

Keeping vulnerable adults safe

Things you need to know

Kirklees Council Deprivation of Liberty Safeguards

This document is a multi agency policy containing procedure and guidance regarding the Deprivation of Liberty for residents in care homes in Kirklees.

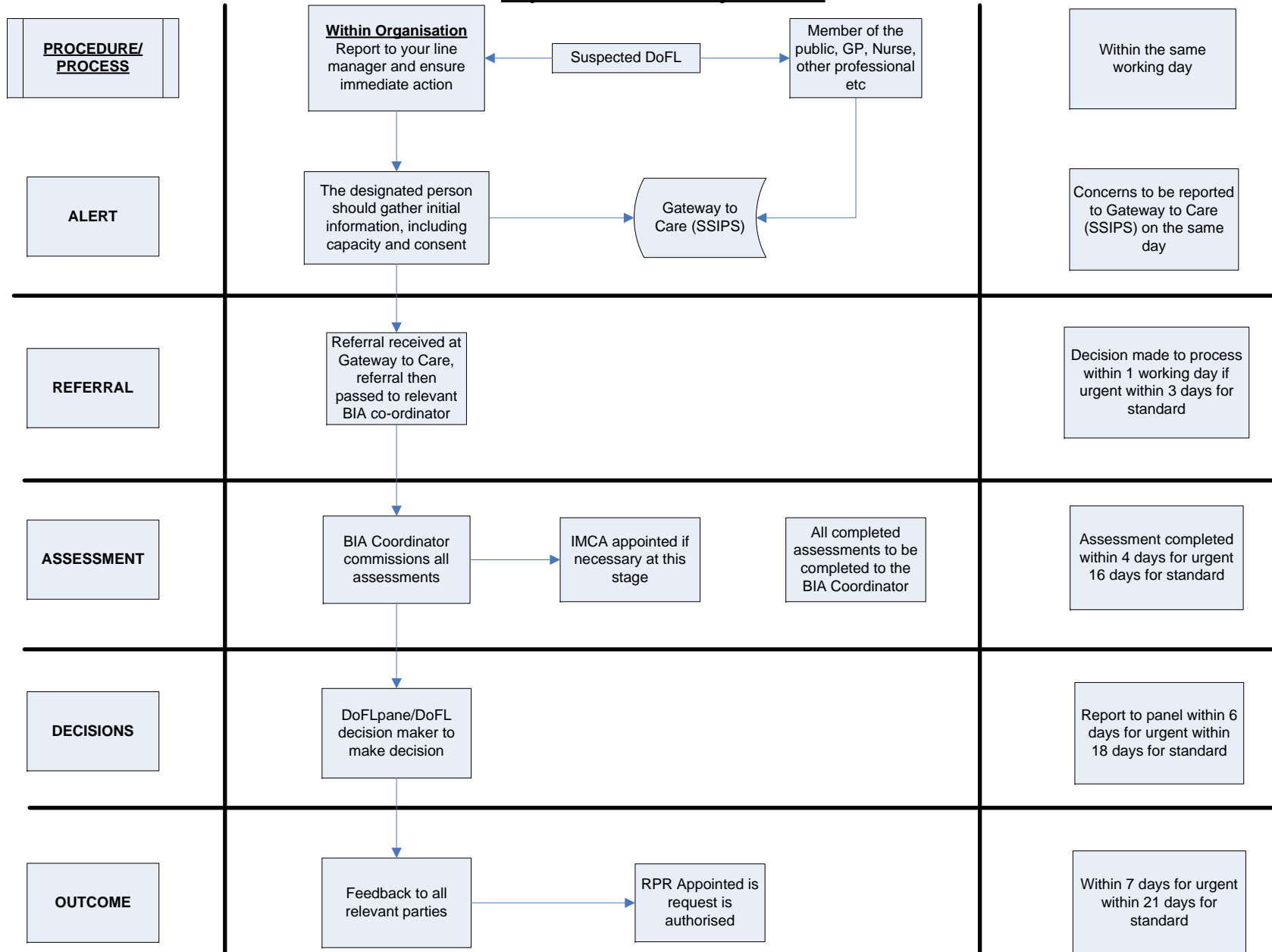
Table of Contents

Deprivation of Liberty Process (DofL) Flow Chart.....	3
SECTION 1 - General background	4
DofL Care Homes Flow Chart.....	6
SECTION 2 - Procedure for care homes.....	7
SECTION 3 - Procedure for Kirklees Council Adult Services.....	12
SECTION 4 - Procedure for the Best Interest Assessment.....	155
SECTION 5 - Procedure for Authorisation Process.....	19
DofL Review Process Flow Chart.....	21
SECTION 6 - Reviews & Suspensions to Standard authorisations.....	212
SECTION 7 - Relevant Person's Representatives	25
SECTION 8 - Involving an IMCA.....	29
SECTION 9 - Unauthorised Deprivation of Liberty.....	300
SECTION 10 - Court of Protection.....	32
SECTION 11 Out of Area Placements/ Reciprocal Arrangements	35
Appendix 1 Deprivation of Liberty Processes.....	38
Appendix 2 Case Examples of Deprivation of Liberty.....	41
Appendix 3 Mental Capacity Act Deprivation of Liberty Safeguards.....	433
Appendix 4 Tool Kit.....	455
Appendix 5 Glossary of Terms.....	466
Appendix 6 Contracts Unit.....	511

All standard forms and letters can be found at the following website:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772

Deprivation of Liberty Process



SECTION 1 - General background

1.1 Introduction

The Mental Capacity Act 2005 provides a framework for making decisions on behalf of people who lack the mental capacity to do so for themselves. The Deprivation of Liberty Safeguards (DofL) is a new provision in the act implemented in April 2009.

Depriving people of their liberty should only happen when it is absolutely necessary and in the best interests of the individual concerned. The DofL safeguards have been developed to ensure that any decision to deprive someone of their liberty is made following a clear authorisation process.

The safeguards apply to adults in hospitals and care home settings who are assessed as lacking mental capacity.

The aims of the safeguards in respect of people who lack mental capacity are to:

- ensure people can receive the care they need delivered in the least restrictive manner
- prevent arbitrary decisions that deprive individuals of their liberty
- provide safeguards for individuals who lack mental capacity
- protect individual dignity and rights
- provide the rights of challenge against unlawful detention

An overview of the entire process is set out in [Appendix 1](#)

1.2. What is deprivation of liberty?

Whether someone has been deprived of their liberty is ultimately a legal question and only the courts can determine the law. The code of practice provides guidance for staff on how to assess whether steps that they are taking (or are proposing to take) might amount to a DofL. Examples of some of the factors that can be relevant to DofL based on a number of cases identified in the DOH Guidance are set out in [Appendix 2](#). Further legal developments may occur after the code of practice was issued. Healthcare and Social Care staff need to keep themselves informed of legal developments that may have a bearing on their practice.

1.3. Roles and Responsibilities

All Staff - who work with adults who may lack mental capacity have a responsibility to raise concerns if they believe an individual may be being deprived of their liberty currently or potentially could be in the future. Staff must ensure that care plans consider the least restrictive options before implementing care packages that may deprive an individual of their liberty.

Managing Authority – is the person registered or required to be registered under part 2 of the Care Standards Act 2000 in respect of the care home or hospital in which an individual resides.

Care Home Managers - have a responsibility to identify individuals who are or at risk of being deprived of their liberty on admission or throughout the placement. They have a responsibility to consider less restrictive measures in delivery of the care package to residents. If, after giving consideration to a less restrictive care package, they are concerned that the individual may be being deprived of their liberty, it is advised that use of the Assessment tool set out in [Appendix 4](#) may assist.

Supervisory Body – A primary care trust, local authority or local health board. With regards to Kirklees Care Homes, the relevant supervisory body is Kirklees Adult Services. In the case of the hospitals, the supervisory body is NHS Kirklees.

Supervisory bodies are responsible for:

- Considering a Deprivation of Liberty request (urgent or standard)
- Commissioning the statutory assessment
- Decision making around authorisations and conditions

Best Interest Assessors (BIA) – are responsible for carrying out as best interest assessment and any other assessments requested by the BIA Coordinator. They may make recommendations to the DofL Panel/Decision Making Manager.

The DofL Panel - have a responsibility to consider all six of the assessments and consider whether authorisation is appropriate. The panel will also consider any conditions proposed.

Court of Protection – Is the specialist Court that deals with all issues relating to people who lack the capacity to make specific decisions. The Court of Protection can deal with serious decisions affecting healthcare and personal welfare matters relating to people who lack the mental capacity to make decisions for themselves.

1.4 Good Practice Guidelines

Assessors need to ensure they have an understanding of what may constitute a Deprivation of Liberty. Assessors need to have an understanding of the Deprivation of Liberty processes.

Any assessment involving an individual who lacks mental capacity must consider the least restrictive options in proposing a care package; in order to avoid a deprivation occurring, where this is not possible, authorisation must be sought.

Assessors may refer to a BIA Coordinator for guidance if they have concerns that the care being proposed may deprive someone of their liberty.

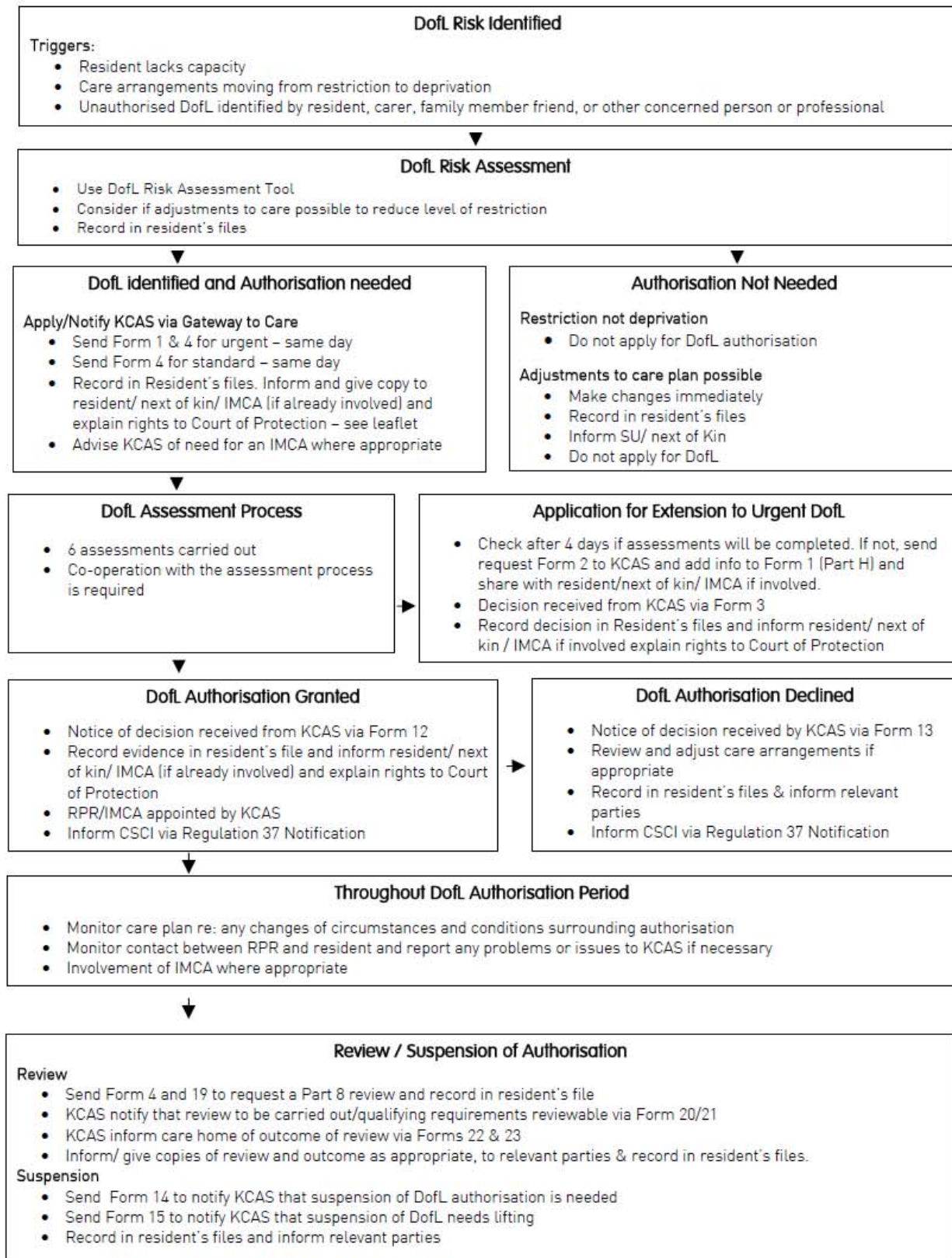
Assessors should refer to a BIA Coordinator for guidance if during assessment they have concerns that care plans would deprive someone of their liberty. The BIA Coordinator may be able to look at less restrictive options of care to avoid the DofL process.

