Deprivation of Liberty Safeguards (DOLS) Policy and Procedure

V1.1

December 2015
Table of Contents

1. Introduction ........................................................................................................................................4
2. Purpose of this Policy/Procedure ....................................................................................................4
3. Scope ...............................................................................................................................................4
4. Definitions / Glossary .......................................................................................................................4
5. Ownership and Responsibilities ......................................................................................................5
6. Standards and Practice ....................................................................................................................5
   6.1. Legal Framework .........................................................................................................................5
   6.5. Process for applying for a DoLS Authorisation - Eligibility criteria and the ‘Acid Test’ 6
   6.10. Applying for a DOLS ................................................................................................................7
   6.26. Patient and Person to consult information .................................................................................7
   6.35. CQC notification .......................................................................................................................8
   6.37. Transfer of a patient subject to DOLS .....................................................................................8
   6.42. Death of a patient subject to DOLS .......................................................................................8
   6.44. What Happens Next ................................................................................................................9
   6.51. DOLS Authorisation is declined ............................................................................................9
   6.56. Deprivation of Liberty Safeguards and Appeals to the Court of Protection ..................10
   6.60. For information on who can appeal to the Court of Protection ...........................................10
   6.65. Monitoring Processes ..............................................................................................................11
   6.69. RCHT Deprivation of Liberty (DOLS) records ......................................................................11
   6.71. Does the Mental Health Act Apply? ......................................................................................11
   6.74. Training Requirements ...........................................................................................................12
7. Dissemination and Implementation .................................................................................................12
8. Monitoring compliance and effectiveness ......................................................................................12
9. Updating and Review .....................................................................................................................13
10. Equality and Diversity ..................................................................................................................13
Appendix 1. Governance Information .................................................................................................14
Appendix 2. Initial Equality Impact Assessment Form .......................................................................17
Appendix 3. Who can appeal to the Court of Protection in respect of decisions taken (or being considered) under the Deprivation of Liberty Safeguards .................................................19
RCHT Deprivation of Liberty Safeguards (DOLS) Flowchart

RCHT identify a patient whose treatment/admission to hospital may constitute deprivation of liberty

Does the patient meet ALL requirements?
1. Is the person 18 or over?
2. Is the person assessed as suffering from a mental disorder?
3. Is the person assessed as lacking capacity to make decisions about their treatment and being in hospital?
4. The person does not have any other existing authority for decision making in place?
5. The person is not detained under the Mental Health Act (or could be e.g. 5/2)?
6. The persons needs to be deprived of liberty, in their best interests, to prevent harm to themselves

Is the person subject to both continuous supervision and control?
AND
Is the person not free to leave?

Complete the ADASS Deprivation of Liberty Safeguard Form 1

The form can be found on the Trust intranet: Our services> A-Z Services> F> Forms> Other Organisations Forms
Or, requested from the RCHT safeguarding team ext 2446 or Cornwall Council 01872 323426

Send the completed form via email with [encrypt] in the subject box to both:
dolapplication@cornwall.gov.uk and rch-tr.DOLS@nhs.net
Once the DOLS form is signed the person can be lawfully prevented from leaving hospital

Once the email has been received and processed by the RCHT DOLS team you will received an email response including: Information leaflet, letter for patient, letter for next of kin and the DOLS care plan

A member of the clinical team must provide the patient and person to consult (family member/friend) with the DOLS letter and leaflet. They should also provide a verbal explanation of DOLS, the implications and process. Record the giving of information in the patient notes and on DOLS care plan.

Statutory assessments commissioned by Cornwall Council should take place within 7 days, an extension to the urgent authorisation may be requested via email dol@cornwall.gov.uk

Has authorisation for Deprivation of Liberty Safeguards been agreed?

YES

If mental capacity returns prior to the DOLS expiring or the person is discharged or transferred (between hospital sites), the DOLS is no longer valid.
Inform the RCHT Safeguarding Adults Team of any changes in circumstance.
Death of a patient subject to DOLS must be reported to the coroner

NO

The treatment plan must be modified immediately:
- Consider least restrictive environment for alternatives for treatment
- Seek senior clinical / legal advice if unsafe to be discharged
- When plan in place allow to leave hospital taking all reasonable care to ensure safe discharge

Deprivation of Liberty Policy and Procedure
Contact details: 01872 252446, 07789 876247 or rch-tr.DOLS@nhs.net
Introduction

10.1. The Deprivation of Liberty Safeguards (DOLS) provide legal protection for those vulnerable people who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Convention of Human Rights (ECHR) in a hospital or care home, whether placed under public or private arrangements. They do not apply to people detained under the Mental Health Act 1983. The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person’s own best interests.

