

The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to make sure that people in care homes, hospitals and supported living are looked after in a way that does not inappropriately restrict their freedom.

The safeguards should ensure that a care home, hospital or supported living arrangement only deprives someone of their liberty in a safe and correct way, and that is only done when it is in the best interest of the person and there is not other way to look after them.

### » What is Deprivation of Liberty?

A Deprivation of Liberty occurs when ‘the person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements’.

Some examples of situations that may constitute a deprivations of liberty:

- a patient being restrained in order to admit them to hospital;
- medication being given against a person’s will;
- staff having complete control over a patient’s care or movements for a long period;
- staff making all decisions about a patient, including choices about assessments, treatment and visitors;
- staff deciding whether a patient can be released into the care of others or to live elsewhere;
- staff refusing to discharge a person into the care of others;
- staff restricting a person’s access to their friends or family.

### » Who is affected?

The safeguards apply to vulnerable people aged 18 or over who have a mental health condition (this includes dementia), who are in hospitals, care homes and supported living, and who do not have the mental capacity (ability) to make decisions about their care or treatment.

The Mental Capacity Act says that someone who lacks mental capacity cannot do one or more of the following four things:

- understand information given to them;
- retain that information long enough to be able to make a decision;
- weigh up the information available and understand the consequences of the decision;
- communicate their decision - this could be by any possible means, such as talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

A Deprivation of Liberty Authorisation cannot be used if a person has the mental capacity to make decisions, so the person’s capacity will be assessed as part of the process.

## » What are the safeguards?

Those planning care should always consider all options, which may or may not involve restricting the person's freedom and should provide care in the least restrictive way possible. However, if all alternatives have been explored and the hospital, care home or local authority administering the supported living arrangements believes it is necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do this by following strict processes.

These processes are the Deprivation of Liberty Safeguards, and they have been designed to ensure that a person's loss of liberty is lawful and that they are protected.

The key elements of the safeguards are:

- to provide the person with a representative;
- to give the person (or their representative) the right to challenge a deprivation of liberty through the Court of Protection;
- to provide a mechanism for deprivation of liberty to be reviewed and monitored regularly.

## » Authorisation for Deprivation of Liberty

Staff in care homes, hospitals and supported living should always try to care for a person in a way that does not deprive them of their liberty. If this is not possible, there is a requirement under DoLS that this deprivation be authorised before it can go ahead. The process in supported living differs from that in care homes and hospitals.

## » How does the authorisation process work?

Once an application is received for a standard authorisation, the supervisory body must arrange for an assessment to take place within 21 days, to establish whether the qualifying requirements for an authorisation are met for that particular person. These include:

- **Age:** this confirms that the person is aged 18 years and over.
- **Mental Health:** this decides whether the person is suffering from a mental disorder. Mental disorder is the term used in law to describe a set of mental health conditions, including dementia.
- **Mental Capacity:** this determines whether the person lacks capacity to make their own decisions about treatment or care in the place that is applying for the authorisation.
- **Best Interests:** this establishes whether there is a deprivation of liberty and whether this is:
  - in the person's best interests
  - needed to keep the person safe from harm
  - a reasonable response to the likelihood of the person suffering harm

- **Eligibility:** this determines whether the person would meet the requirements for detention under the Mental Health Act 1993; this would make them ineligible for a standard authorisation.
- **No refusals:** this determines whether the person has made advance decisions about their treatment, and whether authorisation would conflict with any decisions made by, for example, a court-appointed deputy or someone with Lasting Power of Attorney.

An authorisation for a deprivation of liberty cannot be granted unless all of these requirements are met.

### » Who can make the assessment?

The assessment must be made by at least two assessors - a best interest assessor and a mental health assessor. The supervisory body appoints the assessors, who must have appropriate training and experience.

The best interests assessment must be carried out by someone who is not involved in that person's care or in making any other decisions about it. The best interests assessor will be a qualified social worker, nurse, occupational therapist or chartered psychologist with the appropriate training and experience.

