

Melbury House
Residential Care Home

DoLS and Safeguarding

A guide for residents and their
representatives

Broomhouse Care Ltd

The Deprivation of Liberty Safeguards (DoLS) was introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007.

There is no simple definition of '**deprivation of liberty**'. It will depend on the circumstances of each individual case. A number of previous court cases give some indication of situations where deprivation of liberty has occurred. Lots of factors must be taken into account, such as whether:

- ✧ the person is resisting or other people, such as carers, want the person to be discharged
- ✧ staff have total control over the person's care and movement
- ✧ staff control who the person can see and what kind of treatment they have
- ✧ the person has lost all autonomy.

Deprivation of liberty is different from **restraint**, although the difference is often one of degree or intensity. Certain actions could move up the scale and become a deprivation of liberty. However, the courts do recognise that restraint may be appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood and seriousness of harm. For example, preventing a person from leaving a care home or hospital on their own because there is a risk that they would try to cross a road in a dangerous way is likely to be seen as a proportionate restraint to prevent the person from coming to harm.

Some people living in care homes can't make their own decisions about their treatment and/or care because they lack the mental capacity to do so. They need more care and protection than others to ensure they don't suffer harm. Treating and caring for people who need extra protection may mean restricting their freedom to the point of depriving them of their liberty.

This legislation provides a legal framework for authorising a deprivation of liberty so that treatment or care can be provided in a care home or hospital (the Managing Authority) for people who lack mental capacity. This is irrespective of whether they are placed there under public or private arrangements.

Applications must be made to the Supervisory Body (local authority or primary care trust) to have someone assessed where it is believed that they should be deprived of their liberty in order to prevent them from harm.

These can be made by Managing Authorities and care professionals but can also be made by friends or relatives.

Who does DoLS apply to?

The Mental Capacity Act Deprivation of Liberty Safeguards apply to anyone aged 18 and over:

- who suffers from a mental disorder or disability of the mind – such as dementia or a profound learning disability
- who lacks the capacity to give informed consent to the arrangements made for their care and / or treatment

The safeguards are designed to:

- ensure you or your relative receive the care you need in the least restrictive way
- prevent arbitrary decisions that deprive you or your relative of their liberty
- protect your or you relatives rights and interests
- gives you or your relative the right to challenge unlawful detention
- avoid unnecessary bureaucracy

The Mental Capacity Act is a law about making decisions and what to do when people cannot make some decisions for themselves.

The Deprivation of Liberty Safeguards are part of the Mental Capacity Act 2005.

Who is protected by the Deprivation of Liberty Safeguards?

- All people aged 18 and over who live in England and Wales
- Who lack capacity to make decisions for themselves
- Who live in a registered care or nursing home or a patient in a hospital

Why were the Deprivation of Liberty Safeguards developed?

- To protect vulnerable people from harm and unlawful deprivation of their liberty by providing a legal process.
- The Mental Health Act (2007) made a change to The Mental Capacity Act (2005) to include the Deprivation of Liberty Safeguards.
- The Deprivation of Liberty Safeguards came into force on 1 April 2009.

What is Deprivation of Liberty?

Some people need to be kept in a registered care home to provide them with the care and treatment they need to keep them safe, where these services have to employ approaches that restrict the person's freedom of movement this may amount to a Deprivation of Liberty.

The Deprivation of Liberty Safeguards are for people who cannot make a decision about the way they are being treated or cared for in a hospital or a care home, where other people are having to make this decision for them.

To deprive a person of their liberty their care plan must be in their best interests and Doctors and Social Care professionals must be satisfied that

there is no suitable alternative care plan that would meet the person's needs without having to deprive them of their liberty.

How do you deprive someone of their liberty?

To deprive a person of their liberty to give them the care and treatment they need in a registered care home or a hospital the care home or hospital they are resident in (referred to as the **Managing Authority** in the DOLS Legislation) must submit a request to deprive the person of their liberty to Durham County Council or Durham PCT NHS (referred to as the **Supervisory Body** in the DOLS Legislation).

Durham County Council is the **Supervisory Body** for people resident in registered care homes in Durham County

In Durham County all requests to deprive a person of their liberty whether in a care home or hospital setting are submitted to Adult Services Safeguarding Team

The Assessment Process

DOLS legislation introduced a specific assessment process with set time scales for the completion of the assessments.

There are six assessments all of which must be met to make a Standard Authorisation to deprive a person of their liberty;

- Age Assessment
- Mental Capacity Assessment
- No Refusals Assessment
- Best Interests Assessment
- Mental Health Assessment
- Eligibility Assessment

There must be a minimum of 2 assessors, Best Interest Assessor and Mental Health Assessor to undertake the six assessments.

The Best Interest Assessors and Mental Health Assessors have to complete accredited training before they can perform this role.

Time scales

Urgent Authorisation - Where a Managing Authority (Care Home or Hospital) believes they are depriving a person of their liberty they can issue an Urgent Authorisation that gives them lawful authority to deprive a person of their liberty for a maximum period of 7 days the Managing Authority must make a Standard Authorisation request at the same time. Where an Urgent Authorisation has been issued the Supervisory Body (Durham County Council) must complete the required assessments in 7 days.

Request for a Standard Authorisation - The Managing Authority (Melbury House Residential Care Home) submits a request for a standard authorisation to the Supervisory Body (Durham County Council) where they believe they may need to deprive a person of their liberty in the next 28 days. The Supervisory Body has 21 days in which to complete the required assessments.

As soon as a standard authorisation has been granted, the supervisory body must appoint a relevant person's representative (RPR) to represent the person who has been deprived of their liberty. The RPR provides independent support, acting only in the best interests of the person involved, rather than in the interests of commissioners or service providers.

