

Deprivation of Liberty Safeguards (DoLS) | frequently asked questions



The Mental Capacity Act 2005 (MCA) introduced the Deprivation of Liberty Safeguards (DoLS) to empower and protect people who don't have the capacity to make decisions about their own care and treatment; it places the individual at the heart of any decision needing to be made on their behalf.

What is the purpose of DoLS?

DoLS provide legal protection for vulnerable people who are unable to consent to care or treatment and who may become deprived of their liberty, most commonly in a care home or hospital. DoLS should protect individuals from being deprived of their liberty unless it is in their best interests to protect them from harm, or to provide treatment, and there is no other less restrictive alternative; the safeguards include the procedures that a care home or hospital must follow to deprive an individual of their liberty.

Deprivation of liberty should only ever be seen as a last resort, and never be used simply for the convenience of staff or carers.

DoLS also link with human rights law which states that no-one should be deprived of their liberty except in certain defined circumstances.

What is 'capacity'?

Capacity is the ability to make a decision for yourself about a particular matter. To have capacity a person must be able to:

- understand the information given to them about a particular decision
- retain the information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision, whether by speech, sign language, or simple movements such as blinking or squeezing a hand

People are said to lack capacity when illness or injury prevents them from being able to make personal decisions, temporarily or permanently.

What protection do the DoLS provide?

- People deprived of their liberty in their best interests are provided with:
- A robust assessment (involving at least two assessors) and authorisation process
- A representative to act for them and to protect their interests
- A right of challenge to the Court of Protection against unlawful deprivation of liberty
- A right for the deprivation of liberty to be reviewed and monitored regularly

Who applies the DoLS?

The care home or hospital (known as the managing authority) is responsible for ensuring that the DoLS procedures have been followed and that any deprivation of liberty is lawful in the first instance. Any deprivation of liberty application will then be considered by the local authority where the individual is ordinarily resident (known as the supervisory body). Only the supervisory body (or the Court of Protection in respect of other locations) can authorise deprivation of liberty.

How do MCA DoLS work?

The supervisory body must obtain six assessments:

- Age assessment
- No refusals assessment
- Mental capacity assessment
- Mental health assessment
- Eligibility assessment
- Best interests assessment

Age UK and other organisations provide useful summaries of how DoLS work and what the assessments entail. You can find more detailed information on the [Age UK website](#).

What is a Relevant Person's Representative (RPR)?

This is usually a friend or family member who will ensure that the rights of a person being deprived of their liberty are protected. The RPR is required to follow the 'best interests' principle of the MCA whilst acting on behalf of someone who lacks capacity. If there is no appropriate friend or relative, the supervisory body will appoint someone, possibly a paid professional.

Can a DoL authorisation be challenged / amended?

The RPR can challenge authorisations on behalf of the person they represent; this would normally be done informally with the managing authority and/or supervisory body first before any formal challenge is made.

How often will a deprivation of liberty authorisation be reviewed?

An authorisation can be given for up to 12 months, although supervisory bodies are legally required to undertake a review at any point if the RPR requests it or if there are any other material changes in the circumstances of the individual. If the deprivation is still considered necessary after 12 months, a new authorisation must be applied for and the assessment procedure repeated.

Please note: a review of the safeguards and their application was undertaken in 2016 and recommendations are expected to be published shortly.

This note is for information only and does not constitute legal advice.

The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk