



Protocol for the NHS Inter-Agency Management of Deprivation of Liberty Safeguards Applications

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Acknowledgements

This document is based upon the ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguard Applications.

Thanks should also be provided to the NHS Mental Capacity Act (MCA) Leads within The Yorkshire and the Humber Region for their work in creating this NHS Supervisory Body document. Thanks to Peter Scanlon, Janis Bottomley and Tracy Small, for their valuable time in adapting the ADASS Protocol, to conform to NHS requirements. Thanks are also extended to Hempsons Solicitors for their suggested amendments and comments.

The NHS Confederation's PCT Network has agreed to support the Yorkshire and Humber Leads in disseminating this document for use in other regions.

1. Parties to the Protocol

This protocol has been adapted from the Association of Directors of Adult Social Services (ADASS) document and is recommended for adoption by all PCT's in England.

In circumstances where the supervisory body is a Care Trust Plus, they will need to select the relevant protocol, i.e. the ADASS document or this inter-agency protocol. This will need to be agreed with the host organisation.

This protocol will be reviewed for accuracy and purpose twelve months from its agreement.

2. Background

The Mental Capacity Act 2005 (MCA) was introduced in part in April 2007 and fully implemented in October 2007. The Mental Health Act 2007, which received Royal Assent in July 2007, included an amendment to the MCA to introduce additional Deprivation of Liberty Safeguards from 1st April 2009.

The Deprivation of Liberty Safeguards provides additional protection for the most vulnerable people living in residential homes, nursing homes or hospital environments. There is a requirement, enshrined in law from 1st April 2009, that care will always be provided in a way which is consistent with the human rights of people lacking capacity who are not otherwise protected or safeguarded through the use of the wider powers of the MCA, the Mental Health Act or Court of Protection powers.

Local Authorities (in the case of residential/nursing homes) and Primary Care Trusts (in the case of hospitals) have primary responsibility as the new statutory Supervisory Bodies under the Deprivation of Liberty (DoL) Safeguards. In operational terms this means that Local Authorities and PCTs will receive requests from Managing Authorities (residential/nursing homes and hospitals) and are required to respond to requests for authorisations by arranging for assessments to be undertaken and completed within the mandated deadlines under the DoL regulations.

3. Definitions

This protocol applies the following definitions.

'Supervisory Body' – The Primary Care Trust which has statutory responsibility for conducting assessments and reviews under this legislation.

'Host PCT' – The Primary Care Trust in the geographic locality of the Hospital in which the relevant person is receiving care but where that PCT is not also the Supervisory Body.

'Relevant Person' – The person who is, or may become, deprived of their liberty.

4. Scope and Aims of the Protocol

This protocol aims to outline the responsibilities and actions to be taken by PCT's in circumstances where a person is classified as usually resident in one geographical area (the Supervisory Body jurisdiction) but is receiving hospital care in another (the Host PCT) and deprivation of liberty assessments need to be undertaken.

This protocol does not restrict the ability of any PCT to come to local, individual arrangements for the management of the NHS inter-agency Deprivation of Liberty requests. Where PCTs choose to make individual arrangements, they will not be able to rely on any provisions within this protocol that are inconsistent with the individual arrangements they have agreed. This protocol encompasses arrangements and processes for:

- Making arrangements for out of area DoLS assessments
- Undertaking deprivation of liberty safeguard assessments and reviews
- Commissioning paid representatives.

