



# **Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications**

**Report Author:** Emmet Perry  
Senior Manager, Adult Safeguards  
Essex County Council

## Contents

<b>Heading</b>	<b>Page</b>
Contents	1
Acknowledgements	2
Background/Definitions	3
Scope and Aims of the Protocol	4
Principles	4
Key Responsibilities	5
Determining Ordinary Residence/Responsible Supervisory Body	5 & 6
PCT – Determining Responsibilities as Supervisory Bodies	7
Requests for DoLS Authorisations	7
IMCA Service	8
Paid Representatives	9
Request from Supervisory Bodies/PCTs for Assessments	9
Process Requirements/Agreeing Terms/Conducting Assessments	10
Assessments & Reporting/When Assessment Criteria Not Met	11
Where Managing Authority & Supervisory Body are the Same	12
Reviews of DoLS Authorisations	12
Record Keeping & Information Sharing	12
Urgent Requests for Authorisation	12
Cost Recovery	12 & 13
Disputes, Complaints and Litigation	14
Dispute between Supervisory Body & Host Authority	14

## Appendices

Pan-London Procedure for Managing DoLS Applications	A
Letter from Commissioning Authority to Managing Authority with details of Key Contact Person	B
E-mail from Supervisory Body requesting Host Local Authority to carry out DoLS Assessments	C
E-mail response to the Supervisory Body's request to the Host Local Authority	D
Service Level Agreement between Supervisory Body and Host Local Authority	E

## **Acknowledgements**

The report author would like to thank members of the original working group: Kate Burke (Essex), Greg Slay (West Sussex), Carol Wilkinson (East Sussex) and Paula Hallam (Hampshire) and a particular thanks to Oliver Mills, Managing Director, Adult Social Services Kent County Council for kindly agreeing to sponsor this project.

I would also like to thank Nick Pavitt, (Essex CC legal section), Penny Rogers (Essex CC MCA Consultant), Maggie Goff & Steve Chamberlain (London Development Centre), Linda Metcalfe (Nottingham) and Sylvia Manson (Northamptonshire Teaching PCT) for their invaluable help and advice during the draft stages of the report. Additionally, I am grateful to the ADASS Mental Health Network for their peer review, the ADASS Ordinary Residence Reference Group and everyone else who responded to the document for their assistance and comments.

## **1. Parties to the Protocol**

This protocol was ratified by the Association of Directors of Adult Social Services (ADASS) on 24<sup>th</sup> February 2009 and is intended for adoption by all Councils with Adult Social Services Responsibilities in England. The protocol is also available for use by Primary Care Trusts (PCTs) and Local Authorities in Wales.

## **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 1<sup>st</sup> 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 will be 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 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) will assume primary responsibility as the new statutory Supervisory Bodies under the DoL Safeguards. In operational terms this means that Local Authorities and PCTs will receive requests from Managing Authorities (residential/nursing homes and hospitals) and be required to organise, complete and respond to requests for authorisations within the mandated deadlines under the DoL regulations.

## **3. Definitions.**

This protocol will apply the following definitions.

‘Supervisory Body’ – The Local Authority or Primary Care Trust which has statutory responsibility for conducting assessments and reviews under this legislation.

‘Host Authority/Host PCT’ – The Local Authority or Primary Care Trust in the geographic locality of the Care Home or Hospital in which the relevant person is receiving care but where that Local Authority or PCT is not also the Supervisory Body.

‘Relevant Person’ – The person who is, or may become, deprived of their liberty in a hospital or care home.

#### **4. Scope and Aims of the Protocol**

This protocol aims to outline the responsibilities and actions to be taken by Local Authorities in circumstances where a person is classified as ordinarily resident in one local authority (the Supervisory Body) but is residing in a care home in another local authority (the Host Local Authority) and deprivation of liberty assessments need to be undertaken.

The protocol can be extended to Primary Care Trusts, in circumstances where a PCT is funding the treatment of a patient in an out-of-county hospital or nursing home. In such circumstances, the funding PCT is the Supervisory Body and it may choose to adopt all or some of the principles and processes outlined in this document.

This protocol does not restrict the ability of any Local Authority or PCT to come to local, individual arrangements for the management of inter-authority deprivation of liberty requests. The need for a separate Pan-London procedure is one significant example of this (**see Appendix A**).

Where Local Authorities or 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:

- Undertaking deprivation of liberty assessments
- Commissioning paid representatives.