10.2. The Trust’s Hospital Managers have a statutory duty to ensure that the Deprivation of Liberty Safeguards are applied and monitored.

10.3. All staff working within the framework of the Mental Capacity Act and Deprivation of Liberty Safeguards have a statutory duty to apply the key principles and pay due regard to the Codes of Practice.

10.4. The purpose of this policy and procedure is to provide support and guidance for those working within the framework of the Deprivation of Liberty Safeguards.

2. Purpose of this Policy/Procedure

2.1. The aims and objectives of this policy are to define and describe the processes of the Deprivation of Liberty Safeguards within RCHT.

2.2. This includes processes for:-

   • The clinical and administrative application of the Deprivation of Liberty Safeguards
   • The monitoring of the clinical and administrative application of the Deprivation of Liberty Safeguards.
   • Supporting those applying or monitoring the Deprivation of Liberty Safeguards.

3. Scope

3.1. This policy applies to all permanent, temporary, locum, agency and bank staff of Royal Cornwall Hospitals NHS Trust, including doctors, nurses, allied health professionals, support staff, and managers.

3.2. Whilst the policy outlines how the Trust will manage DOLS it does not replace the personal responsibilities of staff with regard to issues of professional accountability for governance.

3.3. In the event of an infection outbreak, flu pandemic or major incident, the Trust recognises that it may not be possible to adhere to all aspects of this document. In such circumstances, staff should take advice from their manager and all possible action must be taken to maintain on-going patient and staff safety.

4. Definitions / Glossary

4.1. Deprivation of Liberty Safeguard – a legal authorisation that allows a managing authority to deprive someone who lacks mental capacity of their liberty.
4.2. Mental capacity - Mental capacity is the ability of an individual to make decisions about specific aspects of their life at a specific time.

4.3. Mental Disorder - As defined in section 1 of the Mental Health Act 1983, a mental disorder is any disorder or disability of the mind, apart from dependence on alcohol and drugs. This includes all learning disabilities.

4.4. Managing Authority - the organisation responsible for applying for the DoLS authorisation i.e. Royal Cornwall Hospitals NHS Trust

4.5. Supervisory Body / Authority – the Local Authority (Cornwall Council) which covers the person’s normal place of residence. Local Authorities are responsible for considering a DOLS request, arranging the required assessments, agreeing or denying a DOLS authorisation and monitoring conditions set out in the authorisation.

5. Ownership and Responsibilities

5.1. The Trust Board has a duty to ensure that the Trust is compliant when operating within the framework of the Deprivation of Liberty Safeguards.

5.2. All Consultants should have knowledge of the MCA and will act as decision makers. They are responsible for ensuring their teams complete the relevant assessments and documentation. They will also provide guidance within their teams.

5.3. All Managers must be aware of Trust Policy and Guidelines and to ensure their staff comply with the requirements of these documents.

5.4. The Learning and Development Department will facilitate the provision of training opportunities for all staff groups at induction and in line with Trust Policy.

5.5. Individual members of staff must ensure they are aware of and follow this policy.

5.6. Quality Safety and Compliance Team, once in receipt of the completed DoLS application and outcome forms, are responsible for all CQC DoLS notifications and for the collation of DOLS data in respect of the CQC notifications.

5.7. The team manager for learning disabilities, autism, mental health and mental capacity is responsible for supporting and advising staff on the application of DoLS, reporting to the lead executive on the application of the Act and reporting of any known instances of an unauthorised DOLS. Responsible for the collation of DOLS data other than that held in respect of the CQC notifications.

5.8. Legal Services Team are responsible for reporting DOLS deaths to the Coroner, updating Datix, and ensuring appropriate reports and documentation are provided to the Coroner.

6. Standards and Practice

6.1. Legal Framework

6.2. The Deprivation of Liberty Safeguards operates as part of the Mental Capacity Act 2005 and not instead of or in isolation from it.
6.3. Anybody working within the framework of the Mental Capacity Act 2005 (and hence the Deprivation of Liberty Safeguards) must work within the Act’s 5 Key Principles

6.4. The 5 Key Principles of the Mental Capacity Act 2005 are:-

- Presumption of Capacity: A person must be assumed to have capacity unless it is proved otherwise.
- Maximising decision-making: Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity.
- Unwise decisions: An unwise decision does not in itself indicate a lack of capacity
- Best interests: Any act done or decision for someone lacking capacity must be made in their best interests.
- Less restrictive option: When a person lacks capacity any act or decision should aim to be a less restrictive option to the person in terms of their right and freedom of action.