5. Principles

The principles underpinning this protocol are:

- Management of the Deprivation of Liberty Safeguards process will be up to each PCT Supervisory Body, in accordance with local policies and procedures.
- All Supervisory Bodies should have a procedure in place that identifies the action they should take, who should take it and within what timescale.
- Appropriate and transparent arrangements for the management of inter-agency relationships should be developed and agreed, as a matter of good governance and to improve outcomes for the relevant person.
- Suitable arrangements should be established and agreed to allow for the recovery of costs in circumstances where the Supervisory Body arranges for another PCT to act on its behalf.
- Supervisory Bodies should establish arrangements to encourage timely consideration of requests for deprivation of liberty authorisations and reviews. Host PCTs should establish arrangements to encourage timely responses to requests.
- Supervisory Bodies must establish arrangements to ensure that the legislative requirements are met in relation to assessments and reviews.
- It is the responsibility of the Host PCT to ensure that its assessors meet the regulatory and indemnity requirements. There will be an expectation that it is the responsibility of the Host PCT to assure the Supervisory Body that its assessors meet the general eligibility requirements under the Mental Capacity Act (Deprivation of Liberty; Standard Authorisations, Assessments and Ordinary Residence) To this end the Host PCT will keep an up to date register of its assessors and their continuing eligibility to practice.

6. Key Responsibilities

- The Supervisory Body retains responsibility for the granting or refusal to grant Deprivation of Liberty authorisations. This responsibility cannot be delegated.
- The Supervisory Body retains ultimate responsibility for ensuring that all acts undertaken by another party on its behalf, as part of the deprivation of liberty assessment process, meet statutory requirements.
- Where a Host PCT acts on behalf of a Supervisory Body, the Host PCT is responsible for ensuring its actions meet statutory requirements and are communicated to all relevant parties.
- The Supervisory Body is responsible for putting in place effective monitoring and review processes. Any request for a Host PCT to undertake this on their behalf must be initially negotiated verbally and must also be documented formally in writing, detailing the requirements and parameters of responsibility as outlined in Schedule A.

7. Determining Usual Residence/Responsible Supervisory Body

Generally

The terms '*usually resides*' or '*usual residence*' is the NHS term which is generally equivalent to the local social services authority terms '*ordinarily resides*' or '*ordinary resident*' to denote responsibility for provision of services and is used, where appropriate, throughout this document.

A PCT is the Supervisory Body where it commissions the care of a patient resident in any NHS or Independent Hospital in its geographical area of responsibility

A PCT is the Supervisory Body for a patient who usually (but not definitively) resides within its geographical area of responsibility (whether or not that patient is registered to a GP in that area), but for whom care or treatment for the patient is being provided in a hospital in a district which is outside of its geographical area of responsibility.

A PCT is the Supervisory Body where a patient receives privately commissioned care or treatment in a hospital in the PCT's geographical area of responsibility.

Out of PCT boundaries within England

Where a PCT is funding the treatment of a patient in an out-of-area hospital, that PCT is the Supervisory Body.

Where specialist care and treatment is funded directly from the Department of Health, the PCT where the patient usually resides is the Supervisory Body.

Individuals with No Settled Residence

Where individuals have no settled residence or fixed abode the PCT for the hospital where they present themselves is the Supervisory Body

Cross border issues within the UK

Where there are cross border issues with Wales, Scotland or Northern Ireland you are guided to refer to the Department of Health Guidance '*Who Pays? Establishing the Responsible Commissioner*' DH, Gateway ref: 8448, section 3.

Where there is a Dispute

In the event that Supervisory Body status is not immediately clear (by way of for example, if there are unresolved questions about the usual residence of the relevant person) then the PCT responsible for the area where the managing authority is located should refer to the Department of Health Guidance '*Who Pays? Establishing the Responsible Commissioner*' DH, Gateway ref: 8448, in particular section 1(6) and section 9. In exceptional circumstances where disputes cannot be resolved at SHA level, section 11 allows that the case be referred to:

Recovery and Support Unit
Department of Health
Room G32
Richmond House
71 Whitehall
London
SW1A 2NS

8. Communications

Supervisory Bodies must nominate a **Key Contact Person** responsible for receiving and processing all DoL authorisation requests. This person should also be responsible for dealing with any initial query relating to DoL cross boundary issues. Details are available on the Department of Health website:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@pg/documents/digitalasset/dh_104298.pdf

Where a request is received from a Managing Authority to a Supervisory Body the patient's usual residence must be determined. If it is the case that the PCT where the patient usually resides is not the Supervisory Body to which the request has been made, the Managing Authority should be assisted to obtain the contact details of the appropriate PCT Supervisory Body (See DH link above).

