

DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)

What are DoLS?

DoLS is a legal framework to authorise accommodation, care and treatment arrangements to keep a person safe and well. An authorisation is required, where the arrangements include restrictions on the person's freedom, which amount to a deprivation of liberty and they lack the mental capacity to give their consent.

Why do we need this legal framework?

The UK government passed the Human Rights Act in 1998, which means we must comply with the European Convention on Human Rights. The Convention is made up of a list of rights known as articles. Article 5 of the Convention is the Right to liberty and security. This says that no one should be deprived of their liberty unless there is a legal framework in place. It also says that anyone deprived of their liberty must have speedy access to an appeal process.

As a result of our obligations under the Convention and the Human Rights Act 1998, an amendment was made in 2007 to UK legislation to create DoLS.

What is the purpose of DoLS?

The purpose of DoLS is to protect people who are vulnerable and do not have the mental capacity to consent to restrictions that are in place.

The purpose of the safeguards is **NOT** to put restrictions on a person's freedom, but to review any restrictions that are in place and decide the following:-

- do the restrictions amount to a deprivation of liberty.
- are the restrictions necessary and proportionate to meet the person's needs and prevent harm.
- are the restrictions in the person's best interests.

The safeguards are there to ensure a person is not deprived of their liberty unless it is absolutely necessary and there is no alternative. An authorisation under the DoLS will only be made if the local authority agrees that the restrictions are appropriate.

What do we mean by deprivation of liberty?

In 2014 The UK Supreme Court, identified what circumstances amount to a deprivation of liberty. A deprivation of liberty is occurring if a person meets the following criteria:-

- They are not free to leave and go and live elsewhere.
- They are under continuous control.
- They are under continuous supervision.

If a person meets the above criteria and they are assessed as lacking capacity to consent to the restrictions, then they are deprived of their liberty and need a legal framework to authorise the deprivation.

Continuous control can relate to a range of decisions that are made for a person who is unable to consent to those decisions. Often, they are decisions relating to a person's care that take place on a daily basis and can include the following:-

- Washing.
- Continence care.
- Dressing and choice of clothes.
- Choice and provision of food and drink.
- Feeding.
- The giving of medication or other forms of medical treatment.
- Monitoring of blood pressure, temperature and blood tests.

These are just examples and there may be other forms of control in place.

Continuous supervision usually means that a person has carers in their living environment throughout the day and night, but can include other forms of supervision such as monitoring by CCTV or sensor alarms that monitor a person's movements. Even if a

person is able to go out alone for periods of time, they may be deprived of their liberty, if carers are aware of where they are going and when they are expected to come back.

Who is eligible for a DoLS authorisation?

For a person to be eligible for an authorisation under The DoLS, the following criteria must be met:-

- The person must be aged 18 or over.
- They must be residing in a hospital, registered care home or registered nursing home.
- They must lack mental capacity to consent to being there.
- They must have some form of diagnosed mental disorder.
- They must not be detained under a section of the Mental Health Act 1983.

What does the DoLS Process involve?

When a person is admitted to hospital or a care/nursing home, staff will consider if the person can give their consent to being there. If they think the person lacks capacity to consent, they will formally assess their mental capacity to consent to being there. If the person is found to lack capacity to consent the staff will need to complete a best interest process to ensure that it is in the person's best interests to reside there without their

consent. If it is in their best interests, then the manager of the hospital or home will complete a 7 day urgent DoLS authorisation.

At the same time that the urgent authorisation is made, the local authority DoLS team will be contacted to request that they assess the person to see if they require a Standard DoLS authorisation.

The local authority will then arrange for a registered Doctor, with the appropriate mental health training, and a Best Interest Assessor to visit the person and complete assessments to establish if the care arrangements in place are:-

- Necessary and proportionate.
- in the person's best interest.
- a deprivation of liberty.

The Best Interest Assessor will also consult with others who may be involved with the person such as:-

- Family or close friends.
- Any attorney under a Lasting Power of Attorney.
- Any court appointed deputy.
- Care providers and other professionals.

They will write reports which will be reviewed by a senior manager within the local authority. They will decide if it is appropriate to authorise the deprivation of liberty and complete the authorisation document.

A DoLS authorisation can last for a maximum of 12 months.

How can a person under an Authorisation be supported?

When an authorisation is made someone will be identified and appointed to be a Relevant Person's Representative. This person could be a family member or close friend or if there is no one suitable it could be a paid independent advocate.

The role of the Relevant Person's Representative (RPR) is to do the following:-

- Have regular contact with the person under the authorisation.
- Review the care arrangements that are in place to ensure they remain in the person's best interest.
- Be part of any best interest decision making process.
- Advocate for the person.
- Support them in making an appeal against the authorisation.

In addition to this if the person is without family or friends they may have an Independent Mental Capacity Advocate (IMCA) appointed, who can advocate on their behalf. Sometimes where a paid RPR is needed this role may be undertaken by an IMCA.

An unpaid RPR can also request support from an IMCA to help them in carrying out their role.

How can someone appeal against a DoLS authorisation?

Anyone under a DoLS authorisation has the right to appeal against it and the restrictions that are in place. An appeal can be made at any time during the authorisation period, to the Court of Protection for England and Wales. The court will hear evidence from a range of people, including the person and their representative, professionals involved in their care arrangements and any expert witnesses that may be required to help the court make a decision. The court can decide to end the authorisation or it can direct that it should continue.

What about people who may be deprived of their liberty in a community setting or who are below the age of 18?

People who are deprived of their liberty in places other than registered care homes or hospitals, or who are between the age

of 16 and 18, are not covered by the DoLS process. In these cases an application to the Court of Protection has to be made to request the court to authorise a deprivation of liberty.

Additional Information

The DoLS Code of Practice can be found on the following link:

[12369 Mental Capacity 18th.indd](#)

The Mental Capacity Act 2005 can be accessed on the following link: [Mental Capacity Act 2005](#)

The Mental Capacity Act Code of Practice can be accessed here: [Mental Capacity Act Code of Practice - GOV.UK](#)

Other Gloucestershire Health and Care Trust leaflets are available about:-

Mental capacity Act 2005

Lasting Powers of attorney and deputies