6.5. Process for applying for a DoLS Authorisation - Eligibility criteria and the ‘Acid Test’

6.6. To be eligible for DOLS the patient must meet all of the criteria below:

- 18 years and over
- Assessed as suffering from a mental disorder which includes all people suffering from learning disabilities but excluding people under the influence of alcohol or drugs
- Assessed as lacking capacity to make decisions about their treatment and being in hospital
- Not have any other existing authority for decision making in place i.e Lasting Power Attorney or Advanced Decision (This only applies if the donee, deputy or Advance Decision to Refuse Treatment (ADRT) specifically excludes elements of the treatment plan that constitutes a deprivation of liberty)
- Not be detained under the Mental Health Act or on leave from the Mental Health Act

6.7. Needs to be deprived of their liberty, in their best interests, to prevent harm to themselves in a manner that is necessary and proportionate to the risks.

6.8. There are two further questions which must be asked. These are described as the ‘acid test’: 
6.9. **Is the person subject to both continuous supervision and control?**
(in the acute hospital all patients are deemed to be under continuous supervision and control)

AND

**Is the person free to leave? (Indefinitely and not return)**

6.10. **Applying for a DOLS**

6.11. The DOLS form is available on the RCHT intranet:
Intranet > A-Z Services > F > Forms > Other Organisations Forms > ADASS Deprivation of Liberty Safeguards Form 1 (for standard and urgent authorisation)

6.12. The DOLS form is also available from the ‘Sister’s Shelf’ and from the Safeguarding Adults team.

6.13. It is the responsibility of the clinical team caring for the patient to apply for a DOLS authorisation. The care team should not be referring to other services for this.

6.14. The completed DOLS form must be sent by email with [encrypt] in the subject box (as the information is patient identifiable data). Email the form to **both:**

   dolsapplication@cornwall.gov.uk (Council) and rch-tr.DOLS@nhs.net (RCHT)

6.15. If you need guidance on completing the form or care plan please contact the RCHT Safeguarding Team on 01872 252638 or via email rch-tr.DOLS@nhs.net

6.16. Once emailed the form should be printed and filed in the patient’s medical record in the Legal Section

6.17. Once the DOLS form has been completed and signed it is legal to prevent the person from leaving hospital.

6.18. Once the email has been received and processed by the RCHT DOLS team you will receive an email response including: Information leaflet, letter for patient, letter for next of kin and the DOLS care plan.

6.19. The care plan must be completed, with individual interventions, shared with the patient and a copy filed in the healthcare record.

6.20. **Patient and Person to consult information**

6.21. The patient and the person to consult in their best interests (relative or friend) must be given a letter informing them about the DOLS and an accompanying information leaflet.

6.22. The patient must be given:
   - Letter
   - Leaflet
   - A copy of the DoLS forms
6.23. The Relative / Person to consult must be given:
   - Letter
   - Leaflet

6.24. The patient must also be given a verbal explanation and this should be documented in the medical records.

6.25. The patient and person to consult letters are available on the RCHT intranet at: Royal Cornwall Hospitals Trust > Our Services > A-Z Services > F > Forms > Non-Health Record Forms & Letters

6.26. The information leaflet is available from: Royal Cornwall Hospitals Trust > Our Services > A-Z Services > P > Patient Information Review Group (RCHT) > RCHT Leaflet Store

6.27. It may not be appropriate to give the information at the time of the application, if it is deemed inappropriate the reasons should be clearly documented in the medical notes. The information must be given as soon as appropriate.

6.28. The information must be given prior to discharge and staff should document in the medical notes that they have done so.

6.29. **CQC notification**

6.30. It is a requirement of the Trusts registration with the Care Quality Commission (CQC) that they are informed of all DOLS applications and outcomes. This is managed centrally by the Quality, Safety & Compliance Team.

6.31. **Transfer of a patient subject to DOLS**

6.32. It is permissible to transfer a patient who is held under a DoLS to another ward belonging to RCHT within the same hospital site, however any movement should be undertaken in the person’s best interest.

6.33. It is **not** permissible to transfer a patient between RCHT sites, for example from Royal Cornwall Hospital to West Cornwall Hospital.

6.34. If transfer between RCHT sites is required a DOLS application must be completed by the receiving hospital site as soon as possible.

