

Quick Guide to Deprivation of liberty Safeguards (DoLS)

What does deprivation of liberty mean?

Sometimes people who lack capacity to decide for themselves, need to receive care or treatment in a hospital, care home or in a setting such as Supported Living and the only way they can get the care or treatment they need and be safe is for there to be restrictions in place.

The Human Rights Act (HRA) tells us that no one can be “deprived of their liberty” except in certain situations and only when very specific procedures are in place which must be used. This is to protect people from being deprived of their liberty without anyone looking at the circumstances and approving the actions. Assessing whether a ‘Deprivation of Liberty’ has taken place is therefore an essential right as **no one should ever be restricted to an extent greater than is necessary and proportionate to the risks involved.**

The Supreme Court looked at the question of deprivation of liberty in 2014. They summed it up in what they called an ‘acid test’ for those lacking capacity to consent to, or refuse their care arrangements:

- Is the person free to leave?
- Is the person subject to complete or continuous supervision **and** control?

They said it didn’t matter *why* these things were happening and *whether* they were really positive for the person, the facts were simply the facts and it should mean the same thing for all people whether they have a disability or not.

If this acid test was met and the person could not consent to it because they lacked mental capacity, it would need an independent person to look at it and approve it in order to allow it to continue.

EXAMPLE

An older person with dementia may be living in a care home. They may have chosen the care home themselves before the illness progressed. They may have lots of company and enjoy many of the activities that take place in the home. Family might visit regularly and also take them out for meals and to join in family events such as birthdays and Christmas.

Quite possibly the person may sometimes have to be stopped from leaving as they become confused about where they are and think they have to pick their children up from school. They might have staff support and supervision at all times to make sure they are safe and that their care needs are met – this might mean the acid test is met.

The law says if the acid test is met someone needs to check out all the arrangements to make sure that everything that is happening is in the person’s best interests and can’t be done in a less restrictive way.

What does this mean in practice?

Just because the term “deprivation of liberty” is used it doesn’t mean that someone is doing something wrong. It means that the situation needs someone independent to look at it to ensure the person’s rights are being protected and to confirm that things should continue as they are.

Having someone independent to look over the care arrangements means a fresh eye can see whether there are less restrictive ways of providing the care. In some cases the actions taking place may not be in the person’s best interests and the independent oversight will identify this.

EXAMPLE

An older person with dementia had a fall and was admitted to hospital for surgery. This caused them to become very confused and disorientated for several days after the surgery. The hospital staff had to keep a very close eye on the person as they were trying to get out of bed when they were not yet safe to walk and they were putting themselves in danger. The hospital had to arrange for extra staff to stay with the person and supervise them all day - this might mean the acid test is met.

Hospital staff started to wonder if the person was safe to go back home.

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When the independent assessor comes to visit they find out that the person has a lot of support from a network of friends at home and that with this support they manage very well at home. They are able to advise the hospital of this to help with the decision about discharge.

How does it affect my family member or my friend?

If the DoLS are being used to authorise a deprivation of liberty, this means that your friend or relative is in a care home or hospital (sometimes the Court of Protection may be involved even if the person is in a care home or hospital, perhaps because they have disagreed with the decision)

If the person is living in any other setting then you need to read the “Deprivation of Liberty Orders” guide.

The care home or hospital should tell the family members that they have made an application for an authorisation. This is called a Standard Authorisation.

All requests are sent to the Council where the person normally lives (this test is called “ordinary residence”) and the Council will process the request.

The authorisation process then involves two assessors visiting and interviewing the person who is being deprived of liberty. One is a doctor, and they visit to make sure that the person has a diagnosis which allows the DoLS to be used (this means that they have what is described as a mental disorder) and they have checked that the use of DoLS is the correct legal route.

The second person is called a 'Best Interests Assessor' and they will visit to make certain that the person does not have mental capacity to make their own decision¹ about where they get their care or treatment and also to check that being in the care home or hospital is in their best interests and that care and/or treatment can't be done in a less restrictive way.

There are strict time scales for these assessments but there may currently be a delay as Councils have many more cases than they can process at the moment.

Different family members and friends will also be consulted during the DoLS process.

The Best Interests Assessor must consult with those who are called an 'Interested Person'. This is the person's

- partner (spouse or civil partner)
- children or step children
- parents and step parents
- brothers and sisters, half-brothers and sisters and step brothers and sisters
- grandparents
- Court appointed Deputy
- Donee of a lasting power of attorney

Once the assessment reports are completed they will be sent on to someone different in the Council (usually someone fairly senior) to be authorised. If the criteria are not met, the DoLS will not be authorised.

Different reports are then sent out depending on your relationship to the person.

- The person this is about will get copies of all the full reports
- The care home or hospital will get copies of all the full reports
- Any Independent Mental Capacity Advocate (IMCA) appointed will get copies of all the full reports
- The person who has agreed to act as the Relevant Persons Representative (RPR) will get copies of all the reports.

Anyone else who was consulted will get a copy of the final form saying whether the deprivation of liberty has been authorised or not and for how long. This is either Form 5 Granted or Form 6 Not Granted.

If it is granted, the time period can be anything up to 12 months. The whole process will start again if the authorisation period comes to an end and a further authorisation is required.

If an authorisation is not able to be granted and the person's circumstances change the Care Home or Hospital may make a further request.

Some key points to note:

- If there is a Lasting Power of Attorney or Deputy for Health and Welfare Decisions, the deprivation of liberty can only be authorised by the DoLS if they support the arrangements. However, even if the attorney or deputy agree that the arrangements are the right ones for the person, the safeguards may still need to be used.

¹ Sometimes it will be the doctor who checks the person's mental capacity.

- If the person has made an advance decision refusing specific treatment the DoLS cannot be used to deprive them of their liberty in order to deliver that treatment. These cases would have to be considered by a full hearing at the Court of Protection.

The person has some key essential rights to challenge any authorisation and full details can be found here:

<https://www.local.gov.uk/sites/default/files/documents/your-rights-leaflet-271.pdf>

MCA including DoLS resources can also be found here :

<https://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/mental-capacity-act-including-dols>

This guide was prepared by Lorraine Currie with thanks to

The national network of Regional DoLS Leads

Alex Ruck Keene – 39 Essex Chambers

Neil Allen – 39 Essex Chambers

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