Where a request is received from a Managing Authority outside the Supervisory Body's geographical boundaries, concerning a patient for whom it has responsibility, the Protocol for the NHS Inter-agency Management of Deprivation of Liberty Safeguards should be used. In this case the Supervisory Body should contact the Host PCT to discuss arrangements.

In the event that the Supervisory Body is providing one or more assessors rather than those the Host PCT would normally use, this should be communicated to the Host PCT Lead, to ensure that the Host PCT Lead understands what if any DoLS responsibilities it is being requested to undertake on behalf of the Supervisory Body under the terms of this protocol.

The Host PCT must keep the Supervisory Body informed of progress in relation to the assessments being undertaken, with timely feedback relating to the outcomes of the assessments.

In the event that any assessment fails, under the Deprivation of Liberty criteria, the Supervisory Body should be contacted immediately, to enable appropriate action to be taken.

9. Independent Mental Capacity Advocacy Service

The requirement to appoint Independent Mental Capacity Advocates (IMCAs) within the DoL regulations is met according to the wider provisions of the Mental Capacity Act 2005 i.e. where the relevant person is receiving care and **not** where the relevant person is usually resident, if this is different.

Under the Mental Capacity Act resource allocation, funding for the commissioning of an IMCA service was provided exclusively to Local Authorities. The Local Authority in which the relevant person's placement is located is therefore responsible for providing an IMCA service if required. This is the position irrespective of whether the relevant person's usual residence is elsewhere or the relevant person is placed in a care home or hospital.

10. Paid Representatives

The involvement of a representative for the relevant person is provided for under the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008. The expectation is that a representative will normally be a family member, friend, carer, Donee or Deputy (see Section 3 of the Regulations). Where it has not been possible to appoint a representative from any of these categories, the Supervisory Body may select a person to be the representative under Section 9 of the Regulations. In this event, the person would be performing the role in a professional capacity.

If the Supervisory Body wishes to arrange for the Host PCT to appoint paid representatives on its behalf, it will do so following the processes outlined in this protocol. It is expected that paid representatives will spend approximately 26 hours per annum pro-rata, with or on behalf of the individual whose liberty has been deprived. The cost of this service will be as per local commissioned service costs.

11. Request from Supervisory Bodies for another PCT to undertake Assessments

The duty of the Supervisory Body to authorise or decline DoL requests cannot be delegated but the Supervisory Body may arrange for another body to undertake one or

more deprivation of liberty assessments on its behalf. This protocol provides for circumstances where the Supervisory Body wishes to appoint assessors or a paid representative from the Host PCT. However, Supervisory Bodies are at liberty to commission assessors or appoint paid representatives from other bodies provided they meet regulatory requirements. Such arrangements fall outside the scope of this protocol.

The Host PCT may decline the responsibility should there be exceptional circumstances for example, where there is a lack of suitable assessors. The Supervisory Body will remain the body with statutory responsibility for:

- establishing a system for receiving and processing applications from Managing Authorities.
- commissioning suitably trained staff/services to undertake and co-ordinate the various assessments relating to each application within the required timescales.
- commissioning a suitably trained DoL IMCA and Representative service
- establishing an authorisation system which will consider the outcome of DoL requests.
- complying with a range of statutory responsibilities in communicating the outcome of each authorisation to a range of defined parties.
- Ensuring the recommendations made by the Best Interests Assessor are followed, such as :
 - determining the length of the deprivation of liberty
 - identifying a person's representative (as defined in the 'Deprivation of Liberty Safeguards')
 - considering the attachment of any conditions recommended.

