

Deprivation of Liberty Safeguards

Care Home Guidance - January 2013



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What are the Deprivation of Liberty Safeguards?

The Deprivation of Liberty Safeguards (DoLS) are an amendment to the Mental Capacity Act (2005).

DoL Safeguards are designed to prevent arbitrary decisions being made that deprive vulnerable people of their liberty.

The Safeguards have been developed to protect service users, but they also protect staff from legal liability in respect of depriving an individual of their liberty when an authorisation is given.

This legislation was introduced following a ruling from the European Court of Human Rights (ECHR) regarding the rights of people who lack capacity to make their own decisions when cared for in Residential/ Nursing Homes and Hospitals. The Deprivation of Liberty Safeguards (2007) have become a statutory obligation since April 2009.

When a person is deprived of their liberty, they gain a number of rights. These include the right to an identified representative, IMCA, a right of appeal and the right that their authorised deprivation must be reviewed and monitored.

What factors may constitute a DoL? DoLs Code of Practice: Chapter 2

Every case will need to be assessed on an Individual basis. There are no strict definitions.

As a result the following factors could be an indication that DoL is occurring.

A culmination of these factors could be a DoL (but individually probably do not constitute a DoL)

- Locked unit
- Keypad/double door handles
- Bringing back the individual who has wandered
- Benign force being used to take a confused person to a care home/unit
- Placing reasonable limitations on visiting of an individual by relatives/friends
- Refusing to let an individual leave without an escort whose job is to support them

One or more would be a DoL

Restraint (including sedation) being used to take a resisting person to a care home

Force being used to prevent a person leaving a care home where they persistently try to leave

Severely restricting access to the individual by relatives and carers

Decision to admit being **opposed** by relatives/carers who live with the individual

Denying a request by relatives to have the person discharged to their care

Staff exercising complete control over care and movement for a significant period (incl. assessments, treatment, contacts and residence)

Confinement in a limited space for a substantial period of time

How can I reduce the risk of a DoL occurring?

- Encourage the Local Authority's involvement to review Care Plans when care management issues relating to restrictions occur.
- Ensure the individual can retain contact with family, friends and carers.
- Ensure family/friends/advocate are involved in care planning.
- Consider meeting the needs of the person in the least restrictive way.
- Notify commissioners of care of any potential difficulties at the earliest opportunity.
- Ensure that a mental capacity assessment has been completed.
- Ensure that the care plans/risk assessments and management plans are regularly reviewed.
- Ensure all decisions are taken and reviewed in a structured way and that all decisions are recorded.

How do I know if an application is needed?

The following questions must all be answered **YES** to proceed to a Deprivation of Liberty Application

1. Do you reasonably believe the person lacks the capacity to consent to being in the care home or hospital in order to receive the care or treatment that is necessary to prevent harm to them?
2. Is the person who lacks capacity at risk of a deprivation of their liberty now or within the next 28 days?
3. Does a deprivation of the individual's liberty appear to be in their best interests?
4. Is the person 18 years of age or older (or going to turn 18 in the next 28 days)?

How do I know if an application is needed?

The following questions must all be answered **NO** to proceed to a Deprivation of Liberty Application:

1. Is the person subject to any powers of the Mental Health Act (1983) in a way that would mean they are ineligible for a Deprivation of Liberty Authorisation under the Mental Capacity Act (2005)? Please seek advice from the DoLs team.
2. Is the proposed deprivation of liberty in order to provide care and treatment in a case in which the person has made a valid and applicable advance decision to refuse that treatment?
3. Do you reasonably believe the person may meet the criteria to be detained under Section 2 or 3 of the Mental Health Act (1983)? (in which case the MHA must be used).
4. Have they got a legal representative with Lasting Power Attorney or Deputyship for Personal Welfare who has objected or may object.

