

Mental Capacity Act (2005) Deprivation of Liberty Safeguards (DoLS)

A guide for family, friends
and unpaid carers



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1. About this booklet

You have been given this booklet because doctors or health and social care professionals are thinking about changing the way a family member, friend or someone you provide care for is looked after in hospital or in a care home.

They are thinking about introducing a care plan in which your family member or friend will be deprived of their liberty in a hospital or care home. The doctors or other professionals are thinking about this because they believe that:

- this care plan would be in the best interests of your family member or friend
- your friend or family member does not have the capacity to consent to the care plan themselves, and
- it would not be possible to deliver the care they recommend without depriving your family member or friend of their liberty.

As a family member or friend of the relevant person (this is the person who needs to be deprived of liberty), you may have an opinion about whether the proposed care plan is appropriate. You may also want to know more about how long your friend or family member will be deprived of their liberty, and how this will be monitored.

This is where the Mental Capacity Act Deprivation of Liberty Safeguards (MCA DoLS) come in. These safeguards have been introduced to ensure that no one is deprived of their liberty in a hospital or care home setting without good reason, and that people who are deprived of their liberty receive the care they need while retaining specific rights.

This booklet contains all the information you need to understand what the MCA DoLS are all about. Importantly, it helps you to:

- understand your rights to have a say in your friend or family member's care
- ensure that all possible steps are being taken to protect the interests of your friend or family member while they are being deprived of their liberty.

2. Understanding the MCA DoLS: an overview for friends, family members and other unpaid carers

This section helps you to understand the MCA DoLS so you can represent the interests of your friend or family member more effectively.

What are the MCA DoLS?

The MCA DoLS provide protection for vulnerable people who are accommodated in hospitals or care homes in circumstances that amount to a deprivation of their liberty and who lack the capacity to consent to the care or treatment they need.

It is anticipated that the majority of people who will require the protection of the MCA DoLS are those people with more severe learning disabilities, older people with any of the range of dementias or people with neurological conditions such as brain injuries.

The MCA DoLS provide that deprivation of liberty:

- should be avoided whenever possible
- should only be authorised in cases where it is in the relevant person's best interests and the only way to keep them safe
- should be for as short a time as possible
- should only be for the purpose of care or treatment.

Why were the MCA DoLS introduced?

The MCA DoLS were introduced following the legal judgment given by the European Court of Human Rights about an autistic man with a learning disability, who lacked the capacity to decide whether he should be admitted to hospital for treatment. He was admitted to hospital on an informal basis, but was then prevented from leaving the hospital with his carers.

His carers challenged the hospital and took the case to the court, who found that he had been deprived of his liberty unlawfully, which is a breach of the European Convention on Human Rights.

In 2014, the Supreme Court made a landmark judgment about what is meant by deprivation of liberty. It has clarified that a person is deprived of his or her liberty if:

the person is under continuous supervision and control AND is not free to leave.

These questions are commonly referred to as the “acid test” for deprivation of liberty.

It has also said that the following are not relevant when determining whether a deprivation of liberty is occurring:

- The person’s compliance or lack of objection to the care arrangements.
- The relative normality of the placement (whatever the comparison made; each person’s circumstances must be considered individually).
- The reason or purpose behind a particular placement.

If a person lacks capacity to consent to care arrangements involving a deprivation of liberty, authorisation is needed either through the deprivation of liberty safeguards in the Mental Capacity Act or from the Court of Protection.

The Supreme Court has ruled that a deprivation of liberty can occur in domestic settings (including supported living arrangements) where the State is responsible for imposing such arrangements. In these instances, the deprivation must be authorised by the Court of Protection.

Important terms

There is no simple definition of **'deprivation of liberty'**. It will depend on the circumstances of each individual case.

A number of previous court cases give some indication of situations where deprivation of liberty has occurred. Lots of factors must be taken into account, such as whether:

- the person is resisting or other people, such as carers, want the person to be discharged
- staff have total control over the person's care and movement
- staff control who the person can see and what kind of treatment they have
- the person has lost all autonomy.

