



# KIDS Mental Capacity Act and Deprivation of Liberty Safeguards Policy and Procedures

**Date: March 2021**

**Next Review Date: March 2023**

**Policy Reference Number: S-M-54**

**Version: 2**

**Policy Lead: Operational Leadership Team and National Safeguarding Lead**

## **Impact of Coronavirus (COVID-19) outbreak on KIDS policy and procedures**

This policy document should be considered in conjunction with national guidelines setting out the developing situation of the COVID-19 outbreak. KIDS will frequently monitor the situation as reported by GOV UK, Public Health England (PHE) and other reputable information sources and will use this to inform any temporary changes to this policy. Staff should monitor the Coronavirus Business Continuity page on Yammer for any such up-dates. Other relevant changes and guidance will be posted on the following pages on Yammer: Services Managers and Co-ordinators; Health & Safety; Safeguarding and Staying Connected.

**This is a controlled document.** It should not be altered in any way without the express permission of the policy owner or their representative. On receipt of a new version, please destroy all previous versions. If you are reading a printed copy of this document, you should check KIDS Policy page on Yammer to ensure that you are using the most current version.

**This policy can be made available in alternative formats, such as easy read or large print and may be available in alternative languages upon request. Please email [enquiries@kids.org.uk](mailto:enquiries@kids.org.uk)**

## Contents

1. Purpose and Context .....	3
2. Scope .....	3
3. General Policy .....	4
3.1 The five statutory principles of the Mental Capacity Act.....	4
3.2 What is Mental Capacity? .....	5
3.3 When to assess capacity .....	6
3.4 Best Interests Principles .....	7
3.5 Deprivation of Liberty Safeguards (DoLS) .....	7
4. Roles and Responsibilities .....	8
5. Procedures .....	8
5.1 Assessing, implementing and recording capacity .....	8
5.1.1 How does KIDS demonstrate it assumes those we work with have capacity? .....	8
5.1.2 Best Interests assessments and least restrictive interventions. ....	9
5.1.3 Applying the principles of capacity to under 16 year olds. ....	9
5.1.4 Working with parent carers .....	10
5.1.5 Restraint.....	10
5.2 Monitoring and reviewing Capacity Assessments .....	11
5.3 Managing conflicts .....	11
7. References .....	12
7.1 Legislation, regulations and national guidance .....	12
7.2 Associated documents and guidance .....	13
8. Document Control Information .....	13
8.1 Impact assessment .....	13
8.2 Review cycle .....	13
8.3 Document history .....	13
9. Appendices.....	14
Appendix 1 KIDS Mental Capacity Act Assessment.....	15
Appendix 2 Liberty Protection Safeguards .....	19

# **KIDS Mental Capacity Act and Deprivation of Liberty Safeguards Policy and Procedures**

## **1. Purpose and Context**

KIDS works with children and young people up to the age of 25. KIDS' organisational values and working practices are to support all children and young people regardless of age to develop the confidence and ability to make informed decisions and choices that affect them and others. This policy relates to young people aged 16 years and over and demonstrates our commitment to the Mental Capacity Act 2005 (MCA) and the best practice guidance within it.

This policy does not cover those not in receipt of KIDS services such as parent carers and other family member. In cases where this is a concern about a parent carer or family member then a referral should be made to adult services.

The aim of this policy is to ensure that throughout the work of KIDS we will promote the welfare of young people in ensuring the principles of the MCA are embedded into practice. We aim to do this by ensuring that we comply with the MCA Code of Practice and upholding the rights of young people with care and support needs, ensuring it is integral to all we do.

KIDS is committed to implementing this policy and the practices it sets out and building confidence among staff regarding how and when to assess an individual's mental capacity, and how to make a best interests decision when necessary

KIDS recognises that, as an organisation working primarily with young disabled people, that there may be times when we will need to support individuals to make their own choices within the boundaries of the MCA. KIDS actively promotes a person-centred approach, which includes supporting young people to use their preferred communication means to enable them to make their own choices about the support they receive from KIDS.

KIDS will work closely with local Safeguarding Adult Boards to ensure multi agency working and compliance with local guidance when working with those people over 16 where capacity and choice need to be explored. If the child is under 18 then children's service may also be involved.

## **2. Scope**

This policy is relevant to and should be followed by all staff working for or on behalf of KIDS. (Please refer to Definitions for further explanation of Staff). It should be applied to all KIDS services working with young people aged 16 and over.

