



Deprivation of Liberty Safeguards (MCA DoLS)

1. Background

The Mental Capacity Act 2005 (MCA), which came into force in October 2007, provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves. Amendments to the Act set out the legal framework in England and Wales for the Deprivation of Liberty Safeguards, known as DoLS.

The deprivation of a person's liberty is a very serious matter and should not happen unless it is absolutely necessary, and in the best interests of the person concerned. The DoLS have been created to ensure that any decision to deprive someone of their liberty is made following defined processes and in consultation with specific authorities.

This policy has been developed to ensure that Abbeyfield services act in accordance with the terms of the Mental Capacity Act 2005, the Deprivation of Liberty Safeguards and relevant case law.

The Mental Capacity (Amendment) Act 2019 received Royal Assent in May 2019. The legislation will introduce a new system for authorising deprivations of liberty in care (DoLS), known as Liberty Protection Safeguards (LPS). The government has delayed implementation of the LPS until April 2022. It has, however, been confirmed that the DoLS will run alongside the LPS for a year after implementation to ease the transition of existing cases. The government will draft a series of regulations and a code of practice, which will be subject to consultation, setting out the detail of how the LPS will work.

2. Objectives

The aim of this policy is to ensure that:

- We provide human rights based person-centred care and support that is based on compassion, dignity and kindness.
- We support residents to balance safety from harm with freedom of choice.
- Any decision to deprive a resident of their liberty is made following defined processes and in consultation with the required authorities; and
- Abbeyfield complies with relevant legislation and Codes of Practice.

3. Scope

All established staff, agency staff and volunteers working with and caring for people who use Abbeyfield services.

4. Policy

On 1 April 2009, DoLS introduced procedures for authorising the deprivation of liberty in care homes and hospitals of people who lack capacity to consent to their care or treatment. Guidance on the operation of the procedures is contained in the Deprivation of Liberty Safeguards Code of Practice, which is a supplement to the main Mental Capacity Act 2005 Code of Practice. Both codes have statutory force and therefore all staff, agency staff and volunteers have a legal duty to observe the guidance detailed in the codes.

The DoLS should be used for all residents in care homes who lack capacity to make their own decisions and where personal freedoms need to be restricted in the resident's best interests, to the extent that it amounts to a deprivation of liberty. DoLS should not, however, be used if a resident meets the criteria for detention under the Mental Health Act 1983 and either is or should be detained under the terms of that Act.

Whilst DoLS can only be used if the person will be deprived of their liberty in a care home or hospital, people's right to liberty is protected wherever they live. If a resident living in another setting, for example in supported housing, is being deprived of their liberty, the Court of Protection can authorise a deprivation of liberty.

Residents are entitled to be cared for in the least restrictive way possible and care planning should **always** consider if there are other less restrictive options available to avoid unnecessary deprivation of liberty.

However, if all alternatives have been explored and the registered manager believes it is necessary to deprive a resident of their liberty to deliver the care or treatment they need, then there is a standard procedure they must follow to ensure that the deprivation of liberty is lawful and that the resident is protected.

This Policy and Procedure should be read in conjunction with the Mental Capacity Act Policy and Procedure.

4.1. Definitions & Terminology

4.1.1. Lack of Capacity

Reference to a person's lack of capacity in the MCA refers to the capacity of an individual to make a particular decision at the time it needs to be made.

4.1.2. Restraint

The MCA provides a definition of restraint and of deprivations of liberty. Section 6(4) of the Mental Capacity Act 2005 states that someone is using restraint if they:

- Use force – or threaten to use force – to make someone do something they are resisting; or
- Restrict a person's freedom of movement, whether they are resisting or not.

Restraint may or may not also amount to a deprivation of liberty. Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. DoLS is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment to keep them safe from harm.

4.1.3. Managing Authority & Supervisory Body

For the purposes of this policy, the managing authority is the registered manager, and the supervisory body is the local authority for the area in which the person ordinarily resides. If the person has no ordinary place of residence — they are of no fixed abode — then the supervisory body is the local authority for the area in which the care home is situated.

A care home's own local authority will not necessarily be the supervisory body. For example, if a person ordinarily resided in London before moving to a care home in Sussex, the relevant local authority in London will be their supervisory body.

4.1.4. Standard Authorisation

A standard authorisation is issued by a supervisory body and permits the lawful deprivation of a person's liberty.

4.1.5. Urgent Authorisation

An urgent authorisation is issued by the managing authority to itself permitting the lawful deprivation of a person's liberty.

4.1.6. Relevant Persons Representative

The person who is appointed to represent a person who is lawfully being deprived of their liberty is known as the relevant person's representative.

