

Adult Social Care

Deprivation of Liberty Safeguards

Information leaflet for family and friends



● What are the Deprivation of Liberty Safeguards (DoLS)?

DoLS is a law introduced in 2009 as an amendment to the Mental Capacity Act 2005.

DoLS applies to people aged 18 or over who live in Residential Care Homes or people who are patients in a Hospital.

DoLS is about safeguarding vulnerable people's Human Rights to Liberty.

DoLS is related to The Human Rights Act 1998 Article 5 The Right To Liberty "No one shall be deprived of their liberty except by a process prescribed by law".

The care arrangements for some people can restrict a person's liberty such as requiring someone to stay in hospital for treatment when they want to be discharged home, or living in a care home but they want to live in their own home. It could be stopping someone going out of the care home alone because they are not able to manage their safety such as road traffic awareness.

When a person needs care that restricts their freedom in order to keep them safe and well then this may be Depriving them of their Liberty, in such circumstances the Care Home or Hospital must make an application to the Supervisory Body (Local Authority) for a Standard Authorisation to Deprive them of their Liberty.

DoLS is an important safeguard for vulnerable people whose rights may have to be infringed to keep them safe. A Deprivation of Liberty must be authorised to make it lawful but the test for a Deprivation of Liberty includes detailed consideration of the person's care to ensure it is in the person's best interests and is provided to the person in a way that least restricts their liberty. For example if a person can be treated by district nurses in their own home there is no reason to keep them in hospital as the least restrictive option is for the person to go home.



Why has the Care Home or Hospital made a request to Deprive my relative/friend of their Liberty?

- The UK Supreme Court made a Judgment in March 2014 known as the Cheshire West Judgment.
- This Judgment established what is known as the “Acid Test” for determining when a person’s care arrangements is Depriving them of their Liberty.
- The “Acid Test” has 3 elements
 1. Has your relative/friend got the mental capacity to consent to their residence/ admission to the Care Home or Hospital?
 2. Is your relative/friend subject to continuous supervision and control by the people caring for them?
 3. Is your relative/friend free to leave the Care Home or Hospital?
- If the Care Home or Hospital believes your family or friend
 1. Lacks capacity to consent to their admission to the Care Home/Hospital,
 2. That they are subject to continuous supervision and control i.e. they are being cared for 24 hours a day and their whereabouts are always known to those who care for them, and
 3. Should your relative/friend ask to or try to leave the Care Home or Hospital and those caring from them would prevent them from leaving, then

The Residential Care Home or Hospital must submit a request to the Supervisory Body (Local Authority) for a Standard Authorisation to Deprive your relative/friend of their Liberty to provide them with the care they need to keep them safe and well.



● How and who decides if my relative/friend is being Deprived of their Liberty?

- The Care Home or Hospital (Managing Authority) submits a request to the Local Authority (Supervisory Body) for a Standard Authorisation to Deprive your relative/friend of their Liberty to provide them with the care they need to keep them safe and well
- The Care Home or Hospital must issue an Urgent Authorisation if they think they are already Depriving your relative/friend of their Liberty. At the same time they must submit a Standard Authorisation request to Local Authority (Supervisory Body)
- If the Care Home or Hospital issues an Urgent Authorisation the Supervisory Body must complete the assessments in 7 days of the Urgent Authorisation being issued (The Urgent Authorisation can be extended for a maximum of 7 additional days)
- If the Care Home or Hospital does not think they are already Depriving your relative/friend of their Liberty now but may need to Deprive them of their Liberty in the next 28 days they will submit a Standard Authorisation Request. The Supervisory Body must complete a Standard Authorisation request in 21 days
- The Care Home or Hospital must inform your relative/friend that they have issued an Urgent Authorisation and submitted a Standard Request to Deprive them of their Liberty to provide them with the care they need to keep them safe and well
- The Care Home or Hospital must inform you (the Person's closest relative or the person who has the most contact with them) that they have submitted a Standard Authorisation to the Supervisory Body and explain what will now happen i.e. What is the assessment process

The Local Authority (Supervisory Body) is responsible for completing the assessment to decide if your relative/friend is being Deprived of their Liberty by their current care arrangements

- There are 6 assessments that must be completed by a minimum of 2 qualified assessors

The assessors are:

1. Best Interests Assessor (BIA) which is usually a Social Work professional (but could also be a Registered Nurse, Occupational Therapist or Clinical Psychologist)
2. Mental Health Assessor (MHA) which is a Doctor and usually a Consultant Psychiatrist.

(The BIA & MHA have completed specific training to perform these roles.)