12. Process Requirements

If a Supervisory Body wishes to arrange for deprivation of liberty assessments or the appointment of paid representatives to be carried out on its behalf by a Host PCT, the Supervisory Body must make a formal request to the Host PCT. Telephone contact should be made from the Supervisory Body to the lead person or their nominated deputy in the Host PCT. This conversation should discuss what services the Supervisory Body wishes the Host PCT to undertake on its behalf. The date of any authorisations already in force should be clearly stated with timescales for assessments to be completed agreed. The request must be a formal written request, using the prescribed form (Schedule A).

In terms of continuity in the assessment process, when considering whether to accept a request, the Host PCT should have regard to its capacity to undertake any possible subsequent reviews and communicate capacity issues to the Supervisory Body.

The Supervisory Body and Host PCT will ensure arrangements are agreed to reduce any impact upon the relevant person.

It is good practice for communication to be conducted in a timely manner to ensure that Supervisory Bodies can meet their statutory obligations. Where the responsible Supervisory Body wishes to engage the services of the Host PCT negotiations should be initiated by the Supervisory Body as soon as possible following receipt of an authorisation request.

The Host PCT will be required to confirm whether or not they are in a position to carry out the necessary assessments and/or provide the services of a paid representative. In the case of a standard authorisation request, this confirmation should be made within three working days of receipt of the authorisation request and within 24 hours of an urgent authorisation request, where possible. A standard form should be used for this purpose (Schedule B).

13. Agreeing Terms for Conducting Assessments

Following agreement by a Host PCT to conduct one or more assessments on behalf of a Supervisory Body the parties must come to a formal agreement which establishes:

- The assessments to be conducted
- The responsibilities of each of the parties
- Timeframes to be achieved
- Key contacts within each organisation and reporting arrangements
- Procedures within the Supervisory Body for granting authorisations, attaching conditions and setting the period of any authorisation.
- Procedures to follow where the assessment criteria are not met
- Costs and payment arrangements

This formal agreement will be in a standard format (**Schedule C**)

14. Conducting Assessments and Reporting

The Host PCT which has agreed to conduct one or more assessments on behalf of the Supervisory Body will undertake the assessments according to the formal agreement between the parties and in accordance with statutory requirements and relevant best practice.

Receipt of the formal agreement will not delay the assessment process once verbal agreement is concluded.

Use of Equivalent Assessments

Where the Host PCT proposes to use equivalent assessments the Supervisory Body must be informed, receive the assessments and decide if the assessments are acceptable.

Assessments

Assessors will follow the standard reporting procedures of the Host PCT.

On completion of the relevant assessments the nominated key contact person within the Host PCT will forward the assessment documentation to the nominated key contact

person within the Supervisory Body, as identified on the Department of Health website (see above), who will then follow local protocols.

This must be done by the fifth day (from receipt of the original referral) in the case of an Urgent Authorisation and no later than the eighteenth day (from receipt of the original referral) in the case of a Standard Authorisation referral, unless there are exceptional circumstances, which must be discussed with the Supervisory Body and communicated to the Managing Authority.

All assessments should be despatched by post using 'signed for' methods. For Urgent applications a next day delivery service must be used due to the time constraints of the process.

When the Supervisory Body has made a decision on the authorisation request, their key contact person is required to report back to the Host PCT key contact person on the outcome.

As soon as practicable, the Supervisory Body must give a copy of the Standard Authorisation, together with copies of all the assessments in relation to the relevant person (including any equivalent assessments), to the following:

- (a) the Managing Authority of the hospital
- (b) the person being deprived of their liberty
- (c) any interested person identified by the BIA
- (d) any IMCA instructed for the person under section 39A of the Mental Capacity Act 2005 in relation to their deprivation of liberty.