The Mental Capacity Act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment. It applies to people aged 16 and over, therefore this policy is applicable to all staff working with this age group.

The MCA covers decisions about day-to-day things like what to wear or what to buy when shopping, or serious life-changing decisions like whether to move into a care home or have major surgery, therefore KIDS will use this policy for the purpose of supporting a young person in making decisions about the support provided by KIDS which will also include assuming capacity to make decisions when KIDS offer Information, Advice and Family Support Services.

### **3. General Policy**

KIDS recognises the responsibility to ensure adherence to the MCA and to support young people who are not able to make their own decisions.

KIDS will offer learning opportunities and make provision for appropriate MCA training to all staff and will also ensure the MCA Code of Practice is available to all staff [here](#).

The MCA is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. The MCA also aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack capacity to make decisions to protect themselves.

This policy will be a guide for what this means when supporting a young person accessing a KIDS' service.

#### **3.1 The five statutory principles of the Mental Capacity Act**

The Mental Capacity Act includes the following five fundamental principles:

##### **Principle 1: A presumption of capacity**

Every person has the right to make their own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

##### **Principle 2: Individuals being supported to make their own decisions**

A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make decisions for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

##### **Principle 3: Unwise decisions**

People have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

##### **Principle 4: Best interests**

Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.

### **Principle 5: Less restrictive option**

Someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all. Any intervention should be weighed up in the particular circumstances of the case.'

## **3.2 What is Mental Capacity?**

Mental Health Foundation [as at 04.02.2021] defines mental capacity as:

'Being able to make your own decisions.'

Someone lacking capacity - because of an illness or disability such as a mental health problem, dementia or a learning disability - cannot do one or more of the following four things:

- Understand information given to them about a particular decision
- Retain that information long enough to be able to make the decision
- Weigh up the information available to make the decision
- Communicate their decision.

All staff should always start from the assumption that the person has the capacity to make the decision in question (**Principle 1**). Young people should always be involved in the planning of the support they receive from KIDS.

Staff must also be able to show that they have made every effort to encourage and support the person to make the decision themselves (**Principle 2**), this will be evidenced through the KIDS Registration Forms, Care Plans, Risk Assessment and any service specific session logs such as break reviews.

Staff must also remember that if a person makes a decision, which is considered eccentric or unwise, this does not necessarily mean that the person lacks the capacity to make the decision (**Principle 3**), and this should be recorded on the young person's file on the chronology.

Under the MCA, staff are required to make an assessment of capacity before carrying out any care or treatment if they have reasonable belief someone lacks capacity. The greater impact the decision has on the person's life, the more input that is needed from other professionals for the assessment of capacity to be completed. See Appendix 1.

If the outcome of an assessment is that the person lacks capacity to make a decision for themselves at that point in time then KIDS staff will ensure that the person's best interests are taken into account (**Principle 4**) and that the least restrictive alternatives are offered (**Principle 5**). These decisions will all be recorded on the KIDS Capacity and Best Interests Assessment documents. See Appendix 1.

### 3.3 When to assess capacity

The MCA 2005 defines lack of capacity as:

‘A person lacks capacity in relation to a matter if, at the material time, [they are] unable to make a decision for [themselves] in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.’

The Act assumes that a person has capacity until it is proven otherwise.

Capacity should be assessed when a person’s mental capacity to consent to their treatment or care is in doubt. Capacity may be called into question for a number of reasons including:

- an individual’s behaviour or circumstances;
- where concern about capacity has been raised by someone;
- where a person has been previously diagnosed with an impairment or disability that affects the way their mind or brain works;
- a previous mental capacity assessment has shown lack of capacity to make a decision.

Capacity can change over time and can even fluctuate during the course of a day so this should be taken into consideration when deciding when to support someone with decision making.

KIDS must have reasonable belief that the individual lacks mental capacity to have legal protection under the MCA 2005 for making decisions on a person’s behalf. To have reasonable belief, you must take certain steps to establish that the person lacks mental capacity to make a decision or consent to an act at the time the decision or consent is needed. You must establish and be able to show that the decision or act is in the person’s best interests. These decisions should all be recorded in the KIDS Capacity and Best Interests Assessment by the decision-maker. See Appendix 1. The person who has to make the decision about capacity and best interests is known as the ‘decision-maker’ and normally will be the carer responsible for the day-to-day care that KIDS are providing so the service manager or coordinator of the KIDS project, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

A mental capacity assessment helps demonstrate that on a balance of probabilities it is more likely than not that the person lacks capacity. KIDS should be able to show in records why you have come to your conclusion that capacity is either present or lacking for the particular decision.