Some final questions to ask yourself before you make your application

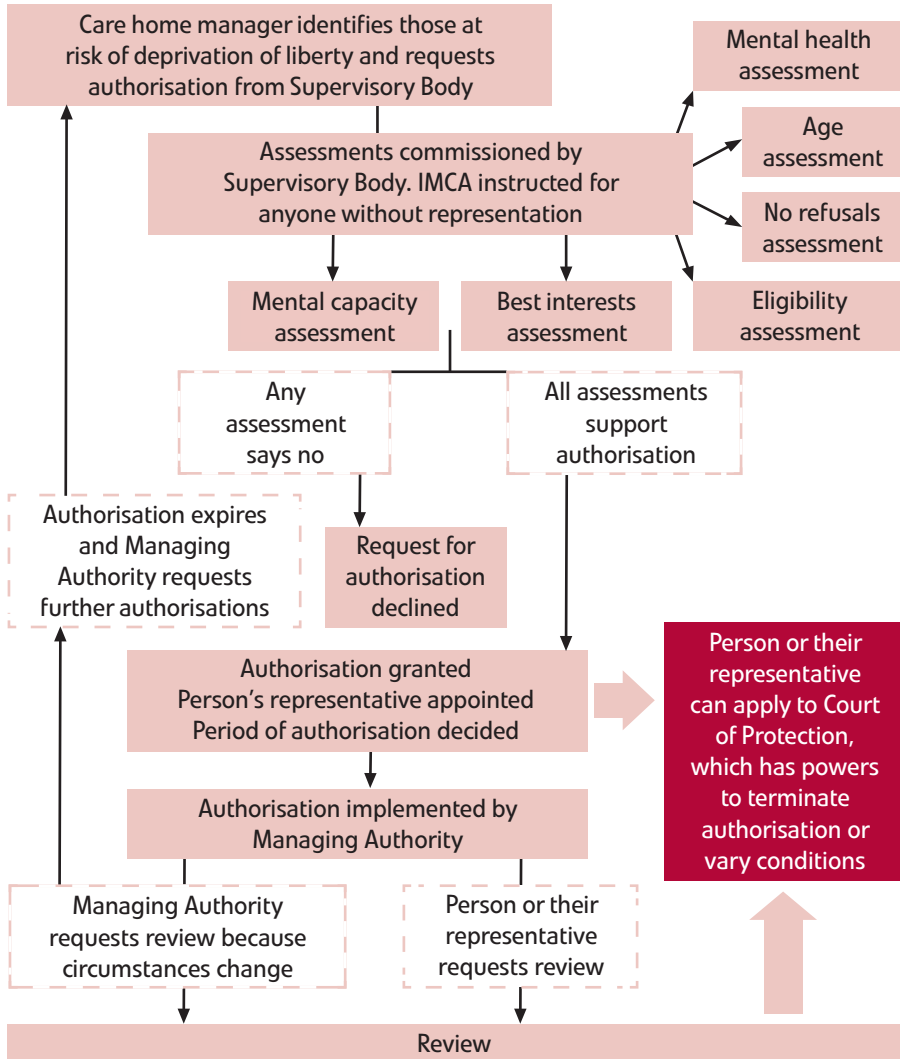
1. Have all the least restrictive measures been made to prevent a Deprivation of Liberty application being made?
 2. Is the need for the person to be deprived of their liberty so urgent that it has to start immediately?
- IF **YES** - The Managing Authority should grant themselves an Urgent Authorisation (Form 1 - which lasts for seven days) and apply to the Supervisory Body for a Standard Authorisation simultaneously (Form 4 - which lasts for 21 days).
- IF **NO** - The Managing Authority needs to apply to the Supervisory Body for a Standard Authorisation (Form 4).

What happens next?

- The Managing Authority (care home) must apply for the authorisation and implement the outcome of it.
- DoLs Code of Practice identifies the information that must be provided in writing to the Supervisory Body (Local Authority) to request a DoLs Authorisation.
- Form 1 (urgent), if appropriate and Form 4 (standard) must be completed in full. The assessment process will not begin until the Supervisory Body has accepted forms from the Managing Authority.
- Authorisation should be obtained from the Supervisory Body in advance of the deprivation of liberty, except in circumstances considered to be so urgent that the deprivation of liberty needs to be enforced immediately.
- Forms 1 and/or Form 4 can either be faxed to 01753 690420 or preferably, emailed to dols@slough.gov.uk
- On receipt of your documentation you will be contacted by a Best Interest Assessor.
- The Best Interests Assessor will be responsible to co-ordinate the 6 required assessments:
 - Age Assessment
 - No Refusals Assessment
 - Mental Capacity Assessment
 - Best Interests Assessment
 - Mental Health Assessment
 - Eligibility Assessment