Deprivation of liberty is different from restraint, although the difference is often one of degree or intensity. Certain actions could move up the scale and become a deprivation of liberty. However, the courts do recognise that restraint may be appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood and seriousness of harm.

For more information about deprivation of liberty, read Chapter 2 of the MCA DoLS Code of Practice.

The **'capacity to consent'** in this context refers to a person's mental capacity to agree to care and treatment. Under the Mental Capacity Act 2005, a person is said to lack capacity if they are unable to understand and make a particular decision at the time it needs to be made. There are lots of reasons why a person might lack capacity. Some are short term (for example, they are unconscious) while others are long term (for example, they have dementia).

For more information on mental capacity, read Chapter 4 of the Mental Capacity Act 2005 Code of Practice.

A **Relevant Person** is the person who is, or may be, deprived of their liberty.

When can someone be deprived of their liberty?

The MCA DoLS set out clear guidelines on when someone can be deprived of their liberty.

1. It must be to provide a specific treatment or care plan that is in the person's best interests.
 2. Doctors or care professionals must be satisfied that there is no suitable alternative care plan that would not deprive the person of their liberty.
 3. The managing authority (the hospital or care home where the person is staying) must apply to its supervisory body (the local authority responsible for the hospital or care home) for authorisation of the Deprivation of Liberty.
 4. The supervisory body must conduct six assessments to confirm that deprivation of liberty is lawful and appropriate:
 1. Age assessment: to check whether the person is aged 18 or over
 2. Mental health assessment: to check whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983.
 3. Mental capacity assessment: to confirm whether the person being deprived of liberty lacks capacity to consent to the arrangements made for their care and treatment
 4. Best interests assessment: firstly to establish whether the proposed care plan would deprive the person of their liberty, and secondly to confirm whether it is:
 - in the best interests of the person to be subject to the authorisation
 - necessary in order to prevent them from coming to harm
 - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.
 5. Eligibility assessment: to confirm whether the person is eligible to be deprived of liberty under the MCA DoLS
 6. No refusals assessment: to ensure that the proposed treatment does not conflict with a valid decision already made by an attorney or deputy on the person's behalf, or with a decision made in advance by the relevant person themselves
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If the answer is Yes to all six assessments, then an authorisation will be granted to carry out the proposed care plan or treatment.

What happens once an MCA DoLS authorisation is granted?

The supervisory body will set how long the authorisation will last, based on the proposed care plan. This should be for as short a time as possible (and for no longer than 12 months).

The care plan or treatment can then begin.

While the authorisation lasts, if at any point the person no longer needs to be deprived of their liberty or their circumstances change, then the authorisation should be reviewed and, where appropriate, end.

Urgent authorisations

In some cases, a hospital or care home may think it is necessary to deprive someone of their liberty immediately – for example, if the person's circumstances change and particular treatment is needed urgently.

In this situation the managing authority can issue itself an urgent authorisation. The managing authority must apply for a standard authorisation at the same time and the assessments must complete within seven calendar days.

When a person subject to a DoLS authorisation dies

If a person dies while subject to a DoLS authorisation, the Chief Coroner has determined that this will be classed as a "Death in State Detention". This means that the local Coroner's office must be informed.

The managing authority with the authorisation for the deprivation of liberty must:

- complete a form to notify the coroner of the death.
- contact the relevant person's GP to request certification of the death
- contact the local police to inform them that the person has died and that they are subject to a DoLS authorisation. A Police Officer will visit the care home or hospital to check the deceased, take necessary details, and arrange for transportation to the mortuary by the Co-Operative Funeral Service, once the death has been certified.

Please note that this does NOT mean that funeral arrangements must be made with the Co-Operative. Any existing or preferred arrangements can be made with a funeral director of your choice.

