Swindon Borough Council MCA DoLS Team Community Deprivation of Liberty (Com DoL) Flowchart

For people living in community settings, the Court of Protection has established a procedure to enable the authorisation of the deprivation of liberty for those aged 16 or over who lack capacity to consent to their confinement. This is referred to as the 'streamlined' or the 'Re X' procedure. Community settings include private family homes, supported living, shared lives, extra care housing, a variety of care settings for young people aged 16-17, a variety of care settings for people under a Mental Health Act Guardianship or Community Treatment Order when care plans involve a deprivation of liberty.

If a person (P), aged 16 or over, **who lacks the mental capacity** to consent, is living in community arrangements in which they are under continuous supervision and control and are not free to leave, then they are being deprived of their liberty. This must be authorised by the Court of Protection. NB: *the Deprivation of Liberty Safeguards apply only to care homes and hospitals.*

Is The Acid Test Met? - Is P under continuous supervision and control?
And Is P not free to leave? (i.e. not free to leave permanently).
Note the MCA DoLS Team can provide a checklist to assist you to determine whether the Acid Test is met.

Yes

Gain your manager's/supervisor's agreement for a Com DoL application to begin.

Explain the Com DoL process to P, family/relevant others, and gain permission from any authorised Health and Welfare Deputy or LPOA to begin the Com DoL process. *Note The MCA DoLS Team can provide a Com DoL information leaflet.*

Using FACE form, assess and record whether P has mental capacity to consent to live at the address they are/will be accommodated for the purposes of receiving the care and treatment set out in their care plan. *Note this FACE form would need to be submitted with the COPDOL11 if an application goes forward, and can also be used to record any subsequent best interests decision.*

Yes

P **has** mental capacity to consent.

Does P consent to their care/treatment/living arrangements?

Yes

Com DoL process ends.

No

Com DoL process ends
No one can consent to P's arrangements on their behalf. Guardianship under the MHA may be used in this situation, if appropriate, but it cannot authorise a deprivation of liberty. Consider and record how Principle 3 of the MCA may apply, and whether Safeguarding and/or Inherent Jurisdiction of the High Court are applicable.

No

Com DoL process ends.

No

P **does not have** mental capacity to consent.

Complete a best interests assessment using a FACE form to record the decision on whether it is in P's best interests to live at the address they are/will be accommodated for the purposes of receiving care and treatment. *Note this FACE form would need to be submitted with the COPDOL11 if an application goes forward.*

Are the arrangements in P's best interests?

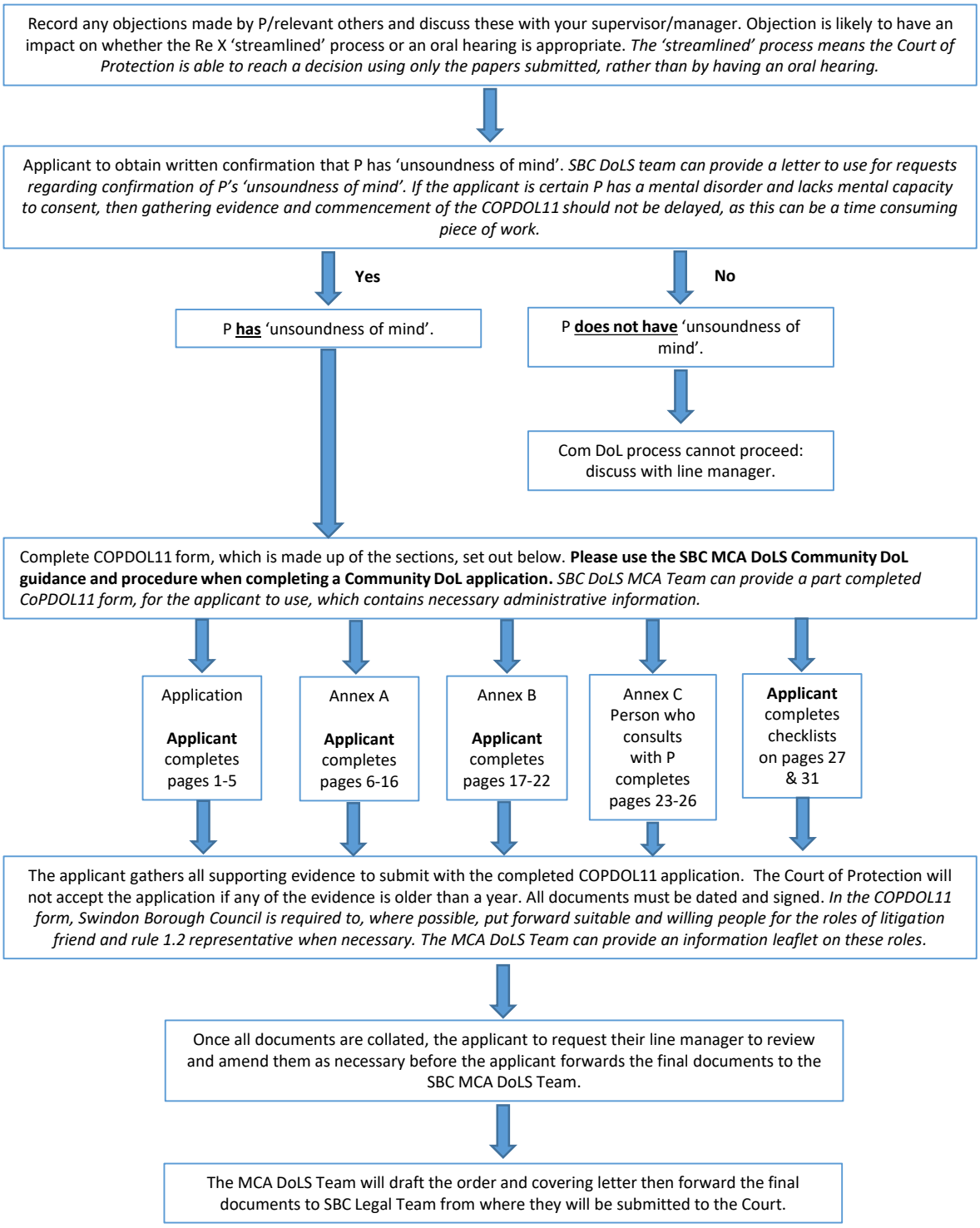
No

Within available options, the arrangements must be in P's best interests. It would be inappropriate for a Com DoL application to be made unless Principles 4 and 5 of the MCA are met. Discuss with manager/supervisor.

Yes

Confirm with your supervisor/line manager the Com DoL application should continue. When confirmation has been received, inform P, MCA DoLS Team, care providers and relevant others **including any LPOA/Deputy** that SBC is of the view that an application to the CoP for a judicial deprivation of liberty authorisation needs to be completed, and will be proceeding with this. *Note, an LPOA/Deputy for Health and Welfare can, if in the scope of their authority, consent to P's living, treatment and care arrangements but cannot authorise a deprivation of liberty.*

See over



The term 'Applicant' means the person who completes the COPDOL11 form.

Unfortunately, the FACE form does not prompt you to record the 'causative nexus'. Therefore, please ensure you record within the FACE form why the person is unable make the specific decision **because of** the impairment of, or disturbance in the functioning of, the mind or brain.

'Unsoundness of mind' is the phrase used in the COPDOL11 form itself, taken from Article 5 (right to liberty and security) of the Human Rights Act.