Where restraint is required for an act under section 5, it must also fulfil the requirements of Section 6 – it must be necessary to prevent harm to the person, and must be proportionate to the likelihood and seriousness of that harm. Section 4B makes further provision in relation to emergency and life-threatening circumstances, when acts may be permitted that would amount to a deprivation of liberty, while the matter is brought to the Court for resolution if need be.
- 4.48. Any restraint that is used under sections 4B, 5 and 6 must be reasonable and proportionate to the risk of harm to the person.
- 4.49. See CQC and SCIE guidance: Restraint: How to move towards restraint free care, also read the following documents:

[CQC Brief guide - Restraint](#)

www.scie.org.uk/publications/ataglance/ataglance16.asp

- 4.50. There is a fine line between a lawful and an unlawful deprivation of liberty. The use of inappropriate restraint or depriving someone without an authorisation may be a potential safeguarding issue. Professionals need to be aware of this when considering care that is being provided.

Deprivation of Liberty – summary of approach

- 4.51. Deprivation of liberty **safeguards** only apply to people aged 18 and over who live in CQC registered care home or hospital.
- 4.52. Deprivation of liberty **Safeguards** cannot be used to authorise deprivation of liberty taking place in a **Children's Home**, here applications must be made to the appropriate court depending on individual's circumstances and age of the child/young person.
- 4.53. Children's Homes are subject to the Children's Homes Regulations 2015. These Regulations provide that Children's Homes and Residential Special Schools should not restrict the liberty of any child as a matter of routine. As a general rule the Court of Protection cannot authorise a deprivation of liberty in non-secure Children's Homes or Residential Special Schools on the basis that such an order may run contrary to Government Regulations. However this is an evolving area of law. If a child or young person not having yet attained the age of 18 requires care in circumstances that necessarily involves a deprivation of that person's liberty in a school governed by the above regulations, advice should be sought in conjunction with the commissioner, as in some circumstances the application to the Court of Protection might be required.
- 4.54. In circumstances where a person has reached 18 years (or over) and remains in a Children's Home, the 2015 Regulations will not apply in view of that person's age. If such a person is subject to a regime that amounts to a deprivation of liberty in the home and lacks capacity to consent to these arrangements, then an application to the Court of Protection should be made to authorise deprivation of liberty in the Children's Home. Such situations are likely to be fairly rare and are most likely to arise where arrangements have not yet been fully implemented to move the person to another supervised environment before they have reached the age of 18 years. An advice should be sought in conjunction with the commissioner, as in some circumstances the application to the Court of Protection might be required.
- 4.55. This is a fairly complex area and legal advice should be sought at the earliest opportunity. However it should also be noted that ultimately the decision to place the individual is a matter for the commissioner and

discussion should be had with them as the possibility of funding or bringing such an application in the first instance.

5. Procedure

Making an application for Deprivation of Liberty Safeguards authorisation (CQC registered care home or hospital)

- 5.1. Applications should be sent on the standard forms to the location local DoLS office. Forms are available from:
<https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance>
- 5.2. Wherever possible, try and make contact with your local Deprivation of Liberty Safeguards office if you require any advice before submitting an application.
- 5.3. If Registered Manager is proposing to make an application or give an urgent authorisation on behalf of Cambian in its capacity as Managing Authority, they must inform:
 - Individual
 - Family and Carers
 - Care Quality Commission - notification about the outcome of the application (see Notifying CQC section below)
 - Nominated Individual
 - Manager responsible for commissioning the care package
- 5.4. Request for a standard authorisation should include:
 - A copy of the most recent care plan
 - A copy of any relevant risk assessment
 - Any other information relevant to the deprivation including minutes of best interest decision meetings
- 5.5. To notify the Supervisory Body that you have issued an urgent authorisation include:
 - Form No. 1 (Urgent and standards request)
 - and all of the above
- 5.6. Managing Authority (Registered Manager) must give an urgent authorisation in only limited specific cases where required to do so (see MCA Schedule A1, paragraph 76 for further guidance).

Notifying CQC

- 5.7. Registered Managers must notify the Care Quality Commission about Deprivation of Liberty applications as soon as they know the outcome of the application. The form is available on CQC website.
- 5.8. Notification only need to be submitted to CQC when the outcome of the application is known or when the application has been withdrawn.

Timescales

- 5.9. When the Supervisory Body is notified of an urgent authorisation which will need to be accompanied by an application for a Standard Authorisation, regulations provide that the Supervisory Body must complete the assessment within the duration of the Urgent Authorisation.
- 5.10. If it appears that the standard authorisation will not be issued within 7 calendar days, the Managing Authority (Registered Manager) may request an extension of the Urgent Authorisation for another 7 days. This can only

be extended by the Supervisory Body once and only in exceptional circumstances. The person submitting application must be fully aware of the timing involved and seek assistance closer to the end of 7 days period.

- 5.11. When Supervisory Body receives an application for a Standard Authorisation, the assessments must be undertaken and a decision must be made within 21 calendar days.

Responses from Supervisory Body

- 5.12. They will:

- Acknowledge receipt of the application
- Request the involvement of an IMCA if that is required – DOLS form 11
- Appoint a best interests assessor (BIA), BIA will make direct contact
- Appoint a psychiatrist to complete necessary assessments

- 5.13. On receipt of Deprivation of Liberty assessments, the DoLS team will arrange for a representative of the Supervisory Body to complete forms indicating whether an authorisation has been granted.