#### **5. Principles**

The principles underpinning this protocol are :

- Appropriate and transparent arrangements for the management of inter-authority 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 one Supervisory Body arranges for another Local Authority or 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 Local Authorities or 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.

## **6. Key Responsibilities**

- The responsible Supervisory Body retains responsibility for Deprivation of Liberty authorisations. This responsibility cannot be delegated.
- The responsible 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 Local Authority or PCT acts on behalf of a responsible Supervisory Body, the Host Local Authority or PCT is responsible for ensuring its actions are communicated to all relevant parties.
- The responsible Supervisory Body is responsible for putting in place effective monitoring and review processes. Any request for a Host Local Authority or PCT to undertake this on their behalf must be negotiated in writing, detailing the requirements and parameters of responsibility. The Supervisory Body retains ultimate responsibility for deciding on whether or not a DoL authorisation should be granted .

## **7. Determining Ordinary Residence/Responsible Supervisory Body**

Where the Deprivation of Liberty Safeguards are applied to a person in a care home, the Supervisory Body will be the Local Authority for the area in which the person is ordinarily resident.

However, if the person is not ordinarily resident in the area of any Local Authority (for example a person of no fixed abode), the Supervisory Body will be the Local Authority for the area in which the care home is situated.

To determine the place of ordinary residence, the principles and mechanisms under the National Assistance Act 1948 will apply.

The sections below identify the responsible Supervisory Body for the purposes of any deprivation of liberty assessment and are intended to provide broad guidance only. When determining ordinary residence issues, Local Authorities should have regard to the Act, LAC (93)7 and the ADASS National Protocol on Ordinary Residence (currently under development)

### *Local Authority Commissioned Placements*

In circumstances where a Local Authority arranges for an individual to be placed in a care home in another authority's area, the commissioning Local Authority is the relevant Supervisory Body (and therefore the responsible Supervisory Body) for the purposes of any deprivation of liberty authorisation referral.

### *PCT/LA Jointly Funded Care Home Placements*

In circumstances where a an individual is placed in a care home in another authority's area under a PCT/LA jointly funded arrangement, the commissioning Local Authority will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

*PCT Commissioned Care Home Placements – within Home Local Authority*

In circumstances where the Responsible Commissioner PCT (see Section 8 below) places a person in a care home within its own local authority, the PCT's home Local Authority will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral. **Note:** the PCT's home Local Authority is defined as the Local Authority area for which the PCT is responsible and not the area where the PCT's headquarters is physically located, if this is different.

*PCT Commissioned Care Home Placements – outside Home Local Authority*

In circumstances where the Responsible Commissioner PCT places a person in a care home located outside of the PCT's home Local Authority, the Local Authority in which the care is located (Host Local Authority) is currently deemed to be the relevant person's place of ordinary residence. The Host Local Authority in these circumstances will be the responsible Supervisory Body. This situation will however change with the introduction of Section 148 of the Health and Social Care Act 2008 in July/August 2009.

Under Section 148 of the H&SCA 2008, where the Responsible Commissioner PCT places a person in a care home located outside of their home Local Authority, the Responsible Commissioner PCT's home Local Authority (and not the Host Local Authority) will be the responsible Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

*Individuals who Fund their own Support*

In circumstances where an individual arranges to go into a care home which is located outside of their existing local authority, without any local authority having taken responsibility for the arrangements, the local authority in which the care home is located (Host Local Authority) will be the relevant Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

*Individuals with No Settled Residence*

In circumstances where an individual has no settled residence or fixed abode the local authority where they present themselves will normally accept responsibility for provision of social services and will be the relevant Supervisory Body for the purposes of any deprivation of liberty authorisation referral.

*Where there is a Dispute*

Any unresolved questions about the ordinary residence of the relevant person will be handled by the Secretary of State. Until a decision is made, the Host Local Authority (the Local Authority in which the care home of the relevant person is located) must act as the Supervisory Body. When the decision is

made, the Local Authority of ordinary residence must assume responsibility as the Supervisory Body. **Note:** The Secretary of State may decide that it is the Host Local Authority which, in any event, is deemed to be the responsible Supervisory Body.

## **8. PCT – Determining responsibilities as Supervisory Bodies**

The PCT defined as the Responsible Commissioner for the relevant person's hospital care will be the responsible Supervisory Body for the purpose of the DoL regulations.