Definitions of urgent and standard referrals

Urgent referral – if the DofL is occurring now (this is a 7 day order).

Standard referral – if the DofL will be occurring in the immediate future and you are requesting authorisation for a DofL order.

Deprivation of Liberty (DofL) procedure for care homes in Kirklees



Key

RPR: Relevant Person's Representative
 KCAS: Kirklees Council Adult Services
 IMCA: Independent Mental Capacity Advocate
 CSCI: Commission for Social Care Inspection which will become the Care Quality Commission April 2009

NB - This simplified overview should be used in conjunction with the KCAS procedure, the DofL Code of Practice and the standard forms produced by DH.

This procedure applies to residents placed in Kirklees care homes who are of ordinary residence in Kirklees. For residents placed in Kirklees from out of area, please apply to the Local Authority where they ordinarily reside.

SECTION 2 – Procedure for care homes

2.1. What Care Home Managers should do if they suspect that the care and treatment they are providing to an individual amounts to a deprivation of liberty

The care home manager should carry out an assessment using the assessment tool (appendix 3).

The outcome of the assessment should be recorded in the residents file.

If the assessments suggest a Deprivation of Liberty may be occurring, the care home manager should review the care plan and consider options for providing that care in a less restrictive way that would not amount to a deprivation of liberty as soon as possible. If less restrictive means are not possible then the care home manager should make an application for authorisation.

During the process of assessment the care home may identify Safeguarding issues, in such cases a referral should be made in accordance with the Kirklees Safeguarding Procedure.

2.2 Urgent Authorisation

Before serving themselves with an urgent authorisation the Care Home Manager must as far as is practical and possible take account of the views of anyone engaged in caring for the relevant person or who has an interest in their welfare. The aim should be to consult carers and family members at the earliest stage possible. All discussions should be recorded.

If the suspected Deprivation is occurring and considered necessary to safeguard the relevant person the Care Home may serve themselves with an Urgent Authorisation in respect of the relevant person using Form 1, and make a request to Kirklees Adult Services for a Standard Authorisation using Form 4.

These forms must be sent together to Gateway to care and dated the day they are sent.

Subject line (Details of Gateway)

Enquiries

The Urgent Authorisation lasts for 7 days, in which time a series of 6 assessments will be commissioned by the BIA co-ordinator and undertaken by relevant professionals trained in The Deprivation of Liberty Safeguards.

The care Home manager should inform the relevant person, their next of kin, any IMCA or advocate about the request and provide them with copies of the relevant forms.

It is the Care Home Managers responsibility to check with the Assessors that the assessments for the application will be completed before the 7 day deadline and if they discover that this is not possible they must then make a further application for an extension to the urgent authorisation using Form 2. In addition they must complete Part H of Form 1.

Kirklees Adult Services will consider the question of the request meeting the criteria for an extension. NB: Extensions will only be made in exceptional circumstances

If an extension is granted by the decision making panel, they must inform all the relevant parties using Form 3.

2.3 Standard Authorisation

If a Deprivation of Liberty is not currently occurring but it is considered likely to occur in the near future a request for a standard authorisation should be made by the care home Manager using Form 4

NOTE: If the deprivation is with regard to a change of residence, the request should be made by the Care Home that the relevant person is moving to, and not the place at which the relevant person currently resides.

Subject Line.....

Gateway Details

A request for Standard Authorisation will be dealt with within 21 days in which time a series of 6 assessments will be commissioned by the BIA Co-ordinator and undertaken by relevant professionals trained in The Deprivation of Liberty Safeguards.

NB: These timescales for both Urgent and Standard Authorisations are statutory and not negotiable.

It is the duty of the Best Interests Assessor to identify a relevant person's representative using Form 24 as part of the assessment process. The supervisory Body will appoint this person to act in respect of the DOLS if they deem them a suitable person to act in this role. Where there is no-one able or willing to act as the relevant persons representative, the supervisory body has a duty to appoint a paid representative.

Any Applications not completed accurately or failing to provide relevant information may be returned for adjustments to be made before re-submitting, as these may be used as legal documents it is important to ensure all information is factual and accurate.

It is important that the Forms are dated on the day they are sent as the timescale begins with the date on the form and not the date received by Kirklees AS.

2.4 Temporary Changes in the relevant persons circumstances (Suspensions to Authorisations)

Should there be a temporary change in the relevant person's circumstances and the Care Home (Managing Authority) believe that a DOL is no longer occurring they must complete a Suspension of a Standard Authorisation Form 14 and forward to Gateway to Care.

If circumstances change again within 28 days and the relevant person becomes eligible for DOL the Care Home Manager must complete notice that a suspension has been lifted Form 15 and forward this to Gateway to Care.

The fax E-mail must be marked URGENT "DOLS change in circumstances"

2.5 Decisions and Outcomes

Kirklees Adult services will inform the Care Home Manager of their decision initially by telephone this will be followed up by a copy of Standard Authorisation Form 12 or Authorisation not granted Form 13. These will be accompanied by copies of the assessments for the relevant person and the Care Home.

All parties named in the Best Interests Assessors report must be informed of the outcome by Kirklees Adult Services.

2.6. Authorisation Granted

Where Authorisation is granted a relevant persons representative will be appointed using Form 25 copies of which will be sent to the Care Home and the relevant person.

This appointment last for the duration of the authorisation.

The Care Home Manager must make sure that the relevant person's representative and the relevant person (Wherever possible) understands:

- the effect of the authorisation
- the right to request a review
- the complaints procedures available to them
- the right to apply to the court of protection
- the right to request and Independent Mental Capacity Advocate (IMCA)

The Care Home Manager must take into account the communication and language needs when providing them information to both parties. Information should be provided on an ongoing basis and this should be recorded.

Records of the contact between the relevant person and their representative must be kept. If the care home feels there has been insufficient or inappropriate contact between the two they should first raise this informally with the representative. If the situation does not improve the Care Home Manager should raise this with Kirklees Adult Services via Gateway to Care.

2.7 Authorisation not granted.

The Care Home Manager must ensure that an urgent review takes place immediately in order to ensure that they are not acting unlawfully and that the relevant person's interests are safeguarded.

Changes to the relevant persons care plan must be recorded in their file, and all people involved in their care informed of any changes put in place.

2.8 Reviews

The managing Authority has a duty to monitor the case on an ongoing basis to identify if/when a person's circumstances change it may mean that a Deprivation of Liberty Authorisation is no longer needed or relevant.

A standard Authorisation can be reviewed at any time and is carried out by Kirklees Adult Services. The Supervisory Body can decide to carry out a review without a request being made.

If the statutory grounds for carrying out a review are met (cop S8), the supervisory body must carry out a review.

The Supervisory body must carry out a review if the relevant person (Letter3), their representative (Letter 4) or the Managing Authority (Form 19) requests it.

When a review is being carried out the Supervisory Body must give notice to all relevant interested parties that a review is to be carried out (Form 20)

Having given notice of the review the Supervisory Body must then decide whether 'any qualifying requirements are reviewable'. The Supervisory Body must decide whether it has evidence that the person may no longer meet the criteria for DofL. (Form 21)

Kirklees Adult Services must arrange for fresh assessments to be undertaken for each qualifying requirement that appears to be reviewable. The exception to this is where it has been decided that the Best Interests requirement is reviewable on the sole grounds that details of the conditions attached to the authorisation need to be changed, and the review request does not include evidence that there is a significant change in the persons overall circumstances. Any fresh Assessments are known as "review assessments", using the same forms required for assessments for standard authorisation.

On receipt of the assessments the decision making panel must decide whether the relevant person still meets the qualifying requirement for DofL. If they do not, the standard Authorisation must be terminated (Form 23)

If the person still meets the requirements the decision making panel must decide whether the reasons have changed, and whether any conditions attached to the standard authorisation need varying.

The decision Making panel must record its decision (Form 22.)

2.9 Concerns raised by others

Anyone may raise concerns that an individual may be being deprived of their liberty without legal authorisation by Kirklees Adult Services. A standard letter may be used (Letter 1)

If the concern is raised with Care Home staff, this must be recorded in the residents file and the Care Home manager must respond to the concerns within 24 hours.

In the first instance the Care Home manager should attempt to resolve the matter informally with the concerned person/s through discussion and adjustments to the care arrangements for the relevant person wherever appropriate, in order to remove the likelihood of a DofL. Record of any discussions and adjustments must be recorded.

If the concerns cannot be resolved quickly through this process they should submit a request for a Standard authorisation (Form 4) to GTC.

If the Care Home Manager does not submit a request within a reasonable timeframe the concerned person may ask Kirklees AS to decide whether there is an unauthorised DofL. They need to inform them of the name of the person and the Care Home in which they reside, and as far as they are able to explain why they feel the person is deprived of their liberty. A standard letter may be used (Letter 2). Kirklees AS will record the request (Form 16).

Kirklees AS will also record whether or not an assessment is required in relation to the issue of whether or not the person is subject to an unauthorised Deprivation of Liberty using Form 16.

An assessment is not required if the request is frivolous or vexatious, or if the issue has already been decided by Kirklees AS that there has been no change in the person's circumstances since then.