4.2. What is a Deprivation of Liberty?

Deprivation of liberty depends on the specific circumstances of each individual case. As a result, there is no single definition or checklist that can be used. However, a number of cases concerning deprivation of liberty have come before the courts and, based on various judgments, the following are listed in the MCA DoLS Code of Practice as factors which may be taken into account in deciding whether a person has been deprived of their liberty:

- Restraint is used, including sedation, to admit a person to a care home where the person is resisting admission.
- Sedative or antipsychotic medication is given and/or medication is given forcibly, against the person's will.
- Staff exercise complete control over the care and movements of a person for a long period of time.
- Staff take all decisions on a person's behalf, including choices relating to assessments, treatments, visitors and where they can live.
- Care home staff take responsibility for deciding if a person could be released into the care of others or allowed to live elsewhere.
- When carers request that a person be discharged to their care, care home staff refuse.
- The person is prevented from seeing friends or family because the care home have restricted access to them; and
- The person is unable to make choices about what they want to do and how they want to live because care home staff exercise continuous supervision and control over them.

4.2.1. Supreme Court 'Acid Test'

In March 2014, the Supreme Court judgement in the case of Cheshire West clarified an 'acid test' for what constitutes a deprivation of liberty.

The acid test states that an individual is deprived of their liberty for the purposes of Article 5 of the European Convention on Human Rights if they:

- Lack the capacity to consent to their care/ treatment arrangements.
- Are under continuous supervision and control; and
- Are not free to leave.

All three elements must be present for the acid test to be met.

The Supreme Court held that factors which are not relevant to determining whether there is deprivation of liberty include:

- Whether or not the person is objecting to the placement.
- The purpose of the deprivation of liberty.
- The extent to which it enables the person to live a relatively normal life; and
- The normality of the living arrangements, i.e. how closely the placement resembles a normal family living arrangement.

Residents who are most at risk are likely to be those with a diagnosed dementia although a diagnosed dementia or mental illness will not, in itself, mean that a resident is being deprived of their liberty. The registered manager, in consultation with relevant family members and health care professionals, will review the

resident's care plan to develop the least restrictive approach to meet the resident's needs. If there is any doubt about whether someone's liberty is being deprived, an application for authorisation should be made.

The legal framework provides that a resident must not be deprived of their liberty in a care home unless an urgent or a standard authorisation is in force.

The DoLS do not replace other safeguards in the MCA. Instead, any action taken under the DoLS must be in line with the key principles of the MCA. It is important to understand that a DoLS authorisation does not, in itself, authorise care or treatment.

4.3. Urgent Authorisations

Urgent authorisations can be made by the managing authority itself. This might be necessary where a standard authorisation has been applied for but not yet granted, and the need to deprive a resident of their liberty is urgent. A simultaneous application for a standard authorisation to the supervisory body must be made (if not already done).

Any decision to issue an urgent authorisation must be taken in the best interests of the resident and must be a proportionate response to the likelihood of the resident being harmed and to the severity of the harm.

An urgent authorisation lasts for a maximum of 7 calendar days.

In exceptional circumstances, an urgent authorisation can be extended by the supervisory body for an additional 7 calendar days. The managing authority must inform the supervisory body when an extension is needed and only one such extension can be granted.

4.4. Standard Authorisations

The managing authority must apply to the supervisory body for authorisation of deprivation of liberty if it believes that a person who lacks capacity is:

- About to be admitted to the care home and risks being deprived of their liberty
- Already in the care home and is being cared for or treated in a way which deprives them of their liberty.

If the supervisory body decides the application is appropriate it will commission an assessment which must be completed within 21 calendar days. The managing authority cannot apply for a standard authorisation more than 28 days before a deprivation of liberty is due to take place.

The supervisory body will commission six assessments in all, which need to be carried out by a minimum of two trained assessors. The six required assessments are:

4.4.1. Age Assessment

Which determines the person is aged 18 or over.

4.4.2. Mental Health Assessment

Which decides whether the person is suffering from a mental disorder.

4.4.3. Mental Capacity Assessment

which determines if the person lacks the capacity to consent to receive care or treatment in the care home.

4.4.4. Eligibility Assessment

Which determines if the person is, or should be, subject to a requirement under the Mental Health Act 1983 (in which case they will not be eligible for authorisation).

4.4.5. No Refusals Assessment

Which determines if the person has refused treatment or made an advance directive (or decision) about the treatment they wish to receive, and also whether the authorisation conflicts with any valid decisions made on their behalf by a Lasting Power of Attorney or a Deputy appointed by the court.