6.35. For a planned routine transfer between RCHT sites the site receiving the patient must complete a Standard Authorisation (from 4) prior to the transfer wherever possible. Once the application has been made the patient will be assessed by the supervisory body. If the patient requires transfer before the assessment has been carried out the receiving site must complete an Urgent authorisation (and a standard authorisation if this had not been completed) on the patient’s arrival.

6.36. **Death of a patient subject to DOLS**

6.37. If a hospital in-patient is subject to a DOLS at the time of their death the bereavement office must be informed. The bereavement office will highlight this to
the mortuary staff and the reporting doctor will inform the coroner. The bereavement office will notify the legal team and ensure correct coronial processes are followed.

6.38. **What Happens Next**

6.39. The Supervisory Body (Cornwall Council) makes arrangements for the required assessments to be undertaken. Clinical staff should support this assessment process but do not undertake the assessments themselves. Access to the medical records will be required by the assessors.

6.40. The assessments will be undertaken by a Best Interest Assessor and independent medical practitioner. The assessment will normally be within the 7 day period of the Urgent Authorisation. If for any reason the assessment process will take longer, then an extension can be requested. The clinical team caring for the patient are responsible for requesting an extension from Cornwall Council via email dols@cornwall.gov.uk. The RCHT safeguarding team rch-tr.DOLS@nhs.net must be copied into the extension request.

6.41. On completion of the assessment process, the Supervisory Body (Cornwall Council) will either authorise or deny the DOLS. The outcome forms will be sent to the RCHT safeguarding team. Copies of the forms are also sent to the original applicant.

6.42. The DOLS care plan should be maintained detailing the treatment plan and ongoing reviews of Mental Capacity and the need for a continuing DoLS authorisation and less restrictive interventions.

6.43. A patient authorised under DOLS may be kept in Royal Cornwall Hospitals Trust for the proposed treatment and care until:

- The course of treatment is completed and the patient no longer needs to remain in hospital and can return to their normal place of residence
- Arrangements have been made for on-going care to continue in another location e.g. care home or other hospital
- The patient’s mental capacity returns and they are able to make their own decision about continuing with treatment and care.
- The DOLS is judged to no longer be required. The clinical team must inform the patient, their person to consult (family/friends) and the RCHT safeguarding team.
- The DoLS expires. If continuing treatment and care is required and the person will continue to be deprived of their liberty then a repeat Standard Authorisation must be made in a timely manner so the authorisation can be given prior to the expiry of the first previous application. A successive Urgent Application is not lawful.

6.44. **DOLS Authorisation is declined**

6.45. If the authorisation is refused or cannot be granted because the qualifying requirements have not been met, then the treatment and care plan should be reviewed again to see if less restrictive alternatives can be put in place. Any outstanding Urgent Authorisation also terminates at this point.
6.46. Consideration should be given to whether a different treatment option or care location can be arranged such as a change of antibiotics to allow administration to take place in the community, a less invasive or aggressive therapy or transfer to a facility closer to family and friends.

6.47. Clinical staff should take steps to reduce the risks of discharge e.g. the provision of TTO’s, liaison with GP, liaison with social care and other community services, liaison with relatives and friends of the patient.

6.48. If there are major concerns about the patients safety should they leave hospital and fail to comply with what is deemed essential treatment and care, safeguarding, senior clinical and legal advice should be sought.

6.49. Deprivation of Liberty Safeguards and Appeals to the Court of Protection

6.50. If there is an objection to an intention to apply DOLS the Managing Authority must refer the case to the Court of Protection (assuming that all attempts at local resolution have been unsuccessful). Support can be sought from the RCHT Safeguarding Adults Team or the Legal Department.

6.51. An appeal may be lodged by the patient (or someone acting on their behalf) even before a decision to issue a Standard Authorisation has been reached.

6.52. Depending on the circumstances, the Court of Protection may decide not to consider the appeal but in other circumstances a hearing must be convened. A fee is normally charged for an appeal to the Court although, depending on the circumstances, this may be waived. Information in respect of submitting an appeal to the Court of Protection, application fees, the waiving and/or remittance of fees and the availability of Legal Aid can be obtained from:

The Office of the Public Guardian
Archway Tower
2 Junction Road
London N19 5SZ

Web site: http://www.publicguardian.gov.uk/
Email: customerservices@publicguardian.gsi.gov.uk

6.53. For information on who can appeal to the Court of Protection
(In respect of decisions taken (or being considered) under the Deprivation of Liberty Safeguards refer to appendix 3. Unauthorised Deprivations of Liberty)

6.54. If staff are concerned that an unauthorised deprivation of liberty has occurred or is likely to occur within the Trust then a senior clinician should review the situation as a matter of urgency and steps taken to avoid any further unauthorised deprivations of liberty. In order to achieve this it may be necessary to make a DOLS application.