There will be times when a more formal mental capacity assessment should be undertaken. Formal mental capacity assessments to assess the mental capacity for an individual to make a particular decision at a particular time should include other professional’s views including the local adult social care team.

Examples of when to undertake a formal pre planned capacity assessment include, but are not exclusive to:

- Use of bed rails
- Use of restraint
- Covert medication
- Any procedures where the resident is handled for the provision of care and treatment (see also 5.1.5)

If it is clear that the person lacks the mental capacity to consent to the assessment and there are concerns or risks about the person's care and treatment, then the assessment can usually go ahead as long as the assessment is in the person's best interests.

The MCA states that a person is unable to make their own decision if they cannot do one or more of the following four things:

- understand information given to them;
- retain that information long enough to be able to make the decision;
- weigh up the information available to make the decision;
- communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

KIDS will make every effort to find ways of communicating with someone in their preferred method before deciding whether they lack capacity to make a decision based solely on their inability to communicate.

### 3.4 Best Interests Principles

If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests by the decision-maker. **(Principle 4).**

The MCA provides a non-exhaustive checklist of factors that decision-makers must work through in deciding what is in a person's best interests and achieve least restrictive practice **(Principle 5).**

Some of the factors to take into consideration are:

- do not discriminate or make assumptions about someone's best interests merely on the basis of the person's age or appearance, condition or any aspect of their behaviour;
- take into account all relevant circumstances;
- will the person regain capacity? If so, can the decision wait;
- involve the individual as fully as possible;
- take into account the individual's past and present wishes and feelings, and any beliefs and values likely to have a bearing on the decision;
- consult as far and as widely as possible.

### 3.5 Deprivation of Liberty Safeguards (DoLS)

DoLS were created to help protect vulnerable people who lack capacity to consent to care and treatment that might deprive them of their liberty, where this is in their best interests to protect them from harm. DoLS are an extra protection for vulnerable people to ensure that deprivation is only used when necessary and that any deprivations are lawful and in the person's best interests.

DoLS only relate to people aged 18 or over, who are not detained under the Mental Health Act 1983 and living in a care home or hospital.

There is a move to change from DoLS to Liberty Protection Safeguards (LPS) in 2021. LPS will apply to people aged 16 years and above, covering many settings including individuals in their own homes or living with carers. Once guidance has been produced by the government this policy will be updated in line with the proposed changes to legislation and the timescale used by government.

## **4. Roles and Responsibilities**

KIDS have committed to ensuring that training on this policy and procedure will be given during induction and updated through team meetings, supervisions and Yammer updates.

Failure to comply with this policy may lead to disciplinary action which could include summary dismissal or as grounds to terminate your contract with KIDS. In some instances, this could also mean a referral to the Disclosure and Barring Scheme and / or a referral to the adult safeguarding team or police for a concern about practice related to an adult at risk.

## **5. Procedures**

### **5.1 Assessing, implementing and recording capacity**

#### **5.1.1 How does KIDS demonstrate it assumes those we work with have capacity?**

When KIDS receive a referral for support and completes the Registration Form for any young person 18 or over, they will ask if there are DoLS in place and the details of this will be recorded on the person's file.

KIDS will involve individuals in their care and support planning, and it will be assumed that all young people over 16 years old, have mental capacity and the right to make their own decisions about the care and support they will receive from KIDS. Every effort should be made to engage the young person in the plan using their preferred communication method and working with those closest in relationship to the young person to support in understanding the unique ways that they can make choices and recording this in the care plan. Young people may lack confidence to make decisions so we will empower them to make informed decisions.

The care planning process should include discussions with the young person and those close to them about times when they may not have capacity to be able to make decisions and pre plan for these.

KIDS knows that people with profound and multiple disabilities may not be able to make decisions about important parts of their care and support at KIDS. KIDS will follow the Best Interests framework recording this on the KIDS Capacity and Best Interests Assessment document (Appendix 1) ensuring the young person is at the centre of all decision making.

### **5.1.2 Best Interests assessments and least restrictive interventions.**

If during the course of the care planning process or whilst supporting a young person it is believed that they do not have the capacity to make a decision about the support and care being provided by KIDS then a Capacity and Best Interests Assessment, Appendix 1 should be completed.