Notwithstanding the conditions of Section 148 of the Health and Social Care Act 2008 (see Section 7 above), the general principles for establishing the responsible commissioner for NHS treatment of an individual patient (as set out under regulation 3(7) of the Functions Regulations) are as follows:

- Where the patient is registered on the list of NHS patients of a General Practitioner (GP) practice, the responsible commissioner will be the PCT that holds the contract with that GP practice.
- If a patient is not registered with a GP practice, the responsible commissioner will be the PCT in whose geographic area the patient is 'usually resident'.
- If a patient is unable to give an address, the responsible commissioner will be determined in accordance with the Functions Regulations as the PCT in which he/she is present, which will usually be the PCT where the unit providing the treatment is located.

In any other case, for example care that is commissioned privately, the Supervisory Body is the PCT for the area in which the relevant hospital is located.

Where Supervisory Body responsibility is not immediately obvious or where it may be shared, any ensuing dispute should be resolved locally ideally at PCT level, using the general principles contained within this protocol. In cases that cannot be resolved at PCT level, the Strategic Health Authority should be consulted and should arbitrate where necessary.

## **9. Requests for Standard Deprivation of Liberty Authorisations**

The relevant managing authority has responsibility for applying for an authorisation of deprivation of liberty for any person who may come within the scope of the deprivation of liberty safeguards criteria.

Managing authorities will make a written request for deprivation of liberty authorisations to the relevant Supervisory Body.

Upon receipt of an application for authorisation of deprivation of liberty, the Supervisory Body must, as soon as is practical and possible:

- Consider whether the request is appropriate and should be pursued,
- and
- Seek any further information that it requires from the managing authority to help it with the decision.

In situations where there is uncertainty in identifying the correct Supervisory Body, the local authority which received the application must act as the Supervisory Body until a decision is reached. After the decision is made, the local authority of ordinary residence must become the responsible Supervisory Body.

Dealing with an authorisation request should not be delayed because of uncertainty about which Supervisory Body is responsible.

All Supervisory Bodies should have a procedure in place that identifies the action they should take, who should take it and within what timescale.

Supervisory Bodies should nominate a **Key Contact Person** responsible for receiving and processing all DoL authorisation requests. This person should also be responsible for dealing with any query relating to DoL cross boundary issues.

It is strongly recommended that all Supervisory Bodies should identify their existing placements in out-of-area care homes and confirm with each home that they are the responsible Local Authority (Supervisory Body). Details of the responsible local authority's Key Contact person should be supplied to the care home in the event that the care home may wish to make a DoL authorisation referral (in their capacity as managing authority). This approach should also apply in the case of all future placements made in out-of-area care homes – **(a template letter which can be used for this purpose has been included as Appendix B) .**

PCTs similarly should identify their existing out of county hospital admissions and provide contact details for their Key Contact Person for Deprivation of Liberty referrals (Appendix 2 can be adapted for this purpose).

#### **10. 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 ordinarily 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 ordinary residence is elsewhere or the relevant person is placed in a care home or hospital.

#### **11. 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 Local Authority or PCT to appoint paid representatives on its behalf, it will do so following the processes outlined in this protocol. The paid representative is required to spend a minimum of 26 hours per annum working with or on behalf of the individual whose liberty has been deprived. The cost of this service will need to be factored in as an additional cost to the standard Assessment/Review costs outlined in Section 20 below.

#### **12. Request from Supervisory Bodies for another Local Authority or PCT to undertake Assessments**

*LAC(93)7 establishes that : "the Local Authority where the person is ordinarily resident can arrange for the assessment and the provision of services to be carried out on its behalf by the Local Authority of the moment".*

The duty of the responsible Supervisory Body to authorise or decline DoL requests cannot be delegated but the responsible 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 responsible Supervisory Body wishes to appoint assessors or paid representative from the Host Local Authority or 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 Local Authority or PCT to which the request has been made is not under any obligation to accept the request. 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 applications.
- 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')
  - agreeing any other conditions which should be imposed

## **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 another Local Authority or PCT, the Supervisory Body must make a formal, written request to the other Local Authority or PCT. The formal request will be in a prescribed form **[see Appendix C]**.

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

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 Local Authority or PCT, negotiations should be initiated by the Supervisory Body as soon as possible following receipt of an authorisation referral. The Host Local Authority or 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 referral and within 24 hours of an urgent authorisation request **[see Appendix D]**.

