

Deprivation of Liberty Safeguards (DoLS)

Please note - this leaflet should be read in conjunction with our 'Making your own decisions' (Mental Capacity Act 2005) leaflet



**Dudley Safeguarding
People Partnership**

Dudley
Metropolitan Borough Council



About this booklet

This booklet looks at the Deprivation of Liberty Safeguards (DoLS). These safeguards relate to people who are placed in care homes or hospitals for their care or treatment and who lack mental capacity. They are part of wider legislation designed to protect the rights of people who lack mental capacity and they also link with human rights law. Having mental capacity means being able to understand and retain information and being able to make a decision based upon that information.

The booklet covers an explanation of what deprivation of liberty means; the required procedure for authorising a potential deprivation of liberty; and the required procedures and protections available once someone has been deprived of their liberty.

What is a deprivation of liberty?

There is no simple definition of a deprivation of liberty as all people are unique and whether someone is being deprived of their liberty depends on their individual circumstances. If it is felt someone may be being deprived of their liberty then a person centred assessment must take place. A Supreme Court judgement in 2014 has helped to provide guidance for this assessment and it is agreed that someone may be seen to being deprived of their liberty if:

- They lack the mental capacity to consent to their care and treatment;
- They are under continuous or complete supervision and control and they are not free to leave (known as the acid test);
- The “state” for example - the local authority, Clinical Commissioning Group, or NHS is responsible for their care (i.e. they paid for it, arranged it or regulated it).

Why do we have deprivation of liberty assessments?

Sometimes, caring for and treating people may mean restricting their freedom; for example, it might be necessary to stop a person from leaving a hospital or going out of their house alone. Restrictions like this may be a deprivation of liberty. Deprivation of liberty in these contexts was introduced via the Mental Capacity Act 2005 as a **protection and safeguard** as it was recognised that some people who could not make their own decisions or consent to their care and were being cared for in a restrictive way had:

- No right of appeal;
- No one formally representing them;

There was no independent assessment or review of these restrictions; there was also no time limit on these restrictions.

This was seen as an infringement of people's rights under Article 5 of the European Court of Human Rights and it was decided that systems had to be put in place to make sure these kind of infringements, if necessary, were in people's best interests.

The Deprivation of Liberty Safeguards (DoLS) came into force in England and Wales in April 2009 under amendments to the Mental Capacity Act 2005. They were introduced following a decision in the European Court of Human Rights. The decision recognised that:

“when someone lacks mental capacity to consent to care or treatment, it is sometimes necessary to deprive them of their liberty in their best interests, to protect them from harm”.

The safeguards are intended to:

- Protect people who lack mental capacity from being detained when this is not in their best interests
- To prevent arbitrary detention
- To give people the right to challenge a decision

They are intended to protect people from being deprived of their liberty unless it is in their best interests to protect them from harm, or to provide treatment after all practical, less restrictive alternatives have been considered.

Who is entitled to an assessment to establish if they are being deprived of their liberty?

Someone may require a deprivation of liberty assessment if they are:

- Aged sixteen or older and live in supported living, Shared Lives schemes, extra care housing or living at home;
- Aged eighteen or over and in a hospital, residential or nursing home;

And:

- They have been assessed as lacking the mental capacity to make certain decisions at a certain time about where they live or their care and support;
- This lack of capacity is assessed as being due to a “mental disorder, disability or impairment” for example this might be because of a stroke, brain injury, a mental health problem, dementia, a learning disability or substance misuse.



Those planning care should always consider all options that may or may not involve restricting a person's freedom, and any practicable, less restrictive options. If however all alternatives have been explored and the people managing or providing the care believe that it is necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do so

How do we seek permission to deprive someone of their liberty?

There are two systems, which depending on where people are living, provide permission/authorisation to allow people to deprive an individual of their liberty.

If an individual lives in supported living, a Shared Lives scheme, extra care housing or if they are living at home an application needs to be made to the Court of Protection. The individual needs to be referred to the council who will in turn appoint an assessor who will complete a COPDOL11 - a Court of Protection Application. A judge will then consider the evidence and will make the decision as to whether they can authorise the deprivation based upon the Court of Protection Application alone. The judge may request more written evidence or they may require a full court hearing to take place. The judge can agree to the deprivation for a period of up to twelve months.

If someone is in a hospital, a residential home or nursing home (managing authority), a representative of the institution must complete a Deprivation of Liberty Safeguards request for an authorisation. This is then sent to the council (supervisory body) who appoints a best interest assessor and a mental health assessor. The two assessors complete six assessments between them which are then sent to a trained authoriser who can authorise the deprivation for a period of up to twelve months.

For both systems the assessors must provide written evidence to demonstrate that:

- the person lacks the mental capacity to make specific decisions about their care and residence due to a mental disorder
- they have consulted with the individual who may be being deprived
- and they have consulted with family, friends, or any people who have Lasting Power of Attorney
- and anyone involved in providing care or treatment to the individual

They also have to consider all of the written records and care plans. If an individual does not have any family or friends to consult, then an independent Mental Capacity Advocate (IMCA) can be appointed by the council to ensure that the person's wishes, rights, values and beliefs are considered.

If it is felt there is a deprivation of a person's liberty the assessor must consider:

- what harm or risks there would be to the individual if they were not deprived of their liberty;
- that the restrictions are proportionate to the likely harm or risks;
- that there are no viable less restrictive options;
- that the decision is in the person's best interest.

[Other publications in this series](#)

Making your own decisions (Mental Capacity Act 2005)

A guide to adult social care and support in Dudley

Keeping adults safe from abuse and neglect

Support for carers in Dudley

Having your say

Useful contact details

Age UK

Offer a useful factsheet on the Mental Capacity Act and planning for the future

Tel **0800 169 6565** or visit **www.ageuk.org.uk**

SCIE MCA

Provides a wide range of information and advice about the MCA

Visit **www.scie.org.uk/publications/mca**

The Alzheimer's Society

Provides a wide range of information on mental capacity with a focus on people with dementia

Tel **03000 222 1122** or visit **www.alzheimers.org.uk**

Dudley Carers Network

Information and resources for carers and their families

Tel **0300 555 0055** or visit **www.dudley.gov.uk**

Carers UK

Provide a booklet 'What every carer needs to know - a guide to mental capacity', aimed at carers who look after people who may not be able to make decisions for themselves about health and social care choices.

Tel **0808 808 7777** or visit **www.carersuk.org**



Further information

**For further information please contact our
access to adult social care helpline**



or contact our Access to Adult Social Care hotline on **0300 555 0055**
(Monday to Friday - 9am to 5pm)
An emergency duty team is available on **0300 555 8574**, at all other times

Web www.dudley.gov.uk/asc

Email acessteam.dachs@dudley.gov.uk

Post **Brierley Hill Health & Social Care Centre
Venture Way, Brierley Hill DY5 1RU**

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