A dynamic assessment will need to be completed whenever care and support is given to establish if KIDS feel capacity has changed or if the team supporting feel that a young person is making an unwise choice. These assessments, Appendix 1 will need to be recorded in a young person's file and care plans updated.

The person completing a Capacity and Best Interests assessment is called the decision-maker and they should complete the document and store it on the individual's file.

There are two parts to the assessment:

1. Capacity Assessment
2. Best Interests Decision Making

Part 1 looks at whether the individual does lack the capacity to make the decision in question.

Part 2 looks at if the individual is deemed to lack capacity, how a best interests decision was determined.

This document is for day to day decisions when an individual is being supported by KIDS. More complex decisions about care and support should be decided with other professionals involved in the young person's life – see section 3.3 for further details.

### **5.1.3 Applying the principles of capacity to under 16 year olds.**

The MCA only applies where the person lacking capacity is 16 years or older. Any decisions for children younger than 16 can be made with the consent of people with parental responsibility. The Court of Protection has the powers to make decisions about the property and affairs of people under the age of 16.

A child under 16 is able to consent to their own medical treatment, without the need for parental permission or knowledge when they are assessed to establish if they are competent to make such decisions. This assessment is referred to as 'Gillick Competence'.

KIDS will involve individuals it works with in their care planning process regardless of age and will ensure plans are person centred with wishes and views of the person receiving the care and support from KIDS are recorded.

#### **5.1.4 Working with parent carers**

Once a child reaches 16 which is the age that they can make their own decision under the MCA, then KIDS will ensure we support their right to do this. This can be a difficult process for parent carers to accept therefore KIDS will work with parent carers to understand how the MCA will affect the support KIDS offer and the involvement they will still have. KIDS will make it clear in service specifications how this will be managed.

If KIDS is working with a parent carer and they feel that they lack capacity to be making choices, then the KIDS team should contact the local authority either via the child's social worker or the Adult Social Care team.

#### **5.1.5 Restraint**

The MCA defines use of restraint as 'the use of force - or threaten to use force - to make someone do something they are resisting, or restrict a person's freedom of movement, whether they are resisting or not.'

The Act only provides protection from liability in using restraint under certain conditions.

- The person taking action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity.
- The amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood of serious harm.
- Less restrictive options should always be considered before restraint.
- The Act describes a proportionate response as one that means using the least intrusive type and minimum amount of restraint to achieve a specific outcome.

The MCA only gives limited liability for use of restraint. Actions may not be lawful where there is an inappropriate use of restraint or where a person who lacks mental capacity is deprived of their liberty without appropriate authorisation.

KIDS will therefore ensure that all young people where restraint may be needed will have a Positive Handling Plan in place; more detail on this can be found in the KIDS Behaviour

KIDS | MCA and DoLS Policy | Owner: OLT/NSL | Originally Created: July 2015 | Last Reviewed: March 2021 | Next Review Date: March 2023 | Version 2

Management Policy. This will include a Multi-Disciplinary Team approach to understand the behaviour, triggers and functions of the behaviour to best understand how to support the person and reduce the need for physical interventions.

## 5.2 Monitoring and reviewing Capacity Assessments

KIDS review care plans on a six monthly basis (see KIDS Intimate and Personal Care Policy and Procedures) or more often as required. As part of this process, time should be given to review the Capacity and Best Interests Assessments that are in place or have been completed over the six months, along with any DoLS that are in place for the individual. This should involve the young person, their family or those close to them and any professionals involved.

## 5.3 Managing conflicts

KIDS will manage conflict between any parties involved in the capacity assessment process by involving others that know the person well including those commissioning the service. If having reviewed the best interests process, there is still conflict or difference of opinion about what is in the person's best interests then KIDS will seek support and guidance from the Local Adult or Childrens Safeguarding Board.

## 6. Definitions

**Staff:** The term includes employees, sessional workers, volunteers, students, contractors, agency workers and trustees of KIDS. This is also extended to independent contractors who are undertaking direct work with children or young people on behalf of the charity.

**Care and Treatment:** This is a term used in the MCA, for KIDS this means any care support or medical treatment support we provide to a young person over 16 years old accessing one of our services. This could be but is not limited to day to day activities, care support needs, medication administration, SENDIASS advice.

**Care and Support Plans:** A care and/or support plan will record what care is needed and how this will be provided, the MCA places the person at the heart of this decision-making process. KIDS must show through their care and support plans and associated documents how people are supported to stay in control of their lives and to make their own decisions about how their care and support is provided as far as they are able, more details [here](#).