- 5.14. The DoLS team will send a copy of the authorisation or other notification of outcome to the care provider, the person, and any other interested party as listed in the best interests assessment.

- 5.15. The location, the individual, and their representative will also receive copies of assessments. (A copy of the assessment will be kept in the individual care file). The individual will also have their rights read to them in the format they can understand, on the day of the authorisation then three monthly.

- 5.16. If Cambian location has any questions regarding the authorisation or conditions these should be raised with the local DoLS team who conducted the assessment.

- 5.17. If the Best Interests Assessor reports that the individual is deprived of their liberty, but they should not become subject to an authorisation (because it is not in their best interests), an urgent review should be arranged and urgent steps should be taken to ensure the unauthorised deprivation of liberty does not continue. This will also include urgently reviewing the individual care plan, considering with the commissioner and others involved in the care whether any less restrictive alternatives are possible and where not whether the matter should be referred to the Court Of Protection for consideration or back to the Supervisory Body where it is felt that key information has been missed or ignored. It is also a matter upon which urgent advice should be sought.

Challenges to an authorisation of Deprivation of Liberty

- 5.18. Section 21A of the Mental Capacity Act 2005 (MCA) gives the Court of Protection jurisdiction to determine a number of matters which relate to Deprivation of Liberty Safeguards standard or urgent authorisations under Schedule A1 of the Mental Capacity Act (2005). The scope of s21A is broad and goes beyond simply deciding whether or not an authorisation should remain in place. Appeals under s21A can involve complex issues of liability as well as bringing in broader best interests and welfare issues which still relate to the issue of the

reason why the person was detained. For example, Individual wants to return to their own home, but the statutory body wants Individual to go and live in residential care.

- 5.19. The Court may determine where a Standard Authorisation has been given, whether the relevant person meets one or more of the qualifying requirements:
 - the period during which the standard authorisation is to be in force
 - the purpose for which the standard authorisation is given
 - the conditions subject to which the standard authorisation is given
- 5.20. If the court determines any question in relation to points above, the court may make an order to vary or terminate the standard authorisation, or directing the supervisory body to vary or terminate the standard authorisation.
- 5.21. Where an urgent authorisation has been given, the court may determine:
 - whether the urgent authorisation should have been given
 - the period during which the urgent authorisation is to be in force
 - the purpose for which the urgent authorisation is given
- 5.22. Anyone connected with the person deprived of their liberty can challenge an authorisation by bringing proceedings under Section 21A of the Mental Capacity Act 2005 in the Court of Protection. In order to benefit from non means tested legal aid the case must be brought by the individual concerned or by their Relevant Person's Representative.
- 5.23. Those with automatic rights to access the Court of Protection are:
 - a person who is considered to lack capacity in relation to a specific decision or action
 - the donor of Lasting Power of Attorney to who an application relates or their donee
 - a deputy who has been appointed by the Court to act for the person concerned
 - a person named in an existing Court Order to which an application relates
 - the person appointed by the individual County Council as the Relevant Person's Representative
 - All others need to seek permission from the Court before making an application by completing the relevant application form.
- 5.24. Legal Aid is available for advice on representation before the Court of Protection for people deemed to lack capacity in relation to a specific decision or action.

Appointment of relevant individual's representative

- 5.25. The relevant individual's representative is appointed by the supervisory body. This person will maintain contact with the relevant individual and support them in matters relating to the DoLS safeguards. A representative can trigger a review, use the complaints procedures or make an application to the Court of Protection. If the relevant individual has the capacity to select their own representative, they should be enabled to do so. If the relevant individual lacks the capacity to select their own representative, the best interest assessor will identify a person whom they would recommend to become the representative in accordance with the guidance in Chapter 7 in the DoLS Code of Practice. The process of selecting a representative must begin as soon as the

best interest assessor is selected following the application for standard authorisation. The best interest assessor will record the selection process using DoL FORM 1.

Deprivation of Liberty review

- 5.26. The Managing Authority (Cambian) MUST request a review if:
- the individual no longer (or it appears they may no longer) meet the criteria for the authorisation
 - the individual still meets the criteria, but for different reasons than originally provided
 - the individual becomes subject to any section of the Mental Health Act
 - the location is unable to comply with any of the conditions set on the authorisation
 - A request may be made by phone or in writing.

Review of standard authorisation – Part 8 reviews

- 5.27. Part 8 reviews are so described in this guidance to distinguish these from other routine care reviews, as they are subject to the provisions of Part 8 of Schedule A1 of the Mental Capacity Act 2005.
- 5.28. A Managing Authority (Cambian location) can carry out a Part 8 review at any time, but must do so if requested to do so by an eligible person, each of the following is an eligible person:
- The relevant person
 - The relevant person's representative
 - The Managing Authority
- 5.29. A Managing Authority may request a Part 8 review at any time but must request one if:
- One or more of the requirements is no longer met, or may not be met,
 - There has been a change in the relevant person's situation and as a consequence it is necessary to amend, delete or add any conditions,
 - The reasons the relevant person met the requirements have changed since the time the standard authorisation was given.
- 5.30. The IMCA should support the relevant individual to make use of the review process if appropriate and has the right to make submissions about having a review.

