



A Guide to the Deprivation of Liberty Safeguards

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Supporting you to be listened to



In this booklet you will find:



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What are DoLS?

A law known as the Mental Capacity Act (2005) was passed to protect people who have been formally assessed to 'lack capacity'. Which means they are unable to make certain decisions about their life.

Under this law, certain restrictions (rules or limits on what someone can do) and restraints (things that stop people doing what they want) are agreed where they are needed. But only if:

- the person has been assessed as lacking capacity to make the decision
- they are in the person's best interest (and needed to keep them safe and well)
- they are not too restrictive

Deprivation of Liberty Safeguards (DoLS) are a part of this law and are needed when a person is unable to choose where they live and what care they should receive.

DoLS protect people who lack capacity and cannot agree or consent to their care or treatment and who need to live in either a care home or hospital in England or Wales.

DoLS gives the person rights and makes sure that these rights are protected.

DoLS was introduced as a legal case which was taken to the European Court of Human Rights (ECHR). This case was called HL v United Kingdom, otherwise known as the Bournemouth case (www.communitycare.co.uk/2005/02/07/the-bournemouth-case/).

What are DoLs?




The ECHR decided that the UK legal system did not give enough protection to people who:

- lacked capacity to consent to their care or treatment
- needed to be deprived of their liberty (freedom) to keep them safe from harm

DoLS protects a person's right to liberty. This is provided and protected under Article 5 of the Human Rights Act (1998) which is another law. The Article 5 right tells us that:

- everyone has a right to freedom unless they are lawfully detained
- everyone who is deprived of their liberty (detained) can ask a court to check if it was done legally
- everyone can challenge or appeal the decision to deprive them of their liberty

IN SUMMARY, DOLS ARE THERE TO:

-  Protect a person from being detained if it is not in their best interests
-  Prevent unnecessary detention when other alternatives have not been fully explored
-  Give the person or their representatives the right to challenge the decision

DoLS only apply to people over 18 that are in care homes or hospitals. If a person is deprived of their liberty in a different setting or is under 18, this must be authorised by the court.

What restrictions amount to a Deprivation of Liberty?

In 2014 there was a legal case which told people what a deprivation of liberty was. The case was called 'Cheshire West'.

Before 2014, deprivations of liberty had no clear meaning – as everybody's situation was so different.

Cheshire West made it easier for care homes and hospitals (called the Managing Authorities) to figure out whether someone was deprived of their liberty or not.

Cheshire West asked the care home/hospital to consider two questions:

1. IS THE PERSON WHO LACKS CAPACITY (UNABLE TO MAKE THE DECISION FOR THEMSELVES) ALWAYS UNDER SUPERVISION AND CONTROL?

For example, are they living somewhere with staff available 24/7, being checked on often, even if staff aren't with them all the time? Are they unable to do some things on their own or being helped to do things they might not want to do?

2. IS THE PERSON NOT FREE TO LEAVE?

For example, can they not go out alone, choose where to live, or go back home to live?

If the answer to both questions is 'yes', the person is deprived of their liberty. These two questions are known as the 'Acid Test.'

What restrictions amount to a Deprivation of Liberty?

If a person is found to be deprived of their liberty, to protect them, a request for a Deprivation of Liberty Safeguards (DoLS) Authorisation needs to be made by the care home or hospital.

The council (Supervisory Body) then need to assess the person and decide whether to allow the deprivation of liberty, by granting a 'Standard Authorisation.'

A DoLS is needed if a person has restrictions in their life or as part of their care plan when living within a care home or hospital.

Restrictions can only be in place if the person cannot make their own decision (they lack capacity), they are in the person's best interest (needed to keep them safe and well), and there is no other way that this can be done that is less restrictive for the person.

Here are some examples of types of restrictions that can deprive a person of their liberty within a care home or hospital:

(please note that this does not include all types of restrictions which might be in place for a person)

PHYSICAL:

- Being held/moved by staff against their wishes to make sure that they are safe. For example, when getting angry or upset, when being helped to wash or dress.
- Being unable to go out without a carer, family member or friend.
- They would be stopped if they tried to go out alone.

What restrictions amount to a Deprivation of Liberty?

CHEMICAL:

- Staff give medication hidden in food or drink (known as 'covert' medication).
- Being given medication to control their behaviour. For example, medication that makes them tired or lessens anxiety.

ENVIRONMENTAL:

- Locked doors that they cannot open. For example, keys, keypads, electronic locks.
- Being unable to access certain rooms within the building.
- Having the door to their room locked when they are not in there and not being given a key- meaning staff must unlock their door to let them in.

ORGANISATIONAL:

- Set food menus that they must eat in a certain place.
- They can only go outside, eat, drink, or join activities when staff are free to help them, not when they want to.
- Set times for visitors.
- Having a risk assessment that stops them from doing something based on general rules of the home, not their own needs. For example, using bed rails when they don't risk falling out of bed, or not letting them go out unless in a wheelchair, even though they can walk well.