If assessment is required, the professional who conducts the assessment must record their findings using Form 17. Having received the assessor's report the decision making panel will record its decision using Form 18.

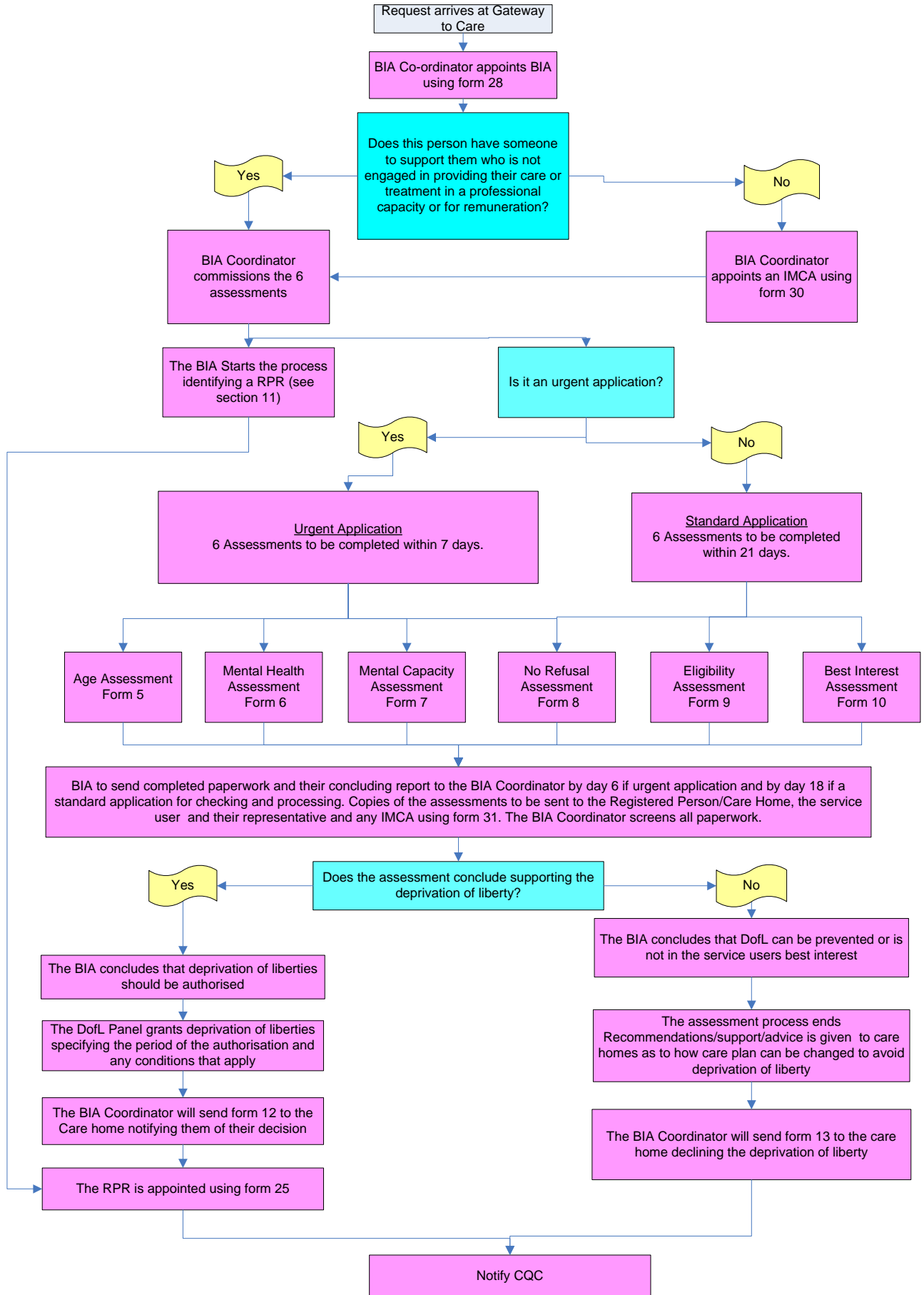
If the person is subject to an unauthorised DofL the following steps must be taken

- The Care Home is deemed to have requested a Standard Authorisation in relation to the person and must now complete Form 4 and forward to GTC
- The present care and/treatment arrangements have been found to amount to DofL, if the Care Home Manager deems that this Care and/treatment should continue whilst the assessments are carried out, it must give itself and urgent authorisation (Form 1) and forward to GTC with the request for the Standard Authorisation.

NB: Kirklees AS must inform the person who raised the concern, the relevant person, the Care Home and any IMCA involved of the actions and outcome.

Processes will be followed as in 2.2 or 2.3

SECTION 3 Assessment Process for DofL



SECTION 3 - Procedure for Kirklees Council Adult Services

3.1 Action on receipt of a DofL authorisation or enquiry

All applications should come to Gateway via fax or email. For an urgent request for authorisation, [[Download Form 1 \(PDF, 154K\)](#)] accompanied by a standard authorisation form [Download Form 4 \(PDF, 233K\)](#). For a standard authorisation, use only form 4 [Download Form 4 \(PDF, 233K\)](#). Faxable versions of these forms are available at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_103818

1. On receipt of an authorisation request and supporting information, Gateway should check if the resident is known to Kirklees Council Adult Services and recorded as an initial contact. These should be passed to the BIA coordinator via the single point of access. The BIA Coordinator will need to set a date for a meeting of the DofL Panel/Decision Making Manager within 7 days for urgent applications or within 21 days for standard applications.

If the BIA Coordinator is unavailable, the single points of access will be:

- Lynne Holtom, email lynne.holtom@swyt.nhs.uk
- Rachel Tanner, email rachel.tanner@kirklees.gov.uk
- Dianne Green, email dianne.green@kirklees.gov.uk

Gateway will then send the information to BPU.

3.2 Assessment Process

Allocation and initial screening

2. The BIA Coordinator receives the application and allocates the case to a BIA after checking for any conflicts of interest in relation to the case.
3. The BIA Coordinator is responsible for identifying a BIA who will obtain and collate the six assessments and present these to the DofL Panel/Decision Making Panel. The assessment should take place within 6 days for an urgent application and 18 days for a standard application. The purpose of the assessments is to establish whether additional support can be provided to avoid depriving the service user of their liberty.
3. The BIA will be responsible for any assessments allocated to them for completion. If, during the assessment process, it becomes apparent that there are safeguarding issues, a referral must be made immediately to Gateway as part of the safeguarding procedure. Discussion must take place with the relevant team manager where a case is open.

NB. If the request is from an in-house care home, then a BIA who does not work for Kirklees Council Adult Services must be commissioned. See [section 10](#) for more detail.

4. If an IMCA is requested on the application, the BIA, on behalf of the Supervisory Body, is responsible for instructing an IMCA to represent the service user immediately. (For more information about the IMCA see [section 8](#) on roles and responsibilities)
5. Ideally the RPR should be identified at the same time as the appointment of the BIA as soon as practicably possible so that the BIA can discuss the role as part of the assessment process. However, if the authorisation is not given, the RPR will not be needed. Although this is a risk, the code of practice recommends that the process of RPR appointment should begin as early as possible so that the representative can be in place immediately once the authorisation has begun. [Download Form 24 \(PDF, 168K\)](#) and [Download Form 25 \(PDF, 138K\)](#) should be used by the BIA to record the selection process.

3.3 Restrictions on who can carry out a BIA role

BIA's employed by the supervisory body cannot undertake assessments in care homes owned by the supervisory body. In such cases they will need to commission BIAs from the NHS under a section 75 agreement, or by another local authority.

The BIA must be independent of the care team or any line management responsibilities.

The BIA must not be a relative of the person being assessed, nor of a person with a financial interest in the person's care.

For this purpose, a relative is:

- a. Spouse, ex-spouse, civil partner or ex-civil partner.
- b. Person living with the relevant person as if they were a spouse i.e. a civil partner.
- c. Parent or child.
- d. Brother or sister.
- e. Child of a person falling within definitions a, b or d.
- f. Grandparent or grandchild.
- g. Grandparent-in-law or grandchild-in-law.
- h. An aunt or uncle.
- i. Sister-in-law or brother-in-law.
- j. Son-in-law or daughter-in-law.
- k. First cousin.
- l. Half brother or half sister.

SECTION 4 - Procedure for the Best Interest Assessment

4.1 Assessments

There are six assessments that the BIA co-ordinator must ensure are completed

The BIA co-ordinator will appoint a BIA who is responsible for undertaking 4 assessments. These are a no refusal assessment, Best Interest Assessment, age assessment and Mental Capacity Assessment. When the BIA is carrying out their assessments they may also identify safeguarding issues. In these circumstances the issues must be discussed immediately with the relevant parties and a referral made immediately if appropriate to Gateway to Care (in the case of a Kirklees resident) as part of the Kirklees Council Adult Services Safeguarding procedure.

The BIA must ensure that the assessments and reports are completed within 6 days for an urgent assessment, or within 18 days for a standard assessment. The BIA Co-ordinator will arrange and agree a date for a meeting of the Deprivation of Liberty Decision Making Panel within 7 days for urgent applications or within 21 days for standard applications.

The forms used by the BIA's to complete the assessment include the following:

4.1.1 Age Assessment (use [Download Form 5 \(PDF, 103K\)](#))

This is to confirm that the person is over 18 or will be 18 within 28 days of the commencement of the Assessment. In cases of doubt, age should be established by obtaining a birth certificate or considering other reliable evidence. This assessment will usually be undertaken by BIA's as part of the best interest assessment.

4.1.2 No Refusal Assessment (use [Download Form 8 \(PDF, 107K\)](#))

This is to establish whether an authorisation to deprive a person who lacks the capacity to consent of their deprivation of liberty would conflict with any other decision making authority for that person, for example:

- If the person has made an advance decision that remains valid and is applicable to some or all of the treatment that the person would receive if application were granted, then a standard application will not be granted unless Kirklees Council Adult Services is convinced that there is a sound reason to overrule the person's wishes.
- If any part of the proposal to deprive the person of their liberty would be in conflict with a decision of a Lasting Power of Attorney or a deputy appointed by the court, a standard application cannot be granted unless Kirklees Council Adult Services is convinced that there is a sound reason to overrule the person's wishes. For example, if an attorney or deputy decided that a person should live in a particular care home and that decision was within their authority, then the care plan would need to be reviewed with the attorney or deputy.

4.1.3 Mental Health Assessment [\(Download Form 6 \(PDF, 111K\)\)](#)

This is to establish whether the relevant person is suffering from a mental disorder within the meaning of the Mental Health Act 1983.

This assessment must be carried out by a doctor who is approved under section 12 of the Mental Health Act and trained in the Deprivation of Liberty safeguards. See Appendix 7. The BIA Co-ordinator will commission this assessment.

4.1.4 Eligibility Assessment [\(Download Form 9 \(PDF, 141K\)\)](#)

This assessment is to identify whether the person would meet the criteria of the Mental Health Act 1983 rather than the Deprivation of Liberty safeguards under the Mental Capacity Act 2005.

