NHS
Leicester City
Clinical Commissioning Group

NHS
West Leicestershire
Clinical Commissioning Group

NHS
East Leicestershire and Rutland
Clinical Commissioning Group

Mental Capacity Act 2005 (MCA) including Deprivation of Liberty Safeguards (DoLS) Policy 2017 – 2020

Leicester City Clinical Commissioning Group (CCG) West Leicestershire CCG and East Leicestershire and Rutland CCG

Mental Capacity Act 2005 including DoLS Policy

2018 Final Version

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VERSION CONTROL AND SUMMARY OF CHANGES

CONTRIBUTION LIST
Key individuals involved in developing the document

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Adrian Spanswick	Consultant Designated Nurse Safeguarding Children and Adults
Mina Bhavsar	Head of Adult Safeguarding
Rachel Garton	Designated Nurse for Safeguarding Adults and Children.

VERSION CONTROL AND SUMMARY OF CHANGES

Version number	Date	Comments (description change and amendments)	Name/Role
Draft 1 V1	April 2017	First draft of refreshed document from June 2015	Adrian Spanswick Consultant Designated Nurse Safeguarding Children and Adults Mina Bhavsar Head of Adult Safeguarding
Draft 1 V2	July 2017		Adrian Spanswick Consultant Designated Nurse Safeguarding Children and Adults Mina Bhavsar Head of Adult Safeguarding
Draft 1 V3	November 2017	Reviewed at request of Safeguarding forum. Changes made to: **Page 4**: Paragraphs 1.1, 1.2 amended. Paragraph 1.4 added relating to legal duties. Paragraphs 2.1and 2.4 amended. **Page 5**: Paragraphs 3.1, 4.1and 4.3 amended. Paragraph 4.2 changed to include the 5 principles of MCA. Paragraph 4.5 added. **Pages 6, 7 and 8:** Given DoLS standalone section, added paragraphs	Rachel Garton, Designated Nurse Safeguarding Adults and Children

Version number	Date	Comments (description change and amendments)	Name/Role
		and reorganised section**.** Cheshire West separate section added in paragraph 6.5 and added link to DoLS authorisation forms. **Pages 10-13:** Accountabilities, responsibilities and governance section restructured. Added in Role of Designated MCA lead and information on IMCA service. Added section 10- details of how to access advice from the hosted team. **Page 15:** Additional reference added. **Throughout**: where there is reference to Leicester City CCG, this has been amended to include ELR and WL CCG's.	
Draft 1 Version 4	17th January 2018	**Page 8**. Paragraph 5.2 amended to include additional statement regarding Court of protection to aid clarity (CoP information was paragraph 5.5 in previous version). Paragraph 5.3 added as an additional point relating to Deprivations resulting from Community Treatment orders. **Pages 10-12**. Paragraph 8.1 Changed Director of Nursing to Director of Nursing/Chief Nurse and Quality Lead. Same amendment made paragraph 8.2, 8.2.1and 8.5. Paragraph 8.2.1 Added West	Rachel Garton, Designated Nurse Safeguarding Adults and Children

Version number	Date	Comments (description change and amendments)	Name/Role
		Leicestershire and East Leicestershire and Rutland Governance Committees. Previously only City listed. 8.4 Point added regarding support from the CCG related to MCA for those services funded by voluntary grant. 8.6 Changes made to section re responsibilities of CCG staff- bullet point 4 changed to “for those staff who” as opposed to just staff generally. **Page 15**. Paragraph 10.1 added care homes in addition to own homes.	
Draft 1 Version 5	8th March 2018	**Page 7** section 1.4. Wording changes however no change to context/message. **Page 8** Section 3.4 Link to policy removed. **Page 13** Section 8.5. Named Lead for MCA changed to Designated Nurse for Safeguarding Adults as opposed to Consultant Designated Nurse. Section 8.6- added: Staff in clinical roles should access MCA training as agreed with their line manager/safeguarding Lead. **Page 14** section 8.6 after bullet point 8, two points added: 1.Staff should alert potential deprivations of liberty to the Local Authority, and for fully health funded patients also the CCG. 2.	

Version number	Date	Comments (description change and amendments)	Name/Role
		Staff who are not responsible for designing and implementing care packages but may see patents in a clinical capacity should also report any potential deprivations of liberty as described in the above point.	