**Mental Capacity Act 2005:** The Mental Capacity Act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment. It applies to people aged 16 and over.

**MCA Code of Practice 2007:** The code of practice gives guidance to people who work with people who can't make decisions for themselves or care for people who can't make decisions for

themselves. It sets out what you must do when you act or make decisions on behalf of people who can't act or make those decisions for themselves.

**Mental Capacity Act amendments to Liberty Protection Safeguards:** The Mental Capacity (Amendment) Act 2019 received Royal Assent on 16th May 2019. The purpose of the Act is to abolish the Deprivation of Liberty Safeguards (DoLS) and to replace them with a completely new system, the Liberty Protection Safeguards (LPS). See Appendix 2 for further details.

**Five Statutory Principles of MCA:** The MCA has five key principles which emphasise its fundamental concepts and core values. These must be kept in mind when working with, or providing care or treatment for, people who lack capacity.

**Best Interests:** This means that any decision made on behalf of an adult (16+) lacking capacity must be in their best interests which means the 'decision maker' must consider the person's past and present wishes and feelings, values and beliefs. They must – so far as practicable and appropriate – consult with others engaged in caring for that person or interested in their welfare when making decisions.

**Decision-Maker:** The person who has to undertake the capacity assessment and best interests decision is known as the 'decision-maker' and normally will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

## 7. References

### 7.1 Legislation, regulations and national guidance

- Mental Capacity Act 2005
- Children Act 1989
- Working Together to Safeguard Children 2018
- Code of Practice 2007
- DoLS Guidance
- Health and Social Care Act 2012
- Fraser and Gillick Assessments
- Care Standards Act 2000
- Data Protection Act 1998
- Equality Act 2010
- Human Rights Act 1998
- Mental Health Act 1983
- National Health Service and Community Care Act 1990
- Children and Families Act 2014
- SEND Regulations 2014

- SEND Code of Practice 2015

## 7.2 Associated documents and guidance

- KIDS Safeguarding Adults Policy and Procedures
- KIDS Child Protection and Safeguarding Policy and Procedures
- KIDS Behaviour Management Policy and Procedures
- KIDS Handover, Collected and Uncollected Child Policy and Procedures
- KIDS Missing Child or Young Person Policy and Procedures
- KIDS Intimate and Personal Care Policy and Procedures
- KIDS Confidentiality and Data Protection Policy and Procedures
- KIDS Medication Policy and Procedures
- KIDS Outings Policy and Procedures<sup>1</sup>

## 8. Document Control Information

### 8.1 Impact assessment

In the design or review of this policy, consideration has been given to any negative impact upon practice relating to General Data Protection Regulations (GDPR), Equal Opportunities and Safeguarding. This policy has not been found to cause a negative impact in these areas. A copy of the impact assessment is retained for this review cycle.

### 8.2 Review cycle

This policy will be reviewed every two years in accordance with relevant legislation, regulations, national guidance, good practice and stakeholder feedback. Material changes in legislation, regulations or national guidance will lead to an earlier review and update.

### 8.3 Document history

Version	Date	Amendments	Page
2	March 2021	Complete redraft of policy and inclusion of appendices	n/a
1.2	April 2020	Move to standard template Inclusion of age reference in 'Scope' section Inclusion of external references and KIDS documents Reference to PCT changing to CCG in Definitions	n/a 2 9 8

---

<sup>1</sup> This policy is subject to review and may be renamed – please refer to Yammer Policies Community for updates  
KIDS | MCA and DoLS Policy | Owner: OLT/NSL | Originally Created: July 2015 | Last Reviewed: March 2021 | Next  
Review Date: March 2023 | Version 2

## 9. Appendices

### 9.1 Mental Capacity Act Assessment

### 9.2 Liberty Protection Safeguards

**Note:** Appendices are included to provide further information and/or show examples of forms to be used in connection with a given policy and procedure. KIDS Forms may be subject to change before the next planned policy review cycle. Staff will be notified of revisions to KIDS forms via Yammer or team briefings. Staff should download forms from Yammer and regularly check they are using the most current version by checking the footer to see if the version number has changed. Please note all KIDS forms should contain a footer with: the name of the form, version number of the form, policy form is connected to and page numbers.

Appendices marked as such will be made available in Word and stored in the Yammer 'Forms for Service Delivery' community unless otherwise stated.