The Eligibility Assessment should be carried out by a doctor who is approved under section 12 of the Mental Health Act who is trained in the Deprivation of Liberty Safeguards or a BIA who is also an Approved Mental Health Professional. If the eligibility assessor and the BIA are different people the eligibility assessor must seek information from the BIA about the person's attitude to the arrangements being made for their care and treatment. The BIA Co-ordinator will commission this assessment.

4.1.5 Best Interest Assessment [\(Download Form 10 \(PDF, 248K\)\)](#)

This is to establish whether a Deprivation of Liberty is occurring or going to occur and if so whether:

- it is in the best interests of the relevant person to be deprived of their liberty
- it is necessary for the relevant person to be deprived of their liberty in order to prevent harm to themselves and such deprivation is a proportionate response to the likelihood of the person suffering harm and the seriousness of that harm

If the BIA concludes that Deprivation of Liberty is not occurring and is not likely to occur, they should inform the BIA Co-ordinator is not in the person's best interest because there is obviously a less restrictive option available. See 'Outcomes of Assessment' section ([link](#))

4.2 Where Assessments Have Been Carried Out Previously

Where equivalent Assessments have already been carried out it is acceptable for the BIA to refer to these Assessments but they must make sure these Assessments are recent and relevant. If an equivalent Assessment is being used then the BIA must keep a record of this using [\(Download Form 11 \(PDF, 105K\)\)](#). Previous assessments can be accessed via the BIA Co-ordinator.

4.3 Appointing a Relevant Person's Representative (RPR)

A relevant person's representative should be appointed by the supervisory body. Where this is not possible, the supervisory body must appoint a paid RPR.

- the BIA establishes that the relevant person has capacity to select their own RPR and then invite them to do so

- the relevant person lacks capacity and there is a donee or deputy, the donee or deputy can select the RPR
- For further details on responsibilities for selecting and appointing an RPR, see [section 7](#).

It is the BIA's responsibility to check and confirm eligibility before recommending them to the Deprivation of Liberty Decision Making Panel.

The appointment of the RPR cannot take place until the application is granted. Identifying someone to take on this role at an early stage can help to ensure that a representative is appointed as soon as possible. For more information See [section 7](#)

4.4 Involving an IMCA/relevant person

The relevant person or their representative has a statutory right to be supported by an IMCA in this role. The BIA Co-ordinator must instruct an IMCA if requested, or in cases where there is no-one available or willing to support the relevant person. In addition the BIA Co-ordinator may wish to instruct an IMCA as part of a review or appeal to Court of Protection if needed.

There should be no need for an IMCA where a professional, paid RPR is in place.

The IMCA can provide:

- additional support and help for the relevant person to communicate their views
- Help for the relevant person and their RPR to understand the effect of an Authorisation of Deprivation of Liberty , what it will mean for them and how a review might be triggered
- Help for the relevant person to understand a review or an appeal to the Court of Protection (see [section 9](#)).
- support with a review or an application to Court of Protection

The IMCA has the right make submissions to Kirklees Council Adult Service:

- whether a qualifying requirement of a Deprivation of Liberty should be reviewed
- information given to assessor carrying out a review
- submissions made to an assessor carrying out a review

For further information see 9.

4.5 Submission of all relevant reports/assessments

- All assessments/reports must be forwarded to the BIA Co-ordinator by the deadline specified. The BIA Co-ordinator will then verify that all documents are in order for submission to the panel.

The BIA Co-ordinator will attend the panel along with the BIA (if possible). The panel will then consider all assessments and requests made before making a decision with regard to an authorisation for a Deprivation of Liberty. See section 5 for the procedure followed with regard to authorisation.

If an equivalent assessment is being used then the BIA must make a record of this using [\[Download Form 11 \(PDF, 105K\)\]](#).

Extensions to Urgent Requests for Authorisation

The Care Home Manager may request an extension to an urgent authorisation if the BIA is not able to complete the urgent assessment within the 7 days. The Care Home Manager should contact the Best Interest Assessor to check on the progress after 4 days. If the assessments are not going to be completed by the expiry date of the urgent authorisation the Care Home Manager will send in a request to Gateway to Care using [\[Download Form 2 \(PDF, 92K\)\]](#). This should be logged by Gateway (see [Appendix 4](#) for more detail) and passed to the BIA Co-ordinator immediately.

The BIA Co-ordinator will inform the Care Home Manager in the care home of their decision immediately and follow this up using [\[Download Form 3 \(PDF, 116K\)\]](#).

Please note that the Care Home Manager can only apply for 1 extension to an urgent authorisation.

SECTION 5 – Procedure for Authorisation Process

5.1 The Deprivation of Liberty Authorisation Panel

On completion of the assessments the BIA will send their concluding report to the BIA Co-ordinator for the attention of the 'Deprivation of Liberty Decision Making Panel' by the 6th day of the application in the case of urgent authorisations and by the 18th day for standard authorisation. The BIA Coordinator (or Senior Group Manager in their absence) will check that all relevant paperwork has been completed and meets statutory requirements.

The DofL Decision Making Panel will review the paperwork and recommendations to make sure they have been completed to statutory requirements. The panel will make a decision on the basis of the paperwork presented and will consider the recommendations put forward by the BIA. The decision making panel is responsible for ensuring that the relevant person is not deprived of their liberty without an authorisation having been granted. It is normally expected that the BIA will attend the decision making panel.

The BIA Coordinator (or Senior Group Manager in their absence) will inform the Care Home Manager of the decision, using [Download Form 12 \(PDF, 191K\)](#) to authorise and [Download Form 13 \(PDF, 119K\)](#) to decline a request.

5.2 Where DofL is authorised

The Care Home Manager in coordination with Care Management, will work with the resident, the next of kin (RPR) and IMCA where appropriate, to discuss the practicalities arising from the decision and will make any relevant adjustments to the care arrangements resulting from the decision.

The RPR will be appointed formally, in writing by the decision making panel using [Download Form 25 \(PDF, 138K\)](#)

5.3 Appeals against DofL

Anyone who is made subject to a DofL authorisation is entitled to appeal to the Court of Protection (CoP). Every effort should be made to ensure that any concerns regarding DofL can be resolved informally through the Care Home's or Kirklees Council Adult Services complaints procedure rather than CoP. However, people should not be discouraged from applying if it is not possible to resolve the concerns in any other way. See Section 10 for information.

5.4 Where DofL is not authorised

Following notification, Care Management and the Care Home Manager will need to adjust the care plan accordingly to avoid any unauthorised deprivation. Any adjustments must be discussed with family and carers.

Other considerations

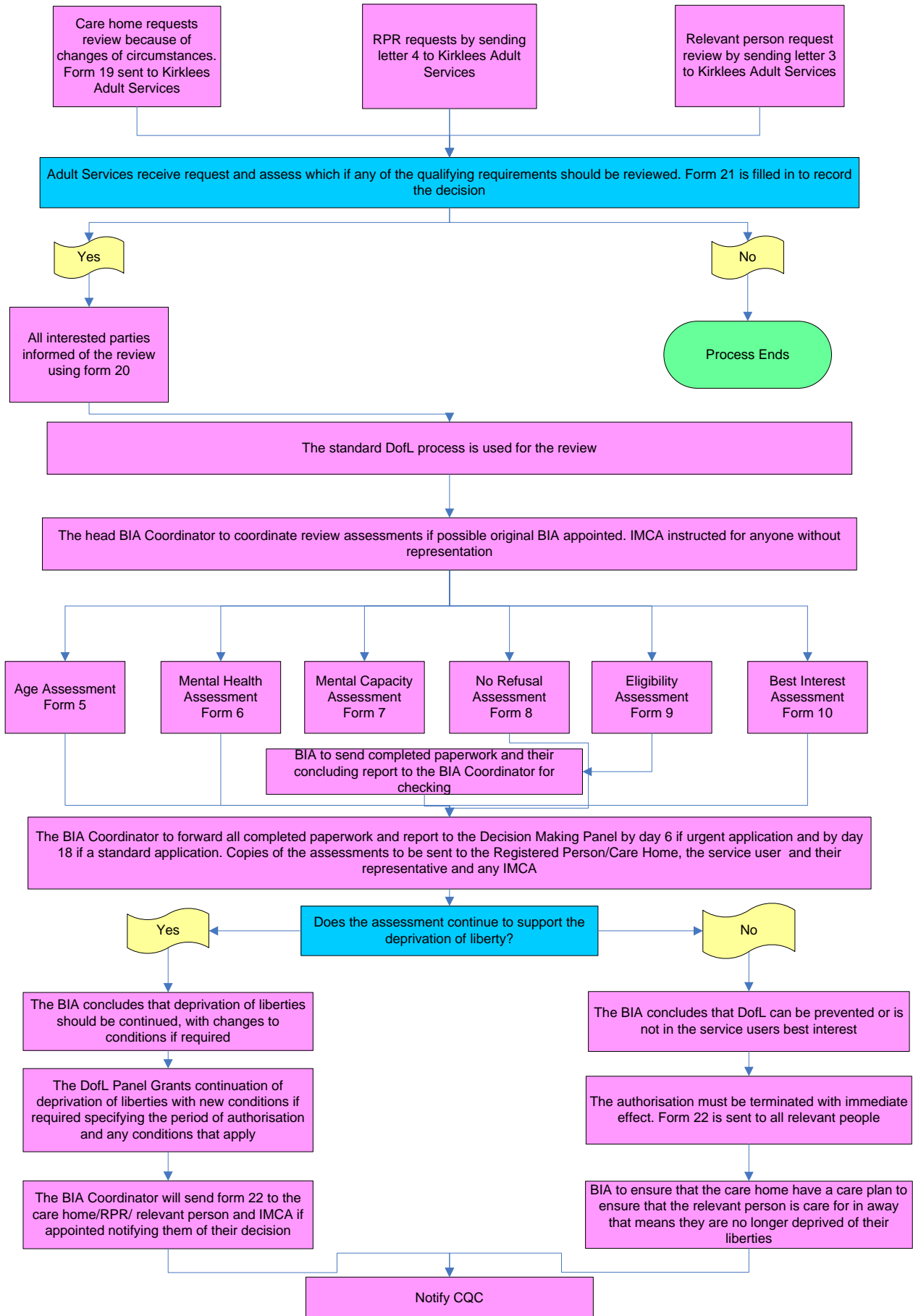
An application may be made in advance of putting in place a care plan that deprives a person of their liberty, on the basis that the declaration sought may come into force at a specific time after it is given, for example, when an application is made as part of care planning (such as discharge planning from hospital).

However, an application cannot be made too far in advance as this might mean that an assessor cannot make an accurate assessment of what the person's circumstances will be by the time the Authorisation comes into force.

DofL authorisation will have specific conditions attached to them, such as time periods, before the case needs to be reviewed.

The review date will be set at the time that the authorisation is granted. This will vary depending on the Service User's needs. The maximum period is within 1 year. Monthly case file audits can be used within a care home setting to identify when reviews need requesting. (See section on reviews.)