Procedures for Part 8 reviews:

- 5.31. If the managing authority is to request a Part 8 review, it will use DoL FORM 10.
- 5.32. The supervisory body may decide to carry out a Part 8 review even if there has been no direct request to carry out a review.
- 5.33. The supervisory body will give notice to the relevant individual, their representative and the managing authority that a review is to be carried out. The supervisory body will then consider whether any of the 6 qualifying requirements also need to be reviewed.
- 5.34. If it is possible that the relevant individual no longer meets one or more qualifying requirements, the supervisory body must arrange for fresh assessments to be carried out for each qualifying requirement that needs review. The supervisory body will use DoL FORM 9 to record this decision.

Part 8 review outcomes:

- 5.35. If there are conditions which need changing or reasons for authorisation have changed, the Supervisory Body must complete DoL FORM 5, circulating to the parties specified on the DoL form.
- 5.36. If the relevant individual does not meet the qualifying requirements, then the standard authorisation must cease. Where a standard authorisation ceases to be in force, the Supervisory Body should record this using DoL FORM 9, circulating to the parties specified on the form.

- 5.37. Suspension of standard authorisation where the relevant individual is detained under the Mental Health Act 1983, the managing authority must notify the supervisory body. The supervisory body will suspend the authorisation. The managing authority completes DoL FORM 9.
- 5.38. If the relevant individual becomes eligible for the DoL safeguards again within 28 days, the managing authority completes DoL FORM 2 to inform the supervisory body. The supervisory body will remove the suspension. If no such notice is given by the managing authority within 28 days, the authorisation will be terminated.

Termination (standard authorisation)

- 5.39. Paragraph 8.8 of the Code of Practice makes it clear that if the Managing Authority decides that a deprivation of liberty is no longer necessary then they must end it at once by adjusting the care plan or implementing whatever change is required. The managing authority must apply to the supervisory body to review, using DoL FORM 10 and, if appropriate formally terminate the authorisation. The relevant person should never continue to be subject to the authorisation simply because it is due to end in the near future anyway.
- 5.40. Managing Authority should be aware that if the relevant individual transfers from a Cambian hospital or care home to another Cambian hospital or care home, then any authorisation must end and a new standard authorisation be applied for (and, if relevant, an urgent authorisation arranged).
- 5.41. If the Managing Authority does not respond within 10 working days before the end of the authorisation by either requesting a Part 8 review or a new authorisation, the Supervisory Body should remind the Managing Authority and urgently notify the commissioners of the relevant person's position. The commissioners should visit and review as soon as practicable, but within 5 working days at the most.

Reasons for termination (standard authorisation)

- 5.42. The following reasons are summarised from DoL FORM 9:
 - 28 days have elapsed since notice was given by the managing authority that the relevant person had ceased to meet the eligibility requirement without the suspension having been lifted.
 - The standard authorisation has expired without it being replaced by a new standard authorisation.
 - A Part 8 review of the standard authorisation has been completed and the person no longer meets the requirements for being deprived of their liberty.
 - Following a change in the person's place of detention, the standard authorisation has been replaced by a new standard authorisation.
 - The Court of Protection or another court has made an order that this standard authorisation is invalid or that it shall no longer have effect.
 - The person has died
 - Some other reason that would need to be described in the form.

Reporting deaths

- 5.43. These should be notified by Cambian, as the Managing Authority, to the Care Quality Commission (CQC).
- 5.44. Under reforms that come into force on 3rd April 2017 Coroners no longer have to hold an inquest if a person dies while subject to a Deprivation of Liberty Safeguards authorisation. Changes introduced through the Policing and Crime Act 2017 mean people who die while deprived of their liberty under the DoLS or a Court of Protection order are no longer classed as having died in 'state detention'. This means the deaths do not trigger an automatic requirement for an inquest. The chief coroner has issued guidance on the new requirements - this says that coroners will still

investigate where there is a concern about the death, such as a concern about the care or treatment the person received before they died, or where the medical cause of death is unknown.

- 5.45.** Where a person is deprived of their liberty by a public authority without authorisation under the Mental Capacity Act, then they are still considered to be 'in state detention' and an inquest must be held, the guidance states.
- 5.46.** Cambian as the managing authority should also notify the following of any death in the duration of a deprivation of liberty authorisation and should confirm to the supervisory body that it has done so:
- The person's representative
 - Any IMCA
 - The Supervisory Body
 - The Court of Protection / Official Solicitor (if involved)
 - The Office of the Public Guardian (if there is or may be a donee of a Lasting Power of Attorney Enduring Power of Attorney or a Deputy).
- 5.47.** The Care Quality Commission has provided guidance on how it will monitor and report on deprivation of liberty safeguards activity and people's experiences of it, in Guidance for CQC staff and providers of registered care and treatment services - The Mental Capacity Act deprivation of liberty safeguards – published May 2009 and available on CQC website.

Suitability of the Mental Health Act

- 5.48.** When considering whether an application for detention should be made under the Mental Health Act instead of relying on DoLS it should be noted that the DoLS safeguards cannot be used if:
- The individual is aged under 18.
 - The individual has made a valid and applicable advance decision refusing a necessary element of the treatment for which they are to be admitted to hospital/care home.
 - The use of the safeguards would conflict with a decision of the individual attorney or deputy or of the Court of Protection; or
 - Where the individual is receiving care in a psychiatric hospital and meets the criteria in section 2 or section 3 of the Mental Health Act and is objecting to being admitted to (or remaining in) the hospital for mental health treatment.

