

# Deprivation of Liberty Safeguards

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# Background

- Introduced into Mental Capacity Act 2005 (MCA) through the Mental Health Act 2007
- Will prevent arbitrary decisions that deprive vulnerable people of their liberty
- Safeguards are to protect service users and if they do need to be deprived of their liberty give them representatives, rights of appeal and for the “deprivation” to be reviewed and monitored.
- Safeguards cover people in hospital and care homes registered under the Care Standards Act 2000 – whether placed publicly or privately
- Became statutory obligation on 1<sup>st</sup> April 2009

## What is deprivation of liberty?

- Arises from the “Bournewood” case – a ECtHR case – Article 5.
- HL had been deprived of his liberty unlawfully, because of a lack of a legal procedure which offered sufficient safeguards against arbitrary detention (5(1)) and speedy access to court (5 (4))
- No definition – intensity / degree > nature / substance
- Subsequent cases have found examples where deprivation of liberty was and wasn’t judged to have occurred in similar circumstances
- A serious matter to be used sparingly and avoided wherever possible

# What is deprivation of liberty?

Supplement to the MCA Code of Practice

2.5

The ECtHR and UK courts have determined a number of cases about deprivation of liberty. Their judgments indicate that the following factors can be relevant to identifying whether steps taken involve more than restraint and amount to a deprivation of liberty. It is important to remember that this list is not exclusive; other factors may arise in future in particular cases.

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- Staff exercise complete and effective control over the care and movement of a person for a significant period.
- Staff exercise control over assessments, treatment, contacts and residence.

# What is deprivation of liberty?

Supplement to the MCA Code of Practice  
2.5 (contd.)

- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts because of restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

# Responsibilities in Deprivation of Liberty

## Supervisory Body

PCT or LA

Responsible for assessing the need for and authorising deprivation of liberty



## Managing Authority

Hospital or Care Home

Responsible for care and requesting an assessment of deprivation of liberty



## Relevant Person

Person being deprived of liberty



## Assessors

Carry out assessments



## Family/Friends/Carers

Consulted, involved and provided with all information



## Representative

Providing independent support

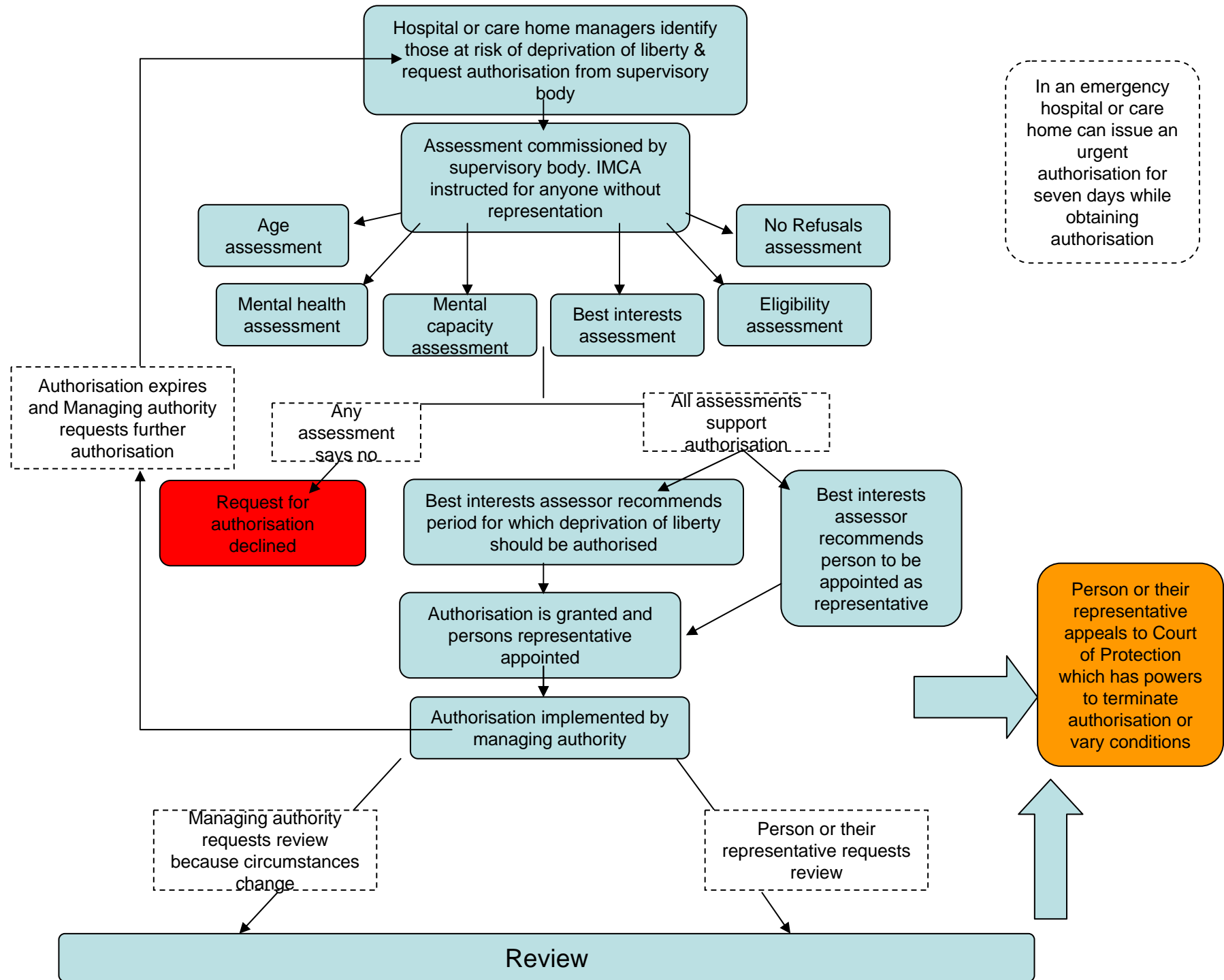


## IMCA



## Court of Protection





## How do DOLS relate to the rest of the MCA?

- Any action taken under the deprivation of liberty safeguards must be in line with the principles of the Act:
- A person must be assumed to have capacity unless it is established that he lacks capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- An act done, or decision made, under this Act or on behalf of a person who lacks capacity must be done, or made, in his best interests
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

## The impact on the system?

- Government expected 20,000 assessments in England in 2009 / 10
- Currently headed for approximately 8,000 assessments in 2009 / 10
- Overall expected to be 4:1 care homes to hospitals and 1:3 authorisations to non authorisations
- So far percentages / proportions very close to predictions but volumes lower

## Who can assess?

- Only doctors can do mental health assessments BUT they don't have to be MHA s12 doctors or psychiatrists
- Only social workers, psychologists, OTs and nurses can be best interests assessors but they don't have to be approved mental health practitioners
- Only AMPS or S12 doctors can do eligibility assessments

## Issues?

- How well is MCA integrated in to day to day practice?
- How confident are practitioners about restriction / restraint before they even tackle deprivation of liberty?