SECTION 6 DofL Review Process



SECTION 6 Reviews & Suspensions to Standard authorisations

6.1 DofL Review Process

Kirklees Council Adult Services are responsible for reviewing standard Authorisation. They have the discretion to carry out a review if it appears appropriate to do so.

A review of the DofL authorisation needs to take place if there is a change in the person's circumstance which requires an adjustment to that authorisation.

Kirklees Council Adult Services has a statutory responsibility to carry out a review on the following grounds.

If there is:

- evidence that the person no longer meets the eligibility criteria with regard to any of the six assessments (see Section 4).

Kirklees Council Adult Services has to carry out a review if asked by the following people:

- the relevant person
- the relevant person's representative
- a section 39a IMCA representing individual

6.2 Review Procedure

When a DofL Authorisation is in place and a review is requested, Kirklees Council Adult Services must carry out a review. The supervisory body completes [Download Form 21 \(PDF, 143K\)](#) which records the supervisory body's decision.

If it is decided by Kirklees Council Adult Services that a review is to take place the supervisory body will complete [Download Form 20 \(PDF, 97K\)](#) to notify interested parties.

If the managing authority requests a review the request should be made on [Download Form 19 \(PDF, 103K\)](#).

If the supervisory body feels that none of the qualifying requirements need to be reviewed no further action is required.

If a review is to be carried out the review process will follow the standard Authorisation process. When the BIA is co-ordinating and carrying out their review assessments, they may also identify a safeguarding issue. In these circumstances the issue must be discussed immediately with the BIA and a referral must be made immediately to Gateway as part of the Kirklees Council Adult Services Safeguarding Procedure.

DofL can be ended before a formal review. An Authorisation only permits DofL it does not mean that a person must be deprived of liberty where circumstances no longer necessitate it.

Where the supervisory body decides that the best interests' requirement should be reviewed, solely because details of the conditions attached to the Authorisation need to be changed and the review request does not include evidence that there is a significant change in the relevant person's overall circumstances, there is no need for a full reassessment of best interests. The supervisory body can simply vary the conditions attached to the Authorisation as appropriate. In deciding whether a full reassessment is necessary, the supervisory body should consider whether the grounds for the Authorisation or the nature of the conditions are being contested by anyone as part of the review request.

If the review relates to any of the other requirements or to a significant change in the person's situation under the best interests requirement, Kirklees Council Adult Services must obtain a new assessment.

When the BIA is carrying out their review assessments, they may also identify a safeguarding issue. In these circumstances a referral must be made immediately to Gateway as part of the Kirklees Council Adult Services Safeguarding Procedure.

If the assessment shows that the requirement is still met, Kirklees Council Adult Services must check whether the reason it is met has changed from the reason originally stated on the Authorisation. If it has, the supervisory body should make any appropriate amendments to the Authorisation. In addition, if the review relates to the best interests requirement, Kirklees Council Adult Services must consider whether any conditions should be changed following the new assessment.

The BIA will be the authorised person responsible for carrying out the review. Where possible, it is good practice for the BIA who carried out the original Authorisation to carry the review.

Kirklees Council Adult Services must give written notification of the outcome of the review and any changes that have been made to the DoFL Authorisation [\[Download Form 22 \(PDF, 188K\)\]](#) to:

- the managing Authority and Care Home Manager
- the relevant person
- the relevant person's representative
- any IMCA involved

If any of the requirements are not met then the Authorisation must be terminated immediately.

Short Term Suspension of Authorisation

When Kirklees Council Adult Services receives a request for a review, it must first decide which, if any, of the qualifying requirements need to be reviewed. A standard form is available for recording this decision. [Download Form 21 \(PDF, 143K\)](#)

If Kirklees Council Adult Services concludes that none of the qualifying requirements need to be reviewed, no further action is necessary. For example, if there has been a very recent assessment or review and no new evidence has been submitted to show that the relevant person does not meet the criteria or that circumstances have changed, no review is required.

If it appears that one or more of the qualifying requirements should be reviewed, Kirklees Council Adult Services must arrange for a separate review assessment to be carried out for each of these requirements.

Kirklees Council Adult Services must record when a review is requested, what it decides to do (whether it decides to carry out a review or not) and the reasons for its decision.

6.3 Is a review necessary when the relevant person's capacity fluctuates?

In the context of DofL safeguards, where a relevant person's capacity to make decisions about the arrangements made for their care and treatment fluctuates on a short-term basis, a balance needs to be struck between:

- the need to review and terminate an Authorisation if a person regains capacity
- spending time and resources constantly reviewing, terminating and then seeking fresh DofL Authorisations as the relevant person's capacity changes.

Each case must be treated on its merits. Managing authorities should keep all cases under review.

Where a person subject to an Authorisation is deemed to have regained the capacity to decide about the arrangements made for their care and treatment, the managing authority must assess whether there is consistent evidence of the regaining of capacity on a longer-term basis. This is a clinical judgement that will need to be made by a suitably qualified person.

Where there is consistent evidence of regaining capacity on this longer term basis, DofL should be lifted immediately and a formal review and termination of the authorisation sought. However, it should be borne in mind that a DofL Authorisation carries with it certain safeguards that the relevant person will lose if the Authorisation is terminated. Where the regaining of capacity is likely to be temporary and the Authorisation will be required again within a short period of time, the Authorisation should be left in place with the situation kept under ongoing review.

SECTION 7 Relevant Person's Representatives

A Relevant Person's Representative (RPR) is a person independent of the relevant hospital or care home, who is appointed to maintain contact with the relevant person and to represent and support the relevant person in all matters relating to an authorised Deprivation of Liberty.

For every individual subject to a Deprivation of Liberty authorisation Kirklees Council Adult Services must appoint an RPR as soon as possible after authorisation has been granted.

7.1 Eligibility to be an RPR

- 18 years and over
- able to keep in regular contact with the relevant person
- willing to be appointed

An RPR must not be:

- have a financial interest in the relevant person's care home
- a relative of a person who has a financial interest in the relevant person's care home
- employed by, or providing service to the care home where the relevant person is staying
- employed by Kirklees Council Adult Services in a role that is or could be related to the relevant person's case

Appointment of a RPR is an addition to the appointment of a donee or deputy therefore it does not affect the appointment or functions of a donee or deputy. However, a donee or deputy may be appointed as an RPR if they meet the above eligibility criteria.

7.1 Role of RPR

- To maintain regular contact with the relevant person.
- To represent and support the relevant person in all matters relating to the deprivation.

When the BIA is appointed, they should seek to identify an appropriate person to act as an RPR and discuss with them (as soon as is practicable) what the role entails. If authorisation is not granted, the RPR will not be necessary.

[Download Form 24 \(PDF, 168K\)](#) should be used by the BIA to record the selection process.

7.2 Selection of RPR

- The BIA should establish if the relevant person has capacity to select their own RPR and then invite them to do so.
- If the relevant person lacks capacity and there is a donee or deputy, the donee or deputy can select the RPR. If the person has a written advance statement, indicating their preference, these instructions should be followed wherever possible.
- It is the BIAs responsibility to check and confirm eligibility before recommending them to Kirklees Council Adult Services.

- If the person selected by the relevant person is ineligible, they should discuss this with the relevant person and attempt together, to identify another person.
- If no-one is suggested then the BIA need to look at identifying another suitable person.
- If there is no-one available or willing to act in this role, then a paid RPR must be appointed by Kirklees Adult Services as soon as is practicable after an authorisation is granted (this service is commissioned through a local advocacy organisation).

7.3 Key factors to be considered when recommending a RPR

It should not be assumed that the RPR needs to be someone who supports the DoFL.

The Best Interest Assessor and Kirklees Council Adult Services must make sure that they pay particular attention to the communication and cultural needs of the relevant person when they select and appoint an appropriate RPR.

7.4 Appointment of RPR

Kirklees Council Adult Services should appoint an RPR formally. When an RPR is appointed [Download Form 25 \(PDF, 138K\)](#) must be completed and copies sent to:

- appointed person
- relevant person
- any donee or deputy of the relevant person
- any IMCA involved
- every interested person named by the BIA in their report as somebody they have consulted in carrying out their assessment
- the Managing Authority

The RPR must confirm their willingness to act in this role, this can be done by a signature on the selection form [Download Form 24 \(PDF, 168K\)](#) confirming that they have understood their roles and responsibilities in relation to the relevant person.

7.5 Care Homes

The Care Home Manager must make sure that the relevant person and their representative understand:

- the effect of the Authorisation
- the right to request a review
- complaints procedures available to them
- rights to apply to the Court of Protection
- rights to request an Independent Mental Capacity Advocate (IMCA)

The Care Home Manager must also ensure that they take into account communication and language needs when providing this information. Information should be provided on an ongoing basis and the care should evidence that this has taken place as part of routine recording in relation to an authorisation.

7.6 Once the RPR is appointed

The Care Home Manager should accommodate any visits by the RPR to the relevant person in order to facilitate regular contact.

Kirklees Council Adult Services and the Care Home Manager must inform the RPR of any sources of support or information that might help them in their role, including how to access support from their local IMCA.

The Care Home Manager must make sure that they monitor and record the level/method of contact between the relevant person and their representative. If there are concerns about the level of contact, the care home manager should raise this informally with the RPR. If the situation does not improve these issues should be raised with Kirklees Council Adult Services via Gateway to Care.

The frequency of contact and method of contact needs may vary from person to person so the Care Home Manager should exercise discretion as to what they deem to be appropriate.

7.7 Termination of Appointment of RPRs

Appointments will be terminated in the following situations. Where:

- the relevant person, if they have capacity to do so, objects to the representative continuing in their role and a different person is selected to be their representative instead
- a donee or deputy, if it is within their authority to do so and the relevant person lacks the capacity to decide, objects to the representative continuing in their role and a different person is selected to be the representative instead
- the supervisory body becomes aware that the representative is no longer willing or eligible to continue in the role
- the supervisory body becomes aware that the relevant person's representative is not keeping in regular contact with the person and/or not representing or supporting them effectively
- the RPR is not acting in the person's best interests
- the RPR dies or becomes incapacitated.

When the appointment of the RPR ends, Kirklees Council Adult Services must give notice as soon as possible to:

- the appointed person
- the relevant person
- any donee or deputy of the relevant person
- any IMCA involved
- every interested person named by the BIA in their report as somebody they have consulted in carrying out their assessment
- the care home manager.

This notice should indicate when the appointment ended and should explain the reason why.

[Download Form 26 \(PDF, 104K\)](#) should be used by Kirklees Council Adult Services to give notice of the pending termination of the appointment. [Download Form 27 \(PDF, 77K\)](#) should also be used to terminate the appointment.

If the role of the RPR is terminated whilst an Authorisation is still in place, Kirklees Council Adult Services must appoint a suitable replacement as soon as possible using the standard selection and appointment approach outlined above. If the RPR appointment has ended because they are no longer eligible, the BIA must also seek the relevant person's view on a suitable replacement.

Where there is no available RPR, Kirklees Council Adult Services should make sure that an IMCA is instructed to represent the relevant person until an RPR can be appointed.

