

# Deprivation of Liberty Safeguards (DoLS)

Sometimes, someone will need to go into a care home or hospital in order to get treatment, but will lack the capacity to make their own decisions about whether they want this. In order to prevent people being detained against their will inappropriately, the 'Deprivation of Liberty Safeguards' are part of the Mental Capacity Act 2005, and came into force in 2009. In this factsheet, the safeguards will be referred to as DoLS.

## KEY POINTS

- DoLS only apply when someone is in, or will be in, a hospital or a care home
- DoLS do not apply when someone is detained under the Mental Health Act
- If someone has the capacity to make their own decisions, they cannot be detained under DoLS
- If someone is deprived of their liberty under DoLS, they will not necessarily be treated against their will and DoLS do not give doctors or other professionals the power to treat someone against their will
- Someone cannot be detained in hospital against their will unless authorisation has been received under DoLS or they have been 'sectioned' under the Mental Health Act

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## 1. When should DoLS be used?

The Deprivation of Liberty Safeguards are necessary if health or social services think that someone you care for needs to be deprived of their liberty for their own wellbeing, and that person lacks the capacity to make the decision about whether they would like to accept services. If they are being held in a hospital or care home (which includes private care) and they feel as though they are being deprived of their liberty, DoLS should have been followed.

Someone should only ever be deprived of their liberty if:

- They lack capacity to make decisions
- It is in their best interests to be deprived of their liberty
- Doing this is 'proportionate' (meaning not 'over the top') given the risk
- There is no reasonable alternative<sup>1</sup>

*How is it decided whether someone lacks capacity and what is in their best interests?*

Someone has capacity to make their own decisions if they can understand, retain, and use/weigh information regarding a decision, and then communicate their decision.<sup>2</sup> If a person cannot do one of these things, they may lack the capacity to make a decision. The person who decides whether a person has capacity will be whoever is directly involved in a person's care or treatment at the time when the decision needs to be made.

If it is decided that a person does lack capacity, then a decision can be made on their behalf in their best interests. If they have made their wishes clear previously, these should be fully taken into account. Also, if it is known what beliefs and values they have that would shape their decision if they did have capacity, these should be acted on. Otherwise, the views of their carers and all other circumstances should be taken into account. The decision cannot be based on their age, appearance, condition or behaviour.<sup>3</sup>

These issues are looked at in more detail in our factsheet on the '**Mental Capacity Act**', which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets) or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

*What is deprivation of liberty?*

There is no straight-forward definition of 'deprivation of liberty'. But factors that may show that someone has had their liberty deprived from them include:

- A person's movements are controlled by staff for a significant period of time
- A decision has been made that a person will not be released into the care of another person
- A person is under constant supervision and control
- A person is restrained in order to be taken to hospital or a care home
- A person is not allowed contact with family or friends<sup>4</sup>

The law distinguishes between a 'restriction' on liberty and a 'deprivation' of liberty. If a person's liberty is being restricted rather than removed, DoLS authorisation will not be required. The difference between restriction and deprivation is a matter of degree, and each case will depend on all of the circumstances.

Examples of restricted movement which *may* not amount to a deprivation of liberty include preventing someone from leaving a hospital because there is a high risk that they would try to cross a dangerous road, or where someone is temporarily locked into a room to prevent immediate harm.<sup>5</sup> It could also include temporarily restraining a person.

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## 2. Can someone be treated against their will under DoLS?

If deprivation of liberty is authorised, this does not automatically authorise treatment without someone's consent. That person must still be asked for consent before being treated. However, they may be compelled to accept treatment that is in their best interests if they are assessed as lacking the capacity to make the decision about treatment.