## **13. Agreeing Terms for Conducting Assessments**

Following agreement by a Local Authority or 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
- 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 **[see Appendix E]**.

#### **14. Conducting Assessments and Reporting**

The Local Authority or 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.

Assessors will follow the standard reporting procedures of the Host Local Authority or PCT.

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

**This must be done by the sixth 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.**

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

The Supervisory Body is responsible for informing the Managing Authority, the relevant person and their representative of the outcome of the authorisation request.

#### **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 ensuring alternative care arrangements are made so that the relevant person is not unlawfully deprived of their liberty.

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

Where a Local Authority or 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/Managing Authority can arrange for the best interests assessments to be carried out on its behalf by a best interests assessor employed by another Local Authority or PCT.

In such circumstances, the Supervisory Body/Managing Authority should 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 Local Authority or PCT, the principles and processes outlined in this protocol should be followed.

In terms of continuity, it is best practice for the same Local Authority best interest assessor to review the relevant person, unless there are exceptional circumstances to suggest otherwise.

## **18. Record Keeping and Information Sharing**

In circumstances where a Local Authority or 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, applications 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 Local Authority or 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 Local Authority/PCT agrees to undertake work on behalf of a Supervisory Body, it incurs costs that must be recovered. The differing demographics and organisational structures of organisations means that:

- Actual costs are highly variable

- Some authorities have large numbers of people residing in care homes that are not ordinarily resident in the authority. It is likely they will receive proportionately more requests to carry out assessments on behalf of other Supervisory Bodies.
- Some authorities/PCTs have placed large numbers of people in care homes or hospitals located in other authorities. It is likely they will make proportionately more requests to Host Local Authorities/PCTs to carry out assessments on their behalf.
- Any cost recovery arrangement seeking to take into account the individual circumstances of Local Authorities & PCTs could be extremely time consuming and expensive.

#### *Governing Principles and Aims*

- The principles of fairness and equity must be balanced against the need to develop a consistent and straightforward method of calculating charges for services.
- Standardised costs reduce the risk of Local Authorities & PCTs with lower costs becoming overwhelmed by a disproportionate number of requests by other Local Authorities & PCTs possibly seeking to reduce their own costs.

From the various options considered, it was agreed to adopt a standard schedule of costs. This schedule would govern charging by all Local Authorities & PCTs for tasks related to deprivation of liberty assessments. The schedule would be updated at agreed times, to take account of changing costs. The DH DoL Impact Assessment on costs of assessment activity has been adopted as a national standardised cost, as follows :

*“For planning purposes, the core estimate is that an assessment would cost approximately £600. This would cover the costs of all necessary associated procedures and paperwork. Costs would be higher (in the region of £1000) where an authorisation is given because of the extra work involved (e.g. appointment of a representative), and a lower cost (in the region of £500) where an authorisation is not given. The figure of £600 represents an average cost across both categories”.*

The schedule includes 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.

**Full Assessment (£600)** – where the range of DoL assessments have been carried out 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.

The standard costs schedule provides for consistency and is relatively easy to administer. However, it is acknowledged there is a risk that some Local Authorities with higher than average actual costs may be disadvantaged by this approach.

## **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 Authority.

The Host Authority 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 Authority**

Where a dispute arises between the Supervising Body and the Host Local Authority/PCT, the party which wishes to raise an issue or concern should do so as soon as reasonably practical.

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.

**Procedure for Pan London Management of  
Deprivation of Liberty Applications**

As outlined in the main body of this document, there is an expectation that host Local Authorities will be requested by the relevant Supervisory Bodies to carry out assessments on their behalf.

The London region has a large number of local authorities, relatively short distances between boroughs and an unequal distribution of care homes and care home residents between authorities.

The majority of the region's registered care homes are located within the outer London authorities. Therefore many residents of the inner London boroughs are placed in outer London. This makes the principle of "reciprocity" more complex in the London context.

This pan-London protocol is designed to maximise equity of resource allocation across the capital, reduce the burden and complexity of cross-charging for assessments and provide clarity on availability of assessors.

**Proposal**

Assessments

Where a resident is placed in a registered care home located within a London authority, the responsible Supervisory Body will accept responsibility for arranging assessments and providing the Best Interest Assessors regardless of location of the care home. However, the Host Local Authority would be expected to co-operate with the process by providing details of local Mental Health Assessors, who may be less willing to travel. The costs of Mental Health Assessors would be met by the responsible Supervisory Body.