TECHNOLOGICAL:

- Having sensors (including mats) within their room that alert staff to their movements (known as 'assistive technology'.)
- Having cameras (CCTV).

What restrictions amount to a Deprivation of Liberty?

MECHANICAL:

- Bed rails and bumpers to prevent them leaving or falling out of bed.
- Having a 'lap belt' fastened when in a wheelchair.
- A table being placed in front of them when sat in a chair to stop them getting up.

OTHER EXAMPLES:

- Staff check their location and presentation regularly.
- Having a staff member always watching them.
- Staff managing prescribed medication (store, order, check stock), giving this to them, and making sure that they take it.

The DoLS cannot allow all types of restrictions. Certain restrictions must be agreed by a Judge in a court called the 'Court of Protection'. Some of these restrictions are:

- Limiting/ preventing a person's contact with other people.
- Limiting/ preventing a person from accessing the internet.
- Limiting/ preventing a person from managing their finances.
- Limiting/ preventing a person from having sexual relationships.
- Limiting/ preventing a person from using a phone.
- Limiting/ preventing a person from opening their letters.

A DoLS Authorisation can only limit Article 5 rights, not other rights under the Human Rights Act (1998). The examples above involve human rights but not Article 5 rights. For instance, Article 8 protects the right to family, private life, home, and correspondence.

When should an application for Deprivation of Liberty Safeguards (DoLS) be made?

If someone is going to live in a care home or stay in a hospital to get care or treatment, the care home or hospital (called the Managing Authority) must apply for a DoLS assessment. This means they send a form to the council (called the Supervisory Body).

WHEN THE COUNCIL RECEIVE THIS FORM, THEY COMPLETE A SERIES OF CHECKS WITH THE PERSON TO SEE IF:

1. The person can legally be deprived of their liberty.
2. This is needed to keep them safe and well (in their best interests).

This application for a DoLS assessment is called a 'request for a Standard Authorisation.' It should be made if the person is likely to be deprived of their liberty in the next 28 days.

If someone is moving into a care home or hospital, the DoLS application can be made before they move.

Sometimes a person can move into a care home or hospital without the DoLS in place. If this happens, the care home or hospital can give itself permission to deprive the person of their liberty. This is called an Urgent Authorisation and lasts for 7 days.

At the same time, the care home or hospital must apply for a Standard Authorisation from the council. If the council needs more time to finish their checks, they can extend the Urgent Authorisation for another 7 days.

Who carries out the DoLS assessments?

The care home or hospital (Managing Authority) will check if a person lacks capacity to decide to live with them and be cared for and is deprived of their liberty.

If the person is deprived of their liberty, they will send a form to the local council (Supervisory Body) to ask permission for this. This is called a Deprivation of Liberty Safeguards (DoLS) Authorisation request.

There is a team within the council called the DoLS team.

The DoLS team arrange for assessments to be completed. This makes sure that the person who is being deprived of their liberty, has been done so legally.

The DoLS team is responsible for making sure that the people completing the assessments are experienced and qualified.

THE ASSESSMENTS ARE CARRIED OUT BY TWO PEOPLE:

- A Best Interest Assessor: a social worker or other experienced and qualified professional. Best Interest Assessors have been trained to assess people who lack capacity and who are being deprived of their liberty.
- A Doctor: a doctor with experience working with people with mental health or capacity concerns. The doctor is often 'approved' under Section 12 of the Mental Health Act (1983)- another law protecting people. The doctor has undergone training to be a medical assessor.

Who carries out the DoLS assessments?

THERE ARE 6 ASSESSMENTS:

These assessments are called the 'qualifying requirements'.

1. AGE ASSESSMENT:

This assessment makes sure that the person being deprived of their liberty is aged 18 or over.

This is because DoLS only applies to people aged 18 or over.

2. NO REFUSALS ASSESSMENT:

This assessment checks if depriving the person of their liberty would go against any existing permissions (authorities) for decision-making for that person.

Examples might be:

- if someone has made an 'advanced decision to refuse treatment', and the reason for the DoLS Authorisation includes to provide the treatment talked about in the advanced decision.
- if depriving the person of their liberty would conflict with a decision made by the person's lasting power of attorney (LPA) or court appointed deputy. These people have special permission to make some decisions on the person's behalf.

Who carries out the DoLS assessments?

3. MENTAL CAPACITY ASSESSMENT:

This assessment finds out whether the person can or cannot make decisions (has or lacks capacity) about whether they should live in the care home or hospital and receive care or treatment.

The Mental Capacity Act (2005) tells us that people should always be believed to have capacity.

People must be proved to lack capacity before any decision can be made for them.

4. MENTAL HEALTH ASSESSMENT:

This assessment is to confirm that the person has a 'mental disorder'.

Examples might be:

- Mental health diagnosis.
- Autism.
- Learning Disability.
- Acquired Brain Injury.
- Dementia

5. ELIGIBILITY ASSESSMENT:

This assessment looks at whether the DoLS Authorisation can be granted.