15. Where Assessment Criteria are Not Met & Authorisation is Declined

Where assessors determine that the DoL criteria are not met, they must inform the Supervisory Body immediately. The Supervisory Body is responsible for informing the Managing Authority that authorisation has been declined and the reasons for this.

Where the assessors have found that Deprivation of Liberty is occurring but the assessment criteria are not met, the Supervisory Body is responsible for informing the Managing Authority that care arrangements must be made so that the relevant person is not unlawfully deprived of their liberty.

The Supervisory Body and Managing Authority may need to agree immediate packages of care, in relation to the circumstances of the relevant person.

16. Where the Managing Authority and the Supervisory Body are the Same Organisation

Where a PCT is both the Supervisory Body and Managing Authority, the Best Interests Assessor cannot be an employee of the Supervisory Body/Managing Authority or providing services to it.

In such circumstances, the Supervisory Body can arrange for the best interests assessments to be carried out on its behalf by an eligible Best Interests Assessor

employed by another NHS organisation or, if it is satisfied that the BIA regulations are met.

In such circumstances, the Supervisory Body/Managing Authority should, to the extent possible, follow the principles and processes outlined in this protocol when arranging for the assessment to be carried out on its behalf.

17. Reviews of Deprivation of Liberty Authorisations

In circumstances where a review of an authorisation is required and the Supervisory Body wishes to arrange for the review to be carried out on its behalf by another PCT, the principles and processes outlined in this protocol should be followed.

18. Record Keeping and Information Sharing

In circumstances where a Host PCT performs an assessment on behalf of a Supervisory Body, both organisations should retain copies of relevant documents and information in line with the Data Protection Act (1998), Caldicott Principles and organisational policy.

19. Urgent Requests for Authorisation

Wherever possible, requests for deprivation of liberty authorisations should be made before the deprivation of liberty commences. However, where a deprivation of liberty unavoidably needs to commence before a Standard Authorisation can be obtained, an Urgent Authorisation can be given which will make the deprivation of liberty lawful for a short period of time.

The PCT to which the request is made should endeavour to prioritise the urgent request or where they are unable to meet the request, inform the Supervisory Body at the earliest opportunity.

20. Cost Recovery

When a Host PCT agrees to undertake work on behalf of a Supervisory Body it incurs costs that must be recovered.

There are set charges for four separate levels/types of activity:

Partial Assessment (£200) – where a DoL assessment has been started but terminated early in the process (e.g. the relevant person was assessed as having capacity) so that a mental health assessor was not required.

Full Assessment (£600) – where the range of DoL assessments have been carried out by both best interests assessor and mental health assessor whether or not these led to an authorisation being given.

Review (£200) – as defined under the DoL regulations.

Paid Representative (£520) – This is calculated on the basis of the required 26 hours per annum at £20 per hour. A pro rata cost can be applied if the paid representative is not required for the whole year.

Administration Charge (10%) – This charge will be payable to the Host Authority to cover the administration costs which are not included in the assessment charges. They will apply individually to partial, full and review assessments.

[The standard costs schedule provides for consistency and is relatively easy to administer. However, it is acknowledged there is a risk that some PCTs with higher than average actual costs may be disadvantaged by this approach and charge the going rate which may be higher]

21. Disputes, Complaints and Litigation

The Supervisory Body remains accountable for any dispute, complaint or litigation that may arise in relation to the Deprivation of Liberty Safeguards process and any assessments they may have commissioned from the Host PCT.

The Host PCT may be asked to assist the Supervisory Body in investigating complaints/disputes but the Supervisory Body maintains accountability for any complaints and will utilise their organisations complaints process. Similarly, the Supervisory Body is liable for any litigation in relation to how they have complied with their statutory duties.

22. Dispute between Supervisory Body and Host PCT

Where a dispute arises between the Supervisory Body and the Host PCT, the party which wishes to raise an issue or concern should do so as soon as reasonably practicable.

