

Deprivation of Liberty Safeguards (DoLS)

The deprivation of a person's liberty should not happen unless it is absolutely necessary and in the best interest of the person concerned. The safeguards have been created: to ensure that any decision to deprive someone of their liberty is made following defined processes and in consultation with specific authorities.

The Deprivation of Liberty Safeguards Code of Practice says that there is no simple definition of a deprivation of liberty. In order to determine whether the steps taken by staff or institutions in relation to a person amount to a deprivation of that person's liberty, decision-makers need to consider all the facts in a particular case.

What is Deprivation of Liberty Safeguards (DoLS):

DoLS came into force in April 2009, as an addition to the Mental Capacity Act 2005 (MCA). The safeguards aim to make sure that people in care homes and hospitals, who lack the mental capacity to consent to care and treatment, are looked after in a way that does not inappropriately restrict their freedom.

The main purpose of DoLS is to protect "vulnerable people who are, or may become, deprived of their liberty in a hospital or care home, whether placed under public or private arrangements. The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, and in a person's own best interests."

Basic Principles of DoLS:

The Court decided that in order to determine whether someone is deprived of their liberty, three elements need to be considered:

- 1) the objective element – the person is subject to continuous supervision and control and not free to leave e.g. if the person/body responsible for the individual has a plan in place which means that they need always to know where the individual is, what the individual does at any time, as well as what they will do in the event that they don't know where the individual is and what they are doing
- 2) the subjective element: the person lacks capacity to consent to being kept in hospital or care home for the purpose of being given the relevant care or treatment;
- 3) the confinement (placement) must be "imputable to the State" (this means that deprivation is one for which the state can be said to be responsible

An example: Mrs M is being kept in a nursing home setting. The nursing home is stopping her from leaving and keeping her under continuous supervision and control, which is consequently depriving her of her liberty. The nursing home is registered with and regulated by the CQC and the placement is funded by the Local Authority. All of these agencies are part of "the state". The deprivation of liberty is therefore "imputable to the state".

These three conditions are the standard criteria for identifying whether a deprivation of liberty is occurring.

Who DoLS applies to:

DoLS applies to individuals in England and Wales, from age 18 upwards who have a mental disorder or a learning disability, and who lack the mental capacity to consent to their care and treatment in a hospital or care home setting, "but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary, to protect them from harm

and appears to be in their best interests". DoLS does not apply when the person is detained under the Mental Health Act 1983.

When a care home or hospital defined as the "managing authority" identifies that an individual is being deprived of their liberty or likely to be deprived of their liberty, they must apply in writing for a DoLS authorisation to the "supervisory body". The Supervisory Body in England is the local authority (for both care homes and hospitals). The Supervisory Body has the responsibility to consider the requests for authorisations, to commission the required assessments and to authorise the deprivation of liberty where all the required assessments agree. The DoLS process requires for six assessments to be undertaken by at least two assessors and it is the legal responsibility of the Supervisory Body to select suitable and eligible assessors.

The guidance states that the DoLS authorisation should be for as short time as possible and never for longer than a year.

The DoLS authorisation is not transferable

If a person who is subject to a DoLS authorisation moves to a different hospital or care home, where the care regime continues to involve deprivation of liberty, the managing authority of the new hospital or care home must request a new authorisation. (e.g. if a person who has a DoLS authorisation in place while in hospital, moves into a care home and the care home identifies that the person is being deprived of their liberty, then the care home needs to make a request to the local authority for an authorisation).

The person's right to advocacy

If there is no appropriate family member or friend to support the person during the assessment process, an Independent Mental Capacity Advocate (IMCA) must be appointed by the supervisory body (Local Authority).

Relevant Person's Representative (RPR)

If the DoLS authorisation is granted, someone must be appointed to represent the person's interests, called the Relevant Person's Representative (RPR).

The role of the RPR is to keep regular contact with the person and to make sure decisions are made in the person's best interests.

The RPR is usually a relative or friend of the person. If there is no appropriate friend or relative, someone will be appointed by the supervisory body, possibly a paid professional.

An RPR must be given written notice of the authorisation including the purpose of the deprivation of liberty and its duration. They must be given information on the person's care to enable them to check decisions are being made in the person's best interests and that any conditions attached to the authorisation are being complied with. The RPR can apply for a review of the deprivation of liberty. This could be necessary if there is a change of circumstances and the managing authority has not informed the supervisory body of this.

The RPR can apply to the Court of Protection on behalf of the person to challenge the DoLS authorisation.

Every time a further DoLS authorisation is done, the best interest assessor has to make a new recommendation for an RPR.

The person and the RPR have the right to be supported by an Independent Mental Capacity Advocate (IMCA), as part of the DoLS process. An IMCA is an independent professional who can support the RPR in order to understand their role and carry it out effectively.

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Case example:

Mrs B was recently moved to X nursing home. Prior to this she was living at home, which was a bungalow with a care package in place (4 calls/ day). She has a diagnosis of Alzheimer's Disease. She has a long history of involvement from social services. She has complex mental and physical health nursing needs and her care is fully funded by the Local Authority. Her care plan includes providing a soft diet as she is at high risk of choking; managing all her personal care as she is double incontinent and physically unable to manage this herself; managing all her transfers as she is no longer able to mobilise independently and managing all other activities of daily living and all risks in her environment. She is particularly at risk of pressure sores and falls. Mrs B is supervised at all times, under complete and effective control of staff and not free to leave due to the risks she would otherwise be exposed to. She is closely supervised throughout the day and staff are aware of where she is at all times. The care plan requires that regular checks are made and recorded and if they don't know where she is they will find her. Staff are also in control of all her care on a daily basis, like personal care and medication management and they are in control of all her movements, for example she is never allowed out without the permission of staff and without an escort and she can only move around the home if and when assisted by staff. Mrs B lacks the mental capacity to make her own decisions about staying at X nursing home and to consent to her care plan. She can therefore not give valid consent to be confined in the accommodation to receive care and/ or treatment.

Mrs B is not free to come and go without permission and staff would stop her if somehow she did attempt to leave. She is also not free to leave to live elsewhere, unless social services and the care home involved agree that it would be appropriate, but she could not do this of her own accord.

The care home (managing authority) makes a request to the local authority (supervisory body) for a deprivation of liberty safeguards authorisation as they are of the view that Mrs B is being deprived of her liberty. The supervisory body would then select assessors (there must be a minimum of two assessors) to complete the relevant assessments as part of the DoLS process. As part of the DoLS process, the assessors will look at establishing whether or not Mrs B is indeed deprived of her liberty, if it is necessary to deprive her of her liberty in this way in order to prevent harm to her; if depriving Mrs B of her liberty in this way is a proportionate response to the likelihood that Mrs B will otherwise suffer harm and to the seriousness of that harm and if depriving Mrs B of her liberty in this way is in Mrs B's best interest.