It makes sure that there are no other restrictions imposed upon the person by the Mental Health Act (1983).

It also makes sure that the Mental Health Act (1983) is not the law that should be being used to deprive someone of their liberty.

Who carries out the DoLS assessments?

6. BEST INTEREST ASSESSMENT.

The assessment decides if;

- It is in the person's best interest to be deprived of their liberty.
- It is needed to keep the person safe.
- It is not an overly restrictive response to the risk of the person suffering harm, and how serious that harm would be.

ASSESSMENTS MUST BE COMPLETED WITHIN 21 DAYS FOR A STANDARD DEPRIVATION OF LIBERTY AUTHORISATION.

If an 'Urgent' Authorisation is granted by the care home or hospital, the assessments must happen within 7 days. If not, the DoLS team can extend the Urgent Authorisation for another 7 days.

If the person has a Relevant Person's Representative (RPR) as they have had a DoLS in place before, they will be spoken to through the assessment process and will then be able to see copies of the assessments.

People with an interest in the person's care will also be spoken to during this process.

Full information on what each assessment entails can be found here www.legislation.gov.uk/ukpga/2005/9/schedule/A1

What happens if a DoLS Authorisation is granted?

IF A DOLS AUTHORISATION IS GRANTED, IT MUST STATE:

- What it is for.
- How long it lasts (which can only be up to 12 months).
- What 'conditions' are attached. These conditions are for the care home or hospital to action.

A COPY OF THE AUTHORISATION MUST BE GIVEN TO:

- The Relevant Person (the person who has been deprived of their liberty).
- The person's Relevant Person's Representative (RPR).
- The care home or hospital.

Every interested person (such as other family members or friends) consulted by the Best Interests Assessor will receive a copy of the Form 5.

THE DOCUMENTS THAT WILL MAKE UP THE AUTHORISATION ARE:

- **Form 3:** the age, mental capacity, no refusals and best interests assessments. This also has details of who has been selected to be the person's representative (RPR).
- **Form 4:** the mental capacity, mental health, and eligibility assessments.
- **Form 5:** the standard authorisation granted. This form will say when the authorisation started, when it ends, and will contain any conditions (actions) that need to be taken.
- **Form 5a:** appointment of a representative. This form needs to be signed by the Relevant Person's representative (RPR). The signed form must be sent to the DoLS team.

What happens if a DoLS Authorisation is granted?

When the DoLS Standard Authorisation is due to end, the care home or hospital must apply for a new one (if it is still needed).

The DoLS team will then complete new assessments to see if a new Standard Authorisation can be granted.

It is not lawful for a person to be deprived of their liberty without the DoLS Standard Authorisation being in place.

The person does not have to be deprived for the duration of the DoLS authorisation. If the restrictions are no longer needed, the restrictions should stop, and the supervisory body should be informed.



Conditions attached to the Standard Authorisation

WHEN THE BEST INTEREST ASSESSOR (BIA) CARRIES OUT THEIR ASSESSMENT, THEY MIGHT:

- Think of ideas to make the person's life better.
- Find ways to reduce restrictions.
- Find ways to avoid a deprivation of liberty.
- Find things that the care home or hospital (Managing Authority) can do to improve care.
- Find things which are not in the person's best interest.

The BIA can make suggestions based upon their assessment which are called 'conditions.'

If the DoLS team agree with these suggestions, they will include them as conditions when the DoLS Standard Authorisation is granted.

These conditions can be found on Form 5.

The care home or hospital must make sure that any conditions are 'met' (they must make sure they do what the conditions say).

If these conditions are not met, then the deprivation of liberty might not be in the person's best interest.

Conditions often vary from person to person.

Some Authorisations do not have conditions.

Conditions attached to the Standard Authorisation

Below are some examples of what BIA's might suggest as conditions:

MEDICATION:

The BIA might notice issues with a person's medication, such as how it is prescribed, when it was last reviewed, how it is given, or whether some medication is still needed.

E.g. The Managing Authority must review Hilda's covert medication regularly and ensure that decisions about her capacity and best interests for this medication are updated regularly.

ACTIVITIES:

The BIA might find ways to improve a person's social activities or engagement.

E.g. The Managing Authority must help Fred join reminiscence activities at least once a week. They should use Fred's family photos and record these activities in his activity log.

CARE PLANNING/DOCUMENTATION:

The BIA might have found that the person's care plans need updating, reviewing, or improving.

E.g. The Managing Authority must update Bob's care plans to reflect his current needs.

Conditions attached to the Standard Authorisation

REFERRALS TO OTHER SERVICES:

The BIA might notice problems that require input from other health or social care agencies.

E.g. The Managing Authority should refer Betty for a continence assessment as she needs incontinence products and is currently paying for these.

LISTENING TO THE PERSON'S VIEWS:

The BIA might find the person is unhappy with their care, where they live, or their restrictions. These feelings might come directly from the person, staff, or from notes.