Circulated to the following individuals for comments			
Version Number	**Date**	**Name**	**Comments**
Version No 3	6th December 2017	LLR CCG's Safeguarding Forum members.	Comments outlining typing errors, inclusion accurate data regarding accountable officer titles and ensuring all 3 CCGS were cited where required. Request to consider inclusion of information related to the Court of Appeal Judgement: PJ (A Patient) v A Local Health Board and Secretary of State for Justice v MM. Consideration to be given to inclusion of CCG duties related to support around MCA for providers funded via voluntary grant system. Clarity required in relation to the circumstances when DoLS is not applicable and CoP authorisation of a deprivation is required. Policy amended to include all points as outlined in preceding section.
Version No 4	4th Feb 2018	LLR CCG's Safeguarding Forum members.	Comments outlining typing errors and also the need to

			reflect changes in MCA responsibility within the safeguarding designate team. Comments related to training and the need for clarity relating to CCG and staff responsibilities with regard to recognising and responding to potential or actual deprivation of liberty. Policy amended to include all points as outlined in preceding section.
Final version	3rd July 2018	ELR CCG Integrated Governance Group	Requested to replace reference to Data Protection Act with GDPR. Requested to remove reference to GP at 10.1

DATE	**Final Draft of Refreshed Document 2018**

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1. INTRODUCTION

1.1. This policy outlines how Leicester City, West Leicestershire and East Leicestershire and Rutland Clinical Commissioning Groups, (thereafter known as the CCGs) will discharge the statutory obligations of the Mental Capacity Act 2005 (MCA) within their commissioning duties.

1.2. The Mental Capacity Act 2005 (MCA) is a statutory framework that is intended to assist and support people who lack capacity to make decisions for themselves, or have capacity and want to make preparations should they lack capacity in the future. The act aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make particular decisions. In which case the act provides a framework for anyone who is making these decisions on their behalf.

1.3. The MCA is accompanied by a statutory code of practice, which explains how it will work on a day to day basis for health professionals and can be accessed via by the following link: www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf.

1.4. The code outlines certain individuals who are under a formal duty to have regard for the code when working with or caring for adults who may lack capacity to make a particular decision. This includes people acting in a professional capacity for, or in relation to a person who lacks capacity such as Doctors, Dentists, Nurses, Therapists, Paramedics, or people being paid for acts in relation to a person who lacks capacity such as care workers providing domiciliary care services (not exhaustive lists).

2. POLICY STATEMENT

2.1. The CCGs hold statutorily responsibility for ensuring that the organisations from which it commissions services have systems in place which safeguard vulnerable children and adults at risk. This includes ensuring that commissioned services provide MCA compliant care.

2.2. The CCGs will ensure that commissioned services provide assurances that meet their statutory responsibilities to the people who are without capacity to consent to care and treatment.

2.3. The CCGs will ensure through existing monitoring arrangements that all staff employed by them are aware of their responsibilities under the MCA within their given commissioning roles.

2.4. The MCA including Deprivation of Liberty Safeguards (DoLS) Policy should be read in conjunction with the CCG combined Children and Adult Safeguarding Policy July 2017 and the Leicester, Leicestershire and Rutland Safeguarding Adults Board policies and procedures (MAPP).

3. SCOPE OF THE POLICY

3.1. This policy applies to all staff working within the CCG (permanent or temporary, including volunteers and agency staff).

3.2. The key principles are applicable to all services commissioned by the CCG.

3.3. All employees of the CCG have an individual responsibility for the protection and safeguarding of children, young people and vulnerable adults including people who lack capacity.

3.4. All managers must ensure that their staff are aware of this policy and know how to access it.

3.5. Managers should also ensure the implementation of the policy in accordance with their line of responsibility and accountability.

4. DEFINITION

4.1. The Mental Capacity Act 2005 (MCA) applies to all patients/service users aged 16, or over, who lack capacity to make a particular decision or who want to plan for the future, and covers decisions about life changing event as well as everyday matters. Everyone working with and/or caring for an adult who may lack capacity to make specific decision must comply with this Act when making decision or acting for that person when an individual lacks capacity to make a particular decision for themselves.

4.2. The Mental Capacity Act 2005 (MCA) is designed to promote the empowerment of individuals and the protection of their rights. The MCA is built on five statutory principles that guide and inform all decision making in relation to people who may lack capacity in some aspect of their lives, the five statutory principles are:

- A person must be assumed to have capacity unless it is established that they lack 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 or she makes an unwise decision.
- An act done, or decision made, under this Act for 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.