## © 2021

KIDS is happy for other organisations to copy all or part of our policies, provided there is an acknowledgement on the other organisation's policy that this has been done, together with the KIDS web address so the reader can locate the original policy.

For further information on the issues raised in this document, email [\*\*enquiries@kids.org.uk\*\*](mailto:enquiries@kids.org.uk)

KIDS is a registered charity in England and Wales, no. 275936, and a company limited by guarantee no. 1346252

Registered Office: 7-9 Elliott's Place, London N1 8HX

[\*\*www.kids.org.uk\*\*](http://www.kids.org.uk)

## Appendix 1 KIDS Mental Capacity Act Assessment

Young person's name	
Decision maker's name and relationship to young person	
Anyone else involved and their relationship to the young person	

What is the decision to be made?

---

### Section 1 Capacity Assessment

---

Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain that may affect their ability to make the above decision?

☐ Yes – give details below

☐ No

If you answer yes to the above then move on to the next section, if **no then the person has the capacity to make their own decision.**

---

### Section 2 Impact on the decision to be made

---

Now answer the following and record your reasons, this will decide if the above impairments prevents them from making the decision being assessed:

1. Does the person understand information about the decision to be made?

☐ Yes – give details below

☐ No – give details below

2. Can they retain that information?

☐ Yes – give details below

☐ No – give details below

3. Can they weigh up that information as part of the decision-making process?

☐ Yes – give details below

☐ No – give details below

4. Can they communicate their decision?

☐ Yes – give details below

☐ No – give details below

If you answered no to any of the questions 1-4 and yes to the initial question, then the person does not have capacity and you should move on to the next section.

---

### Section 3 Best Interests Decision Making

---

What are the options for the decision needing to be made?

- 1.
- 2.
- 3.

From your knowledge of the young person, what would be their views on the decision be, thinking about their previous wishes, values and what is important to them?

KIDS | MCA and DoLS Policy | Owner: OLT/NSL | Originally Created: July 2015 | Last Reviewed: March 2021 | Next Review Date: March 2023 | Version 2

Is there anyone that can be consulted with about the decision e.g., parent, sibling, main care provider? What are their views?

There is no-one to be consulted <input type="checkbox"/>	
There is someone who can be consulted <input type="checkbox"/>	
Name of person and relationship to young person	
Their views	

---

#### Section 4 Outcome

---

Following consideration what is deemed to be the decision which is in the best interests of the person?

Why was this deemed the best option above the others?

Was there any differences of opinion in this process? Please record the details.

Decision maker's signature		Date	
Service manager's (or another manager) signature		Date	

DO NOT COPY

## Appendix 2 Liberty Protection Safeguards

The Mental Capacity (Amendment) Act 2019 received Royal Assent on 16th May 2019. The purpose of the Act is to abolish the Deprivation of Liberty Safeguards (DoLS) and to replace them with a completely new system, the Liberty Protection Safeguards (LPS). This system will apply to England and Wales only. The main points of the LPS are:

- One scheme will apply in all settings (e.g., care homes, nursing homes, hospitals, supported living, people's own homes, day services, sheltered housing, extra care, Shared Lives etc).
- The LPS will apply to anyone aged 16+.
- There will be no statutory definition of "deprivation of liberty" under LPS; therefore the "Acid Test" set by the Supreme Court in the "Cheshire West" case remains.
- The role of "Supervisory Body", which authorises deprivations of liberty, will be abolished. It will be replaced by the "Responsible Body". There will be different Responsible Bodies in different settings. For some cases the Responsible Body will be the NHS Trust; in other cases, the role will be filled by the Clinical Commissioning Group (or Local Health Board in Wales); and in other cases still it will be the local authority.
- There will only be three assessments: the "Capacity" assessment, the "Medical" assessment and the "Necessary and Proportionate" assessment.
- In certain circumstances the Responsible Body may ask a care home manager to organise the assessments.
- There will be a brand new role of Approved Mental Capacity Professional to deal with more complex cases.
- There will be an expansion of the role of the Independent Mental Capacity Advocate.

## Timescales

The Government announced on 16th July 2020 that the original implementation date for LPS (1st October 2020) would be postponed until April 2022.

Various Regulations need to be written to accompany the Act. These cover topics such as training for Approved Mental Capacity Professionals, transitional arrangements and who will regulate the LPS scheme.

There will also be a brand new Code of Practice.

There will be a six month gap between the final versions of the Code of Practice, and the Regulations, being published, and the implementation of LPS.