The mental health assessor must be a doctor (likely to be psychiatrist or geriatrician) who is able to assess whether a person is suffering from a mental disorder and discuss with the best interested assessor how depriving the person of their liberty may affect their mental health.

The assessors will report back to the supervisory body. If the assessment has determined that all of the conditions are met and that a deprivation of liberty would be in the person's best interests, the supervisory body will grant an authorisation. They can ask the managing body to make some changes so that the person's care is less restrictive.

### » How long does the authorisation last?

An authorisation should last for the shortest time possible up to a maximum of 12 months. The assessment on which the authorisation is based can remain valid for 12 months.

The managing authority and the supervisory body must:

- make regular checks to see if the authorisation is still needed;
- remove the authorisation when no longer necessary;
- provide the person's representative with information about their care and treatment.

## » What is a review?

A review of a deprivation of liberty authorisation is a formal process that looks at whether the authorisation is still needed. This can take place at any time after the authorisation has been granted. It is up to the care home or hospital to make regular checks to see if the requirements for the authorisation are still needed, and they must inform the supervisory body if circumstances change.

This means that a review should take place if there is a change in circumstances, and also if the qualifying requirements are no longer met. Therefore, if the deprivation is no longer in someone's best interests, or if it is not managed in the least restrictive way, then this should be looked at again in a review.

The person under the authorisation, or their representative or Independent Mental Capacity Advocate (IMCA), can request a review if the situation has changed.

The supervisory body is responsible for carrying out the review, and for keeping everyone involved aware of the changes as they take place.

## » Who can speak for a person being deprived of their liberty?

Everyone who is subject to an authorised deprivation of liberty must have a 'relevant person's representative'. The representative is appointed by the supervisory body authorising the deprivation.

Often it will be a family member or friend, or other carer, and they would normally have been involved in the assessment.

The representative can gain access to documents about the decision and ask for a review of the decision, and should be informed if anything changes.

If the person has no immediate family or non-professional carer to support them through this process, the managing authority will inform the supervisory body. The supervisory body will then appoint a representative. This may be an independent mental capacity advocate (IMCA) whose role is to help the person with dementia.

The supervisory body and the managing authority at the care home or hospital should work together to ensure that the person and their representative understand the deprivation of liberty process, that they know their rights, and that they receive the right support when the authorisation process begins and once a decision has been made.

The representative must stay in touch with the person deprived of their liberty in order to fulfil their role and to protect the rights of that person. The managing authority has a duty to make sure that this happens.

» Key

- **The Supervisory Body:** this is the body that is responsible for giving the standard authorisation.
- **The Managing Authority:** this is the care home or hospital that may need to obtain an authorisation.
- **IMCA:** Independent Mental Capacity Advocate

If you want to speak to someone about and Independent Mental Capacity Advocate, you can contact the Hartlepool advocacy Hub by letter, telephone or email.



Telephone: 01429 401742 / 07522 866 080



Email: [advocacyhub@incontrol-able.co.uk](mailto:advocacyhub@incontrol-able.co.uk)



Postal address: Centre for Independent Living  
Burbank Street  
Hartlepool  
TS24 7NY

## » Contact us

You can contact the Early Intervention Team by letter, telephone, text, or email. If English is not your first language, we can provide a translation service.

## » Our opening times

We open at 8:30am every weekday. We close at 5:00pm from Monday to Thursday. On Fridays we close at 4:30pm.



Telephone: 01429 523390



Text Service: 60006 (start your text with HBC)



E-mail: [dutyteam@hartlepool.gcsx.gov.uk](mailto:dutyteam@hartlepool.gcsx.gov.uk)



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## » About this factsheet

This factsheet tells you more about what Deprivation of Liberty Safeguards is and the process. We issued this factsheet in November 2015 and updated it in April 2018. We will check the information is up to date in April 2020.



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