** Details regarding **Best Interests** can be found in the Mental Capacity Act Code of Practice, **Chapter 5**:* www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf.

4.3. The MCA underpins all health and social care commissioning and practice.

4.4. The MCA provides legal protection from liability for carrying out certain actions in connection with care and treatment of people provided that staff have:

- Observed the principles of the MCA
- Carried out, or been party to, an assessment of capacity and reasonably believe that the person lacks capacity in relation to the matter in question **and**;
- You reasonably believe the action you have taken is in the best interests of the person.

4.5. Provided you have complied with the MCA in assessing capacity and acting in the person's best interests you will be able to diagnose and treat patients who do not have the capacity to give their consent. **Chapter 6** of The Mental Capacity Act 2005 Code of Practice outlines what protection the act offers for people providing care or treatment in addition to information regarding what types of actions might have protection from liability: www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf.

5. DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)

5.1 The Deprivation of Liberty Safeguards is an amendment to the Mental Capacity Act 2005. They apply in England and Wales only. Whilst the Mental Capacity Act allows restraint and restrictions to be used, this is only if the restraint and restrictions are in a person's best interests. If the restraint and restrictions in place used will deprive a person of their liberty (regardless of whether they are in best interest) extra safeguards are needed, these are the deprivation of Liberty Safeguards.

5.2 The Deprivation of Liberty **Safeguards** can only be used if the person will be deprived of their liberty in a care home or hospital. **(*For people being cared for somewhere other than a care home or hospital, such as domiciliary care settings, any deprivation of liberty will only be lawful with an order from the Court of Protection (CoP).***

5.3 In some cases patients are discharged from hospital under a Community Treatment order, where the order includes restrictions that would amount to a deprivation of liberty, these restrictions cannot be authorised under DoLs or CoP. **See NHS England Briefing Note (for PJ (A Patient) v A Local Health Board) for further information.**

5.4 A deprivation of liberty can only be authorised under the MCA when there is evidence that a person lacks capacity as defined by the MCA, and where the proposed arrangements that deprive the person of their liberty are made in their best interests. **The Deprivation of Liberty Safeguards (DoLS) applies to patients/service users aged 18 or over.**

5.5 Care homes or hospitals must ask a local authority if they can deprive a person of their liberty.

5.6 Both self-funded and publicly funded residents are covered by the safeguards.

5.7 All providers and commissioners of health and social care must therefore have a good understanding of the MCA. This will ensure that appropriate assessments of capacity are carried out and that decisions made for those who lack the required mental capacity are made in their best interests. Any situation calling for a request for authorisation under the Deprivation of Liberty Safeguards must first meet the requirements of the MCA.

5.8 The Deprivation of Liberty safeguards (DoLS) provides a legal protective framework for those vulnerable/at risk people who are deprived of their liberty who are not detained under the Mental Health Act 2005 and require therapeutic care, including any care that involves restriction or restraint. DoLS sets out a process which must be followed if deprivation of liberty is being considered as a necessary requirement in order to provide effective care or treatment of an individual who lacks mental capacity and no other legal authority exists.

5.9 DoLS itself is a legal mechanism to protect an individual who requires therapeutic care including any care that involves restriction or restraint, being provided.

5.10 The DoLS apply to people who lack capacity to consent to care or treatment The aim of the safeguards is to:

- Ensure people are given the care they need in the least restrictive way
- Prevent decisions being made to suit the care home or hospital rather than the needs of the adult at risk
- Provide safeguards for adults at risk
- Provide the rights to individuals to challenge unlawful restrictions against the person's will.

6 SUPREME COURT RULING: CHESHIRE WEST

6.1 What constitutes a deprivation of liberty? The *P v Cheshire West and Chester Council and another and P and Q v Surrey County Council* Supreme Court judgment of 19 March 2014 clarified an “acid test” for what would constitute a Deprivation of Liberty.

6.2 The acid test, as set out in the Judgement is met when:

- The individual lacks the capacity to consent to their care/treatment arrangements
- Are under continuous supervision and control
- Are not free to leave.

All three elements must be present for the acid test to be met.

6.3 The Supreme Court did not define “continuous supervision and control”, but it is clear that they were concerned with whether carers were in effect exercising control over every aspect of the person’s life. The Court did not precisely define “not free to leave”, but their concern related to the extent to which carers control when and where the person can go.