The Mental Health Act and Deprivation of Liberty Safeguards

- 5.49.** The DOLS eligibility assessment will determine whether the person is ineligible for detention under the Safeguards, according to the provisions of Schedule 1A of the Mental Capacity Act 2005.
- 5.50.** Case law GJ v Foundation Trust 2009 has clarified the following point in paragraph 58 of the judgment:
- "It is not lawful for the medical practitioners referred to in [the Mental Health Act], decision makers under the Mental Capacity Act, treating doctors, social workers or anyone else to proceed on the basis that they can pick and choose between the two statutory regimes as they think fit having regard to general

considerations (e.g. the preservation or promotion of a therapeutic relationship with P) that they consider render one regime preferable to the other.”

- If the individual is within the scope of the Mental Health Act, “it is to have primacy when it applies.”
- 5.51.** The purpose of DOLS was to create a procedural framework to protect people who lack capacity from arbitrary deprivation of liberty in the gap where the Mental Health Act does not apply, not to create an alternative system that could be used where the Mental Health Act does apply.
- 5.52.** If an individual could and should have been detained under the Mental Health Act prior to the advent of the DOLS, then this should still be the case, and DoLS should not be seen as creating an alternative.
- 5.53.** The complex provisions that set out ineligibility are at Schedule 1A, and are best understood as providing, in broad terms, that if the Mental Health Act is already being used, or could be used, in a way that provides the person with procedural protection from any arbitrary deprivation of liberty, then the person will be ineligible for DOLS.
- 5.54.** A relevant individual is ineligible for detention under the DOL safeguards if:
- He/she is a patient who is detained the relevant sections of the Mental Health Act , namely:
 - Section 2 Application for admission for assessment
 - Section 4 Application for admission for assessment in emergency cases
 - Section 3 Application for admission for treatment
 - Section 35 Order for Remand to Hospital
 - Section 36 Order for Remand to Hospital
 - Section 37 Hospital order
 - Section 38 Interim Hospital order
 - Section 44 Order for Detention in Hospital
 - Section 45A Hospital Direction
 - Section 47 Transfer direction
 - Section 48 Transfer direction
 - Section 51 Hospital Order
- 5.55.** Note: decisions as to treatment for purely physical health needs must be taken in accordance with the Mental Capacity Act, if Individual lacks capacity, notwithstanding any detention under the Mental Health Act, since

the MHA provides only for compulsory treatment without the person's consent where this is treatment for their mental disorder.

- 5.56. An individual is on leave of absence or conditional discharge under the MHA.
- 5.57. An individual, who has been granted s 17 leave of absence, or s 42 / s 73 conditional discharge, will not be eligible for the Safeguards if there is a conflict between where the patient is required to live under the terms of leave or conditional discharge and the proposed deprivation of liberty authorisation.
- 5.58. The deprivation of liberty safeguards cannot be used as an alternative to recall under the Mental Health Act. The power of recall under the Mental Health Act must be used where this is for treatment of the mental disorder.

An individual is on a Community Treatment Order (CTO)

- 5.59. An individual who is subject to s 17A community treatment order will not be eligible for the safeguards if there is a conflict between where the individual is required to live under the requirements of that order and the proposed deprivation of liberty authorisation.
- 5.60. The deprivation of liberty safeguards cannot be used as an alternative to recall under the Mental Health Act. The power of recall under the Mental Health Act must be used.
- 5.61. Note that if the individual required treatment in hospital for a physical disorder the Mental Health Act could not be used to authorise such treatment, and so the individual could not be recalled under the MHA powers, and s/he would be therefore be eligible for the procedural protection of DOLS for any proposed or actual deprivation of liberty.
- 5.62. An individual who is subject to s7 guardianship application or a s 37 guardianship order will not be eligible for the safeguards if the proposed course of action is not in accordance with a requirement imposed by the guardianship, such as a requirement to live in a particular place.
- 5.63. An individual who is subject to a s7 guardianship application or a s 37 guardianship order will not be eligible for the safeguards if the standard authorisation would authorise detention in a mental hospital for the purposes of medical treatment for a mental disorder and the patient objects and no valid consent has been given by a donee of lasting power of attorney or a deputy.
- 5.64. When an individual is not already under a Mental Health Act regime, as above, but "within the scope" of the Mental Health Act, so that it could (and therefore, in theory, should) be used to give the procedural protection required for any deprivation of liberty, and therefore s/he is ineligible for DOLS.
- 5.65. "Within the scope" of the Mental Health Act means that (in the opinion of the DOLS eligibility assessor) an application could be made to detain P (the potential patient/individual) under s 2 or s3 of the Mental Health

Act, and if such an application were made, Individual could be detained in a hospital for treatment of a mental disorder, and Individual objects (and no valid donee / deputy consents to those issues on P's behalf).

- 5.66. If any of these criteria are not fulfilled, then the Mental Health Act could not be used to provide Individual with the appropriate procedural protection from arbitrary deprivation of liberty, and so s/he would be eligible for DOLS.
- 5.67. For example, if the needs that gave rise to the care plan that would constitute a deprivation of liberty were essentially for physical health needs, then the Mental Health Act could not be used to detain Individual compulsorily, as it only provides for detention for treatment of a mental disorder.
- 5.68. Note that an Individual with a learning disability cannot be treated under section 3 of the Mental Health Act unless they display abnormally aggressive or seriously irresponsible behaviour. If they cannot be treated under the Mental Health Act, they will be eligible for DOLS.
- 5.69. Note that an appropriately appointed donee or deputy can consent to the treatment to which the relevant person objects. This would have the effect of being treatment / care with consent, and so would take Individual outside of both the Mental Capacity Act and DOLS.