E.g. Bev often says she wants to go home. The care home must record any comments she makes about wanting to leave or objections to her care in the daily notes.

OTHER ISSUES FOUND:

Sometimes, the BIA may find specific issues about the person's care, wishes, or feelings that need addressing.

Examples could include:

- *When a single room becomes available, the Managing Authority should consider if it's suitable for George, taking his and his representative's views into account.*
- *Helen wants to wear a trouser suit on Sundays to continue her "Sunday Best" tradition. The Managing Authority must help her and contact her daughter if clothing is needed (who is aware of this request).*
- *Kevin enjoys a can of diet coke and a chocolate bar twice a week. The Managing Authority must ensure he has these treats, as they make him happy.*

Conditions attached to the Standard Authorisation

THERE ARE ALSO USUALLY SOME CONDITIONS ABOUT THE CARE HOME/HOSPITAL:

- Allowing the Relevant Person's Representative (RPR) to read a person's care plans and records.
- Informing the DoLS team (Supervisory Body) if the RPR is not visiting the person on a regular basis.
- Making a new Standard Authorisation request before the current one expires.
- Telling the Supervisory Body why a new Standard Authorisation request is not needed.
- Requesting a review of the Standard Authorisation if things have changed. For example, if the person can now make decisions (has regained capacity), if new restrictions have been put in place for the person, a condition in the authorisation cannot be met.

The BIA cannot include conditions that are not about the deprivation of liberty. However, they may find other issues that, while not directly related, could help improve the person's life.

These findings are sometimes included in the BIA's assessment, and Form 5 of the Authorisation when granted.

They will be called 'recommendations', not conditions.

Recommendations are different because, while the care home or hospital should pay attention to them and try to follow them, they don't have to make sure they are carried out.

The person's rights

When someone has a Deprivation of Liberty Safeguards (DoLS) Authorisation, they have legal rights.

THE PERSON'S RIGHTS ARE:

- Being told about the Authorisation, how long it will be in place, what it means for them, and how it will affect them.
- Having a Relevant Person's Representative (RPR) to support them. The RPR will explain their rights and help them make a complaint or appeal if needed. More details about the RPR's role are explained later in this booklet.
- To ask the council (Supervisory Body) for the deprivation of liberty or the reasons why this was granted, to be looked at again. This is called a review. A review might be requested if: the person or RPR disagrees with the decision to grant the Authorisation, or things have changed for the person since the Authorisation was granted.
- For the conditions of the Authorisation (explained earlier in the booklet) to be followed. If they are not, the council's DoLS team should be told.
- To access an Independent Mental Capacity Advocate to support in matters relating to the DoLS Authorisation and/or the person's rights.
- To access to the Court of Protection. The Court of Protection is a special court for people who have been assessed as being unable to make decisions (lack capacity). If a person has a DoLS Authorisation in place, they have access to the Court of Protection if needed.

The person's rights

- The Court of Protection can be asked to look at a person's Authorisation and the reasons why they are deprived of their liberty.

For example:

- If conditions are not being met.
- If the person or their RPR disagrees with the decision to grant the Authorisation.
- To review a person's ability to make their own decisions (capacity).
- To access 'legal aid' which is funding used to pay a solicitor to help – legal support is free to the person and their RPR.

THERE ARE SOLICITORS WHO ARE SPECIALISED (HAVE EXPERIENCE AND ARE ALLOWED) TO HELP WITH ADVICE ABOUT CAPACITY AND DOLS AUTHORISATIONS.

You can find a solicitor in the following ways:

- Citizens Advice can tell you about local solicitors who are able to help.
- www.solicitors.lawsociety.org.uk
- www.mhla.co.uk/find-a-lawyer/geographical-list/
- Call 020 7320 5650 (Monday to Friday, 9am until 5.30pm)

Relevant Person's Representative (RPR)

When a Deprivation of Liberty Safeguards (DoLS) Authorisation is granted, the person being deprived of their liberty has the right for a person to represent them. This person must be appointed (chosen) as soon as possible.

This person is known as the Relevant Person's Representative (RPR). The RPR is a legally appointed role.

The role of the RPR is to represent and support the person who has the DoLS Authorisation in place. This representation and support is for everything relating to the DoLS Authorisation.

The RPR is independent. They provide the person deprived of their liberty with support separate to the care home or hospital (Managing Authority), the council (Supervisory Body), or any other professional involved in their care.

The RPR must act in the person's best interest.

The RPR is usually a relative or friend but can be a paid professional.

Relevant Person's Representative (RPR)

WHO CAN BE A PERSON'S RPR?

To become a person's RPR you must be:

- 18 years old or older.
- Able to keep in contact with the person.
- Willing to be appointed.

To become a person's RPR you cannot be:

- Someone with financial interest in the care home or hospital e.g. owner, director.
- A relative of someone with financial interest in the care home or hospital.
- Employed by the care home or hospital.
- A service provider to the care home or hospital.
- Involved in providing care or treatment to the person – in a paid role.
- Employed by the council in any way connected to the person.