When a death is reported to the coroner, the coroner's office will contact the next of kin, where known, and where possible, within one working day of the death being reported, to explain why the death has been reported and what steps are likely to follow.

Once the coroner's investigation has been completed, the body will be released so that funeral arrangements can be made. Further information on the Coroners' Service and the processes and procedures followed can be found on the Middlesbrough council website

www.middlesbrough.gov.uk/index.aspx?articleid=8299

3. What can you do to support your friend or family member?

There are several points in the process where, as a friend or family member, you can have a say. At some points, you should be consulted. At other points, you should be informed. This section explains more about your rights.

When should a friend or family member be consulted?

Friends or family members previously named by the relevant person (or someone acting on the relevant person's behalf) should be consulted at the following points:

- before a managing authority applies for an authorisation – the managing authority should discuss the proposed care plan with any named friends or family members, to see if they agree that it is appropriate and that the deprivation of liberty would be necessary. This is essential for a standard authorisation, and where possible it should happen before an urgent authorisation is made
- by the person carrying out the best interests assessment – the person carrying out this assessment should ask any named friends or family members whether they agree that the proposed treatment or care plan is in the relevant person's best interests
- if anyone challenges the authorisation or care plan after it has begun – if someone (such as another friend or family member, or someone appointed to represent the relevant person) challenges the authorisation, because they think it is no longer necessary or for any other reason, named friends or family members may be asked for their views.

When should a friend or family member be informed?

Every named friend or family member should be kept informed about the relevant person's treatment. In particular, you should be informed in writing:

- when the assessments have been completed, to let you know whether the authorisation has been issued or not

- when the authorisation comes to an end
- if the managing authority requests a new authorisation after any reviews or challenges to the care plan.

Acting as a relevant person's representative

Everyone who is deprived of their liberty under the MCA DoLS is entitled to a relevant person's representative (RPR). This is normally a friend or family member, who should be consulted and informed about all matters relating to the care or treatment of the relevant person while the authorisation lasts.

The RPR has legal rights to:

- request a review of the authorisation at any time
- ask for an Independent Mental Capacity Advocate (IMCA) to be appointed, to provide extra support to the relevant person and their representative if they do not already have a professional representative.

The RPR should be appointed as soon as possible after a standard deprivation of liberty authorisation is given.

To ensure that this is the case, the person carrying out the best interests assessment is asked to recommend someone to act as the RPR.

As a friend or family member, you may be asked if you would be willing to act as the RPR. If so, you should decide if:

- you are willing to do so
- you are able to keep in regular contact with the relevant person during the authorisation period
- you are confident that you can act in their best interests.

Contacting your friend or family member

If your friend or family member is being deprived of their liberty, you should still be able to keep in contact with them. The hospital or care home should make sure this is possible.

Challenging unlawful deprivation of liberty

If you believe that your friend or family member is being deprived of their liberty unlawfully (i.e. without the appropriate authorisation in place), you must inform the hospital or care home immediately. Standard letters are available for this purpose on pages 14 and 15.

In the first instance, you should ask the managing authority to apply for an authorisation if it wants to continue with the care regime, or to change the care regime immediately. Given the seriousness of deprivation of liberty, the hospital or care home must respond to you quickly – normally within 24 hours.

Asking for an authorisation to be reviewed

If you think that an authorisation is no longer necessary, you can ask for it to be reviewed. Normally, you should do this through the relevant person's representative or by contacting the managing authority.

4. Where to find further information

Stockton-on-Tees Borough Council has more information on the DoLS at www.stockton.gov.uk/adult-services/safeguarding-adults/the-deprivation-of-liberty-safeguards-dols/

The following documents may be useful to you:

- Mental Capacity Act 2005 Code of Practice– a document that covers the entire Mental Capacity Act. In particular, it provides information about what mental capacity is, and how it is defined.
- MCA DOLS Code of Practice– a document that explains the MCA DOLS in more depth. In particular, it looks at what deprivation of liberty is, how the assessment process should be carried out and how authorisations should be monitored and reviewed.

These documents are available at www.dh.gov.uk

Online: www.orderline.dh.gov.uk

By email: dh@prolog.uk.com

By telephone: 0300 1231002

- Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for relevant person's representatives–this guide explains the role of the RPR in more depth. Anyone appointed as an RPR should be given a copy, but it may also be useful for you if you are considering whether to become an RPR.

This information, and further information about the MCA DoLS can be found on Stockton-on-Tees Borough Council's website.

Please visit:

www.stockton.gov.uk

Deprivation of Liberty Letter 1

Letter to managing authority concerning unauthorised deprivation of liberty

[Sender's address]
[Telephone number]
[Date]

[Name and address of supervisory body]

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].

As I am sure you know, 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]

Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.

Deprivation of Liberty Letter 2

Letter to supervisory body concerning unauthorised deprivation of liberty

[Sender's address]

[Telephone number]

[Date]

[Name and address of supervisory body]

Dear Sir/Madam

Re [Name of person/resident]

I am writing to you about the above-named person, who is accommodated in [name and address of hospital or care home].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc].

On [enter date], I wrote to/spoke with [delete as applicable] the managing authority of the [name of hospital or care home]. I informed them that it appeared to me that this person lacked capacity to consent to the arrangements made for their care or treatment and was subject to an unauthorised deprivation of liberty. I asked them to give an urgent deprivation of liberty authorisation and to request a standard authorisation, in accordance with the provisions of the Mental Capacity Act 2005.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [briefly state reasons].

I understand that the managing authority has not requested a standard authorisation.

I am therefore writing to make a formal request that you now decide whether or not this person is subject to an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully,

[Signature]

[Name of sender in block capitals]

Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.

If you would like this information in any other language or format for example **large print** or audio please contact 01642 527501.

إذا كنت ترغب الحصول على هذه المعلومات بلغات أو بأشكال أخرى على سبيل المثال بالطبعة الكبيرة أو بالشريط المسجل فالرجاء الإتصال 'بدايفرستي تيم' على هاتف رقم 01642 527501

ARABIC

اگر شما این اطلاعات را به زبان یا شکل دیگری مثلا چاپ بزرگ یا بصورت صدا میخواهید لطفا با تیم دایورسیتی (گوناگونی) با شماره 01642 527501 به تماس شوید

FARSI

Si vous souhaitez obtenir ces informations dans d'autres langues ou sous un autre format, par exemple, en gros caractères / version audio, veuillez contacter l'équipe au n° 01642 527501

FRENCH

نه گهر جهزت لئ به ئهم زانباريه به دهستت بکهوئت به زمانهکانی تر بان به شنبه به کی تر بو نمونه چاپی گهوره/بان به تیبی تو مارکراو نکابه په یوهندی بکه به 'تیمی دایفرستی' له سهر ژماره ی ته له فون 01642 527501

KURDISH

欲要這份資訊的其它語言版或其它版式例如大字體印刷/錄音帶，請致電 01642 527501 接洽 ‘多元化隊’

CHINESE

ਜੇ ਤੁਸੀਂ ਇਹ ਜਾਣਕਾਰੀ ਕਿਸੇ ਹੋਰ ਬਣਤਰ ਜਾਂ ਖੋਲੀ ਵਿੱਚ, ਵੱਡੀ ਛਪਾਈ ਵਿੱਚ ਜਾਂ ਟੇਪ/ਸੀ ਡੀ 'ਤੇ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਫ਼ੋਨ 01642 527501 ਨੰਬਰ ਉੱਤੇ ਫ਼ੋਨ ਕਰੋ।

PUNJABI

اگر آپ ان معلومات کو کسی بھی اور زبان یا انداز، مثلاً بڑے پرنٹ/آڈیو ٹیپ وغیرہ میں حاصل کرنا چاہیں، تو 'ڈائیورسٹی ٹیم' کو اس نمبر پر فون کیجئے 01642 527501

URDU

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