6.5 The person's compliance or lack of objection to the proposed care/ treatment and the reason or purpose behind a particular placement is not relevant to where or not they are being deprived of their liberty, nor is the relative normality of the placement, given the person's needs.

6.6 Therefore, the starting point to consider for each patient is:

- Do they have capacity to decide on where to reside for the purpose of the care/treatment they require?
- In considering the individuals best interests within the meaning of the DoL Code of Practice and looking at current care interventions, is there a less restrictive means of providing the care/treatment that would not constitute a deprivation of liberty?
- If the answer to both the questions above is 'No' and you feel that they meet the Acid test then it is more likely that the individual is being deprived of their liberty. In these instances, the provider of care should apply for a DoLS authorisation.
- Deprivation of Liberty Safeguards forms and guidance can be found at https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance

7. LEGISLATION/GUIDANCE

7.1. Various legislation and guidance is published that is relevant to this policy:

- The Mental Capacity Act 2005
- The Mental Capacity Act: Code of Practice
- Deprivation of Liberty Safeguards (DoLS): Code of Practice
- The Mental Health Act 2003
- The Human Rights Act 1998
- The European Convention on Human Rights
- The Care Act 2014
- NHS Accountability Framework 2015
- Supreme Court Ruling handed: 19th March 2014. P v Cheshire West and Chester Council and another" and "P and Q v Surrey County Council".
- The Equality Act 2010

8. ACCOUNTABILITIES, RESPONSIBILITIES AND GOVERNANCE

8.1 The Managing Director for the respective CCG is the chief officer accountable within their own organisation. They are responsible for ensuring that the CCG is able to discharge its duties in relation to the Mental Capacity Act 2005 both within the CCG and across the local health economy through the CCG's commissioning arrangements. This role is supported by the Director of Nursing and Quality/ Chief Nurse and Quality Officer who holds delegated responsibility.

8.2 **Responsibilities of the Director of Nursing and Quality/Chief Nurse and Quality Officer:** The Director of Nursing and Quality/Chief Nurse and Quality Officer is the senior officer with lead responsibility for safeguarding children and vulnerable adults within each CCG. This role includes the responsibility of

overseeing the discharge of the CCG's responsibility in relation to the Mental Capacity Act 2005.

8.2.1 The Director of Nursing and Quality/Chief Nurse and Quality Officer will:

- Ensure arrangements are in place to support the implementation and monitoring of this policy
- Ensure safeguarding reports are provided to the Leicester City Integrated Governance Committee, East Leicestershire and Rutland Integrated Governance Committee and West Leicestershire and Rutland Quality and Performance meeting
- Represent the CCG as a member of the Leicester Safeguarding Children Board and Adult Board
- Ensure appropriate training and support is made available to the Designated Mental Capacity Act Lead and the Deputy Lead (Head of Adult Safeguarding), to enable them to effectively conduct their roles.

8.3 **Responsibilities of the Safeguarding Group:**

8.3.1 The Safeguarding Group reports into the Quality and Clinical Governance Committee.

- The Safeguarding Group meets bi-monthly and receives a report from the CCG Hosted Safeguarding Team to enable the CCGs to be informed of the performance monitoring of CCG, commissioned services, local arrangements and be advised of emerging safeguarding risks and actions required to mitigate those risks.

8.4 **Responsibilities of the CCG:**

- The CCG is responsible for ensuring the organisation has a named Designated Mental Capacity Act Lead who will be proficient in this area and is able to provide the necessary direction and expertise required.
- The CCG will establish governance and assurance reporting arrangements through existing channels for Continuing HealthCare Quality and Performance management, and provider services to ensure the principles of the Mental Capacity Act, Deprivation of Liberty Safeguards and Cheshire West Ruling are robustly embedded in practice, including for those CHC patients with particular focus on those living at home/supported living.
- Ensure contract monitoring agreements with providers' evidence the adoption of the new acid test.
- Ensure the CCG has appropriate insurance arrangements in place to cover any liability and/or litigation costs should they arise.
- Ensure appropriate training with regard to the Mental Capacity Act 2005 and its effective implementation is available to CCG staff as required.
- Ensure provider contracts specify compliance with MCA and DoLS legislation and that commissioned services are supported and contract monitored for compliance with MCA.
- Ensure MCA leads work within the health and social care economies to influence local thinking and practice around MCA.