The assessments are;

- (i) **Age assessment** – Confirm the person is aged 18 or over, completed by the BIA.
- (ii) **No Refusals Assessment** – To confirm if the person has a Lasting Power of Attorney (LPA) or a Court appointed deputy for Health and Welfare completed or made a valid advanced decision to refuse treatment, completed by the BIA.
- (iii) **Best Interest's Assessment** – Completed by the BIA who must consider the person's care plan to decide if it is Depriving them of their Liberty and if it is in the person's Best Interests. The BIA makes the decision as to whether the Supervisory Body should grant a Standard Authorisation to Deprive your relative/friend of their Liberty.
- (iv) **Mental Health Assessment** – Completed by the MHA to confirm your relative/friend has a mental disorder (diagnosis) within the meaning of the Mental Health Act 1983.
- (v) **Mental Capacity Assessment** – Completed by the MHA or BIA to decide if your relative/friend has the mental capacity to make the decision on their place of residence in the care home or admission to hospital.
- (vi) **Eligibility Assessment** – Completed by the MHA to consider if your relative/friend meets the criteria for assessment under the Mental Health Act 1983, if they do then the Mental Health Act must be followed and the DoLS process stops.

● How are you involved as the relative/friend of the person in the assessment process

- The Best Interest's Assessor has a legal duty to consult with the person's relative/friend to complete their Best Interest's Assessment. The BIA will ask you your views of how your relative/friend is being cared for and ask you if you think your relatives/friend's current care arrangements are in their Best Interests.



● What happens if a Standard Authorisation is granted by the Supervisory Body to Deprive your relative/friend of their Liberty?

The Supervisory Body can grant a Standard Authorisation for a maximum period of 12 months, if your relative/friend still needs to be Deprived of their Liberty at the end of this period then the Care Home or Hospital must submit a new Standard Authorisation request and the assessment process is repeated.

- The Supervisory Body must appoint a Relevant Person's Representative (RPR) this is usually a family member or friend.
- The Supervisory Body must provide your relative/friend and you with copies of the assessments completed by the BIA and MHA as well as a copy of the Standard Authorisation it has granted.
- Your relative/friend and the person appointed the Relevant Person's Representative is entitled to independent support from an Independent Mental Capacity Advocate (IMCA). The Supervisory Body, where required, will refer for an IMCA to support your relative/friend to understand their rights when they are subject to a Standard Authorisation Depriving them of their Liberty and support the RPR in their role.

RPR Selection – Please note the BIA will require confirmation that the RPR will ensure their relative/friend is able to exercise their right to challenge the Standard Authorisation in the Court of Protection. The RPR does not have to agree with their relative/friend's wish to challenge the Standard Authorisation but must ensure their right to do so is upheld.

● Can my relative/friend or I challenge the Standard Authorisation?



- An essential part of the Deprivation of Liberty safeguards is the right of the person to challenge the Standard Authorisation granted to Deprive them of their Liberty. The person may ask the Supervisory Body to conduct a Statutory Review of the Standard Authorisation or has the right to apply to the Court of Protection to ask the Court to decide if the Standard Authorisation is lawful. The application to the Court of Protection is a right preserved in the DoLS legislation and the person will not have to pay for their case to be heard.
- The relevant person's representative also has the right to ask the Supervisory Body to undertake a Statutory Review of the Standard Authorisation and the RPR has the same right to refer the case to the Court of Protection and must do so if that is the expressed wish of their relative/friend.

Does a Standard Authorisation affect my rights in respect of my contact with my relative/friend?



NO

- The Standard Authorisation does not give any extra or additional powers to the Care Home or Hospital. Granting a Standard Authorisation is in effect like holding a mirror to the person's care plan and asking: does this care plan Deprive the person of their Liberty, is it being provided in the least restrictive way and is it in the Person's Best Interests. If the answer to those 3 questions is YES then, for the care plan to be made lawful it must be Authorised
- The granting of a Standard Authorisation is actually confirming what is happening now in the delivery of the care to your relative/friend is in their Best Interests and is Necessary and Proportionate to maintain their well-being
- When DoLS was being developed initially the term "protective care" was considered rather than Deprivation of Liberty. It is important to emphasise that the purpose of Depriving your relative/friend of their Liberty is to provide them with the care they lack the capacity to consent to in order to keep them safe and well and afford them the best quality of life possible
- Your day to day contact with your relative/friend will not be altered by the granting of a Standard Authorisation Depriving them of their Liberty
- Your involvement in the day to day decisions about your relative/friends care will remain unchanged. You will remain involved in all Best Interest's Decisions for the care and treatment of your relative/friend where they lack the Mental Capacity to make that decision



Further Information

For further information please contact the
Deprivation of Liberty Safeguards (DoLS) Team

Tel 024 7697 8910

Email dolsadmin@coventry.gov.uk

Contact Adult Social Care Direct

Call **024 7683 3003**

or email ascdirect@coventry.gov.uk

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