The DoLS Code of Practice makes this clear:

*A deprivation of liberty ... relates solely to the issue of deprivation of liberty. It does not give authority to treat people, nor to do anything else that would normally require their consent...*

*This means that any treatment can only be given to a person who has not given their consent if:*

- *it is established that the person lacks capacity to make the decision concerned*
- *it is agreed that the treatment will be in their best interests, having taken account of the views of the person and of people close to them, and, where relevant in the case of serious medical treatment, of any [independent mental capacity advocate] involved*
- *the treatment does not conflict with a valid and applicable advance decision to refuse treatment, and*
- *the treatment does not conflict with a decision made by a donee of Lasting Power of Attorney or a deputy acting within the scope of their powers.*<sup>6</sup>

### 3. How are Deprivation of Liberty Safeguards authorised?

If health or social care staff think that it is necessary to deprive someone of their liberty, they must inform the '*managing body*', which will be hospital management or the manager of a care home. The managing body then makes an application for authorisation of deprivation of liberty.

An application must be made using a set procedure and a standard form is used. The application is made to a '*supervisory body*', which in England will be either a Primary Care Trust (PCT) or Local Authority (LA). The supervisory body then has to follow a set procedure before the application can be authorised. Unless there is an emergency situation, a 'standard authorisation' will be made.

When considering whether to make an authorisation, the supervisory body must arrange the following assessments:

<b>Age Assessment</b>	to confirm that a person is over 18
<b>'No Refusals' Assessment</b>	to see whether someone has made an 'advance directive' <sup>7</sup> or whether there is someone who is allowed to make decisions for them (like a donee under a lasting power of attorney or a deputy)
<b>Mental Capacity Assessment</b>	to see whether someone has the capacity to decide for themselves
<b>Mental Health Assessment</b>	to see whether someone has a mental disorder
<b>Eligibility Assessment</b>	to check whether someone would meet the requirement of detention under the Mental Health Act 1983
<b>Best Interests Assessment</b>	to make sure that the deprivation of liberty is necessary, proportionate and that it is in the best interests of the person

There are six assessments, and they must be carried out by at least two different people. Some of the assessments, such as the 'best interests assessment' must be carried out by fully trained members of staff. The assessments should not be carried out by a relative of the person or anyone who has a financial interest in the case.

The assessments would normally be carried out within twenty one days of an application. However, in some circumstances, an 'urgent authorisation' can be made in order to deprive someone of their liberty straight away, rather than waiting for standard authorisation. An urgent authorisation can last for up to seven days.<sup>8</sup>

#### 4. How long can someone be detained for?

The authorisation can last for up to twelve months, but should be for the shortest time necessary to ensure someone's safety, and only for as long as the person is likely to meet the qualifying requirements. So if they are likely to regain mental capacity later on, the authorisation should only be made up until this time.

Once authorisation has been made, the managing authority is under a duty to monitor the situation to ensure that a person is not being detained unnecessarily. If the managing authority thinks that the deprivation of liberty is no longer necessary, it should ask the supervising authority to carry out a review. A review must be carried out if someone has been detained under the Mental Health Act whilst the authorisation was in place.<sup>9</sup> Once the authorisation has expired, it is against the law to continue to deprive a person of their liberty. However, if necessary, another authorisation can be applied for in advance.

#### 5. What happens if someone is deprived of their liberty without DoLS authorisation?

Anyone who thinks that a person is being deprived of their liberty without authorisation should bring this to the attention of the 'managing authority' (hospital or care home management) as soon as possible. There is a standard letter available to do this, which is at the bottom of this factsheet. This should trigger an urgent assessment to see if that person is indeed being deprived of their liberty unlawfully.

Article 5 of the European Convention on Human Rights protects the right to liberty, and can be enforced in the UK using the Human Rights Act 1998. It is illegal to detain someone in hospital without proper safeguards being followed.<sup>10</sup>

Someone may wish to seek legal advice if they would like to take court action against the hospital or care home that they are in. They could try contacting Community Legal Advice on 0845 345 4 345 to be put in touch with a local specialist.

