
Deprivation of Liberty Safeguards (DoLS)

Frequently Asked Questions

Why were the Deprivation of Liberty Safeguards (DoLS) introduced?

The DoLS emerged following a case of a patient with autism who was admitted to hospital as a voluntary patient – he was not detained under the Mental Health Act but admitted informally. The patient was cared and treated in hospital, in a way which severely restricted his freedom. As a result his family was not allowed to discharge him and he was treated with medication without his consent. This meant that the hospital authority assumed complete control of his movement and ability to leave the hospital.

Eventually after successive court action taken against the hospital by the patient's family, the European Court of Human Rights declared that the patient had been detained in hospital unlawfully in a way that deprived him of his liberty under Article 5 of the Human Rights Act.

The European Court of Human Rights has declared that if a patient or a resident in a Care Home or hospital is cared for in a way which requires them to be deprived of their liberty in order to provide necessary care or treatment it must be done following due legal process. As a result the Mental Capacity Act 2005 (MCA) was amended on 1 April 2009, to provide a lawful means to deprive people of their liberty when it is judged to be in the patient's best interest.

What are the Deprivation of Liberty Safeguards?

The MCA is a legal process by which local authorities and Primary Care Trusts (PCTs) can protect adults who lack mental capacity to make decisions about their care or treatment. It allows local authorities and PCTs to ensure that adults lacking mental capacity receive the care or treatment that they require when they are residents in Care Homes or hospitals even if this requires some restriction on their freedom.

When these restrictions go beyond those for which the Mental Capacity Act provides protection, for both the patient and professional carer, special safeguards need to be considered to ensure that the patient's rights and freedoms are protected. These safeguards are called DoLS. They mean that a professional assessment needs to be undertaken. This then determines the need to detain the person and provides a legal way of reviewing the decision.

When might a person lack capacity?

For the purpose of the MCA, a person lacks capacity if at any material point in time they are unable to make a decision for themselves in relation to a particular matter, because of an impairment of, or disturbance in, the functioning of the mind or brain (for example, a disability, condition or trauma). It does not matter whether the impairment disturbance is permanent or temporary.

Who can be cared for or treated under DoLS?

DoLS only affects people who lack mental capacity who are resident in Care Homes or hospitals. The wider provisions under the Mental Capacity Act are normally sufficient to enable professional carers to provide care or treatment in care homes or hospitals. In exceptional circumstances some people require carers to restrict their freedom of movement in Care Homes or hospitals to provide care or treatment which if they were not detained, would place them at risk of significant harm.

What are the rights of a patient who has been deprived of their liberty?

A person who is deprived of their liberty must have somebody, who is not a paid carer, to represent them and advocate for them. A person deprived of their liberty, or their representative, can challenge the authorisation if they believe that any of the six parts of the assessment are flawed or have subsequently changed.

How long can a person be deprived of their liberty?

A person can not be deprived of their liberty for longer than a year but in most cases the term would be expected to be much shorter. If it is considered by the Care Home or hospital that a person needs to be detained for a further period another assessment needs to be undertaken.

What are the six parts of the assessment criteria?

Age Assessment –

The person must be 18 years old or over.

Mental Capacity Assessment –

The person is assessed as lacking the mental capacity to make a decision about the care or treatment they receive in a Care Home or hospital.

Mental Health Assessment –

The person must have a 'mental disorder' as defined under the Mental Health Act 1983.

No Refusals Assessment –

The person must not have made an advanced decision or have a donee* under a lasting power of attorney or a court appointed deputy who is in opposition to the proposed care or treatment.

Eligibility Assessment –

This relates specifically to the relevant person's status or potential status under the Mental Health Act 1983.

Best Interest Assessment –

It must be considered to be in the person's best interest for them to be deprived of their liberty.

* A donee is someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.

Who carries out the assessments?

Two specially qualified professionals are necessary to carry out the assessments. One must be a doctor and the other must either be a nurse, a social worker, an occupational therapist or a clinical psychologist. At least one of them must be qualified to undertake an assessment under the Mental Health Act. The assessors are independent of the Supervisory Body.

How can the process be challenged?

If the patient or their representative believes that a DoLS authorisation would not be in their best interest they can apply to the Court of Protection to decide whether an assessment should proceed. If an assessment has already been completed and an authorisation granted the patient, or their representative, can request a review from the PCT or Local Authority or make a complaint. In any event they can apply directly to the Court of Protection to review the process.

What is the role of the Local Authority or PCT (Supervisory Body)?

Local Authorities and PCTs, known as Supervisory Bodies, have been given powers and responsibilities in law for facilitating Deprivation of Liberty applications and assessments as well as authorising them when necessary (when the Best Interest Assessor determines that the Deprivation of Liberty is in a person's best interest).

What powers do care homes and hospitals (Managing Authorities) have?

If a care home or hospital, known as Managing Authorities, anticipates that a resident or patient will need to be cared for in a way which will result in them being deprived of their liberty within the next 28 days they must apply to the Supervisory Body for standard authorisation of the Deprivation of Liberty. If a Care Home or hospital believe that they are actually depriving somebody of their liberty at any point in time, then they must grant an urgent authorisation themselves which can last up to seven days. At the same time they must refer the patient to the Supervisory Body for assessment for a standard authorisation.

What happens if the independent assessors decide that a deprivation of liberty is not in the person's best interest?

If the Best Interest Assessor decides that depriving someone of their liberty is not in the patient's best interest, then the Care Home or hospital must review their care plan and any restrictions on freedom so that they do not unlawfully deprive the patient of their liberty.

Where can I find out more about DoLS?

Key information is available at www.leadssafeguardingadults.org.uk and additional booklets can be downloaded at www.publicguardian.gov.uk

For further details speak to your line manager or call the DoLS helpline 0113 295 2347.