

Appendix 1: Deprivation of Liberty Safeguards (DoLS) Application Process

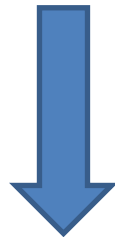
- The right to liberty is enshrined through Article 5 of the Human Rights Act (1998); the state can only remove an individual's liberty through a lawful procedure, for example that related to the criminal justice process, Mental Health Act (1983), Children Act (1989), Education and Inspections Act (2006)
- DoLS is an amendment of the Mental Capacity Act (2005) for people who **lack capacity**; this is applicable to children and young people, from the age of 16 years old. The applicability of DoLS to 16 and 17 year olds change after the Cheshire West (2014) and Re-D (2015) rulings where it was deemed no longer appropriate to rely on Parental Consent or s. 20 (CA, 1989) for the purpose of accommodation to restrict the liberty of young people.
- There is no statutory definition of a Deprivation of Liberty, however the Cheshire West Supreme Court Judgement made reference to an '**acid test**', consisting of two key questions:
 - Is the person subject to continuous supervision and control?
 - Is the person free to leave?These questions are applicable to any child or young person who **does not have the capacity** to consent to measures which deprive them of their liberty, including if this is in the community for their own safety for example car seat restraint, cot sides on a bed, locked doors, 1-2-1 supervision
- The comparator to determine whether a child or young person may be deprived of their liberty is 'a child or young person of the same age subject to the same levels of support/supervision/restrictions. It is **irrelevant** that the arrangements are in place to promote the child or young person's welfare and safety
- The Court of Protection directly authorises all DoLS applications, however if a child or young person is under the age of 16 years or the individual is over the age of 16 and **does not** consent, then this application should be processed via the High Court under Inherent Jurisdiction
- A DoLS application is placement specific, so if for the purposes of accommodation the Child or Young Person moves to a new placement, a new application would need to be made in advance of the move.
- From April 2022 as a result of the Mental Capacity (Amendment) Bill, the Liberty Protection Safeguards (LPS) will replace the existing DoLS process for anyone over the age of 16. DoLS will be still be applicable for children and young people under the age of 16
- If you are working with a child or young person, where the '**acid test**' applies, or you think that it might apply but would like some more information, please discuss this in the first instance with your direct line manager and team manager. Please see the [Deprivation of Liberty and Mental Capacity Guidance](#).

- If you have a case where you think the 'acid test' applies or may apply in the future, please complete the below and forward this to cs_mso@lincolnshire.gov.uk to arrange a virtual discussion/panel.

Name	Mosaic	DOB	Legal Status	Brief detail Rational why you think DOL
A Example	12345	21.8.12	S20 CiC	Constant supervision 2to1 at all times Residential placement

- **Please note that any request for a DoLS Application, needs to be agreed by an Assistant Director**

If in doubt that a young person has capacity to make a decision you will need to undertake a Mental Capacity assessment, consult code of practice
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf



Discussion with PS,
Case note of
management
decision to be
recorded on file

Read Mental Capacity Procedure: https://www.proceduresonline.com/resources/cs_mca/p_mental_capacity.html#1.-introduction

Decide on the specific decision that the young person needs to make

This needs to be in line with another young person of a similar age, who does not have a disability

Plan how you are going to support the young person to understand the decision they are being asked to make.

A minimum of 2 visits are required

Record these on visit step
(CIN, OT case work, CP, CIC)

1st Visit – teaching part

At this visit the aim is to support the young person with all the information to help them make the decision
You may need to consider breaking this down in to small chunks of information to help them process and digest this. It is important that you support the young person with their understanding . You may need to consider use different communication methods

Depending upon the decision being made, you will need to request care plans/ risk assessments from any care establishment.

It is important that these include what restrictions are in place, who supports when/ why and why can't the young person access certain areas.