- Ensure best practice around MCA is promoted, implemented and monitored both within the CCG and within commissioned provider services, including those funded via voluntary grant.
- Engage with the local Safeguarding Adults Board and its sub groups.
- Have clear lines of accountability which are visible through robust governance arrangements.
- Ensure learning from cases is used to inform future commissioning and practice.

8.5 **Role of the Designated MCA Lead:**

- The Designated Nurse for Safeguarding Adults within the CCG Hosted Safeguarding Team is the named Designated Mental Capacity Act Lead for the three Clinical Commissioning Groups, supported by the Head of Safeguarding Adults Ultimate responsibility will remain with organisations' Director of Nursing and Quality/Chief Nurse and Quality Officer.
- The Designated Mental Capacity Act Lead will take on a strategic, professional advisory lead on all aspects of the health service contribution to the implementation of the MCA (including DoLs) across the area within which the CCG commissions services, and includes all health providers. The named lead supported by the Head of Adult Safeguarding will provide expert advice or source the expertise if required for the CCG on requirements that will inform the commissioning and strategic development of the MCA to ensure high quality service provision for patients lacking capacity. The Designated Mental Capacity Act Lead will also have a role in highlighting the extent to which the CCG and the services commissioned, are compliant with the MCA through undertaking audit where required, via CCG Quality visits reporting, completion of NHSE and local SAT (which includes MCA) and providing or securing the provision of training.
- The Designated Mental Capacity Act Lead and/or deputy will provide support and advice to clinicians in individual cases and supervision for staff in areas where these issues may be particularly prevalent and /or complex.
- Work with local agencies to provide joint strategic leadership on MCA and DoLS in partnership with Local Authorities, provider organisations, CQC and the police.

8.6 **Responsibilities CCG staff:**

- All managers must ensure that their staff (employed, contracted or volunteers) are aware of this policy and know how to access it. Managers should also ensure the implementation of the policy in accordance with their line of responsibility and accountability.
- All staff employed by the CCG must be aware of their responsibilities with respect to the MCA, in particular:
- Staff in clinical roles should access MCA training as agreed with their line manager/safeguarding Lead.
- Professionals must remember that the deprivation of liberty authorisations and Court of Protection orders under DoLS in the Mental Capacity Act 2005 are rooted in the principles of that Act. DoLS exists to provide protection to individuals, to safeguard these individuals when a deprivation of liberty is an unavoidable part of a best interests care plan. Individuals

who are identified as potentially deprived of their liberty must be considered on a case-by-case basis and all appropriate steps taken to remove the risk of a deprivation of liberty where possible. The emphasis should be on empowerment and enablement.

- **For those staff who are designing and implementing new care** and treatment plans for individuals lacking capacity, these staff should be alert to any restrictions and restraint which may be of a degree or intensity that mean an individual is being, or is likely to be, deprived of their liberty and:

- Take steps to review existing care and treatment plans for individuals lacking capacity to determine if there is a deprivation of liberty (following the revised test supplied by the Supreme Court).

- Where a potential deprivation of liberty is identified, a full exploration of the alternative ways of providing the care and/ or treatment should be undertaken, in order to identify any less restrictive ways of providing that care which will avoid a deprivation of liberty.

- Where the care/ treatment plan for an individual lacking capacity will unavoidably result in a deprivation of liberty judged to be in that person's best interests, this must be authorised.

- Staff should alert potential deprivation of liberty to the Local Authority, and for fully health funded patients also the CCG.

- Staff who are not responsible for designing and implementing care packages but may see patents in a clinical capacity should also report any potential deprivations of liberty as described in the above point.

- Where required professionals should refer for an Independent Mental Capacity Advocate (IMCA) where required. **Chapter 10** of The Mental Capacity Act 2005 Code of Practice the role of the MCA and when an IMCA referral will be required: www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf.

8.7 **Responsibilities of Providers:**

- Provider organisations are responsible for: ensuring compliance with MCA legislation (including DoLS) within and across their organisation.
- The Care Quality Commission (CQC) Standards for safeguarding require providers who are regulated to comply with standards around the MCA and have the evidence of organisational compliance ready for inspections that may occur in due course.
- They must ensure that there is clarity as to who holds corporate responsibility for MCA and DoLS functions within the organisation, and that appropriate governance and safeguarding systems are in place to deliver best practice.