In the case of disputes relating to financial payment, all payments agreed to in the formal written agreement should be paid in full by the agreed date. Any reimbursement due will be paid following resolution of the dispute.

The issue or concern should be communicated via the key contacts within each organisation and should be in writing. The document should set out the nature of the issue or concern, the resolution sought and a proposed timeline for response and resolution.

On receipt of the document outlining the issue, concern or complaint, the key contact should acknowledge receipt.

The key contact will take responsibility for co-ordinating the response to the issue raised. This will include investigating the issue and informing relevant staff and any other relevant stakeholders.

If the issue cannot be resolved, the matter will be escalated in accordance with the standard dispute resolution arrangements in each organisation.

Request for the Host PCT to carry out a Deprivation of Liberty Assessment:

Dear [Host PCT Key Contact Person]

Re: Deprivation of Liberty Assessment Request

Mr/Mrs/ Miss / Ms [patient's name] is a patient at [name & address of hospital].

As the PCT responsible for commissioning [patient's name] care (and therefore the responsible Supervisory Body), it has come to our attention that he/she requires a deprivation of liberty assessment.

This is a [Standard/Urgent] Authorisation request.

In accordance with the Protocol for the NHS Inter-Agency Management of Deprivation of Liberty Safeguards Applications can you please advise whether you can arrange for the appropriate assessments to be carried out on behalf of NHS _____.

We are requesting the following work be undertaken on our behalf (please place a X in the relevant boxes):

- IMCA representation
- Age Assessment
- No Refusals Assessment
- Eligibility Assessment
- Mental Health Assessment
- Mental Capacity Assessment
- Best Interest Assessment
- Relevant Persons representation

Also in line with the protocol, I look forward to your response by [within three working days of this request in the case of a standard authorisation or within 24 hours of an urgent authorisation request]

Regards

(Name of Lead and Supervisory Body Details)

Response to the Supervisory Body's request to the Host PCT to carry out a Deprivation of Liberty Assessment:

Dear **[Supervisory Body Key Contact Person]**

Re: Deprivation of Liberty Assessment Request

Thank you for your letter dated **[insert date]** requesting this PCT to carry out the required deprivation of liberty assessments for **[patient's name]** who is currently receiving care at **[name & address of hospital]**.

We can confirm that we are able/unable to carry out the assessment on behalf of **[name of Supervisory Body]**.

The terms of our engagement on this occasion will be formalised using the service level agreement contained within the Protocol for the NHS Inter-Agency Management of Deprivation of Liberty Safeguards Applications . We look forward to receiving this at your earliest convenience.

OR

We are sorry we are not in a position to assist your PCT on this occasion but hope that you are able to make alternative arrangements in relation to this matter.

Regards

Lead name and Host PCT details

Collaborative Working Agreement

THIS AGREEMENT is made the day of 20

BETWEEN:

- (1) **[insert name of Host PCT]** and
- (2) **[insert name of Supervisory Body]**

RECITALS

- (1) The Supervisory Body wishes to commission from the Host PCT management of Deprivation of Liberty Safeguards Applications
- (2) The Host PCT has appropriate skills, background and experience for providing such assessments and make recommendations.
- (3) The Host PCT is willing to provide the Services (as defined below) and the Supervisory Body wishes to receive the Services, all subject to the provisions of this Agreement.

NOW IT IS AGREED as follows:

1 Definitions

In this Agreement, the following words shall have the following meanings:

'Services' means (a) the provision of deprivation of liberty assessments: of advice and recommendations to the Supervisory Body by the Host PCT (b) the subsequent operation of that function.

'Completion Date' means (*date*) or such other date as the Parties may agree.

'Fee' means The fees of any service at current cost to the Host PCT.

'Reports' means all reports, documentation, presentations, and software in whatever format that the Host PCT shall or may create or deliver to the Supervisory Body as part of the Services provided by the Host PCT.

'Specification Document' has the meanings given in Clause 2.2 and the document attached to this Agreement as Schedule D.