Equality and Diversity

- 5.70. DoLS should not impact in any different way on racial or ethnic groups and care should be taken to ensure that the provisions are not operated in a way that discriminates against any particular racial or ethnic groups.
- 5.71. Any decisions taken in respect of the deprivation of liberty of a patient should take account of their cultural, national or ethnic backgrounds. Interpreters should be available, where necessary and reasonably practical, to help communicate with the patient and with the people who have an interest in their care and treatment.

6. Standard Forms, Relevant Documents, Letters & References

- 6.1. Other documents available
 - 50.01 – Your Rights form
 - 50.02 - The Deprivation of Liberty (DoLS) Legal Rights – England / Wales
 - 50.03 – DoLS Easy Read
- 6.2. Codes of Practice
 - DoLS Code of Practice
 - MCA Code of Practice
- 6.3. Other Cambian Policy
 - Mental Capacity and Consent

Appendix 1 - Definitions

Age assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, of whether the relevant individual has reached age 18.

Assessing lack of capacity - The Act sets out a clear test for assessing mental capacity - the ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in section 2 of the Mental Capacity Act 2005.

Assessor - An individual who carries out a Deprivation of Liberty Safeguards assessment(s)

Best interests assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, of whether deprivation of liberty is in an individual's best interests, is necessary to prevent harm to the individual and is a proportionate response to the likelihood and seriousness of that harm.

Bournewood Judgment - The commonly used term for the October 2004 judgment by the European Court of Human Rights in the case of HL v the United Kingdom that led to the introduction of the Deprivation of Liberty Safeguards.

Balance of probabilities- Presence of capacity must be decided on the balance of probabilities, this means the test is whether it is more likely than not, as opposed to "beyond reasonable doubt".

Care home - A care facility registered under the Care Standards Act 2000.

Care Quality Commission – (CQC) The integrated regulator for health and adult social care.

Carer - Someone who provides unpaid care looking after a family member, friend or neighbour who needs support because of sickness, age or disability. In this document, the term carer does not mean a paid care worker.

Code of practice (MCA) 2005 - Code of practice (MCA) This Code of Practice provides guidance for all people working with and/or caring for adults who lack capacity, including professionals, carers and family members.

Code of practice (DOLS) - The DOLS Code of Practice provides guidance for all people working with and/or caring for adults who lack capacity, focusing on those who have a duty of care to an individual who lacks capacity to consent to the care or treatment that is being provided, where that care or treatment may be depriving an individual of their liberty.

SCIE DoLS guidance- Social Care Institute for Excellence Guidance in relation to DoLS process.

Conditions - Requirements that a Supervisory Body may impose when giving a standard deprivation of liberty authorisation, after taking account of any recommendations made by the Best Interests Assessor (BIA).

Consent - Agreeing to a course of action – specifically in this document, to a care plan or treatment regime. For consent to be legally valid, the individual giving it must have the mental capacity to take the decision, have been given sufficient information to make the decision, and not have been under any duress or inappropriate pressure.

Court appointed deputies - The Act provides for a system of court appointed deputies. Deputies are able to (once appointed) take decisions on welfare, healthcare or financial matters in so far as they are authorised to do so by the court of protection. The Deputies will not be able to make decisions concerning life-sustaining treatment. Court appointed deputies will only be appointed if the court cannot make a one-off decision to resolve issues.

Court of Protection - The specialist court for all issues relating to people who lack capacity to make specific decisions.

Decision maker - The MCA Code of Practice refers to people who decide on whether an individual has capacity to take a particular decision "decision makers", or sometimes known as assessors. Assessors / decision makers can be anyone able to undertake the assessment - care workers, nurses, doctors, family members or a social worker. For in-depth decisions a decision maker will be identified as the main link to liaise with all involved. The decision maker is the individual proposing to take an action in relation to the care or treatment of the individual who lacks capacity - i.e. the doctor will be the decision maker for treatment/a surgical decision.

Deprivation of Liberty - a term used in the European Convention on Human Rights addressing circumstances that result in the curtailment of an individual's freedom. Article 5 of the European convention on Human Rights states that

'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. Its meaning in practice is being defined through case law.

Deprivation of liberty safeguards (DoLS) - The Deprivation of Liberty Safeguards are an amendment to the Mental Capacity Act 2005. They apply in England and Wales only. Extra safeguards are needed if the restrictions and restraint used will deprive a person of their liberty. The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other settings the Court of Protection can authorise a deprivation of liberty.

Acid Test - The Supreme Court Judgment in March 2014 clarified that there is a deprivation of liberty for the purposes of Article 5 of the European Court of Human Rights if the 'Acid Test' is met. The acid test sets out questions that should be considered when determining whether an adult **who has been assessed as lacking the capacity to consent to their care arrangements** is being deprived of their liberty or not. The 'acid test' comprises two key questions:

- Is the person subject to continuous supervision and control?
- Is the person free to leave?

Liberty Protection Safeguards (LiPS) - In March 2017, the Law Commission produced its final proposal on a replacement for the Deprivation of Liberty Safeguards (DoLS), and suggested amendments to the Mental Capacity Act itself. The changes to the act are to incorporate the new scheme, called the Liberty Protection Safeguards (LiPS), and to strengthen people's rights in areas such as best interest decisions.

