

The Mental Capacity Act 2005

Deprivation of Liberty

The Deprivation of Liberty Safeguards

The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to make sure that people in care homes and hospitals are looked after in a way that does not inappropriately restrict their freedom. The safeguards should ensure that a care home or hospital 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.


The Safeguards apply to vulnerable people aged 18 or over who have a mental health condition or disorder, (this includes conditions such as dementia and brain injury), who are in hospitals or care homes and do not have the mental capacity to make decisions about their care or treatment.




**How is
Mental
Capacity
Assessed?**

The Mental Capacity Act says that someone who lacks mental capacity has a disorder of the mind or brain and cannot do one or more of the following :

- 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.



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 or care home believes 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 this by following the relevant processes.

A recent court decision has provided clarification 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'.

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 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, (for seven days), but must apply for a standard authorisation at the same time.

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 the following:

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 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 occurring, whether this is in the person's best interests, needed to keep the person safe from harm and 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.

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 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) who is able to assess whether a person is suffering from a mental disorder.

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'. Often it will be a family member or friend, or other carer who maintains regular contact with the person. The representative can 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 supervisory body will then appoint a paid representative, (usually an IMCA).

How long does the authorisation last?

An authorisation should last for the shortest time possible up to a maximum of 12 months.



Case Study

Mr J is an 88 year old man with a diagnosis of moderate stage Alzheimer's dementia. Prior to his admission to the care home he was living with his daughter who was acting as his main carer with support from a care package provided by the local authority. Due to deterioration in Mr J's memory and increased safety risks, it was no longer possible to support him safely at home and he was admitted to a residential care home. The care home subsequently made an application to the supervisory body for a standard deprivation of liberty safeguards authorisation for Mr J.

The supervisory body arranged for a mental health and eligibility assessment to be carried out by a Mental Health Assessor, (psychiatrist). Mr J met both of these qualifying criteria as he has a mental disorder, (dementia), and does not meet the criteria for detention under the Mental Health Act 1983. The supervisory body then arranged for a Best Interests Assessor to carry out a mental capacity and best interests assessment with Mr J. The best interests assessor found that Mr J had settled fairly well in the care home. However, he was disorientated to time and place and sometimes believed that he was still living with his wife in the family home. He usually required the assistance of one member of staff with personal care tasks, including toileting. He could occasionally become irritable with staff when they tried to deliver personal care but he had not been physically aggressive towards them. At these times two members of staff were needed to deliver care but they did not need to use any form of physical restraint. Mr J was reported to be unsettled during the night. Mr J was prescribed night time sedation due to his restlessness.

Mr J was assessed as lacking the mental capacity to make a decision about his care and accommodation in the residential home. He was unable to understand where he was living or why he needed to be there. He was found to lack insight into his health conditions and the care he was receiving, (including his medication), in the residential home. He was unable to retain information provided to him about the purpose of the assessment and his care plan for a sufficient period of time to make a decision.

Case Study cont...

Because Mr J was unable to understand or retain the information relevant to the decision he was assessed as lacking the mental capacity to use or weigh the information within the decision making process. He was able to communicate his decision verbally but his speech was tangential and difficult to follow due to his dementia.

The best interests assessor considered whether Mr J was deprived of his liberty and found that he was not free to leave the residential home and live elsewhere due to identified safety risks. He was unable to leave the care home for any reason without a staff or family member as escort. The door to the care home was locked with a key coded system that Mr J was unable to operate. Mr J was found to be subject to the complete and effective control and supervision of staff members as they managed all of his daily living activities. Consequently he was considered to be deprived of his liberty.

This was considered to be in his best interests to appropriately manage the significant risk of harm to Mr J if he was not receiving 24 hour care and supervision. Consequently Mr J's placement in the care home and the restrictions incorporated into his care plan were thought to be a proportionate response to the level of risk identified. Less restrictive options in the community had been tried previously and unfortunately had failed.

Mr J's daughter was consulted within the assessment process in addition to the mental health assessor and staff at the residential care home. She maintained regular contact with her father and agreed to act as his Relevant Persons Representative, (RPR).

Mr J's needs were thought to be unlikely to change significantly within a short period of time and consequently the recommended period of time for the authorisation was one year. The best interests assessor did not recommend that any conditions were attached to the authorisation in this instance, (but in other cases may consider a condition, for example, requesting that the care home refer for an Occupational Therapy or Telecare assessment). The Supervisory Body granted the authorisation for one year. A review could be requested within that time if circumstances change or if the RPR felt that the restrictions in place were no longer in the persons best interests.