2 Services

- 2.1 The Host PCT shall provide the Services to the Supervisory Body, subject to the provisions of this Agreement.
- 2.2 At the commencement of the Services, the Supervisory Body shall agree and submit to the Host PCT an 'Assessment Request' (Schedule A). A specification (Schedule D) is also attached that defines the appropriate assessors , timescales and procedures for the provision of the Services
- 2.3 On verbal agreement of the terms of the 'Assessment Request', the Host PCT will immediately proceed with the service provision pending receipt of formal signed, written receipt of the request.
- 2.4 On receipt of the 'Request for the Host PCT to carry out a Deprivation of Liberty Assessment' the Supervisory Body will accept or decline the request by returning a signed, written 'Response to the Supervisory Body's request to the Host PCT to carry out a Deprivation of Liberty Assessment (Schedule B).
- 2.5 A 'Request for the Host PCT to carry out a Deprivation of Liberty Assessment' will be required for each occasion on which a request is made.

2.6 Any variation to the 'Assessment Request' by the Supervisory Body should be discussed immediately and agreed with the Host PCT, or vice versa.

3 Performance of Services

3.1 The Parties shall agree the time and place (if not specified in the Specification Document) for Performance of services subject to the availability of the Host PCT's staff and agents.

3.2 The Host PCT shall use reasonable endeavours to complete the Services by the Completion Date or meet such other dates as agreed by the Parties.

4 Fee and payment

4.1 Payment of the Fee for the Services shall be made within 30 days of the date of invoice.

4.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from the Supervisory Body.

5 The Supervisory Body's obligations

5.1 The Supervisory Body acknowledges and agrees that for the Host PCT to be able to provide the Services the Supervisory Body shall:

5.1.1 co-operate with the Host PCT and its subcontractors, as the Host PCT and/or its subcontractors reasonably require;

5.1.2 provide to the Host PCT (and its subcontractors) such information and documentation as the Host PCT (and/or its subcontractors) reasonably require, including where practicable, any local information required, for example details of any relevant Mental Health Act history.

- 5.1.3 .make available to the Host PCT (and its subcontractors) the facilities, resources, working space and staff as specified in the Specification Document and/or as the Host PCT (and/or its subcontractors) reasonably require from time-to-time; and
- 5.1.4 instruct the Supervisory Body's staff and agents to co-operate and assist the Host PCT (and its subcontractors).
- 5.2 The Host PCT may charge the Supervisory Body for any additional reasonable costs and expenses incurred by the Host PCT caused by the Supervisory Body's instructions or failure to provide instructions.

6 Reporting requirements

- 6.1 Schedule A shall specify the Reports that are to be produced during or on completion of the Services as detailed in the 'Request for the Host PCT to carry out Deprivation of Liberty Assessment.
- 6.2 Where required in the Schedule A to provide reports, the Host PCT shall supply one copy of the Reports to the Supervisory Body. The Host PCT grants to the Supervisory Body a non-exclusive license (without the right to sub-license) to use the reports for the purpose. The Host PCT shall own all copyright, database and other intellectual property rights in the reports.

7 Protection of confidential information

- 7.1 Each Party ('Receiving Party') shall keep the Confidential Information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the Confidential Information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this Clause 7, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

- 7.2 The obligations of Clause 7.1 shall not apply to any information which:
- 7.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Providing Party;
 - 7.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
 - 7.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
 - 7.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
 - 7.2.5 is required to be disclosed by order of a court of competent jurisdiction.
- 7.3 This Clause 7 shall survive termination of this Agreement for a period of ten years.