6.55. Any unauthorised deprivations of liberty must be reported on DATIX and also be reported immediately to the RCHT Adult Safeguarding Team or, if it is out of hours, call the On Call Manager.
6.56. All unauthorised deprivation of liberty will be reported to the Trust Board, the CQC and external Safeguarding partners. The RCHT Legal Team will coordinate these notifications with the RCHT Safeguarding team and the Quality, Safety and Compliance Department and the relevant Divisional Management Team.

6.57. If there is a concern that a deprivation of liberty may be occurring in non-Trust accommodation then staff should discuss the concerns with their line manager and the Adults Safeguarding Team who will ensure appropriate onward reporting.

6.58. **Monitoring Processes**

6.59. The Deprivation of Liberty Safeguards will be monitored by the managing authority RCHT.

6.60. Inspection bodies including the Care Quality Commission will also monitor the compliance of RCHT in applying this statutory power.

6.61. These inspection bodies will:-

- Monitor the manner in which the Deprivation of Liberty Safeguards are being applied in practice
- Visit hospitals and care-homes for the purpose of inspection
- Interview people residing or accommodated in care homes and/or hospitals as appropriate
- Inspect the relevant Authorisation of Deprivation records as appropriate
- Report annually (This may be a single, specific Deprivation of Liberty Safeguards report or it may be part of a report detailing a more generalised inspection).
- Have the power to require the relevant Supervisory Bodies/Managing Authorities to disclose information as requested
- Look at Deprivation of Liberty protocols/procedures within Supervisory Bodies/Managing Authorities

6.62. **RCHT Deprivation of Liberty (DOLS) records**

6.63. A central register of DOLS applications and outcomes will be held and jointly managed by the Quality, Safety and Compliance department and the RCHT safeguarding Adults team.

6.64. **Does the Mental Health Act Apply?**

6.65. When a person lacking mental capacity is in a hospital, receiving treatment for a mental disorder and is, or is likely, to have their liberty deprived consideration should be given as to whether to use the provisions of the Mental Health Act rather than DOLS. If the person fits the criteria to be detained under the Mental Health Act applied then that must be the chosen route.

6.66. Factors that may indicate use of the Mental Health Act rather than DOLS include:

- The patient’s lack of capacity to consent to treatment and care is fluctuating or temporary and the patient is not expected to consent when they regain capacity. This may be particularly relevant to patients having acute psychotic, manic or depressive episodes;
• A degree of restraint needs to be used which is justified by the risk to other people but which is not permissible under the MCA because, exceptionally, it cannot be said to be proportionate to the risk to the patient personally; and
• There is some other specific identifiable risk that the person or others might potentially suffer harm as a result. For example, if there is a risk that the person may need to be returned to the hospital or care home at some point in a manner that would not be authorised under DoLS.
• The person is a Mental Health patient and is objecting to their care and or treatment

6.67. Training Requirements
6.68. All clinical staff working directly with patients should have an understanding of DOLS. An introduction will be included in Adult Safeguarding training on induction and a one off Mandatory training session will be provided to all front line staff.

6.69. Each line manager has the responsibility to ensure that their staff are afforded the opportunity to undertake all essential training.

7. Dissemination and Implementation
7.1. This policy is to be implemented and disseminated through the organisation immediately following ratification and will be published on the organisations intranet site document library. Access to this document is open to all.

7.2. The Policy will be launched via the RCHT daily communication network.

7.3. The Policy will be available to all external stakeholders via the Documents Library on the Intranet.

7.4. This policy document will be held in the public section of the Documents Library with unrestricted access, replacing the previous version which will be archived in accordance with the Trust Information Lifecycle and Corporate Records Management Policy.

7.5. Provision of mandatory safeguarding adults training, including the Mental Capacity Act and the Deprivation of Liberty Safeguards will be delivered by the Learning and Development Department as outlined in the RCHT Core Training Policy. Reference to relevant sections from this Policy will be utilised at all RCHT Level 1 & 2 Safeguarding Adults mandatory training.

