

# Deprivation of Liberty Safeguards (DoLS)

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The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to make sure that people in care homes, hospitals and supported living are looked after in a way that does not inappropriately restrict their freedom. The safeguards should ensure that a care home, hospital or supported living arrangement only deprives someone of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them.

This factsheet looks at who is affected by DoLS, explains what the safeguards are, and outlines the process for getting authorisation for a deprivation of liberty and how to get it reviewed.

DoLS apply in England and Wales, but Northern Ireland (which does not have a mental capacity act) has no such system in place.

## Who is affected?

The safeguards apply to vulnerable people aged 18 or over who have a mental health condition (this includes dementia), who are in hospitals, care homes and supported living, and who do not have the mental capacity (ability) to make decisions about their care or treatment.

The Mental Capacity Act says that someone who lacks mental capacity cannot do one or more of the following four things:

- understand information given to them
- retain that information long enough to be able to make a decision
- weigh up the information available and understand the consequences of the decision
- communicate their decision – this could be by any possible means, such as talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

A deprivation of liberty authorisation cannot be used if a person has the mental capacity to make decisions, so the person's capacity will be assessed as part of the process. For more information about mental capacity, see factsheet 460, Mental Capacity Act 2005.

The safeguards do not apply when someone is detained ('sectioned') under the Mental Health Act 1983. (See factsheet 459, The Mental Health Act 1983 and guardianship, for information about this act.)

## What are the safeguards?

Those planning care should always consider all options, which may or may not involve restricting the person's freedom, and should provide care in the least restrictive way possible. However, if all alternatives have been explored and the hospital, care home or local authority administering the supported living arrangements believes it is necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do this by following strict processes. These processes are the Deprivation of Liberty Safeguards, and they have been designed to ensure that a person's loss of liberty is lawful and that they are protected.

The key elements of the safeguards are:

- to provide the person with a representative
- to give the person (or their representative) the right to challenge a deprivation of liberty through the Court of Protection (see 'Useful organisations')

- to provide a mechanism for deprivation of liberty to be reviewed and monitored regularly.

## What is deprivation of liberty?

A recent court decision has provided a definition of what is meant by the term 'deprivation of liberty'. A deprivation of liberty occurs when 'the person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements'.

It can be helpful to think of restrictions of a person's activity as being on a scale, from minimum restrictions at one end to the more extreme restrictions – deprivations of liberty – at the other end. One large restriction could in itself be a deprivation of liberty (such as sedating a person for non-medical reasons) or many small restrictions could combine to create a deprivation of liberty. It is the amount of control that the care home or hospital has over the person that determines whether the person is being deprived of their liberty.

There have been several test cases in the European Court of Human Rights and in the UK that have clarified which situations may constitute a deprivation of liberty:

- a patient being restrained in order to admit them to hospital
- medication being given against a person's will
- staff having complete control over a patient's care or movements for a long period
- staff making all decisions about a patient, including choices about assessments, treatment and visitors
- staff deciding whether a patient can be released into the care of others or to live elsewhere
- staff refusing to discharge a person into the care of others
- staff restricting a person's access to their friends or family.

## Authorisation for deprivation of liberty

Staff in care homes, hospitals and supported living should always try to care for a person in a way that does not deprive them of their liberty. If this is not possible, there is a requirement under DoLS that this deprivation of liberty be authorised before it can go ahead. The process in supported living differs from that in care homes and hospitals.

### Supported living arrangements

If a person is receiving care in a supported living environment, arranged by the local authority, the Court of Protection must authorise the deprivation of liberty. This is the only route available. Anyone who feels that a deprivation of liberty in this setting may be required can ask the local authority to seek authorisation. The Court of Protection can also provide further guidance and information (see 'Other useful organisations' below).

### Care homes and hospitals

If a care home or hospital needs to provide care in a way that will deprive someone of their liberty, the registered manager of the care home, or the NHS trust or authority that manages the hospital (the managing authority) is responsible for applying for an authorisation for the deprivation of liberty. The managing authority should do this either when someone is about to be admitted, or when they are already in hospital or the care home. It is unlawful to carry out an action that will deprive someone of their liberty, without an authorisation for this action being in place.

The application for a standard authorisation will be made to the supervisory body. In England this is the local authority. In Wales this depends on where the person is receiving care. For care homes, the supervisory body is the local authority, and for hospitals it is the local health board.

The supervisory body will arrange an assessment to decide whether the qualifying criteria for DoLS are met, and will either grant or refuse an authorisation.

In an emergency, the management of the hospital or care home may grant itself an urgent authorisation, but must apply for a standard authorisation at the same time. This urgent authorisation is usually valid for seven days, although the supervisory body may extend this for up to another seven days in some circumstances.

Before an urgent authorisation is given, steps should be taken to consult with carers and family members.