How are RPRs selected?

The Best Interest Assessor (BIA) will consider who might be the best person to be someone's RPR.

They will consider if:

- The person can choose who they want to act as their RPR.
- The person's Lasting Power of Attorney (LPA) or Court Appointed Deputy has chosen, or identified someone, to act as RPR.

Relevant Person's Representative (RPR)

The BIA will also check:

- If the person cannot make the decision about who they want as their RPR – whether they have previously identified someone they would want to represent them.
- That the person trusts and is comfortable with the proposed RPR.
- If the proposed RPR will keep in contact with the person.
- If the proposed RPR will represent the person's best interests.
- If the proposed RPR is willing to act as the RPR.

If no-one is suitable or willing to be the person's RPR – a person will be appointed by the DoLS team. This is sometimes a paid professional e.g. an Independent Advocate, known as a paid RPR.

AN IMPORTANT CASE WHEN BIA'S ARE THINKING ABOUT WHO CAN BE A RPR.

A judge in the Court of Protection reviewed a case where someone was deprived of their liberty. The judge then gave guidance that now must be followed when thinking about DoLS Authorisations and who to choose as a person's RPR.

The case is known as 'AJ vs. A Local Authority (2015) EWCOP5.'

Here is a link if you want to read the judgement and guidance:
www.39essex.com/information-hub/case/aj-v-local-authority

Relevant Person's Representative (RPR)

The judge focused on the person's right to challenge their deprivation of liberty, and who would be best to support this right as their RPR. *We will cover what a challenge is later in this booklet.*

The judge said that it could be hard for a relative or friend of a person to be the RPR. Especially where they might have to challenge the deprivation of liberty on their loved one's behalf. This could be because they believe the person is in the best place to keep them safe and well. It could be because they were involved in moving the person into the care home or hospital in the first place.

The judge said that because of these concerns, BIA's and councils must make sure that the proposed RPR is willing to support the person to challenge their deprivation of liberty. Even if they do not agree with the person's wishes.

ONCE THE DOLS AUTHORISATION HAS BEEN GRANTED THE CARE HOME/HOSPITAL MUST MAKE SURE THAT THE RPR AND THE PERSON THEMSELVES (AS MUCH AS POSSIBLE) UNDERSTAND:

- The effect of the Authorisation.
- The person's right to ask for a review of the deprivation of liberty or the reasons it has been granted.
- How to make complaints (formally and informally).
- The right to 'challenge' (to change or end) the Authorisation via a court that deals with matters of a person's ability to make decisions (capacity). This court is known as the Court of Protection.
- The right of access to an Independent Mental Capacity Advocate.

The role of the Relevant Person's Representative (RPR)

The RPR must always act in the best interests of the person being deprived of their liberty.

The RPR also has an important role to make sure that the person's best interests are safeguarded.

The RPR has certain duties and functions that they must fulfil (act on) if they need to.

The person who is deprived of their liberty may also ask or tell the RPR to do things for them, which the RPR must do - even if they do not agree with what the person is asking or telling them.

These duties and functions are:

MAINTAINING CONTACT WITH THE PERSON DEPRIVED OF THEIR LIBERTY:

Although in law there are no specific guidelines about how often the RPR should be visiting there is an expectation that this would be 'regularly'. The DoLS team will often say on Form 5 (of the granted DoLS Authorisation) how often they expect the RPR to visit the person.

The RPR should see the person face to face.

The role of the Relevant Person's Representative (RPR)

REQUESTING A REVIEW OF THE DEPRIVATION OF LIBERTY:

The RPR can ask the DoLS team to 'review' the deprivation of liberty itself, or the reasons why the deprivation of liberty is in place if they find that the person or their care and treatment has changed.

Examples could include:

- More restrictions have been put in place for the person deprived of their liberty.
- The person deprived of their liberty has become able to make more/all decisions about their care, treatment or residence.
- The care home or hospital (Managing Authority) are not taking action to meet a condition.
- The deprivation of liberty or the care and treatment is not in the person's best interest anymore.

MAKING COMPLAINTS:

The RPR can make complaints on behalf of the person. These complaints can be 'informal' e.g. a chat with the manager of the care home to try to get something changed or improved. Or they can be 'formal' – following a 'procedure' (set way of making the complaint) either with the care home/hospital, council (Supervisory Body) or other service providing care, treatment or support.

The role of the Relevant Person's Representative (RPR)

MAKING AN APPLICATION TO THE COURT OF PROTECTION (COP):

Sometimes issues cannot be resolved without going to the CoP – a special court that makes decisions for people who cannot make certain decisions themselves (they lack capacity).

Usually accessing the CoP is to 'challenge' (object) on the person's behalf to their accommodation, care, treatment or to the restrictions that are in their life.

This can happen even when everyone has done their best, but the person deprived of their liberty is still unhappy with the answers or explanations they've been given.

The RPR has to put aside their own views and put forward the person's views. Even if the RPR does not agree with the person.