SECTION 8 Involving an IMCA

The relevant person or their representative (if this is a family member or friend) has a statutory right to access an IMCA. Kirklees Council Adult Services must instruct an IMCA if requested. A request can be made more than once during any period of the authorisation.

Kirklees Council Adult Services may wish to instruct an IMCA as part of a review or appeal to Court of Protection if an IMCA has not been requested and one is felt to be needed.

The IMCA can provide:

- additional support and help for someone to communicate their views
- help the relevant person and their RPR to understand the effects of an Authorisation, what it will mean for them.
- help them access a review or an appeal to the Court of Protection (see [section 9](#)).
- provide support with a review or an application to Court of Protection.

The IMCA has the right to question with Kirklees Council Adult Service whether a qualifying requirement of an authorisation should be reviewed. They can also give information and make submissions to an assessor carrying out a review.

SECTION 9 Unauthorised Deprivation of Liberty

9.1 Any individual who has concerns that an individual may be being deprived of their Liberty without Authorisation should in the first instance draw their concerns to the managing authority by using Download Standard Letter 1 and ask them to apply for an Authorisation if they wish to continue to with the care regime or to change the care regime quickly so that it does not constitute a Deprivation of Liberty. The Managing authority must respond within 24 hours.

9.2 All attempt should be made to resolve the matter informally with the concerned person/s, this may involve making adjustments to the care arrangements in order to remove the concerns that a Deprivation of Liberty may be occurring. If the managing authority is unable to resolve the matter with the concerned person/s they should then submit a request for a standard authorisation immediately.

9.3 If the concerned person has raised the matter with the managing authority and the managing authority does not apply for an authorisation within a reasonable period the concerned person may ask the supervisory body to decide whether there is an unauthorised deprivation of Liberty? They must inform the supervisory body of the name of the relevant person and the name of the hospital/care home and explain why they think the relevant person is being deprived of their liberty using Download standard letter 2.

9.4 The supervisory body should appoint a Best Interests Assessor through the normal assessment procedure for Deprivation of Liberty, except in circumstances where it appears to the supervisory body that the request is frivolous or vexatious, or where a very recent assessment has been carried out and repeated requests are received. Or in circumstances where the question of unauthorised deprivation has been decided and there has been no change of circumstances that would merit further consideration. The supervisory body should record their reasons for the decision using Download Form 16.

9.5 The Supervisory body must notify the person who raised the concern, the relevant person, the managing authority of the relevant hospital/care home and any IMCA involved that they have been asked to assess whether or not there is an unauthorised Deprivation of Liberty, whether or not it has decided to commission an assessment and where relevant who has been appointed as assessor. Copies of Download Form 16 should be used for this purpose.

9.6 If a person raises concerns directly with the Supervisory body, a preliminary assessment should be arranged immediately to determine whether or not a deprivation of Liberty is occurring. The supervisory body should then inform the managing authority to ask them to request a standard authorisation in respect of relevant person. The supervisory body should agree with the managing authority what is a reasonable period within which a standard authorisation should be requested (unless the managing authority is able to resolve the matter with the concerned person informally). If the managing authority does not resolve the matter with the concerned person or submit a request for authorisation within the agreed period the supervisory body should follow the process outlined in 8.4 to assess whether an unlawful deprivation is occurring.

The concerned person may prefer to deal directly with the managing authority; the supervisory body must monitor what happens closely to ensure that no unlawful deprivation is occurring without proper action being taken.

9.7 An assessment of whether an unlawful deprivation of liberty is occurring must be carried out within 7 calendar days by a Best Interest Assessor. It is not a Best Interests Assessment as such. The purpose of the assessment is to establish whether an unlawful deprivation is occurring.

9.8 The Best Interest Assessor must consult with the managing authority and examine any care plans and needs assessments and consider whether they constitute a deprivation of Liberty. They should consult with the concerned person about why they believe a deprivation may be occurring, and consult as far as is possible with any relatives, carers or interested parties in respect of the relevant person. If there is nobody to consult an IMCA should be instructed to support and represent the person. Using Download Form 17 the assessor must record the outcome of their assessment.

9.9 The assessor may conclude that:

- the person is not being deprived of their liberty
- the person is being lawfully deprived of their liberty because authorisation exists
- the person is being deprived of their liberty unlawfully

9.10 The Supervisory body must notify the concerned party, the relevant person, the managing authority and any IMCA involved of the outcome of the assessment using Download Form 18.

9.11 If the outcome is that an unauthorised deprivation is occurring then the full assessment process should be completed, unless the managing authority changes the care regime so that it is clear that a deprivation no longer exists.

9.12 If the managing authority considers there is a need to continue the deprivation and it is so urgent that the care regime should continue whilst the assessments are carried out it must give itself an urgent authorisation and seek a standard authorisation within 7 days using Download Forms 1 and 4.

9.13 If the concerned person is unhappy about the outcome they may apply to the Court of Protection to hear their case.

SECTION 10 Court of Protection

Anyone who is subject to an Authorisation is entitled to access to the Court of Protection (CoP), so that the lawfulness of that Authorisation can be reviewed. Concerns regarding Authorisations should be resolved informally through the Care Home's/Kirklees Council Adult Services complaints procedure rather than CoP. We would hope that application to CoP would be limited to those cases that definitely need to be referred to the court. However, people should not be discouraged from applying where it is not possible to resolve their concerns in any other way.

10.1 When Can People Apply?

Before an Authorisation is given

The relevant person or someone acting on their behalf can apply to the CoP before a decision has been reached on their application for Authorisation. The COP will decide if they are willing to consider this prior to Authorisation.

After an authorisation is given

For standard Authorisations, the relevant person or their representative has the right to apply to the CoP regarding:

- whether the relevant person qualifies for an Authorisation
- the length of time the Authorisation is to be in place
- reason for the Authorisation
- any conditions placed on the Authorisation

For urgent Authorisations, the relevant person or persons' acting on their behalf, such as the donee or deputy, can apply to the CoP regarding:

- whether the urgent Authorisation should have been granted
- the length of time the Authorisation is to be in force
- reason for the Authorisation

Any other person can also apply to CoP to take the relevant person's case to court to determine whether the Authorisation should have been granted, the CoP can decide if they will consider the application.

10.2 People with Automatic Rights to Access Court of Protection

- a person who is considered to lack capacity in relation to a specific decision or action
- the donor of Lasting Power of Attorney to who an application relates or their donee
- a deputy who has been appointed by the Court to act for the person concerned
- a person named in an existing Court Order to which an application relates
- the person appointed by Kirklees Council as the relevant person's representative

All others need to get permission from the Court before making an application by completing the relevant application form.

Legal Aid is available for advice on representation before the CoP.

10.3 Court of Protection Orders

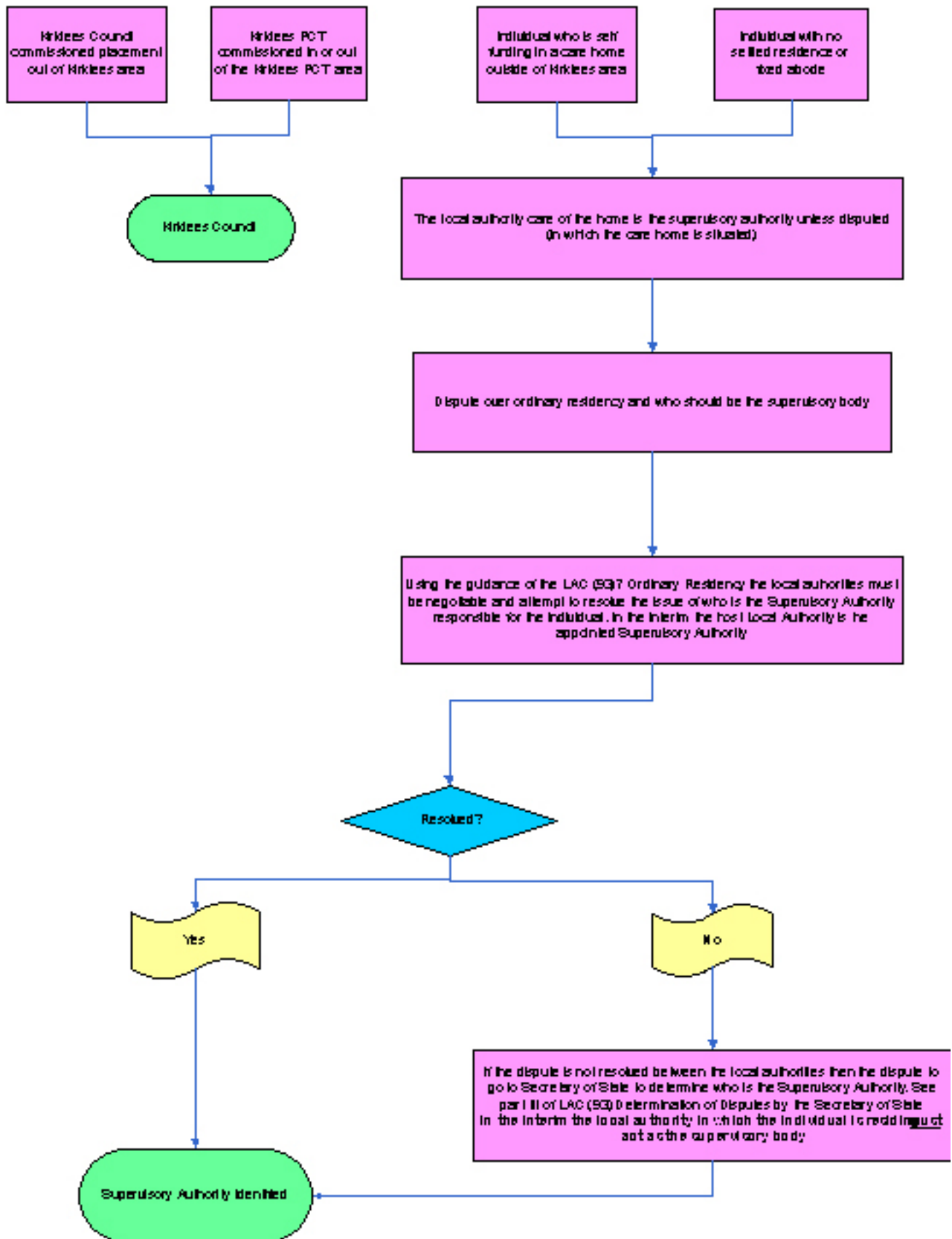
These can include:

- directing Kirklees Council Adult Services (for a standard authorisation) or a care home (for an urgent Authorisation) to vary or stop the Authorisation that is already in place.

For Further information:

- Mental Capacity Act 2005 DofL Safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice. Section 10 (p98)
- Mental Capacity Act 2005 Code of Practice ('What are the best ways to settle disagreements and disputes about issues covered in the MCA 2005')
- Office of the Public Guardian
<http://www.publicguardian.gov.uk/about/court-of-protection.htm>

SECTION 11 DoL Out of Area Placements



SECTION 11 Out of Area Placements/ Reciprocal Arrangements

11.1 Local Authority Commissioned Placements

The procedure outlines the responsibility of Kirklees Council Adult Services in circumstances where a person is classified as ordinarily resident in Kirklees but resides in a care home in another local Authority (host Authority) where a request for an authorisation has been made.

