Yeovil District Hospital NHS
NHS Foundation Trust

The Mental Capacity Act 2005
Legislation and
Deprivation of Liberties (DOLs) Authorisation Policy

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Policy Owner	Director of Nursing and Clinical Governance		
Author	Adult Mental Health Lead		
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Staff/Groups Consulted	Director of Nursing Medical Director LA Lead for MCA and DoLs Associate Directors of Nursing Associate Director of Clinical Governance and Patient Safety Older Persons Specialist Nurse Consultant Matrons		
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Policy Audited			
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IMPLEMENTING THE MENTAL CAPACITY ACT LEGISLATION AND DOLS POLICY

1. RATIONALE

The Mental Capacity Act 2005 (MCA) applies to the care, treatment and support of people 16 years and over, in England and Wales, who are unable to make all or some decisions themselves. The Act is accompanied by a Code of Practice, which explains how the MCA will work on a day-to-day basis, and provides guidance to all those working with, or caring for, people who lack capacity. Therefore, this Act applies to all patients who may be unable to consent to treatment and care in YDH or where restrictive intervention is being used or considered for the patients care and / or treatment.

As the code has statutory force, certain categories of people have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions themselves e.g.

Any person acting in a professional capacity for, or on relation to, a person who lacks capacity
Any person being paid for acts in relation to a person who lacks capacity
Any person carrying out research approved in accordance with the MCA
An attorney under a Lasting Power of Attorney
A deputy appointed by the new Court of Protection
An individual acting as an IMCA

2. AIMS

This policy sets out the requirements of all YDH staff in respect of the Mental Capacity Act 2005 and the accompanying Code of Practice.

This policy sets out the framework of responsibilities for the assessment of mental capacity and the tasks associated with working with people who do not have capacity. It will provide the broad outline of the MCA, and detailed guidance can be sought from the MCA 2005 Code of Practice. Detailed guidance on carrying out capacity assessments and following the best interest's process can be found in additional documentation alongside guidance on the use of restrictive practices and deprivation of liberties.

YDH aims to ensure that adult patients who lack capacity to consent to care and treatment receive appropriate care and treatment in accordance with the requirements of the Mental Capacity Act 2005 (MCA). On occasions this might require the patient to be restrained, if it is used to protect the patient from harm, is a proportionate response to that harm, is in their best interests and is the least restrictive available intervention. Therefore, this policy also aims to provide guidance to staff regarding the use of restraint with adult patients (i.e. those aged 16 and over) who lack capacity to consent to treatment and care. This should ensure that YDH staff deal with restraint issues safely and lawfully and patients are treated with dignity and respect at all times.

To provide guidance to staff regarding the MCA Deprivation of Liberty Safeguards (DoLS) which exist to protect people who cannot make decisions about their care and treatment when they need to be cared for in a particularly restrictive way.

3. MENTAL CAPACITY ACT 2005 (MCA)

The MCA defines five core principles, which apply throughout the MCA and must be followed in every instance when consideration is being given to using the MCA.

The MCA 5 Principles:

1. A person must be assumed to have capacity until it is established that he/she lacks capacity.

2. A person is not to be treated as unable to make a decision unless all practicable steps to do so have been taken without success.

3. A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision.

4. Any action taken; or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made in his/her best interests.

5. Before any decision is made or action taken, due regard must be given to whether this is least restrictive of option on the person's rights and freedom of action.

4. DEFINTIONS

Capacity - The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in Section 2 of the Act.

Deprivation Of Liberty Safeguard (DoLs) - The Mental Capacity Act aims to protect people who lack mental capacity but need to be deprived of liberty in order to receive appropriate care and treatment in hospitals and care homes. But the safeguards are not meaningful for disabled and older people and their families, local councils and the NHS are struggling to meet their obligations under the law, and people who live in other settings – such as supported living – are being left unprotected.

The DoLS is intended to provide a process for ensuring that people who lack capacity to consent to their care are deprived of their liberty only if it is in their best interests. Assessments of their capacity are made independently of the hospital or care home, and decisions can be challenged by appeal to the Court of Protection.

Decision maker - Under the Act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the decision is referred to throughout the MCA 2005 Code of Practice as the 'decision maker', and it is the decision maker's responsibility to work out what would be in the best interests of the person who lacks capacity.

Best Interests - Any decision made, or anything done for a person who lacks capacity to make specific decisions, must be in the person's best interest. There are standard minimum steps to follow when working out someone's best interest. These are set out in section 4 of the Act, and in the non-exhaustive checklist in 5.13 of the MCA 2005 Code of Practice.

Independent Mental Capacity Advocate (IMCA) - When a person lacks capacity and has nobody else who is appropriate and able to represent them or be consulted in the process of working out their best interests, an IMCA should be appointed to provide this support. The IMCA makes representations about the person's wishes, feelings beliefs, and values, at the same time as bringing to the attention of the decision-maker all factors that are relevant to the decision. The IMCA can challenge the decision-maker on behalf of the person lacking capacity, if necessary.

5. ROLES AND RESPONSIBILITIES

5.1 Chief Executive

Is responsible for ensuring there are arrangements in place for the safe implementation of the MCA across the Trust.