More information on the Court of Protection can be found here www.gov.uk/courts-tribunals/court-of-protection.

For more information, check out our Accessing the Court of Protection: Step-by Step Guide.

The role of the Relevant Person's Representative (RPR)

OTHER ROLES AND RESPONSIBILITIES:

Documents and speaking with staff:

The RPR will speak with staff of the care home or hospital and access a person's care plans and other documents. This is to see how the person has been, and to see if anything has changed in their care and treatment.

Form 5 of the DoLS Authorisation can include a condition which tells the care home or hospital that they must let the RPR access records. RPRs do not have a legal right to access records.

Being aware of conditions of the DoLS Authorisation:

The RPR will have been given a copy of the DoLS Authorisation (Form 5).

The Form 5 is where any conditions that have been agreed by the DoLS team and the Best Interest Assessor will be written.

It is up to the care home or hospital to make sure they meet the conditions.

It is helpful for the RPR to know what these conditions are and check with staff at the care home or hospital that actions are being taken to meet these conditions.

Sometimes if a condition is not met, the deprivation of liberty might not be in the person's best interest. If this happens, a review or challenge will need to be considered/ requested by the RPR.

Replacement of the Relevant Person's Representative (RPR)

SOMETIMES THE PERSON WHO HAS BECOME THE RPR MIGHT NOT TO BE SUITABLE TO REPRESENT THE PERSON.

The reasons might be because:

- The person deprived of their liberty can make the decision about who is their RPR. They might not want the person to continue in this role.
- The person's other representatives (e.g. Lasting Power of Attorney or Court Appointed Deputy) who can make decisions on the person's behalf, do not want the person to continue in this role.
- The RPR is not willing or able to continue as RPR.
- The RPR is no longer eligible e.g. they have started working at the care home where the person is deprived of their liberty.
- The RPR is not visiting the person regularly. Or is not keeping in touch with the person as they said they would.
- The RPR is not representing or supporting the person properly.
- The RPR is not acting in the person's best interest.

If a person's RPR needs to be replaced, the Council (Supervisory Body) will find another person to fill this role. This can be another family member or friend.

If there are no other family members or friends, the Council will ask an independent service e.g. an advocacy service, to act as the person's RPR. This role is known as a paid RPR.

Replacement of the Relevant Person's Representative (RPR)

SOMETIMES THERE MIGHT BE OTHER FAMILY OR FRIENDS WHO ARE SUITABLE TO BE A PERSON'S RPR, BUT FOR SOME REASON THEY CANNOT DO THIS STRAIGHT AWAY.

If this happens, the Council will ask an advocacy service to provide an Independent Mental Capacity Advocate (IMCA) to support the person deprived of their liberty for a short time.

The IMCA would act as the person's RPR until the family member or friend can become the RPR.



Reviewing the Deprivation of Liberty Safeguards (DoLS) Authorisation

The care home or hospital (Managing Authority) must monitor any person's care or treatment if a DoLS Authorisation has been granted. They must check that if any changes happen with the person, or their care or treatment, that the DoLS Authorisation is still needed.

If the care home or hospital decides that the person no longer needs to be deprived of their liberty, they must stop this (by making changes to a person's care or treatment). They must then ask for a review of the Authorisation.

A DoLS Authorisation is granted for a set amount of time. This does not mean that if anything changes it cannot be reviewed. A review of the DoLS Authorisation can be asked for at any time.

A DoLS Authorisation allows a person to be deprived of their liberty (freedom). It does not mean that they must be.

The Managing Authority, a Relevant Person's Representative (RPR), or the person themselves can ask for a review.

There are certain forms used to ask for a review. These can be found here: www.gov.uk/government/publications/deprivation-of-liberty-safeguardsforms-and-guidance





The Council (DoLS team – Supervisory Body) complete these reviews.

Reviewing the Deprivation of Liberty Safeguards (DoLS) Authorisation

The DoLS team can decide to complete a review themselves if they think this is needed, without being asked.

There are certain reasons written down in law (statutory) which would mean that a review of the DoLS Authorisation would happen.

THESE ARE:

-  If the person no longer meets one of the six assessments/requirements: age, no refusals, mental capacity, mental health, eligibility, or best interests.
-  If the person is in hospital for their mental health, and the Mental Health Act (1983) needs to be used.
-  A person's situation has changed, and a condition needs to be altered, added or removed.
-  The reasons why a person is being deprived of their liberty change - there are differences between a person's present situation to when the DoLS Authorisation was granted.

When the Council receives a review request, they will check that the reason for the request is for one of these statutory reasons.

The Council will contact the person who made the review request to tell them if they are going to complete the review or not. These review requests will be recorded in the person's records at the Council.

Reviewing the Deprivation of Liberty Safeguards (DoLS) Authorisation

A review will be like the DoLS assessment process. However, it might not be required to reassess everything. The assessments completed would be guided by the reasons why the review was requested.