Where a resident is placed in a registered care home located outside London, the national Protocol for the Inter-Authority Management of Deprivation of Liberty Applications will apply.

IMCA services

The Supervisory Body retains responsibility for arranging involvement of an IMCA where required, although again the Host Local Authority would be expected to provide details of the local IMCA service.

Paid Representatives

The Supervisory Body retains responsibility for the appointment of paid representatives.

Where the Managing Authority and the Supervisory Body are the Same Organisation or there is a potential conflict of interest with using assessors employed by the Supervisory Body

In this circumstance, the national protocol (section 16) applies.

Each London Borough should develop individual arrangements to ensure that alternative assessors are available in these circumstances. This may involve reciprocal agreements with neighbouring boroughs, use of independent practitioners, etc.

***Letter from Commissioning Authority to Managing Authority  
with details of Key Contact Person.***

**[Name & Address of Care Home]**

Dear Owner/Registered Manager,

As you will be aware, the Deprivation of Liberty Safeguards will come in to effect on 1<sup>st</sup> April 2009. Under these regulations, it is a statutory duty for all Managing Authorities (Care Homes) to apply to the appropriate Supervisory Body for authorisation if they need to deprive any resident of their liberty.

It is our understanding that the Supervisory Body responsible for agreeing any authorisation under the Deprivation of Liberty Safeguards, will be the commissioning (placing) authority in the case of out of county placements.

From the 1<sup>st</sup> April 2009 therefore, if you feel that anyone within your care home who has been placed by **[Commissioning LA]** meets the Deprivation of Liberty criteria, can you please refer the matter in the first instance using the appropriate form to : **[insert contact details of Commissioning LA Key Contact Person]**

For more information of the Deprivation of Liberty, you can visit the Department of Health website on - [www.dh.gov.uk](http://www.dh.gov.uk).

Yours sincerely

## Appendix C

### ***Suggested form of wording for a standard e-mail requesting the Host Local Authority to carry out a Deprivation of Liberty Assessment :***

Dear **[Host Authority Key Contact Person]**

#### **Re: Deprivation of Liberty Assessment Request**

Mr/Mrs **[resident's name]** is resident at **[name & address of care home]**.

As the Local Authority responsible for commissioning **[resident'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 ADASS Protocol for the Inter-Authority 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 **[name of the responsible Supervisory Body]**.

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

**[Supervisory Body Key Contact Person]**

***Suggested form of wording for a standard e-mail in response to the Supervisory Body's request to the Host Local Authority to carry out a Deprivation of Liberty Assessment :***

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

**Re: Deprivation of Liberty Assessment Request**

Thank you for your e-mail dated **[insert date]** requesting this Authority to carry out the required deprivation of liberty assessments on **[resident's name]** who currently resides at **[name & address of care home]**.

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 ADASS Protocol for the Inter-Authority 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 Authority on this occasion but hope that you are able to make alternative arrangements in relation to this matter.*

Regards  
**[Host Authority Key Contact Person]**

**Agreement for undertaking assessments under the ADASS Protocol for  
the Inter-Authority Management of Deprivation of Liberty Safeguards  
Applications**

THIS AGREEMENT is made the ..... day of .....

200

BETWEEN:

- (1) **[insert name of Host Local Authority/PCT]** ('the Service Provider')  
and
- (2) **[insert name of Responsible Supervisory Body]** ('the Client')

RECITALS

- (1) The Client wishes to commission from the Service Provider a Deprivation of Liberty Assessment service in accordance with.....
- (2) The Service Provider has appropriate skills, background and experience for providing such assessments and make recommendations.
- (3) The Service Provider is willing to provide the Services (as defined below) and the Client 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 deprivation of liberty assessments of advice and recommendations to the Client by the Service Provider (b) the subsequent operation of that function.

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

'Fee' means £(*amount*).

'Reports' means all reports, documentation, presentations, software in whatever format that the Service Provider shall or may create or deliver to the Client as part of the Services provided by the Service Provider.

'Specification Document' has the meanings given in Clause 2.2 and the document attached to this Agreement as Schedule 1.