5.2 Director of Nursing and Clinical Governance:

Has Board level responsibility for the implementation of the MCA with the Trust and is responsible for ensuring that all nursing staff adhere to the MCA and Deprivation of Liberties legislation, policies and procedures as set out within this policy.

5.3 Associate Directors of Nursing:

The Associate Directors of Nursing are responsible for deciding if a Deprivation of Liberties application form should be completed when medical staff assesses a person as being potentially deprived of their liberties. They are also responsible for managing any concerns / referrals made to Safeguarding Adults Lead in her absence.

5.4 Medical Director:

The Medical Director is responsible for ensuring that all medical teams attend Safeguarding Adults Mental Capacity training.

5.5 All Clinical Staff

All staff are responsible for attending mandatory training which includes safeguarding training in line with the Training Needs Analysis. They are also responsible for:

Recognising when a patient may lack capacity to consent to treatment or procedure.
Carrying out and documenting a decision specific assessment of capacity.
Following the Best Interests checklist if patient is assessed as lacking capacity.
Ensuring referrals are made to the IMCA service when appropriate.

5.6 Matrons and Ward Sisters

Matrons are in particularly responsible for:

Ensuring patients who lack capacity for treatment within their clinical areas are referred to the appropriate clinician to undertake a capacity assessment.
Ensuring all staff in their area of responsibility attend appropriate training.

5.7 Adult Mental Health Lead

Is responsible for:

Responding to any concerns / referrals made over issues covered within the MCA.
Acting as resource for issues around mental capacity and deprivation of liberties for staff throughout the hospital.
Conducting Root Cause Analyses (RCA) into patient care concerns relating to issues of capacity.
Auditing implementation of MCA and consent annually.
Producing associated guidance and procedures linked to this policy and reviewing it regularly and updating it in line with developments locally and nationally

5.8 Acute Learning Disabilities Liaison Nurse

The liaison nurse is responsible for:

Liaising with patients with learning disabilities and their families / carers regarding issues relating to the MCA and their capacity to consent to treatment.
providing training and advice to staff and produce relevant reports to the Trust when

required

5.9 Safeguarding Adult Group

The working group is responsible for:

This group is chaired by the Director of Nursing and Clinical Governance
The group is responsible for reviewing and ratifying this documentation and ensuring it is embedded throughout the Trust

5.10 Health and Social Care Team

Social workers become the decision maker with regard to decisions relating to changes in accommodation. They are responsible for leading capacity assessments concerning such decisions if so needed and should refer to the IMCA service regarding this issue if appropriate.

6. PROCEDURES AND GUIDELINES

http://www.scie.org.uk/publications/mca/

In order to fully comply with this policy, the individuals with responsibilities set out in this policy should refer to the relevant guidance or procedure listed below which can be found on the Trust Intranet:

Guidelines on implementing the Mental Capacity Act 2005 -containing information relating to:

- Procedures for assessment of Mental Capacity and Best Interests process
- Advance Decisions
- Lasting Powers of Attorney
- Independent Mental Capacity Advocates (IMCAs)

Guidelines on the use of restrictive intervention
Procedure for Deprivation of Liberties Safeguards (DOLS)

7. TRAINING

Safeguarding adults training is delivered through Induction and mandatory. This is managed through the Yeovil Academy which reflects the levels of training and staff required to attend including frequency. Somerset Safeguarding Adults Training Strategy Matrix is used which includes Face to Face, workbooks and e-learning opportunities. In addition, targeted training sessions are offered to staff with decision making responsibilities.

8. APPLICABILITY

This policy and procedure will apply to all staff employed, voluntary, security staff or undergoing training at
Yeovil District Hospital NHS Foundation Trust.

9. COMPLIANCE AND MONITORING

The effectiveness of this policy will be monitored through:

The annual safeguarding adults, mental capacity act and consent audit programme.
The on-going CQC evidencing of compliance with the essential standards for consent to care and treatment and safeguarding people who use service from abuse.
Review of concerns brought to the attention of the Safeguarding Adults at Risk Working Group.

10. EQUALITY IMPACT ASSESSMENT

This policy has been assessed and implemented in line with the policy on procedural documents and an equality impact has been carried out to ensure the policy is fair and does not discriminate any staff groups. A completed form can be found at the end of this policy in Annex A.