## **If you feel someone is being deprived of their liberty**

If you feel that someone is being deprived of their liberty, speak to the person in charge. In hospital this may be a doctor, nurse or administrator; in residential care it will be the care home manager; for supported living this should be the social worker. Try to agree on changes that can be made so that the person's freedom is less restricted. If the manager of the care home or the person in charge in the hospital believes that what they are doing is necessary to keep the person safe, they must apply for a deprivation of liberty authorisation.

You may be in a situation where there is no deprivation of liberty authorisation in place for care in a care home or hospital, and the manager does not think that such an authorisation is necessary. In this case, you can approach the local authority (for any care in England and care homes in Wales) or the local health board (for a hospital in Wales) and ask them to investigate whether an unlawful deprivation of liberty has occurred. You should be able to find the health board's contact details at your local doctor's surgery or hospital, and there are template letters linked to from the end of this factsheet that you can use.

For supported living, see ‘Supported living arrangements’ above. The rest of the factsheet outlines the standard process for those people being deprived of their liberty in care homes and hospitals.

## How does the authorisation process work?

Once it receives an application for a standard authorisation, the supervisory body must arrange for an assessment to take place within 21 days, to establish whether the qualifying requirements for an authorisation are met for that particular person. These include:

- **Age** – This confirms that the person is aged 18 years or over.
- **Mental health** – This decides whether the person is suffering from a mental disorder. Mental disorder is the term used in law to describe a set of mental health conditions, including dementia.
- **Mental capacity** – This determines whether the person lacks capacity to make their own decisions about treatment or care in the place that is applying for the authorisation.
- **Best interests** – This establishes whether there is a deprivation of liberty and whether this is:
  - in fact in the person’s best interests
  - needed to keep the person safe from harm
  - a reasonable response to the likelihood of the person suffering harm.
- **Eligibility** – This determines whether the person would meet the requirements for detention under the Mental Health Act 1983; this would make them ineligible for a standard authorisation.
- **No refusals** – This determines whether the person has made advance decisions about their treatment, and whether authorisation would conflict with any decisions made by, for example, a court-appointed deputy or someone with Lasting Power of Attorney.
- An authorisation for a deprivation of liberty cannot be granted unless all of these requirements are met.

## Who can make the assessment?

The assessment must be made by at least two assessors – a best interests assessor and a mental health assessor. The supervisory body appoints the assessors, who must have appropriate training and experience.

The best interests assessment must be carried out by someone who is not involved in that person's care or in making any other decisions about it. The best interests assessor will be a qualified social worker, nurse, occupational therapist or chartered psychologist with the appropriate training and experience.

The mental health assessor must be a doctor (likely to be a psychiatrist or geriatrician) who is able to assess whether a person is suffering from a mental disorder and discuss with the best interests assessor how depriving the person of their liberty may affect their mental health.

The assessors will report back to the supervisory body. If the assessment has determined that all of the conditions are met and that a deprivation of liberty would be in the person's best interests, the supervisory body will grant an authorisation. They can ask the managing body to make some changes so that the person's care is less restrictive.

## Who can speak for a person being deprived of their liberty?

Everyone who is subject to an authorised deprivation of liberty must have a 'relevant person's representative'. The representative is appointed by the supervisory body authorising the deprivation. Often it will be a family member or friend, or other carer, and they would normally have been involved in the assessment.

The representative can gain access to documents about the decision and ask for a review of the decision, and should be informed if anything changes.

If the person has no immediate family or non-professional carer to support them through this process, the managing authority will inform the supervisory body. The supervisory body will then appoint a representative. This may be an independent mental capacity advocate (IMCA) whose role is to help the person with dementia.

The supervisory body and the managing authority at the care home or hospital should work together to ensure that the person and their representative understand the deprivation of liberty process, that they know their rights, and that they receive the right support when the authorisation process begins and once a decision has been made.

The representative must stay in touch with the person deprived of their liberty in order to fulfil their role and to protect the rights of that person. The managing authority has a duty to make sure that this happens.

## How long does the authorisation last?

An authorisation should last for the shortest time possible up to a maximum of 12 months. The assessment on which the authorisation is based can remain valid for 12 months.

The managing authority and the supervisory body must:

- make regular checks to see if the authorisation is still needed
- remove the authorisation when no longer necessary
- provide the person's representative with information about their care and treatment.

## What is a review?

A review of a deprivation of liberty authorisation is a formal process that looks at whether the authorisation is still needed. This can take place at any time after the authorisation has been granted. It is up



to the care home or hospital to make regular checks to see if the requirements for the authorisation are still needed, and they must inform the supervisory body if circumstances change.

This means that a review should take place if there is a change in circumstances, and also if the qualifying requirements are no longer met. Therefore, if the deprivation is no longer in someone's best interests, or if it is not managed in the least restrictive way, then this should be looked at again in a review.

The person under the authorisation, or their representative or IMCA, can request a review if the situation has changed.