## **2 Services**

2.1 The Service Provider shall provide the Services to the Client, subject to the provisions of this Agreement.

2.2 At the commencement of the Services, the Service Provider shall submit to the Client a specification for the Services. The specification shall specify the Services to be undertaken, the time estimates for

the provision of the Services and the fees payable ('Specification Document').

2.3 On receipt of the Specification Document the Client will sign a copy and return that copy to the Service Provider to signify the Client's agreement as to the Services to be provided and the fees payable to the Service Provider. The Client acknowledges and agrees that no Services will be provided until the Service Provider has received the signed copy of the Specification Document.

2.4 The Specification Document may be varied, or added to, from time to time, in writing and signed by both Parties. The changes shall be clearly identified, together with the additional or different level of fees to be paid by the Client.

### **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 Service Providers staff and agents

4.2 The Service Provider shall use reasonable endeavours to complete the Services by the Completion Date or meet such other dates as agreed by the Parties.

### **5 Fee and payment**

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

5.2 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 Client.

## **6 The Client's obligations**

6.1 The Client acknowledges and agrees that for the Service Provider to be able to provide the Services the Client shall:

6.1.1 co-operate with the Service and its subcontractors as the Consultant and/or its subcontractors reasonably require;

6.1.2 provide to the Service Provider and its subcontractors such information and documentation as the Service Provider and/or its subcontractors reasonably require;

6.1.3 make available to the Service Provider and its subcontractors the facilities, resources, working space and staff as specified in the Specification Document and/or as the Consultant and/or its subcontractors reasonably require from time-to-time; and

6.1.4 instruct the Client's staff and agents to co-operate and assist the Service Provider and its subcontractors.

6.2 The Service Provider may charge the Client for any additional reasonable costs and expenses incurred by the Service Provider caused by the Client's instructions or failure to provide instructions.

## **7 Reporting requirements**

7.1 The Specification Document shall specify the Reports that are to be produced during or on completion of the Services ('Reports').

7.2 Where required in the Specification Document to provide Reports, the Service Provider shall supply one copy of the Reports to the Client. The Service Provider grants to the Client a non-exclusive licence (without the right to sub-licence) to use the Reports for the

Purpose. The Service Provider shall own all copyright, database and other intellectual property rights in the Reports.

## **8 Protection of confidential information**

8.1 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 8, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

8.2 The obligations of Clause 8.1 shall not apply to any information which:

8.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Providing Party;

8.2.2 is, or becomes, publicly available through no fault of the Receiving Party;

8.2.3 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;

8.2.4 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

8.2.5 is required to be disclosed by order of a court of competent jurisdiction.

8.3 This Clause 8 shall survive termination of this Agreement for a period of ten years.

## **9 Warranties, liability and indemnities**

9.1 The Service Provider warrants that it will use reasonable care and skill in performing the Services.

9.2 If any part of the Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Client the Service Provider will re-perform the relevant part of the Service

9.6 The Client shall indemnify and hold harmless the Service Provider from and against all Claims and Losses arising from loss, damage, liability, injury to the Service Provider 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 Client by the Service Provider, its employees or consultants, or supplied to the Service Provider by the Client 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 whatsoever.

9.7 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:

For and on behalf of *(name)*

Signature:

Print name:

Job Title:

Date:

For and on behalf of *(name)*

Signature:

Print name:

Job Title:

Date:

SCHEDULE 1  
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 insurance *and*
- (ii) a s.12 approved Dr who has additionally completed a DoLS training approved by the Royal College of Psychiatry *or*
- (iii) a GP with three years specialist training in mental health and who has additionally completed a DoLS training approved by the Royal College of Psychiatry

The assessments that must be completed are:

Assessment	Conducted by:
Age Assessment	BIA
No Refusals	BIA
Mental Capacity	BIA
Eligibility	S12 Dr / GP / AMHP
Mental Health	S12 Dr
Best Interests	BIA

The costs of Assessments and Reviews are estimated as being:

**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.

**Full Assessment (£600)** – where the range of DoL assessments have been carried out, whether or not these led to an authorisation being given.

**Review (£200)** – as defined under the 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.

The time scale for these assessments – are 7 days for an Urgent Assessment or 21 days for a Standard Assessment . There are extensions to these timescales for April 2009 only where the timescales are effectively doubled – 14 days for an urgent assessment and 42 days for a standard assessment.

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 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 Local Authority or PCT will forward the assessment documentation to the nominated key contact person within the Supervisory Body.

This must be done by the sixth 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.