Deprivation of liberty safeguards assessment - Any one of the six assessments, i.e. Age, Mental Health, Mental Capacity, Best Interests, Eligibility, and No refusals that need to be undertaken as part of the Standard Deprivation of Liberty Authorisation process.

Eligibility assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, of whether or not an individual is rendered ineligible for a standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the individual under the Mental Health Act 1983.

European Convention on Human Rights (ECHR) - A convention drawn up within the Council of Europe setting out a number of civil and political rights and freedoms, and setting up a mechanism for the enforcement of the obligations entered into by contracting states.

European Court of Human Rights - The court to which any contracting state or individual can apply when they believe that there has been a violation of the European Convention on Human Rights.

Guardianship under the Mental Health Act 1983 - The appointment of a guardian to help and supervise patients in the community for their own welfare or to protect other people. The guardian may be either a local authority or a private individual approved by the local authority.

Independent Mental Capacity Advocate (IMCA) - Someone who provides support and representation for an individual who lacks capacity to make specific decisions, where the individual has no one else to support them. The IMCA service was established by the Mental Capacity Act 2005 and is not the same as an ordinary advocacy service. IMCAs must become involved in decisions relating to serious medical treatment or changes in accommodation where an individual lacks capacity and has no one appropriate to consult. This is sometimes referred to as the individual being 'unbefriended'.

Lack of capacity - Section 2 of the Mental Capacity Act 2005 says that 'a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain'.

Lasting Power of Attorney - A Power of Attorney created under the Mental Capacity Act 2005 appointing an attorney, or attorneys, to make decisions on behalf of that individual should he later lack mental capacity to make decisions.

The individual can appoint the Attorney to make decisions about the donor's individual welfare, including health care, and/or deal with the donor's property and affairs.

Life sustaining treatment - Treatment that, in the view of the individual providing health care, is necessary to keep an individual alive. Further information can be found in the Code of Practice 5.29

Main Code - The Code of Practice for the Mental Capacity Act 2005

Managing authority (DoLS) - The individual or body with management responsibility for the hospital or care home in which an individual is, or may become, deprived of their liberty. (Under part 2 of the Care Standards Act 2000 in respect of that hospital or care home.).

Maximum authorisation period - The maximum period for which a Supervisory Body may give a standard deprivation of liberty authorisation, which must not exceed the period recommended by the Best Interests Assessor, and which cannot be for more than 12 months.

Mental Capacity Act 2005 (MCA) - Legislation that governs decision-making for people who lack capacity to make decisions for themselves or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this.

Mental capacity assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, of whether an individual lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care/treatment.

Mental health assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, that determines if the individual has a mental disorder within the meaning of the MHA 1983.

No refusals assessment - An assessment, for the purpose of the Deprivation of Liberty Safeguards, to establish whether the arrangements amounting to a deprivation of liberty would be prevented by existing decision-making authority.

Qualifying Requirement - Any one of the six assessments (age, mental health, mental capacity, best interests, eligibility and no refusals) that need to be assessed and met in order for a standard deprivation of liberty authorisation to be given.

Relevant hospital or care home - The hospital or care home in which the individual is, or may become, deprived of their liberty.

Relevant individual - An individual who is, or may become, deprived of their liberty in a hospital or care home.

Relevant individual's representative - An individual, independent of the relevant hospital or care home, appointed to maintain contact with the relevant individual, and to represent and support the relevant individual in all matters relating to the operation of the deprivation of liberty safeguards.

Restriction of liberty - An act imposed on an individual that is not such a degree or intensity as to amount to a deprivation of liberty.

Review - A formal, fresh look at a relevant individual's situation where there has been, or may have been, a change of circumstances that may necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation.