Kirklees Council Adult Services will always maintain responsibility for individuals placed by them in other local authorities in respect of their duties as the relevant supervisory body.

To determine the place of ordinary residence the principles on mechanisms under the [National Assistance Act 1948](#) will apply.

The sections below identify the purposes of any Deprivation of Liberty assessments and are intended to provide a broad guidance only. When determining ordinary residence issues, Local Authorities should have regard to the National Assistance Act, LAC [93]7. (the DH Out-of-Area Review guidance – under development).

11.2 PCT Commissioned Care home Placements

Where a PCT commissions a placement in a care home within its own local authority, the Local Authority will be the Supervisory Body for the purposes of any deprivation of liberty authorisations. Note: the PCT's home Local Authority is defined as the Local Authority area for which the PCT is responsible.

PCT Commissioned Care Home Placements – outside Home Local Authority where the Responsible Commissioning 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 Commissioning PCT places a person in a care home located outside of their home Local Authority, the Responsible Commissioning 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.

11.3 Individuals who Fund their own Support

In circumstances where an individual arranges to go into a care home that 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 will be the relevant Supervisory Body for the purposes of any DofL requests.

11.4 Individuals with No Settled Residence

In circumstances where an individual has no 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 requests.

11.5 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 must act as the supervisory body.

When the decision is made, the local Authority of ordinary residence must assume responsibility as the Supervisory Body.

11.6 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.

The Supervisory Body and Local Authority or PCT must develop and sign up to a formal written agreement that 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 is not met
- costs and payment arrangements

The formal agreement will be in a prescribed form (to be developed).

11.7 Conducting Assessments and Reporting

The Local Authority or PCT that 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.

Following receipt of the assessments, the key contact within the host Local Authority or PCT will forward the assessment to the nominated key contact within Kirklees Council Adult Services.

When Kirklees Council Adult Services 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.

Kirklees Council Adult Services is responsible for informing the Managing Authority, the relevant person and their representative of the outcome of the referral.

11.8 Where Assessment Criteria are Not Met and Authorisation is declined

Where assessors determine that assessment criteria are not met, they must inform the Host Authority and Kirklees Council Adult Services immediately. Kirklees Council Adult Services is responsible for informing the Host Authority that Authorisation has been declined and the reasons for this. Where assessors have found that DofL is occurring but the assessment criteria are not met, Kirklees Council Adult Services is responsible for ensuring alternative care arrangements are made so that the relevant person is not unlawfully deprived of their liberty.

11.9 Where the managing Authority and the Supervisory Body are both Kirklees Council Adult Services

- The BIA cannot be an employee of Kirklees Council.
- In such circumstances Kirklees Council Adult Services must arrange for the best interest assessor out on its behalf by a BIA employed to be employed by another local authority or PCT.

11.10 Reviews of DofL Authorisations

In terms of continuity, it is best practice for the same Local Authority BIA to review an individual, unless practicable to do so.

11.11 Disputes Complaints and Litigation

Kirklees Council Adult Services 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.

The host Authority may be asked to assist Kirklees Council Adult Services in investigating complaints/disputes, however, Kirklees Council Adult Services maintains accountability for any complaints and will utilise their organisation's complaints process.

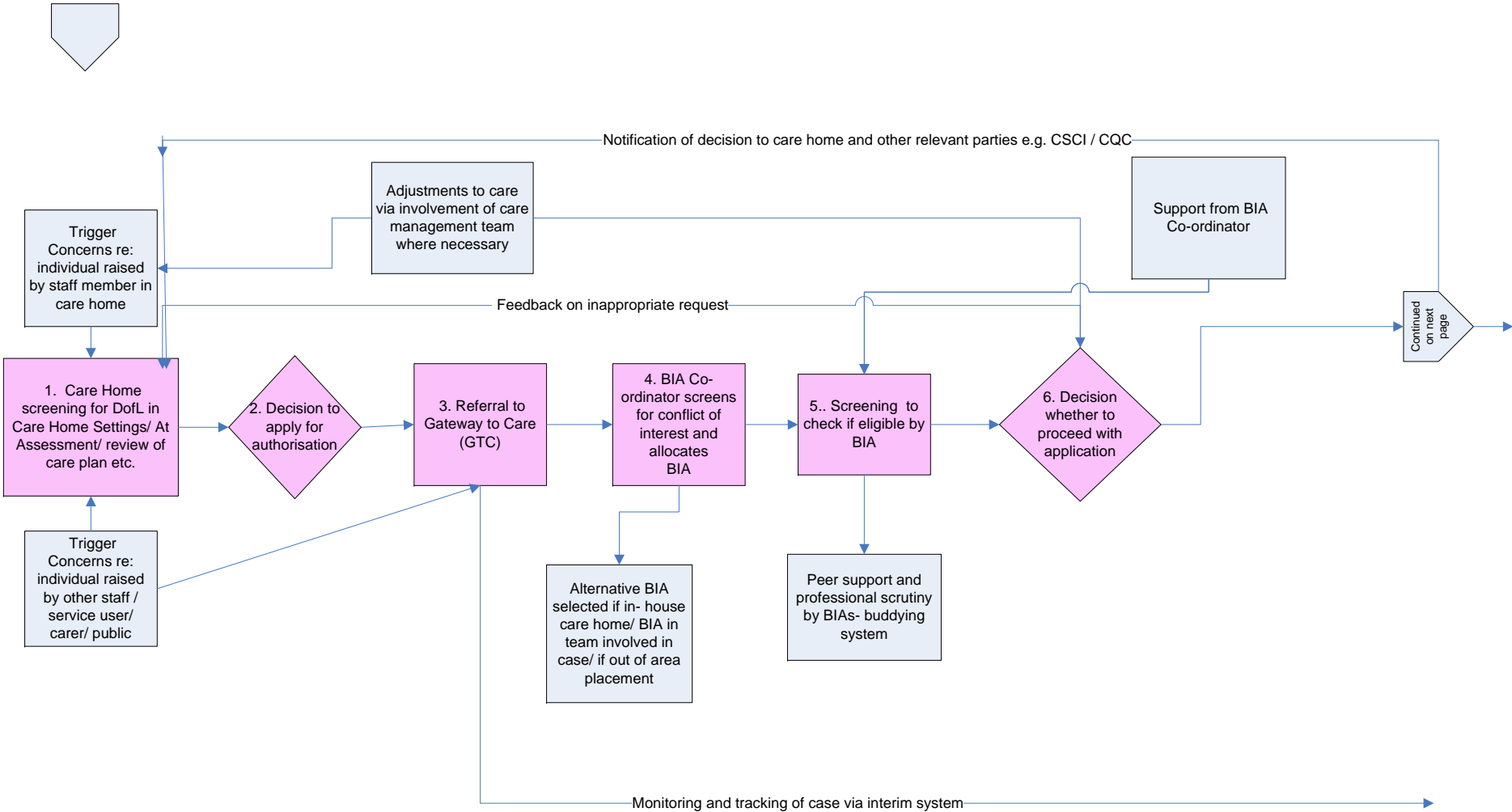
11.12 Dispute between Kirklees Council Adult Services and Host Authority

Where a dispute arises between Kirklees Council Adult Services and the host Local Authority/PCT that has agreed to carry out one or more assessments on its behalf, the party that wishes to raise an issue or concern should do so as soon as reasonably practicable.

In the case of disputes relating to financial payment, all payments agreed to in the formal written agreement should be paid in full by the due 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.

Appendix 1
Deprivation of Liberty Processes
Kirklees



Appendix 2 Case Examples of Deprivation of Liberty

1. Example of where a DofL is not required

Amelia did not have a formal assessment before entering the care home. Her son says her level of confusion is not bad, but from the beginning she is very distressed, difficult to calm and repeatedly tries to leave.

The Care Home Manager wonders whether it is necessary to use the MCA DofL to keep her safe.

Prior to requesting an assessment for an MCA DofL authorisation, the Care Home Manager asks for a comprehensive assessment of her needs, including exploring Amelia's previous interests and preferences with her son. It appears that Amelia has a urinary tract infection and so has been more confused than usual. The GP prescribed antibiotics. Amelia's son spends some time with her every day for the rest of the week to help her settle in. Amelia is shown the greenhouse as she has been a keen gardener; they discover that she still plays the piano and enjoys jigsaws.

Over the course of the next two weeks she settles in and becomes quite content with the freedom she is able to maintain; therefore the Care Home Manager takes the view that a request for a DofL standard authorisation is not currently necessary.

2. Example of how changing the care plan to be less restrictive can prevent a DofL

Jean has moved into a local care home because of her mild Alzheimer's disease. Her care is complicated by regular visits to her local pub and on one occasion she returns to the care home drunk.

After speaking with Jean's daughter, who lives at some distance away, the Care Home Manager decides that the only way to stop the drinking is to keep Jean from leaving the care home at any time.

The Care Home Manager completes a DofL urgent authorisation and requests a standard authorisation. Jean passes the age, no refusals, mental capacity, mental health and eligibility assessments, but the best interests assessor (BIA) considers that the restrictions used to limit the alcohol misuse are disproportionate to the risk and are not in Jean's best interests.

The BIA asks the Care Home Manager to immediately stop depriving Jean of her liberty and suggests they urgently draw up a new care plan to manage the risk of excess alcohol use without being so restrictive. In his report, the BIA suggests involving Jean's care manager in this process.

A new package of care is arranged which includes trips out and accompanied visits to the pub.

Appendix 2 Case Examples of Deprivation of Liberty

3. Example of DofL And Role Of Relevant Person Representative

Erik's care home is granted a standard authorisation to help meet his care needs legitimately.

His brother is appointed as his relevant person's representative for the standard authorisation. The staff tells Erik as clearly as possible what the authorisation means and explain his brother's role as his representative. They give him simple written information about it and provide copies for his brother. A copy of the authorisation is placed in Erik's file and his care plans are amended, making it clear that Erik's brother should now be involved in any major care decisions and care reviews.

There are conditions attached to the authorisation which relate to visits by Erik's other family members and these are incorporated into his care plans. The expiry date of the standard authorisation is noted in the diary so that the Care Home Manager can apply for a new authorisation before the current term expires.

The Care Home Manager meets Erik's brother to check that he understands the nature and effect of the authorisation. The Care Home Manager explains the complaints and appeals procedure in detail and tells him about the right to request a review or apply for termination of the standard authorisation.

4. Example of request to review Standard Authorisation

Samir was only 45 when he had a stroke, leaving him with considerable nursing needs, cognitive impairment, impulsive and sometimes violent behaviour. He was detained using a standard authorisation as he met all the criteria for authorisation.

Over the course of a year, Samir improves considerably. He stops hitting out at staff and his awareness and judgement become better. As a result, his wife is confident that she can look after him and the Care Home Manager (the managing authority) works with her to organise trips out.