8 Warranties, liability and indemnities

- 8.1 The Host PCT warrants that it will use reasonable care and skill in performing the Services.
- 8.2 If any part of the Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Supervisory Body the Host PCT will re-perform the relevant part of the Service.
- 8.3 The Supervisory Body shall indemnify and hold harmless the Host PCT from and against all Claims and Losses arising from loss, damage, liability, injury to the Host PCT employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information

supplied to the Supervisory Body by the Host PCT, its employees or consultants, or supplied to the Host PCT by the Supervisory Body within or without the scope of this Agreement. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature in line with NHSLA indemnity cover. It is the intention that the indemnity is only intended to cover those losses which the NHSLA schemes cover.

- 8.4 In the event of the outcome of an authorisation assessment being decided at the Court of Protection NHSLA cover will not be available. Should this situation arise any costs incurred by the Host PCT and/or its Assessors not covered by the NHSLA, or any other responsible insurer, will be the responsibility of the Supervisory Body.
- 8.5 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

AGREED by the Parties through their authorised signatories

Name of Relevant Person:
Hospital/Care Home where person is located:
SUPERVISORY BODY
For and on behalf of (name):
Signature:
Print name:
Job Title:
Name and address to which invoice should be sent:-
Date:
HOST PCT
For and on behalf of (<i>name</i>):
Signature:
Print name:
Job Title:
Name and address to which payment should be sent:
Date:

Specification Document

A series of six assessments must be completed for an Authorisation to be granted. The assessments must be separately undertaken by:

- (i) A Best Interests Assessor who has completed a training approved by the Secretary of State and who has professional indemnity and/or insurance and CRB check.
- (ii) A Section 12 approved doctor who has additionally completed appropriate DoLS training made available by the Royal College of Psychiatrists and who has professional indemnity and/or insurance and a CRB check.
- (iii) A registered medical practitioner who has at least three years post registration experience in the diagnosis or treatment of mental disorder, has completed appropriate DoLS training made available by the Royal College of Psychiatrists, has professional indemnity and/or insurance and a CRB check.

The assessments that must be completed are:

Assessment	Conducted by:
Age Assessment	Anyone whom the Supervisory Body is satisfied is eligible to be a Best Interests Assessor.
No Refusals	Anyone whom the Supervisory Body is satisfied is eligible to be a Best Interests Assessor.
Mental Capacity	Anyone who is eligible to act as a Mental Health or Best Interests Assessor.
Eligibility	(a) A Doctor (see above) (ii) who is approved under Section 12 of the Mental Health Act 1983 (as amended by the MHA 2007). Or (b) A Best Interest Assessor who is also an AMHP.
Mental Health	(a) A Doctor (see above) (ii) approved under section 12 of the Mental Health Act 1983 (as amended by the MHA 2007). Or (b) A registered medical practitioner (see above (iii)) who the Supervisory Body is satisfied has at least three years post registration experience in the diagnosis or treatment of mental disorder. and

	Has completed the standard training for Deprivation of Liberty mental health assessors.
Best Interests	Best Interests Assessor.

The costs of Assessments and Reviews are according to actual costs incurred.

The time scale for these assessments – are 7 days for an Urgent Authorisation or 21 days for a Standard Authorisation. Assessment documentation must therefore be provided back to the Supervisory Body in sufficient time for authorisations to be processed.

Where an authorisation is granted, a Representative must be appointed - this could be a family member or friend of the individual whose liberty is being deprived, but they must be both willing to undertake the responsibilities of a Representative and suitable to be appointed. Where there is no willing or suitable friend or family member who can be appointed as a Representative, then the Supervisory Body must appoint a Paid Representative who must spend a minimum of 26 hours per annum working pro-rata with or on behalf of the individual whose liberty has been deprived.

On completion of the relevant assessments, the nominated key contact person within the Host PCT will forward the assessment documentation to the nominated key contact person within the Supervisory Body.

This must be done by the fifth day (from receipt of the original referral) in the case of an Urgent Authorisation and no later than the eighteenth day (from receipt of the original referral) in the case of a Standard Authorisation referral. In the event that there are later referrals the timescales may be shortened, subject to agreement.