If someone does not feel that they want to take legal action, they could make a complaint through the organisation's complaint procedure. Further information on how to make a complaint about NHS services can be found in our '**Complaining about the NHS or Social Services**' factsheet, which is available to download for free from [www.rethink.org/factsheets](http://www.rethink.org/factsheets) or by contacting the Rethink Advice & Information Service directly. Our contact details are at the end of this factsheet.

## 6. I think that the authorisation should not have been granted.

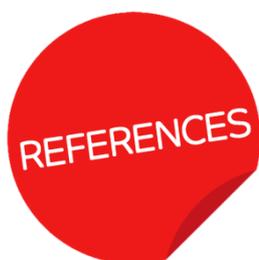
The lawfulness of the decision to grant authorisation can be challenged in the Court of Protection.<sup>11</sup> An appeal against a standard authorisation can be made on the following grounds:

- *whether the relevant person meets one or more of the qualifying requirements for deprivation of liberty*
- *the period for which the standard authorisation is to be in force*
- *the purpose for which the standard authorisation is given, or*
- *the conditions subject to which the standard authorisation is given.*<sup>12</sup>

An urgent authorisation can also be challenged on:

- *whether the urgent authorisation should have been given*
- *the period for which the urgent authorisation is to be in force, or*
- *the purpose for which the urgent authorisation has been given.*<sup>13</sup>

An appeal can be made by the person subject to the authorisation, their 'relevant person's representative', who is a person appointed to represent the person who has been deprived of their liberty, or other representatives such as a deputy or a donee under a lasting power of attorney. Any other person would need to apply to the Court of Protection for permission to appeal on that person's behalf.<sup>14</sup>



<sup>1</sup> Mental Capacity Act – Deprivation of Liberty Safeguards Code of Practice, Ministry of Justice, TSO (2008) para 1.13

<sup>2</sup> Mental Capacity Act Code of Practice, Department for Constitutional Affairs, TSO (2007) para 4.14

<sup>3</sup> As note 2, para 5.13

<sup>4</sup> As note 1, para 2.5

<sup>5</sup> As note 1, para 2.10

<sup>6</sup> As note 1, para 5.10 – 5.11

<sup>7</sup> See our factsheet on Advance Directives at

[http://www.mentalhealthshop.org/products/rethink\\_publications/advance\\_statements\\_f.html](http://www.mentalhealthshop.org/products/rethink_publications/advance_statements_f.html)

<sup>8</sup> For the full procedure, see note 1, chapters 3-4

<sup>9</sup> As note 1, page 86

<sup>10</sup> *HL v UK (Bournewood)* 45508/99 (2004) ECHR 471

<sup>11</sup> For further information on the Court, see

[http://www.direct.gov.uk/en/DI1/Directories/DG\\_176136](http://www.direct.gov.uk/en/DI1/Directories/DG_176136)

<sup>12</sup> As note 1, para 10.2

<sup>13</sup> As note 1, para 10.3

<sup>14</sup> As note 1, pages 99-100



**Letter to raise concern that someone may be subject to  
an unauthorised deprivation of liberty**

Date:

Your Name  
Your address  
Address  
Address  
Post Code

Name and address  
of managing authority  
Address 2  
Address 3  
Post Code

Your contact telephone No

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].

If you do not request a standard authorisation within 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]

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## Letter to ask for a review of an authorisation

Your Name  
Your address  
Address  
Address  
Post Code

Date:

Name and address  
of managing authority  
Address 2  
Address 3  
Post Code

Dear Sir/Madam

### **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]

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## Rethink Advice & Information Service

**Phone 0300 5000 927**

**Monday to Friday, 10am to 1pm**

**Email [advice@rethink.org](mailto:advice@rethink.org)**

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The Rethink Advice & Information Service welcomes your feedback on whether this information was helpful to you. You can provide feedback in the following ways:

**By email:** [feedback@rethink.org](mailto:feedback@rethink.org)

**By post:**

Rethink Advice & Information Service  
Rethink Mental Illness  
89 Albert Embankment  
London SE1 7TP

**By telephone:** 0300 5000 927



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