For example, if a person was able to make their own decisions about where they lived and the care and treatment they received – only the mental capacity assessment would be reviewed.

Once a review has been completed, there will be an outcome (decision). This outcome will be shared with the care home or hospital, the person, RPR, and the Independent Mental Capacity Advocate (IMCA – if one is supporting the RPR/person). This will be done in writing.

Outcomes might include:

- The DoLS Authorisation ending – being 'terminated'.
- Conditions being removed, changed or added.
- New reasons being written down about why someone is being deprived of their liberty.



What happens if the request for a deprivation of liberty authorisation is refused?

Earlier, we talked about the assessments that must be done as part of the Deprivation of Liberty Safeguards (DoLS) process.

Sometimes the person OR the care and treatment within the care home or hospital (Managing Authority) does not pass one or more of the assessments.

If this happens the assessment process stops. A deprivation of liberty cannot be lawfully granted.

The care home or hospital then must review and change the person's care and treatment. This is to make sure that the person will not be deprived of their liberty.

WAYS THAT THE CARE HOME OR HOSPITAL CAN DO THIS MIGHT BE:

- Reducing restrictions.
- Involving the person more in decisions.
- Checking what decisions the person can still make, as some people can make certain decisions (e.g. accepting help with personal care but not taking medication).
- Regularly checking that the care provided is needed to keep the person safe and well.

The council or other services (e.g. health services) may also need to consider different ways of providing care.

What is an objection?

An 'objection' is where the person being deprived of their liberty, is unhappy with one or more of the following:

- Where they live.
- The care or treatment they are receiving.
- The 'restrictions' that are in place (things that stop them from doing or acting in a way that they want).

Not everybody living in a care home or hospital will present with an objection.

It is important to know what an objection might be. If a person is, or begins to object, then certain things must be done.

People can show their objection in different ways.

EXAMPLES MIGHT INCLUDE:

- Saying they want to go home (even if the home they are talking about is from their past or is not available to them anymore).
- Refusing to accept care and support.
- Packing their things away into bags.
- Waiting by a door in the home, ready to leave.
- Walking around with their coat on.
- Trying to climb out of windows.
- Trying to open doors.
- Trying to climb out of secure garden spaces.

CONTINUED >>>

What is an objection?

- Refusing to go back to the care home or hospital when they have been out.
- Being unhappy that they cannot go out every day.
- Being unhappy sharing a bathroom.
- Being unable to participate in an activity they used to love e.g. gardening.
- Being unable to be visited by family or friends as much as they would like.
- Not liking the area where they are living.
- Becoming very angry and upset.
- Becoming low in mood.
- Not spending time in areas of the home with other people.
- Refusing to come out of their room.

A person who has a DoLS Authorisation granted, has a right for their objection to be recognised – regardless of other’s views about what the person is saying or doing.

There might be things that can be done informally to improve the person’s life which would stop their objection e.g. for the person to have their own room, to be able to go out every day, or even to move to another care home or hospital.

Sometimes even if things have been done to improve the person’s life, and there is nothing more that can be done - they can still be unhappy and/or objecting.

What is an objection?

Earlier in this booklet, when discussing the rights that a person has when a DoLS Authorisation is in place, we mentioned the Court of Protection.

If someone is objecting, and all informal action has been taken to reduce this with no success, then an application to the Court of Protection must be made. This ensures that the person's rights under Article 5 of the Human Rights Act are protected.

This application must be made as soon as possible.

The Court of Protection would complete an independent review of the person and their circumstances. They make decisions about what would be in the person's best interest.

The Court's decision would be based on evidence provided by the:

- Council or health service funding the placement (Supervisory Body)
- Care home or hospital (Managing Authority)
- Person themselves and/or their Relevant Person's Representative (RPR)

IF YOU THINK THAT YOUR FAMILY MEMBER OR FRIEND IS OBJECTING TO THEIR PLACEMENT, PLEASE SEE OUR ACCESSING THE COURT OF PROTECTION: STEP-BY STEP GUIDE.

Key words and phrases

A list of common terms and phrases used when talking about/working with the Deprivation of Liberty Safeguards and the Mental Capacity Act (2014).

Advocacy/ advocate	<p>A professional who is independent of all other services.</p> <p>They do not work for the council, NHS, or Managing Authority.</p> <p>They help put forward a person's views, thoughts and feelings.</p> <p>They help make sure that the person's rights are protected and upheld.</p>
Authorisation period	<p>The length of time that the person has a DoLS Standard Authorisation in place.</p> <p>Within this time the person is legally deprived of their liberty.</p>
Best Interests	<p>Where something is decided for the person who lacks capacity to decide.</p> <p>OR</p> <p>Where action is taken with/for/to a person who lacks the capacity to take the action for themselves.</p> <p>Usually, this decision is made by people and professionals involved in the person's life.</p> <p>Certain things must be thought about when thinking about what might be in a person's best interest.</p> <p>Things considered include: the positives of the decision, the negatives of the decision, other options, the person's wishes, other people's thoughts, what the person needs.</p>