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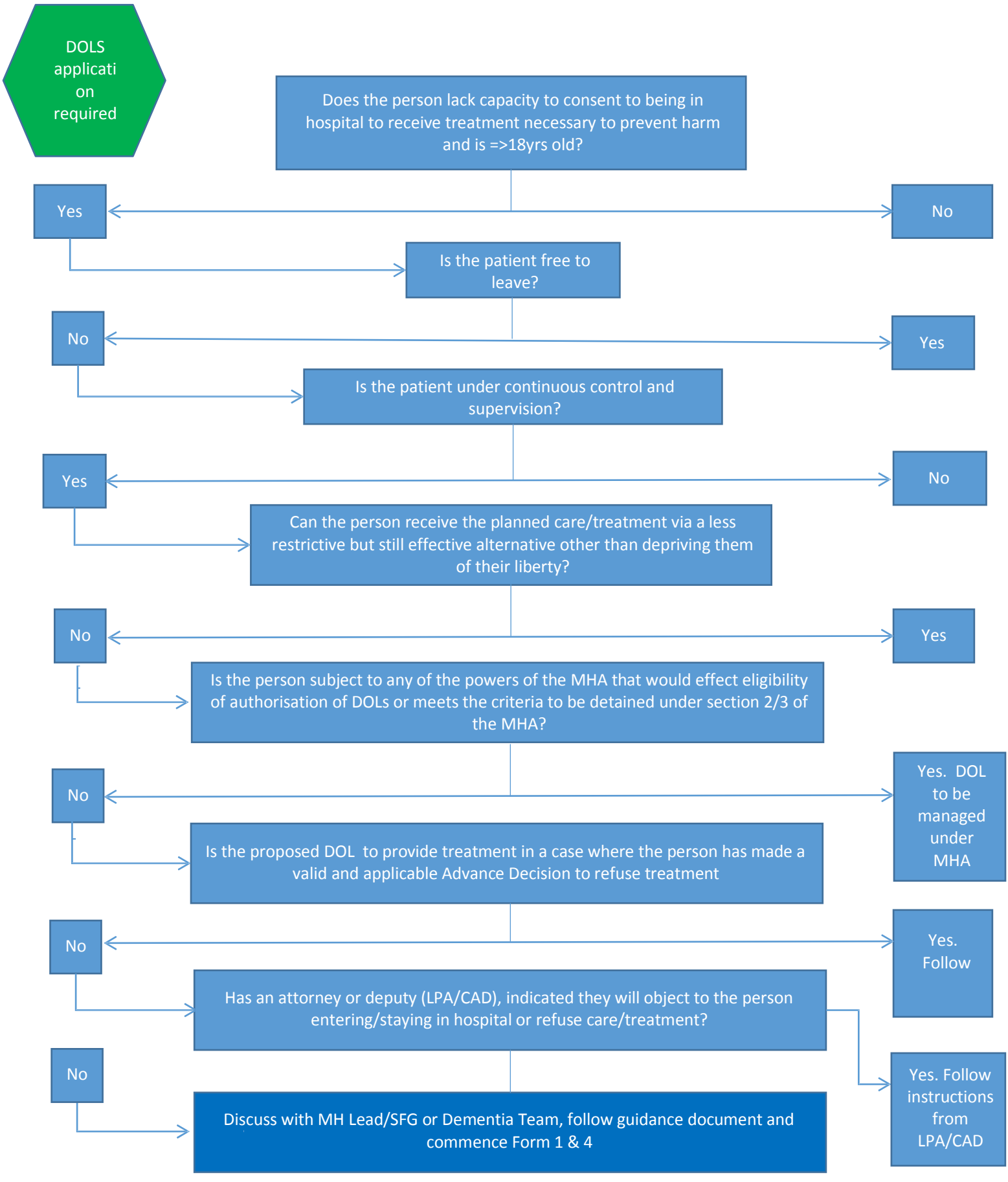
DOLS application required
Does the person lack capacity to consent to being in hospital to receive treatment necessary to prevent harm and is =>18yrs old?
Yes
No
Is the patient free to leave?
No
Yes
Is the patient under continuous control and supervision?
Yes
No
Can the person receive the planned care/treatment via a less restrictive but still effective alternative other than depriving them of their liberty?
No
Yes
Is the person subject to any of the powers of the MHA that would effect eligibility of authorisation of DOLs or meets the criteria to be detained under section 2/3 of the MHA?
No
Yes. DOL to be managed under MHA
Is the proposed DOL to provide treatment in a case where the person has made a valid and applicable Advance Decision to refuse treatment
No
Yes. Follow
Has an attorney or deputy (LPA/CAD), indicated they will object to the person entering/staying in hospital or refuse care/treatment?
No
Yes. Follow instructions from LPA/CAD
Discuss with MH Lead/SFG or Dementia Team, follow guidance document and commence Form 1 & 4

ANNEX B – EQUALITY IMPACT ASSESSMENT TOOL

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Name of Document: **Implementing the Mental Capacity Act 2005 Legislation and Deprivation of Liberties (DOLs) Authorisation policy**

		Yes / No / N/A	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	Race	No	
	Ethnic origins (including gypsies and travellers)	No	
	Nationality	No	
	Gender	No	
	Culture	No	
	Religion or belief	No	
	Sexual orientation including lesbian, gay and bisexual people	No	
	Age	No	
	Disability	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	Not considered applicable N/A
4.	Is the impact of the policy/guidance likely to be negative?	N/A	
5.	If so can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	
7.	Can we reduce the impact by taking different action?	N/A	

If you have identified a potential discriminatory impact of this procedural document, please refer it to the Trust's lead for Equality & Diversity, together with any suggestions as to the action required to avoid / reduce this impact.

For advice in respect of answering the above questions, please contact the Trust's lead for Equality & Diversity.

Signed – Name: Gaynor Appleby –Adult Mental Health Lead YDH November 2015