The RPR is usually a family member or someone known to the person deprived of liberty. If the person has no family member, friend or carer,

the supervisory body has to appoint a representative, who can be paid as appropriate.

The managing authority has a responsibility to ensure that both the RPR and the relevant person:

- ✓ understand what the deprivation of liberty authorisation means
- ✓ are aware of their right to request a review at any time
- ✓ have information about the formal and informal complaints procedures
- ✓ understand that they have the right to challenge the deprivation of liberty through the Court of Protection
- ✓ understand that they are entitled to the support of an Independent Mental Capacity Advocate (IMCA), unless they are a paid representative.

The RPR must stay in touch with the person deprived of their liberty in order to fulfil their statutory role. If the RPR does not keep in regular contact, then the rights of the relevant person to review or appeal their deprivation of liberty may not be sufficiently protected

If you have contacted the relevant care home or hospital and have not received a satisfactory response, you may write to the Deprivation of Liberty Safeguards (DoLS) Office highlighting your concerns using the following standard letter:

Your Name
Your address
Date: Address
Address
Post Code
Your contact telephone No

Name and address of managing authority
Address
Post Code

Dear Sir/Madam

Re: [Name of person/resident]

I am writing to you about the above-named person, who is accommodated in your Hospital /care home [delete as applicable].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc.]

It appears to me that this person lacks capacity to consent to the arrangements made for their care or treatment and is subject to an unauthorised deprivation of liberty. I am therefore writing, in accordance with the provisions of the Mental Capacity Act 2005, to ask you to give an urgent deprivation of liberty authorisation and to request a standard authorisation from the supervisory body.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [Briefly state reasons].

As I am sure you know, if you do not request a standard authorisation with a reasonable period, I may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully

[Signature]

[Name of sender in block capitals]

What if I (or someone I know) am subject to a Deprivation of Liberty authorisation and I wish for the authorisation to be reviewed?

If you are currently subject to a Deprivation of Liberty authorisation and wish to have this reviewed, please write to the DoLS Office. The following standard letter may be used

Your Name
Your address
Date: Address
Address
Post Code
Your contact telephone No

Name and address of managing authority
Address
Post Code

Dear Sir/Madam

Re: [Name of person/resident]

I am writing to you about the above-named person, who is accommodated in [Name and address of hospital or care home].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc.]

On [enter date], I wrote to/spoke with the managing authority of the [name of hospital or care home]. I informed them that it appeared to me that this person lacked capacity to consent to the arrangements made for their care or treatment and is subject to an unauthorised deprivation of liberty. I asked them to give an urgent deprivation of liberty authorisation and to request a standard authorisation, in accordance with the provisions of the Mental Capacity Act 2005.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are set out below:
[Briefly state reasons].

I understand that the managing authority has not requested a standard authorisation.

I am therefore writing to make a formal request that you now decide whether or not this person is subject to an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully

[Signature]
[Name of sender in block capitals]

Alternatively, if you are a relevant person's representative and wish to request a review of a standard authorisation that has been issued, you may use the template letter below and forward to the DoLS Office who will look into this matter further.

Your Name
Your address
Date: Address
Address
Post Code
Your contact telephone No

Name and address of managing authority
Address
Post Code

Dear Sir/Madam

Re: [Name of person/resident]

My deprivation of liberty under a standard authorisation

I am deprived of liberty at [enter name of hospital/care home].

I am writing to request that you conduct a review under Part 8 of Schedule A1 to the

Mental Capacity Act 2005 of the standard authorisation that permits me to be deprived of my liberty there.

My reason(s) for requesting a review is/are.....

Thank you for your consideration of this matter.

Yours faithfully

[Signature]

[Name of sender in block capitals]

Alternatively, if you are a relevant person's representative and wish to request a review of a standard authorisation that has been issued, you may use the template letter below and forward to the DoLS Office who will look into this matter further.

Your Name
Your address
Date: Address
Address
Post Code
Your contact telephone No

Name and address of managing authority
Address
Post Code

Dear Sir/Madam

Re: [Name of person/resident]

I am writing to you about the above-named person who is deprived of their liberty at [enter name of hospital/care home].

I am the person's representative.

I am writing to request that you conduct a review under Part 8 of Schedule A1 to the Mental Capacity Act 2005 of the standard authorisation that permits their deprivation of liberty.

My reasons for believing that this person does not meet the qualifying requirements for being deprived of their liberty under a standard authorisation are as follows:

[Briefly state reasons]

Optional additional paragraph – Should this not eventually be accepted, in my view the conditions attached to the standard authorisation should be relaxed.

[Briefly state how and your reasons]

Thank you for your consideration of this matter.

Yours faithfully

[Signature]
[Name of sender in block capitals]

Useful contacts

Care Quality Commission Northeast
PO Box 1255
City Gate, Gallowgate
Newcastle upon Tyne
03000 616161

Social Care Direct
0845 8505010

Durham County Council
0300 123 7070
Email - scd@durham.gov.uk

Mind
15-19 Broadway, Stratford, London E15 4BQ
T: 020 8519 2122, F: 020 8522 1725
e: contact@mind.org.uk

Office of the Public Guardian (OPG)
PO Box 16185
Birmingham
B2 2WH Phone number: 0300 456 0300 - Phone lines are open Monday - Friday
9am - 5pm (Except Wednesday 10am - 5pm) Fax number: 0870 739 5780

The OPG also has responsibility for mental capacity policy, and provides guidance to public, legal and health professionals

Age UK - <http://www.ageuk.org.uk>