

Deprivation of Liberty Safeguards in hospitals and care homes

This leaflet explains what DoLS is and what it may mean for your friend or relative.

Key points

Deprivation of Liberty Safeguards (DoLS) only applies to people aged over 18 who lack the mental capacity to make the decision about their own care and treatment.

If the person is in their own home or supported living, this will require an application to the Court of Protection.

A Standard DoL can be applied in a hospital and care homes.

The care home or hospital where the person is staying is responsible for ensuring that any proposed deprivation of liberty is lawful.

They must make a DoLS application if there is any possibility that a person is, or is likely to be, deprived of their liberty.

The care home or hospital is known as the Managing Authority, and they must make an application to the Supervisory Body for the DoLS to be authorised if it is believed to be in the persons best interests and there is no less restrictive alternative.

In England, the Supervisory Body is the local authority if you go into a care home or hospital.

DoLS does not apply if an individual is being treated under the Mental Health Act 2005.

What is Deprivation of Liberty?

A deprivation of liberty is where your liberty is taken away from you -you are not free to leave and are under continuous control and supervision.

Safeguards are in put in place to protect people aged 18 years and over who lack mental capacity or are not able to make a decision about their care or treatment.

Where does it happen?

A Standard DoLS could be applied for if the person lacking capacity is in a hospital or a care home.

If a person is deprived of their liberty in their own home or supported living, this would require an application to the court of protection often referred to as a COP Dolor a Community Dol.

The Mental Capacity Act 2005 includes protection for people who lack mental capacity and have restrictions placed on them by organisations such as care or treatment facilities. 'Restrictions' in this sense meaning an individual being kept under close supervision by others (staff or family) to keep them safe and prevent the person from leaving the place where they are living.

How might DoLS affect your family member or friend?

The person under a DoLS should be treated and cared for in a way that means they are safe. Some restrictions may be needed to keep the person safe and well. This is called a 'deprivation of liberty' because they may not be able to do something, or are stopped from doing something, they want to do, such as leaving the premises where they are being treated or looked after.

The UK Supreme Court has produced a test for professionals working with people assessed as lacking mental capacity for their care and treatment. It is called the "ACID TEST" and asks:

Is the person subject to continuous supervision and control? and Is the person free to leave? If the answers are 'yes' to the first and 'no' to the second, then a DoLS should be applied for.

Who Completes the DoLS assessments?

A Mental Health Assessor checks whether the person is suffering from a mental disorder.

A Best Interest Assessor discusses with the Mental Health Assessor what may be in the persons best interests, particularly how the deprivation might affect the persons mental health. The Best Interest Assessor may also consult with other professionals involved in the persons care alongside current carers, family members or close friends of the person.

What happens next?

Following the visit and report from the Best Interest and Mental Health Assessors, a decision will be made to either approve or refuse the deprivation order.

As a family member or friend, you may be asked if you would be willing to act as the relevant persons representative (RPR). This can be a friend or family member who should

be consulted or informed about all matters relating to the care and/or treatment of the relevant person while the DoLS authorisation lasts.

As an RPR you have agreed to take on responsibilities (legal duties) under the MCA ensuring that you act in their best interest- to 'be their voice'.

The role of the RPR is to maintain regular contact with the relevant person who has been deprived of their liberty. This can include appealing against a DoLS authorisation, requesting a review, ensuring least restrictive practices are in place or raising a complaint.

If there are no family or friends to represent the individual or they are unable to represent the individual, then an independent RRP will be appointed.

Will the Deprivation of Liberty be reviewed?

Any deprivation of liberty should be reviewed regularly by the Managing Authority (care home/hospital) and the Supervisory Body (Local Authority) to check whether the authorisation is still needed and to check that the qualifying requirements are still present. A review should take place immediately if there is any change of circumstance, such as a person regaining mental capacity or agreement upon a less restrictive way of caring for them. If the authorisation is no longer necessary, it should be removed. A Deprivation of Liberty should last for the shortest possible time and up to a maximum of 12 months.

During this time, the person's representative should be kept updated with information about the person's treatment and care.

If you have any concerns or queries, please do not hesitate to contact the Westmorland and Furness DoLS team:

- on 01228 226170
- email applications.dols@westmorlandandfurness.gov.uk
- or you can speak to the hospital or care home where the person currently resides