- All providers must have a MCA lead that is responsible for providing support and advice to clinicians in individual cases and supervision for staff in areas where these issues may be particularly relevant and/or complex.
- GP practices are required to have a lead for safeguarding and MCA, who should work closely with the Named GP and Designated Safeguarding professionals.
- All providers must be in a position to provide assurance to the CCG that their responsibilities with respect to MCA are being safely discharged.
- The CCG will oversee these responsibilities with commissioned services via quarterly monitoring processes.

9 INFORMATION GOVERNANCE

9.1 The CCG will comply with the following rules of information sharing:

- The General Data Protection Regulation 2016 (GDPR). The GDPR is not a barrier to sharing information, but provides a framework to ensure that personal information about living persons is shared appropriately.
- Be open and honest with the person (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and seek their agreement, unless it is unsafe or inappropriate to do so.
- Seek advice if you are in any doubt, without disclosing the identity of the person where possible.
- Sharing with consent is the preferred route and, where possible respects the wishes of those who do not consent to sharing confidential information. You may still share information without consent if you believe the patient lacks capacity under the MCA or if you feel that it is in the public interest. You will need to base your judgement on the facts of the case and to document the reasons as to why.
- Consider safety and well-being: Base your information sharing decisions on considerations of the safety and well-being of the person and others who may be affected by their actions.
- Necessary, proportionate, relevant, accurate, timely and secure: Ensure that the information you share is necessary for the purpose for which you are sharing it, is shared only with those people who need to have it, is accurate and up-to-date, is shared in a timely fashion, and is shared securely.
- Keep a record of your decision and the reasons for it – whether it is to share information or not. If you decide to share, then record what you have shared, with whom and for what purpose.

10 ADVICE AND SUPPORT

10.1 Should a clinician have concerns relating to MCA/deprivation of liberty regarding a patient in their own home/care home then he/she can contact the LLR CCG Hosted Safeguarding Team for advice on 0116 295 1433.

11 POLICY GOVERNANCE AND MONITORING

11.1 This policy will be reviewed every three years. It will be the responsibility of the CCG Safeguarding Team to:

- Identify a suitable reviewer;
- Ensure that the review is conducted;
- Ensure that required changes are made.

11.2 Changes may be required as a result of legislation, national or local guidance, findings of Case Reviews, recommendations of audits or from other sources.

11.3 The LLR CCG Hosted Safeguarding Team will monitor the effectiveness of MCA/DoL practice on behalf of the CCG Safeguarding Group. This will inform any necessary changes to the policy.

12 DUE REGARD

12.1 The CCG is committed to all processes that safeguard children and adults and promote their welfare and aims to commission safeguarding services that will ensure equal access to all children and young people, regardless of:

- Gender
- Gender Reassignment
- Pregnancy
- Race
- Religion and Belief
- Marriage/Civil Partnership
- Sexual Orientation
- Deprivation
- Disability.

APPENDIX 1

References

Mental Capacity Act 2005
http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityAct2005/index.htm

Code of Practice (2007) for Mental Capacity Act 2005 (2007)
http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf

General Data Protection Regulation 2016 (GDPR) https://www.eugdpr.org/

The DOLS Code of Practice:
http://webarchive.nationalarchives.gov.uk/20130107105354/http:/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

Deprivation of Liberty Safeguards: A guide for hospitals and care homes:
http://webarchive.nationalarchives.gov.uk/20130107105354/http:/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094348

Deprivation of Liberty Safeguards: A guide for relevant person's representatives:-
http://webarchive.nationalarchives.gov.uk/20130107105354/http:/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094346

Making Decisions: The Independent Mental Capacity Advocate (IMCA) service

Supreme Court Ruling handed down 19th March 2014. P v Cheshire West and Chester Council and another" and "P and Q v Surrey County Council".

http://supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf

Care Quality Commission (2009) Guidance about compliance*:* Essential Standards of Quality and Safety

Safeguarding Vulnerable People in the Reformed NHS (2013): Accountability and Assurance Framework. NHS Commissioning board.

www.justice.gov.uk/protecting-the-vulnerable/**mental-capacity-act**

Care and Support Statutory Guidance Issued under the Care Act 2014 Department of Health:

https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance

Department of Health Guidance (2015) Response to the supreme Court Judgement/Deprivation of Liberty

APPENDIX 2

Due Regard (Equality Analysis)