Key words and phrases

<p>BIA – Best Interest Assessor</p>	<p>A person (usually a social worker or other qualified and experienced person) who completes the assessment that says whether a person’s care/treatment/placement is:</p> <ul style="list-style-type: none"> • in the person’s best interest to be deprived of their liberty. • needed to keep the person safe (necessary). • not an overly restrictive (proportionate) way of keeping the person safe.
<p>Capacity</p>	<p>A person’s ability to make decisions about their life. If someone has capacity to make a decision, they can make this decision themselves. Even if others think that this is not the right decision.</p>
<p>Conditions</p>	<p>Directions given by the Best Interest Assessor on a Standard Authorisation that has been granted.</p> <p>The Managing Authority must consider or act on these conditions.</p>
<p>Consent</p>	<p>The agreement from person on what is happening by choice.</p> <p>Having the freedom and ability to make or change that choice.</p>
<p>Court of Protection (CoP)</p>	<p>A special court that deals with matters for people who have been deemed to lack capacity (in England and Wales).</p> <p>They can make decisions about what is in a person’s best interest.</p>
<p>Deprivation of Liberty</p>	<p>Where a person’s freedom to make decisions about their life e.g. where they live, the care they receive, whether they can go out alone – has been taken away to keep them safe.</p>

Key words and phrases

<p>Deputy / Court Appointed Deputy</p>	<p>A person who the Court of Protection has given the legal right to make decisions about:</p> <ul style="list-style-type: none"> -property and financial affairs <p>AND/ OR</p> <ul style="list-style-type: none"> - health and welfare. <p>They make decisions where someone has been assessed as lacking capacity to make these decisions themselves.</p>
<p>DoLS – Deprivation of Liberty Safeguards</p>	<p>The DoLS protect people who lack capacity about their care or treatment and who need to live in either a care home or hospital (in England or Wales). They make sure that people are only deprived of their liberty if they need to be and give people legal rights.</p>
<p>DoLS team</p>	<p>The team within the council who are responsible for completing and reviewing DoLS assessments.</p>
<p>IMCA – Independent Mental Capacity Advocate</p>	<p>An advocate with a special role within the Mental Capacity Act (2014).</p> <p>An IMCA must be asked to support and represent a person who has been assessed as being unable to make their own decisions in some circumstances.</p>
<p>Lacks capacity</p>	<p>Where a person has been assessed as being unable to make certain decisions.</p>

Key words and phrases

<p>LPA – Lasting Power of Attorney</p>	<p>When a person has capacity, they can appoint people to make decisions on their behalf should they ever lose capacity.</p> <p>They are legally appointed to make these decisions.</p> <p>They must be registered with the Office of the Public Guardian.</p> <p>There are two types of LPA:</p> <ul style="list-style-type: none"> -property and financial affairs <p>AND/ OR</p> <ul style="list-style-type: none"> - health and welfare. <p>Health and Welfare LPAs can only be used once the person who appointed them has lost capacity.</p> <p>Property and financial affairs LPAs can use their powers before the person loses capacity – if the person who appointed them has given them permission.</p>
<p>Managing Authority</p>	<p>The care home or hospital where someone lives (In England or Wales).</p>
<p>Mental Capacity Assessment</p>	<p>An assessment about whether a person can or cannot make a decision.</p> <p>These assessments should be done for each decision that needs to be made.</p>
<p>Relevant Person</p>	<p>The person who lacks capacity and is deprived of their liberty with a DoLS Standard Authorisation in place.</p>

Key words and phrases

<p>Restraint</p>	<p>The use or threat of force to help do something which the person might not want to do.</p> <p>OR</p> <p>The person's freedom of movement is restricted whether they agree or not.</p> <p>Can only be used where is it necessary (needed) and proportionate (relative) to the risks of harm that the person may pose/experience without it.</p>
<p>Restriction</p>	<p>A practice or action that affects the person's freedom to choose what to do for themselves.</p>
<p>Review</p>	<p>Where a person's circumstances are looked at again.</p>
<p>RPR – Relevant Person's Representative</p>	<p>A person who has been legally appointed to support and represent someone who has a DoLS Authorisation in place.</p>
<p>Standard Authorisation</p>	<p>The legal document to deprive someone of their liberty.</p>
<p>Supervisory Body/Local Authority</p>	<p>The council who are responsible for the person's deprivation of liberty.</p> <p>The council where the person lives.</p> <p>OR</p> <p>The council where the person lived before they were deprived of their liberty (if they have moved to another area).</p>

Key words and phrases

<p>Urgent Authorisation</p>	<p>Where the Managing Authority has applied for a deprivation of liberty to be authorised urgently.</p> <p>It lasts for 7 days - within which time the assessments for a DoLS Authorisation should be completed.</p> <p>It can be extended for another 7 days.</p>
<p>Unauthorised deprivation of liberty</p>	<p>Where a person has lost their freedom without there being legal permission for this to happen.</p>



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Notes

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