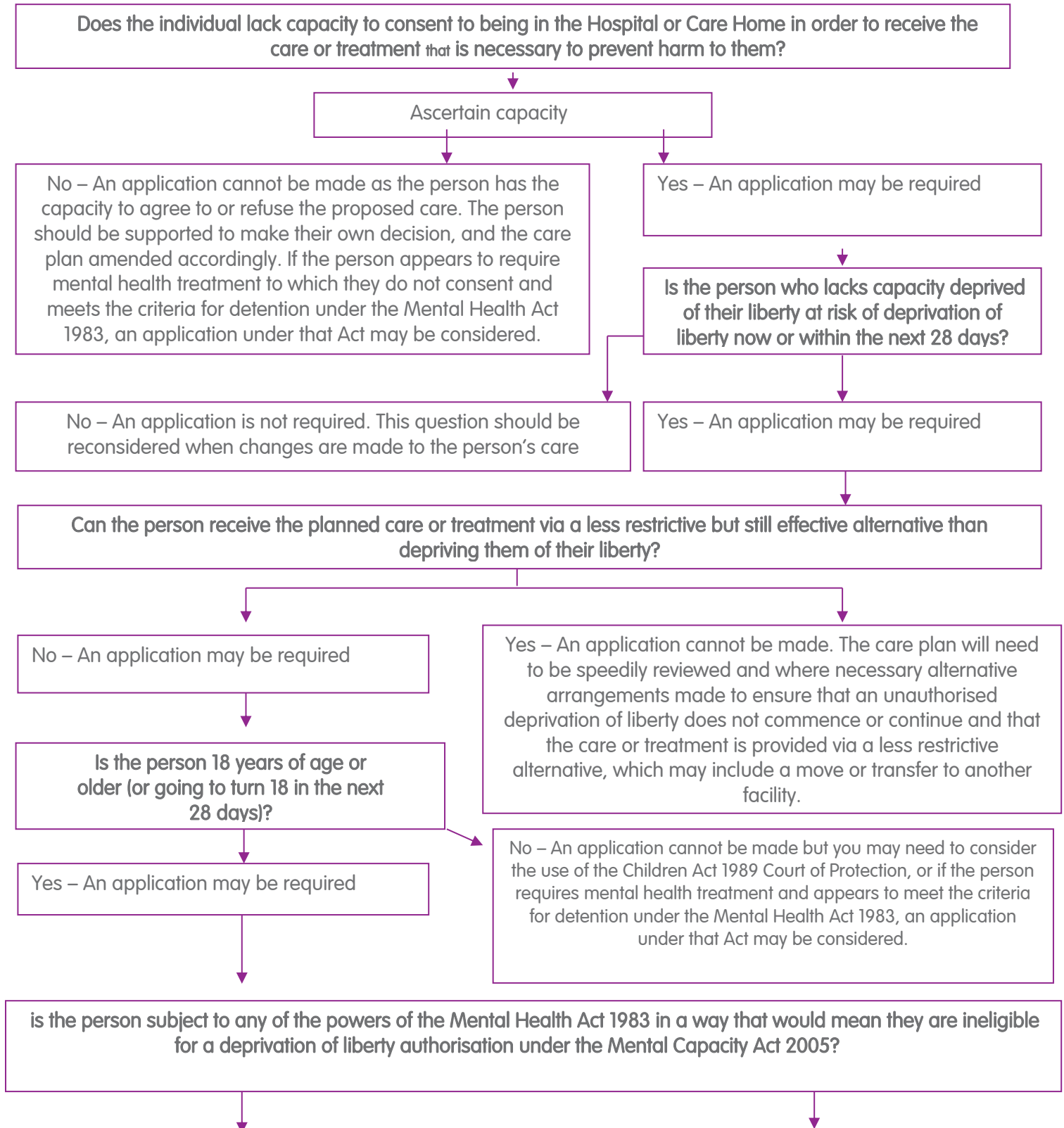
Standard authorisation - An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant individual of their liberty in the relevant hospital or care home

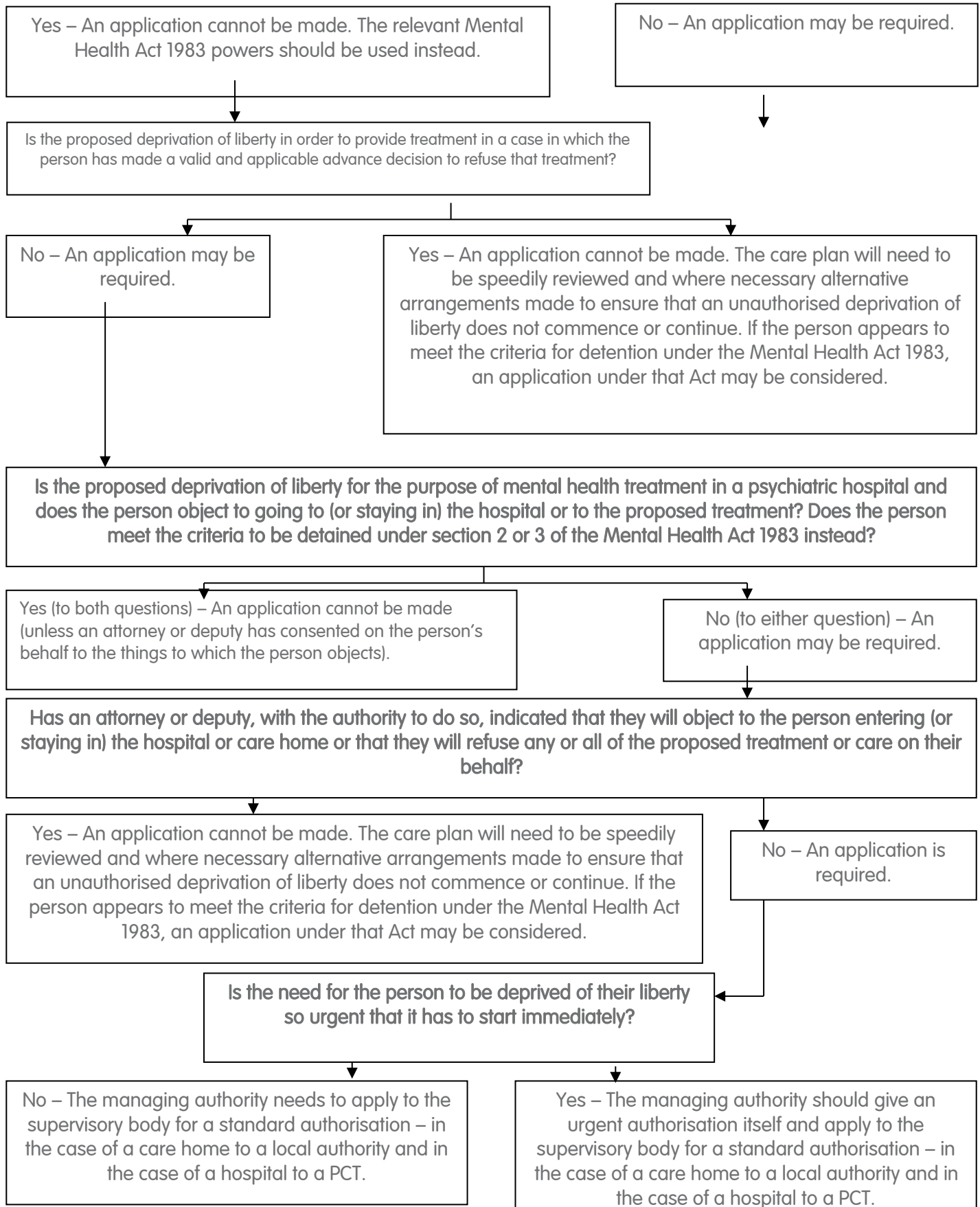
Supervisory body (DoLS) - The local authority (LA) that is responsible for considering and/or assessing the DoL request from the managing authority. This is usually the LA responsible for the area in which the Individual is usually resident or the LA responsible for the area in which the Care Home is situated where ordinary residence is in doubt or cannot be established.