8. Monitoring compliance and effectiveness
8.1. Monitoring of compliance with this guidance will be reported to the Safeguarding Committee.

| Element to be monitored | Audit documentation will capture and record evidence regarding the completeness, timeliness, authorised signatories, patient and family information provided – Urgent Authorisation Standard Authorisation DoLS Care Plan |

Deprivation of Liberty Policy and Procedure
<table>
<thead>
<tr>
<th>Lead</th>
<th>The audit will be undertaken by members of the RCHT Safeguarding Adults Operational Group (SOAG) following the designation of a lead auditor by the SAOG Chair.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tool</td>
<td>Audit documentation will capture and record evidence regarding the identified elements to be monitored</td>
</tr>
<tr>
<td>Frequency</td>
<td>The audit will be undertaken on an annual basis, the initial audit will be within 6 months of the policy ratification.</td>
</tr>
<tr>
<td>Reporting arrangements</td>
<td>RCHT Safeguarding Adults Operational Group (SOAG)</td>
</tr>
<tr>
<td>Acting on recommendations and Lead(s)</td>
<td>Where the report indicates sub optimal performance the Chair of SAOG will nominate a group member to produce an action plan. The SAOG will be responsible for monitoring progress and will undertake subsequent recommendations and further action planning for all deficiencies identified within agreed timeframes.</td>
</tr>
<tr>
<td>Change in practice and lessons to be shared</td>
<td>Required changes to practice identified will be documented in the action plan outcomes. The membership of the SAOG will identify a lead to take each change forward across divisions as appropriate. Lessons will be shared with all relevant parties.</td>
</tr>
</tbody>
</table>

9. **Updating and Review**

9.1. This policy will be reviewed every 3 years or earlier in view of developments which may include legislative changes, national policy instruction (NHS or Department of Health) or Trust Board decision. Revisions can be made ahead of the review date when the procedural document requires updating.

10. **Equality and Diversity**

10.1. This document complies with the Royal Cornwall Hospitals NHS Trust service Equality and Diversity statement which can be found in the 'Equality, Diversity & Human Rights Policy' or the Equality and Diversity website.

10.2. The Initial Equality Impact Assessment Screening Form is at Appendix 2.
## Appendix 1. Governance Information

<table>
<thead>
<tr>
<th>Document Title</th>
<th>Deprivation of Liberty Policy and Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Issued/Approved:</td>
<td>November 2014</td>
</tr>
<tr>
<td>Date Valid From:</td>
<td>November 2014</td>
</tr>
<tr>
<td>Date Valid To:</td>
<td>1 January 2018</td>
</tr>
<tr>
<td>Directorate / Department responsible (author/owner):</td>
<td>Mental Capacity Lead, Safeguarding Adults</td>
</tr>
<tr>
<td>Contact details:</td>
<td>01872 254551</td>
</tr>
<tr>
<td>Brief summary of contents</td>
<td>The aims and objectives of this policy are to define and describe the processes of the Deprivation of Liberty Safeguards within RCHT.</td>
</tr>
<tr>
<td>Suggested Keywords:</td>
<td>Mental Capacity Act, MCA, Deprivation, Deprivation of Liberty, Deprivation of Liberty Safeguards, DOLS, Restriction, Restrictive practice, detention, legal framework</td>
</tr>
<tr>
<td>Target Audience</td>
<td>RCHT, PCH, CFT, KCCG</td>
</tr>
<tr>
<td>Executive Director responsible for Policy:</td>
<td>Director of Nursing</td>
</tr>
<tr>
<td>Date revised:</td>
<td>December 2015</td>
</tr>
<tr>
<td>This document replaces (exact title of previous version):</td>
<td>New Document</td>
</tr>
<tr>
<td>Approval route (names of committees)/consultation:</td>
<td>Safeguarding Adults Operation Group, RCHT Legal team, Consultation with clinical staff, Cornwall Council DOLS Lead.</td>
</tr>
<tr>
<td>Divisional Manager confirming approval processes</td>
<td>Director of Nursing</td>
</tr>
<tr>
<td>Name and Post Title of additional signatories</td>
<td>Not Required</td>
</tr>
<tr>
<td>Signature of Executive Director giving approval</td>
<td>{Original Copy Signed}</td>
</tr>
<tr>
<td>Publication Location (refer to Policy on Policies – Approvals and Ratification):</td>
<td>Internet &amp; Intranet, Intranet Only</td>
</tr>
<tr>
<td>Document Library Folder/Sub Folder</td>
<td>Safeguarding Adults</td>
</tr>
<tr>
<td>Links to key external standards</td>
<td>The Deprivation of Liberty Safeguards 2007, The Mental Capacity Act 2005</td>
</tr>
<tr>
<td>Related Documents:</td>
<td>CQC Essential Standards of Quality and Safety – Outcome 7</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>• RCHT Policy and Procedures for the Safeguarding of Vulnerable Adults</td>
</tr>
<tr>
<td></td>
<td>• RCHT Procedure for the Safe and Supportive Observations in Adults</td>
</tr>
<tr>
<td></td>
<td>• RCHT Record Keeping Policy</td>
</tr>
<tr>
<td></td>
<td>• RCHT Consent to Treatment/Examination</td>
</tr>
<tr>
<td></td>
<td>• RCHT Restrictive Practice Policy</td>
</tr>
<tr>
<td></td>
<td>• RCHT Management of Violence &amp; Aggression Policy</td>
</tr>
<tr>
<td></td>
<td>• RCHT Code of Conduct for employees in respect of confidentiality</td>
</tr>
<tr>
<td></td>
<td>• RCHT Data Protection and Caldecott Guidance</td>
</tr>
<tr>
<td></td>
<td>• Clinical Governance and Adult Safeguarding- an integrated approach (2010)</td>
</tr>
<tr>
<td></td>
<td>• Guidance for Practitioners and Managers HM Government (2008)</td>
</tr>
<tr>
<td></td>
<td>• Human Rights Act (1998)</td>
</tr>
<tr>
<td></td>
<td>• Mental Capacity Act &amp; Deprivation of Liberty Safeguards codes of practice and decision making guides (2009)</td>
</tr>
<tr>
<td></td>
<td>• Mental Capacity Act Code of Practice (2008)</td>
</tr>
<tr>
<td></td>
<td>• Mental Health Act Code of Practice (2007)</td>
</tr>
<tr>
<td></td>
<td>• National Patient Safety Agency National Framework for reporting and learning from serious incidents requiring investigation (2010)</td>
</tr>
<tr>
<td></td>
<td>• No secrets: Guidance on developing multi-agency policies and procedures to protect vulnerable adults from abuse Department of Health March (2000)</td>
</tr>
<tr>
<td></td>
<td>• Safeguarding adults: a national framework of standards for good practice and outcomes in safeguarding adults work (2005)</td>
</tr>
</tbody>
</table>