These will need to be submitted to court, so it is important these are looked at early on to prevent later delay

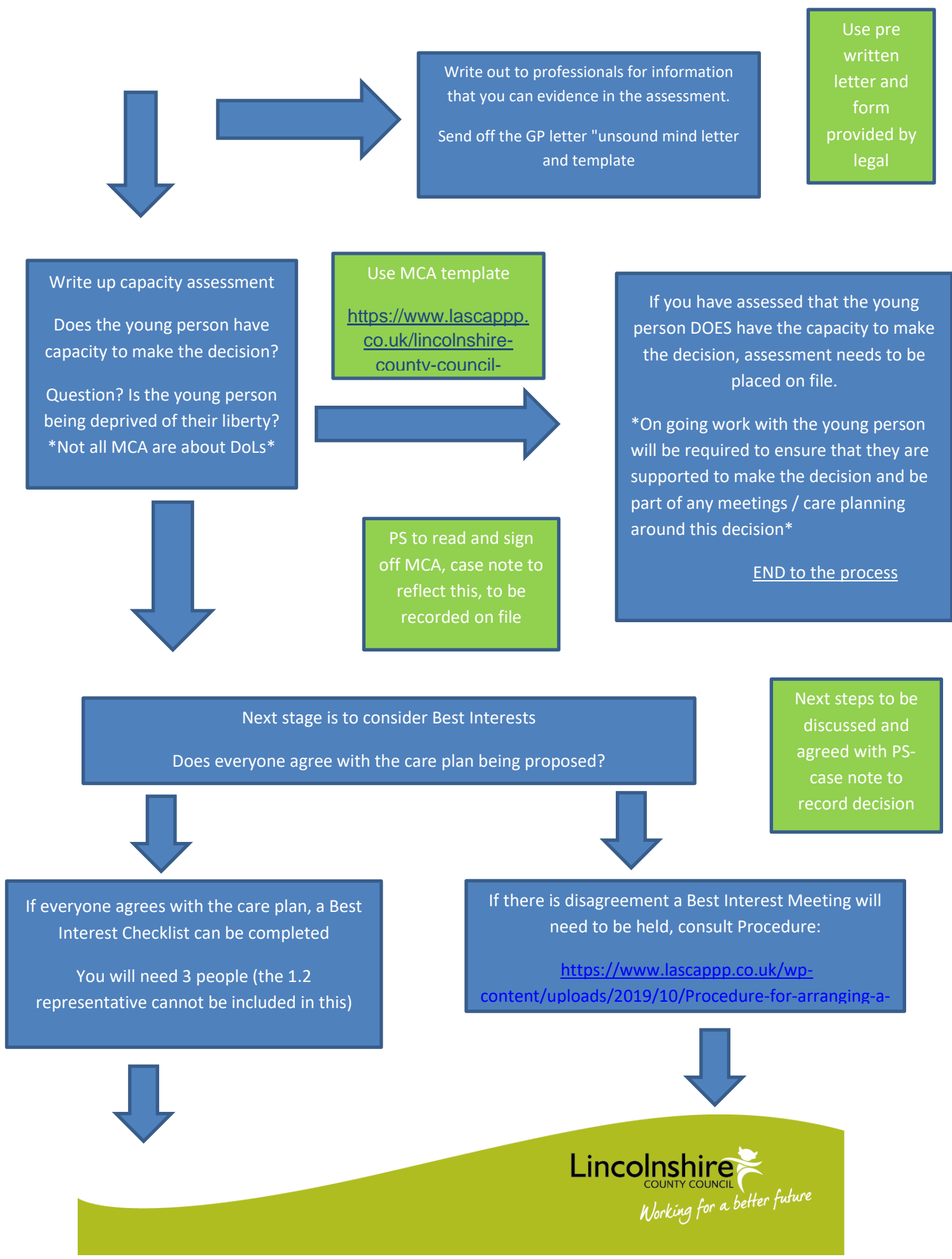
If you feel the young person has no understanding of the information, you will need to repeat the visit a second time. You may need to leave resources and information with the young person for parents or carers to go through with them again

If you assess the young person does have understanding, move to the second visit. You may consider leaving information and resources for the young person to look again

2nd Visit- Assess retention/ weighing up of information/ risks

At this visit your aim is to assess the young person's ability to use information to help them make the decision, encourage them to tell you about the 1st visit, what they can remember, are their answers similar to the visit 1st. It is important not to expect that the young person can tell you this verbatim but that you feel their responses gives an indication that they have retained the information and they can weigh up the risk factors associated.

Remember it is ok for young people to make unwise decisions



If mental capacity has found that the young person's liberty has been deprived, you will need to apply the following ACID TEST

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If you are working with a child or young person, where the '**acid test**' applies, or you think that it might apply but would like some more information, please discuss this in the first instance with your direct line manager and team manager.



Discuss with PS, decision and rational of next steps to be added as a case note
Please note that any request for a DoLS Application, needs to be agreed by an Assistant Director

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