At a regular care review, Samir's keyworker asks whether it is still necessary or in his interests to have the standard authorisation in place and queries whether he even still meets the mental capacity or mental health criteria for the authorisation.

The Care Home Manager writes to the supervisory body to request a review. The review finds that although Samir still meets the mental capacity criteria, he no longer meets the mental health or best interest criteria. The standard authorisation is terminated. The supervisory body compliments the care home staff on the way they are working with Samir and his wife to free up the restrictions on his liberty.

Appendix 2 Case Examples of Deprivation of Liberty

5. Example of Appointing an IMCA

William is sad to see his wife Elaine leave their home and move into the nursing home. He agrees with the use of the standard authorisation as she would have been a risk to herself and others if she had been allowed more freedom. He is pleased to be appointed as her RPR by the supervisory body. This allows him to carry on caring for Elaine and to ensure that the restrictions used to keep her safe are really in her best interests.

Unfortunately, William then has a stroke himself and is only rarely able to visit, having moved to live near his daughter. John, the Care Home Manager, considers that William's lack of regular contact means that he is unable to carry on representing his wife's interests. John talks to William about this, but William says that his ill-health prevents him from visiting.

John informs the supervisory body about his concerns. William agrees that he should be kept up to date by copies of the care plans. The supervisory body appoints an IMCA as an alternative relevant person's representative, as no other suitable person can be immediately identified.

Appendix 3 Mental Capacity Act Deprivation of Liberty Safeguards

Information for Care Homes

- After April 1st 2009 Care Homes must make applications via Gateway using the standard DH forms via email: gatewaytocare@kirklees.gov.uk. Please do not use personal email accounts such as hotmail or yahoo.

If Care Home Managers do not have an email account please send via fax on: 01484 221231. Please fax applications only if there is no email facility.

DofL Procedure Applications

Email Applications

- Please ensure that you send the email as high priority (usually a 'red' email).
- Please clearly state what the email refers to:
E.g. 'DofL Urgent and Standard Authorisation'.
- Please also provide contact name and telephone number in the email.
- Please password protect the document before you send it.
- A Gateway staff member will then contact you to obtain the password once it has arrived.

Fax Applications

- Please clearly state what the fax refers to:
E.g. 'DofL Urgent and Standard Authorisation'.
- Please also provide contact name and telephone number on the fax.
- Please call and alert Gateway before you send the fax (Call: 01484 223000).
- Someone will then call to notify you that the information has been received.

Overview – Enquiries on Procedure

- Enquiries about DofL cases and applications should be made directly to Gateway. However, the following can be contacted as an alternative to Gateway if there are enquiries specific to following the Kirklees Council procedure.

Lynne Holtom
Lynne.Holtom@swyt.nhs.uk
01484 343523/07710 37 0936

Dianne Green
Dianne.green@kirklees.gov.uk
01924 324733/07713 06 6892

Rachel Tanner
Rachel.tanner@kirklees.gov.uk
01924 324737/07814 74 9986

Lorraine Garip
Lorraine.garip@kirklees.gov.uk
01924 324739/07980 913008

How to password protect your document:

Word Documents:

Click on Tools/ Options/ Security/ Password to Open

Enter password into 'password to open'

Document will then only open with password

Appendix 4 Tool Kit

<http://intranet/business/documents/PDFFiles/10028/dofindicator toolkitv1.xls>

Appendix 5 Glossary of Terms

Advance decision to refuse treatment	A decision to refuse specified treatment made in advance by a person who has capacity to do so. This decision will then apply at a future time when that person lacks capacity to consent to or refuse the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment.
Advocacy	Independent help and support with understanding issues and putting forward a person's own views, feelings and ideas.
Age assessment	An assessment, for the purpose of the DofL safeguards, of whether the relevant person has reached the age 18.
Approved mental health professional	A social worker or other professional approved by a local social services authority to act on behalf of a local social services authority in carrying out a variety of functions.
Assessor	A person who carries out a DofL safeguards assessment.
Best interests assessment	An assessment, for the purpose of the DofL safeguards, of whether DofL is in a detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm.
Bournewood judgment	The commonly used term for the October 2004 judgment by the European Court of Human Rights in the case of <i>HL v the United Kingdom</i> that led to the introduction of the DofL safeguards.
Capacity	Short for mental capacity. The ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in section 2 of the Mental Capacity Act 2005.
Care Home	A care facility registered under the Care Standards Act 2000.
Care Quality Commission	The new integrated regulator for health and adult social care that, subject to the passage of legislation, will take over regulation of health and adult social care from 1 April 2009.

Carer	Someone who provides unpaid care by looking after a friend or neighbour who needs support because of sickness, age or disability. In this document, the term carer does not mean a paid care worker.
Conditions	Requirements that a supervisory body may impose when giving a standard DofL authorisation, after taking account of any recommendations made by the BIA.
Consent	Agreeing to a course of action – specifically in this document, a care plan or treatment regime. For consent to be legally valid, the person giving it must have the capacity to take the decision, having been given sufficient information to make the decision and not have been under any duress or inappropriate pressure.
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decisions.
Deprivation of liberty (DofL)	DofL is a term used in the European Convention on Human Rights about circumstances when a person's freedom is taken away. Its meaning in practice is being defined through Case Law.
Deprivation of Liberty safeguards	The framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interests for care or treatment and who lack the capacity to consent to the arrangements made for their care or treatment.
Deprivation of Liberty safeguards assessment	Any one of the six assessments that need to be undertaken as part of the standard DofL Authorisation process.
Deputy	Someone appointed by the Court of Protection with ongoing legal authority, as prescribed by the Court, to make decisions on behalf of a person who lacks capacity to make particular decisions.
Donee	Someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.

Eligibility assessment	An assessment, for the purpose of the DofL safeguards, of whether or not a person is rendered ineligible for a standard DofL authorisation because the Authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983.
European Convention on Human Rights	A convention drawn up within the Council of Europe setting out a number of civil and political rights and freedoms and setting up a mechanism for the enforcement of the obligations entered into by contracting states.
(ECHR) European Court of Human Rights	The Court to which any contracting State or individual can apply when they believe that there has been a violation of the European Convention of Human Rights.
Guardianship under the Mental Health Act 1983	The appointment of a guardian to help and supervise patients in the community for their own welfare or to protect other people. The guardian may be either a local authority or a private individual approved by the local authority.
Independent Mental Capacity Advocate (IMCA)	Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them. The IMCA service was established by the Mental Capacity Act 2005 and is not the same as an ordinary advocacy service.
Lasting Power of Attorney	A Power of Attorney created under the Mental Capacity Act 2005 appointing an Attorney (donee), or Attorneys, to make decisions about the donor's personal welfare, including health care, and/or deal with the donor's property and affairs.
Local authority	In the deprivation of liberty safeguards context, the local council responsible for social services in any particular area of the country.
Managing authority	The person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of their liberty.
Maximum authorisation period	The maximum period for which a supervisory body may give a standard DofL Authorisation, which must not exceed the period recommended by the BIA and which cannot be for more than 12 months.

Mental Capacity Act 2005	Legislation that governs decision making for people who lack capacity to make decisions for themselves or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this.
Mental capacity assessment	An assessment, for the purpose of the DofL safeguards of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment.
Mental disorder	Any disorder or disability of the mind, apart from dependence on alcohol or drugs. This includes all learning disabilities.
Mental Health Act 1983	Legislation mainly about the compulsory care and treatment of patients with mental health problems. It covers detention in hospital for mental health treatment, supervised community treatment and guardianship.
Mental health assessment	An assessment, for the purpose of the DofL safeguards, of whether a person has a mental disorder.
No refusals assessment	An assessment, for the purpose of the DofL safeguards, of whether there is any other existing authority for decision making for the relevant person that would prevent the giving of a standard DofL Authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney.
Qualifying requirement	Any one of the six qualifying requirements (age, mental health, mental capacity, best interests, eligibility and no refusals) that need to be assessed and met in order for a standard DofL Authorisation to be given.
Relevant hospital or care home	The hospital or care home in which the person is, or may become, deprived of their liberty.
Relevant person	A person who is, or may become, deprived of their liberty in a hospital or care home.

Relevant person's representative	A person, independent of the relevant hospital or care home, appointed to maintain contact with the relevant person, and to represent and support the relevant person in all matters relating to the operation of the DofL safeguards.
Restraint	The use or threat of force to help carry out an act that the person resists. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm.
Restriction of liberty	An act imposed on a person that is not of such a degree or intensity as to amount to a DofL.
Review	A formal, fresh look at a relevant person's situation when there has been, or may have been, a change of circumstances that may necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation.
Standard authorisation	An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in the relevant hospital or care home.
Supervisory body Unauthorised deprivation of liberty	<p>A Primary Care Trust, local Authority, Welsh Ministers or a local health board that is responsible for considering a DofL request received from a managing authority, commissioning the statutory assessments and where all the assessments agree, authorising DofL.</p> <p>A situation in which a person is deprived of their liberty in a hospital or care home without the deprivation being authorised by either a standard or urgent DofL Authorisation.</p>
Urgent authorisation	An Authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days by a supervisory body, that gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard DofL Authorisation process is undertaken.

Appendix 6 Contracts Unit

Identification of Unauthorised Deprivations of Liberty

If the Contracts Unit are concerned that an individual may be deprived of their liberty, they should take the following steps [Deprivation of Liberty Safeguards Code of Practice](#), Chapter 9 (p94).

- Flagging up the issue to the care home manager and asking them to look at least restrictive alternatives and where this is not possible, asking the care home manager to put in an application for a deprivation of liberty authorisation to Kirklees Council.
- As the Contracts Unit may not have the opportunity to follow this up with the care home, they would need to inform the care home that they are making a referral to gateway to care at the same time to ensure that this is investigated by a BIA.
- The Contracts Unit should complete Deprivation of Liberty Letter 1, sending this to the relevant Care Home and a copy to Gateway to Care detailing the name of the person they are concerned about, the name of the care home and the reasons that they think the person is deprived of their liberty.

In addition, should any safeguarding issues be identified, a referral must be made immediately to Gateway to Care as part of the Kirklees safeguarding procedure:

<http://www.kirklees.gov.uk/publications/SS/adultprotection/kirkleessafeguardingmulti-agencypolicy.pdf>

Where abusive or restrictive care arrangements are uncovered that may not necessarily be a deprivation of liberty, a referral must be made immediately to Gateway to Care as part of the Kirklees safeguarding procedure

<http://www.kirklees.gov.uk/publications/SS/adultprotection/kirkleessafeguardingmulti-agencypolicy.pdf>

Where DofL Authorisation Requests are Turned Down

For Independent Sector Care Homes, the Contracts Unit need to be able to access information where a DofL has been turned down, the reasons why and any outcomes of follow up action undertaken with the care home. This information is used to inform the Contract Monitoring process; not to follow up the specific DofL issue raised.

Where a DofL is Authorised

For independent sector care homes, the Contracts Unit must be informed or have access to information about where a DofL has been authorised and the time period for that authorised, so that the team are aware.