| Training Need Identified? | Yes-RCHT is responsible for ensuring all clinical staff are offered training with regards to the key aspects of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards included within this Policy |

### Version Control Table

<table>
<thead>
<tr>
<th>Date</th>
<th>Version No</th>
<th>Summary of Changes</th>
<th>Changes Made by (Name and Job Title)</th>
</tr>
</thead>
<tbody>
<tr>
<td>28th Oct 2014</td>
<td>V1.0</td>
<td>Initial Issue</td>
<td>Lerryn Hogg Specialist Nurse for Mental Health and Wellbeing</td>
</tr>
</tbody>
</table>
8th December 2015 | V1.1 | Reviewed policy in light of revised DOLS forms (changing from Cornwall Council issued forms to ADASS forms) | Lerryn Hogg
Team manager for MH, LD and Autism and MCA lead

---

**All or part of this document can be released under the Freedom of Information Act 2000**

This document is to be retained for 10 years from the date of expiry.

This document is only valid on the day of printing

**Controlled Document**

This document has been created following the Royal Cornwall Hospitals NHS Trust Policy on Document Production. It should not be altered in any way without the express permission of the author or their Line Manager.
## Appendix 2. Initial Equality Impact Assessment Form

<table>
<thead>
<tr>
<th>Name of the strategy / policy / proposal / service function to be assessed (hereafter referred to as policy): Deprivation of Liberty Policy and Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directorate and service area: Corporate</td>
</tr>
<tr>
<td>Name of individual completing assessment: Lerryn Hogg</td>
</tr>
</tbody>
</table>

### 1. Policy Aim* 
Who is the strategy / policy / proposal / service function aimed at?

The aims and objectives of this policy are to define and describe the processes of the Deprivation of Liberty Safeguards within RCHT.

### 2. Policy Objectives* 

The aims and objectives of this policy are to define and describe the processes of the Deprivation of Liberty Safeguards within RCHT. This includes processes for:-

- The clinical and administrative application of the Deprivation of Liberty Safeguards
- The monitoring of the clinical and administrative application of the Deprivation of Liberty Safeguards.
- Supporting those applying or monitoring the Deprivation of Liberty Safeguards.

### 3. Policy – intended Outcomes* 

To ensure the legalities and statutory responsibilities within the Deprivation of Liberty Safeguards and associated legislation are embedded into clinical practice.