Urgent Deprivation of Liberty Authorisation - An Authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days by a supervisory body, that gives

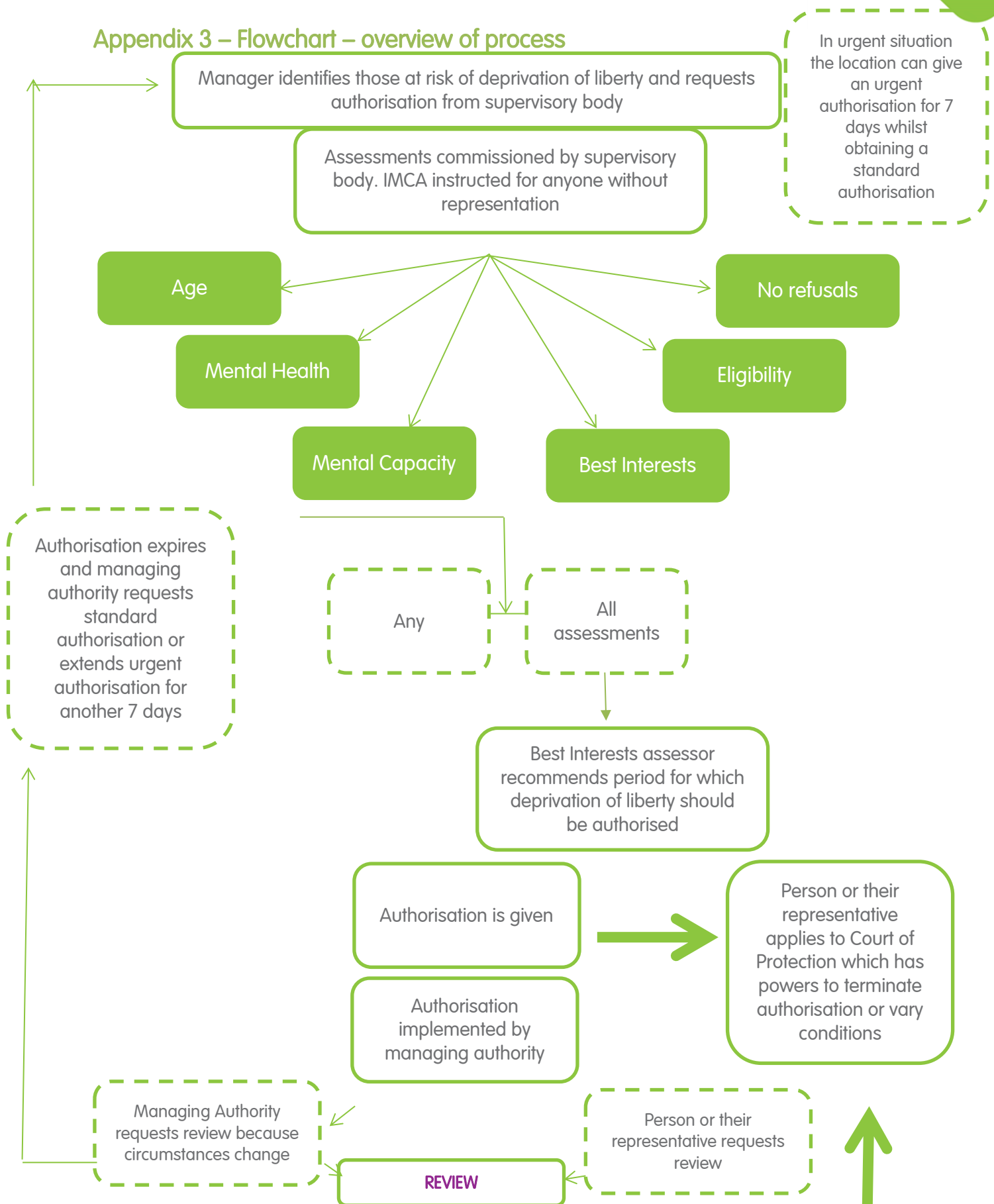
the managing authority lawful authority to deprive someone of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken.

Appendix 2. Flowchart – what to consider before applying for authorisation of deprivation of liberty





Appendix 3 – Flowchart – overview of process



Appendix 4 – Flowchart – Easy read guidance

Easy Read Flowchart & Guidance for identifying whether your residents or patients may be deprived of their liberty