- The Best Interests Assessor will need to access all the necessary care documentation or records pertaining to the request.
- Please remember that legal deadlines are crucial and should you have concern please contact the DoLs administrator on 01753 690408.
- You will be notified of the outcome by the Best Interests Assessor visiting, followed by a hard copy of all assessments completed in the post.
- Please retain all the DoL information in the person's file.
- Please ensure that DoL conditions are adhered to and noted on the current care plan.
- Any change of circumstances or changes to the conditions to the standard authorisation in place, please contact the DoLs team immediately for a review.
- If Authorisation is still required to be in force after the expiry date, please request a further standard Authorisation in advance.

Overview of the Deprivation of Liberty Safeguards process



Glossary of terms

Managing Authority

Name to describe Care Homes within the meaning of Deprivation of Liberty Safeguards Code of Practice.

Supervisory Body

Can be a Local Authority or PCT who is the responsible organisation ratifying the DoL Authorisations.

Best Interest Assessor

Specialist qualified Assessor under DoL responsible to carry out most of the Assessments of the exception of the Mental Health Assessment.

Section 12 Doctor

Approved medical practitioner for both Mental Health Act and Deprivation of Liberty Safeguards

IMCA

Independent Mental Capacity Advocate under Mental Capacity Act and Deprivation of Liberty Safeguards

Paid/Unpaid Representative

Requirement from DoL to appoint a representative as part of the legal process. Can be family, friends or advocate appointed

How to contact us

Slough Borough Council

If you have any questions or queries regarding the Deprivation of Liberty Safeguards, please contact:

Telephone:

01753 690408

Email:

dols@slough.gov.uk

Fax:

01753 690420

(Monday - Friday 9am-5pm)

The Care Home Manager is responsible for completing the forms and sending them to the DoLs administrator via email or fax.

We are also able to send a Best Interests Assessor out to visit your Care Home if you require some help and guidance (please call the above number).

Useful links

Department of Health:

www.dh.gov.uk

Care Quality Commission:

www.cqc.org.uk

This document can be made available on audio tape, braille or in large print, and is also available on the website where it can easily be viewed in large print.



Essex County Council

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Deprivation of Liberty Safeguards

If you would like assistance with the translation of the information in this document, please ask an English speaking person to request this by calling 01753 690408.

यदि आप इस दस्तावेज में दी गई जानकारी के अनुवाद किए जाने की सहायता चाहते हैं तो कृपया किसी अंग्रेजी भाषी व्यक्ति से यह अनुरोध करने के लिए 01753 690408 पर बात करके कहें.

ਜੇ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਵਿਚਲੀ ਜਾਣਕਾਰੀ ਦਾ ਅਨੁਵਾਦ ਕਰਨ ਲਈ ਸਹਾਇਤਾ ਚਾਹੁੰਦੇ ਹੋ, ਤਾਂ ਕਿਸੇ ਅੰਗਰੇਜ਼ੀ ਬੋਲਣ ਵਾਲੇ ਵਿਅਕਤੀ ਨੂੰ 01753 690408 ਉੱਤੇ ਕਾਲ ਕਰਕੇ ਇਸ ਬਾਰੇ ਬੇਨਤੀ ਕਰਨ ਲਈ ਕਹੋ।

Aby uzyskać pomoc odnośnie tłumaczenia instrukcji zawartych w niniejszym dokumencie, należy zwrócić się do osoby mówiącej po angielsku, aby zadzwoniła w tej sprawie pod numer 01753 690408.

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اگر آپ کو اس دستاویز میں دی گئی معلومات کے ترجمے کے سلسلے میں مدد چاہئے تو، براہ کرم ایک انگریزی بولنے والے شخص سے 01753 690408 پر کال کر کے اس کی درخواست کرنے کے لئے کہیں۔