### 4. How will you measure the outcome? 

Documentation audit, reported incidents of deviation from the Policy, Datix and safeguarding adult concerns

### 5. Who is intended to benefit from the policy? 

All patients, and their family/friends, who are required to be Deprived of their Liberty whilst an inpatient at RCHT

### 6a) Is consultation required with the workforce, equality groups, local interest groups etc. around this policy? 

No

b) If yes, have these *groups been consulted? 

C). Please list any groups who have been consulted about this procedure.

Safeguarding Adults Operational Group

### 7. The Impact 
Please complete the following table.

Are there concerns that the policy could have differential impact on:

Deprivation of Liberty Policy and Procedure
<table>
<thead>
<tr>
<th>Equality Strands:</th>
<th>Yes</th>
<th>No</th>
<th>Rationale for Assessment / Existing Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex (male, female, transgender / gender reassigned)</td>
<td>✓</td>
<td></td>
<td>This Policy revision strengthens and clarifies the Trust’s expectations that the Deprivation of Liberty Safeguards and associated legislation are adhered to and correctly implemented. It aims to ensure that patients who may have impaired mental capacity and who are deprived of their liberty are empowered and protected. Everyone who cares for, or makes decisions on behalf of someone who lacks capacity and is deprived of their liberty will follow the law therefore all clinical staff including doctors, nurses and allied health professionals who work directly with patients (regardless of their seniority) will be legally required to have regard to this Policy.</td>
</tr>
<tr>
<td>Race / Ethnic communities / groups</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability - Learning disability, physical disability, sensory impairment and mental health problems</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religion / other beliefs</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marriage and civil partnership</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pregnancy and maternity</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual Orientation, Bisexual, Gay, heterosexual, Lesbian</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

You will need to continue to a full Equality Impact Assessment if the following have been highlighted:

- You have ticked “Yes” in any column above and
- No consultation or evidence of there being consultation- this excludes any policies which have been identified as not requiring consultation. or
- Major service redesign or development

---

8. Please indicate if a full equality analysis is recommended.  
   Yes       | No  ✓

9. If you are not recommending a Full Impact assessment please explain why.

It is not required

<table>
<thead>
<tr>
<th>Signature of policy developer / lead manager / director</th>
<th>Date of completion and submission</th>
</tr>
</thead>
</table>

Names and signatures of members carrying out the Screening Assessment  
1.  
2.

Keep one copy and send a copy to the Human Rights, Equality and Inclusion Lead, c/o Royal Cornwall Hospitals NHS Trust, Human Resources Department, Knowledge Spa, Truro, Cornwall, TR1 3HD

A summary of the results will be published on the Trust’s web site.

Signed ____________________

Date ____________________

Deprivation of Liberty Policy and Procedure
Page 18 of 19
Appendix 3. Who can appeal to the Court of Protection in respect of decisions taken (or being considered) under the Deprivation of Liberty Safeguards

<table>
<thead>
<tr>
<th>COURT of PROTECTION</th>
<th>Reason For Appeal</th>
<th>Who Can Appeal</th>
<th>Duty of the Court to Convene the Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applications made before Authorisation has been given</strong></td>
<td>To ask the Court to terminate an application for authorisation before a decision has been reached</td>
<td>The Relevant person or someone authorised to appeal on behalf of that person</td>
<td>No statutory duty imposed. It is up to the Court whether to consider the application or not.</td>
</tr>
<tr>
<td><strong>Applications made after a decision has been reached and Standard Authorisation granted</strong></td>
<td>Appeal to question whether the Relevant Person meets one or more of the qualifying requirements for Deprivation of Liberty</td>
<td>The Relevant person or someone authorised to appeal on behalf of that person</td>
<td>Court has a statutory duty to convene the hearing</td>
</tr>
<tr>
<td></td>
<td>Appeal to question the duration of the Standard Authorisation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appeal to question the purpose of the Standard Authorisation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Appeal to question the conditions laid down in the Standard Authorisation</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Application made after a decision has been reached and Urgent Authorisation granted</strong></td>
<td>Appeal to question the duration</td>
<td>The Relevant person or someone authorised to appeal on behalf of that person</td>
<td>Court has a statutory duty to convene the hearing</td>
</tr>
<tr>
<td></td>
<td>Appeal to question the purpose</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Application made after a decision has been reached where NEITHER Urgent NOR Standard Authorisation has been granted</strong></td>
<td>Appeal to get the Court to reverse the decision and grant the Authorisation</td>
<td>Any interested party</td>
<td>No statutory duty imposed. It is up to the Court whether to consider the application or not.</td>
</tr>
</tbody>
</table>