To ensure that the CCGs fulfil their legal obligations to comply with the Public Sector Equality Duty, as well as demonstrate best practice, project leads are expected to complete the following Equality Analysis template for all new and reviewed projects, including policies, procedures, strategies and guidelines. The Equality Analysis is a practical tool and should be:

- Carried out as early as possible in the decision making process
- Based on appropriate consultation where possible
- Informing decisions
- Setting out an appropriate level of analysis in proportion to the potential impact of the decision

Title of project:

Mental Capacity Act 2005 (MCA) including Deprivation of Liberty Safeguards (DoLS) Policy 2017-2020

Please give details of project proposals:
This document defines the Mental Capacity Act (MCA) including Deprivation of Liberty Safeguards (DoLS) Policy 2017-20 for the Leicester City, West Leicestershire and East Leicestershire and Rutland Clinical Commissioning Groups (CCGs).

The Policy illustrates the requirements and compliance with legislative duties to safeguard individuals who lack capacity as defined and assessed under the Mental Capacity Act. It is applicable to all CCG staff and volunteers.

In this policy, the Mental Capacity Act applies to individuals who are 16 or over. The Deprivation of Liberty Safeguards applies to individuals who are 18 or over.

What consultation and engagement has been undertaken or is planned to take place? If consultation/engagement exercises have been undertaken please provide a summary of the outcome of these and how this will feed into project planning. Provide details of different sections of the community that were involved:

- Hosted Safeguarding Team
- Safeguarding team Business meeting
- LLR CCG Safeguarding Group
- LLR Local Information Network (MCA/DoLS)

What equalities monitoring information did you use in your analysis and what were the findings?

Guidance referred to:

- The Mental Capacity Act 2005
- The Mental Capacity Act: Code of Practice
- Deprivation of Liberty Safeguards (DoLS): Code of Practice
- The Mental Health Act 1983 (as amended 2007)
- The Human Rights Act 1998
- The European Convention on Human Rights
- The Care Standards Act 2003
- The Care Act 2014
- NHS Accountability Framework

Supreme Court Ruling 19th March 2014. P v Cheshire West and Chester Council and another" and "P and Q v Surrey County Council".

GDPR -The General Data protection Regulation (2016)

Confidentiality: NHS Code of Practice

LLR LIN Data.

DUE REGARD principles followed:

- The CCGs are committed to all processes that safeguard adults, children and young people including people who lack capacity and promote their welfare and aims to commission safeguarding services that will ensure equal access to all children and young people, regardless of:
- Gender
- Gender Reassignment
- Pregnancy
- Race
- Religion and Belief
- Marriage and Civil Partnership
- Sexual Orientation
- Deprivation

The Equality Act 2010 (S147) requires public bodies to pay due regard to equality when making any decisions relating to the shaping of policies, service delivery, or as an employer, to the need to:

1. **Eliminate unlawful discrimination, harassment, victimisation, and any other conduct prohibited by the Equality Act 2012.**
2. **Advance equality of opportunity and**
3. **Foster good relations between people who share any of the protected characteristics and people who do not share them (note: 2 and 3 do not apply to a marriage and civil partnership).**

Socio-economic deprivation is not a protected characteristic but included as best practice. In the table below, please describe how the proposals will have a positive or negative impact on service users

	Positive impact	Negative Impact
Age	This policy applies to individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	n/a
Disability	Following the supreme court ruling 19th March 2014 (Cheshire west), the state will now have a duty to afford the equivalent level of safeguards and protection to individuals who are deemed to lack capacity and meet the objective test residing in care homes or hospitals but also those living in supported living or own home funded by either health or social care or both.	
Gender	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Gender Reassignment	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Pregnancy and Maternity	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	

	Positive impact	Negative Impact
Race	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Religion / Belief	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Marriage and Civil Partnership	MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Sexual Orientation	. MCA affords protection for individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	
Deprivation	This policy applies to individuals who lack capacity and who are 16 years or older. In addition the Act affords additional protection and safeguards to individuals under the DoLs legal framework who are 18 years of age or above who lack capacity and are required to have care that is the least restrictive and requires the least amount of control and restraint.	

Please provide details of what action will be taken to mitigate any negative impact identified above.

Action plan		
Action	Responsibility	Timescale
Although no negative impact has been identified, the LLR Local Information Network for MCA/DoLs will continue to monitor referrals according to the protected characteristics (as far as possible) and agree suitable intervention if necessary based on themes/ patterns and trends.		

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