The supervisory body is responsible for carrying out the review, and for keeping everyone involved aware of the changes as they take place.

## Examples

Listed below are some examples of circumstances and questions about the application of the Deprivation of Liberty Safeguards which you may find helpful.

**My wife has dementia and social services want to put her into a care home. She does not want to go and I want her to stay at home with me. Can they make her go into a home using the Deprivation of Liberty Safeguards?**

Deciding that someone needs to go into a care home is a big step. Social services and other health professionals (like the GP and mental health nurses) should be working with you to discuss all the possible care arrangements that would be best for your wife. This should include looking to see if your wife has the ability (mental capacity) to decide for herself. If she does not have capacity, the professionals need to consider if there is a way that your wife can stay at home.

However, in some situations it is not always possible for everyone involved to agree on the best course of action. Social services can

decide if it's in someone's best interests to go into a care home if they don't have the mental capacity/ability to decide for themselves, but they cannot force the person to move. If they did want to separate you from your wife against your wishes, a deprivation of liberty authorisation would not be enough and they would have to ask the Court of Protection for permission and a court order.

**The care home has stopped my husband from going to the pub on his own because they say he drinks too much and can be distressing and dangerous to other residents when he has been drinking. Is this a deprivation of his liberty?**

It could be. The care home should take steps to identify when a deprivation of liberty authorisation might be required and to consider any steps they can take to avoid it happening.

If the manager thinks that a person might need to be deprived of their liberty in their care home and this cannot be avoided, they have a responsibility to apply for DoLS authorisation. An assessment would have to be done by a best interests assessor to see if he has the mental capacity to make the decision to go to the pub and if this restriction amounts to a deprivation of his liberty.

If he doesn't have the mental capacity and it amounts to a deprivation of his liberty, then the best interests assessor would decide if it is proportionate to stop him from going to the pub for his own safety and for the safety of others. If it isn't, then the authorisation would not be granted to prevent him from going to the pub. The home would have to reassess the care plan to find a way of letting him go that is acceptable, for example by allowing him to go at a certain time with someone else who can encourage him to limit his drinking to a more reasonable level.

## Useful organisations

### **Court of Protection**

PO Box 70185  
First Avenue House  
42–49 High Holborn  
London WC1A 9JA

T 0300 456 4600 (9am–5pm weekdays)  
020 7947 6000 (out of hours)  
W [www.gov.uk/court-of-protection](http://www.gov.uk/court-of-protection)

The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare

### **Office of the Public Guardian**

PO Box 16185  
Birmingham B2 2WH

T 0300 456 0300 (customer services)  
E [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)  
W [www.gov.uk/office-of-public-guardian](http://www.gov.uk/office-of-public-guardian)

Document Exchange (DX)  
Office of the Public Guardian  
DX 744240  
Birmingham 79

The OPG supports and promotes decision-making for those who lack capacity or would like to plan for their future, within the framework of the Mental Capacity Act 2005. The Office of the Public Guardian provides a range of useful information online on the gov.uk website, including the Mental Capacity Act Code of Practice.

## **Department of Health**

Richmond House  
79 Whitehall  
London SW1A 2NS

T 020 7210 4850 (8.30am–5pm)  
020 7210 5025 (textphone)  
E [dhmail@dh.gsi.gov.uk](mailto:dhmail@dh.gsi.gov.uk)  
W [www.dh.gov.uk](http://www.dh.gov.uk)

The government department responsible for health, social care, and the National Health Service (NHS). Information about all aspects of the Mental Capacity Act and Deprivation of Liberty Safeguards can be found on the website.

## Template letters

Following are three example letters which you might find helpful when you are considering communicating with a managing authority or supervisory body regarding Deprivation of Liberty Safeguards.

**Template letter 1** – To the care home or hospital, requesting that they issue an urgent deprivation of liberty authorisation and apply for a standard deprivation of liberty authorisation. Download from [alzheimers.org.uk/dolsrequest](https://alzheimers.org.uk/dolsrequest)

**Template letter 2** – To the supervisory body (local authority), requesting they investigate a possible unauthorised deprivation of liberty. Download from [alzheimers.org.uk/dolinvest](https://alzheimers.org.uk/dolinvest)

**Template letter 3** – Relevant person's representative requesting a review of a standard authorisation for Deprivation of Liberty Safeguards from the supervisory body. Download from [alzheimers.org.uk/dolsreview](https://alzheimers.org.uk/dolsreview)

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This factsheet has also been reviewed by people affected by dementia. A list of sources is available on request.



## Alzheimer's Society National Dementia Helpline

England, Wales and Northern Ireland:  
**0300 222 11 22**

9am–5pm Monday–Friday  
10am–4pm Saturday–Sunday

[alzheimers.org.uk](http://alzheimers.org.uk)

Alzheimer's Society is the UK's leading support and research charity for people with dementia, their families and carers.



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