4.4.6. Best Interests Assessment

Which determines whether a deprivation of liberty is actually occurring or is likely to occur, and whether it would be in the person's best interests, necessary to keep them from harm and a reasonable response to the likelihood and seriousness of that harm.

Not every assessment process will result in an authorisation and a standard authorisation will be granted only if all six assessments support the authorisation.

4.5. When a DoLS Authorisation is Granted

Once a resident has a DoLS authorisation, a Relevant Person's Representative (RPR) will be appointed by the supervisory body to support the resident and look after their interests. The RPR will usually be a family member or someone known to the resident. If there is no-one suitable to take on the role of RPR, the supervisory body will appoint a representative, who can be paid as appropriate.

The supervisory body may attach conditions to the authorisation.

The supervisory body must give a copy of the authorisation to:

- The managing authority.
- The relevant person.
- The RPR.
- Any Independent Mental Capacity Advocate; and
- Any person named in the report of the best interests assessor.

The managing authority (together with its supervisory body) must:

- Make regular checks to see if the authorisation is still necessary;
- Remove the authorisation when it is no longer necessary; and
- Provide the resident's RPR with information about the care and treatment of the resident who is subject to the DoLS authorisation.

A standard authorisation will be issued by the supervisory body for the shortest possible period of time, as recommended by the best interests assessor, and for a maximum of 12 months. If at the end of 12 months, the managing authority thinks that the resident still needs to be deprived of their liberty for their own protection, they can request a new standard authorisation.

A standard authorisation can be reviewed at any time. A review must be triggered if there is a change in the resident's situation that requires the authorisation to be altered, temporarily suspended or terminated altogether. The supervisory body must carry out a review if requested to do so by either the resident, the RPR, or any Independent Mental Capacity Advocate (IMCA) representing the resident.

In the event of an unresolved dispute with the managing authority or the supervisory body, a decision to deprive a resident of liberty may be challenged by the resident or the RPR by an application to the Court of Protection. The court may make an order to vary or terminate an urgent or standard authorisation.

4.6. When a DoLS Authorisation is Refused

If an authorisation request is turned down, the managing authority must not deprive the person of their liberty and will need to take alternative steps. This will usually involve finding ways to support the resident in a less restrictive way that avoids depriving them of their liberty.

4.7. Notifying the Coroner

Until April 2017 the managing authority was required to notify the coroner in the event of the death of a resident who was subject to a DoLS authorisation. However, it is no longer necessary to notify the coroner unless the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the person's death.

4.8. Record Keeping

The need to make and keep written records comes from several sources: the Mental Capacity Act 2005 itself, regulations made under the Act, and the Code of Practice.

Detailed records are an essential part of the DoLS process. Carefully and systematically recording the process is an important safeguard, and consequently an important part of the law, good practice and concern for the welfare of others.

The Department of Health and Social Care has developed forms which can be used by managing authorities. Whilst there is no legislative requirement to use these standard forms, their use is recommended by the Department of Health and Social Care and will be used by Abbeyfield services. They cover the record-keeping that is required by statute and therefore their use in unedited form will help managing authorities ensure compliance with the safeguards and also promote a consistent approach to record-keeping.

Completing these forms and records also enables managing authorities to demonstrate that they acted lawfully if their actions are later challenged. Their completion should be viewed as a way of helping them to practice safely within the law, so that necessary care or treatment can be provided without unnecessary fear of legal liability.

The forms were reviewed and updated in 2014 and are listed in the table below. The shaded forms are for use by managing authorities, form 10 is shared by both the managing authority and supervisory body, and the remainder are for use by the supervisory body.

New Form	Previous Form/s	Form Name
1	1,2,3,4	Standard Request, Urgent Authorisation and Extension to Urgent
2	New	Further Request for a Further Standard Authorisation (Current DoLS coming to an end)
3	5,7,8,10,24	Age, Mental Capacity, No Refusals and Best Interests Assessments
3A	New	No Deprivation Assessment
4	6,7,9	Mental Health, Mental Capacity and Eligibility Assessments
5	11,12,25	Standard Authorisation Granted (including detail of equivalent assessments if used)
6	13	Standard Authorisation Not Granted
7	14,15	Suspension of Authorisation
8	26,27	Termination of Relevant Person's Representative Appointment
9	23	Notification that an Authorisation has Ceased
10	19,20,21,22	Review of Current Authorisation
11	30	IMCA Referral
12	New	Notification to Coroner of a Death Whilst Under an Authorisation

The managing authority should establish a separate record of all deprivation of liberty related documents for a resident whenever an urgent authorisation is given or a standard authorisation is requested. This record should remain open until the resident ceases to be deprived of their liberty. It should contain all of the completed forms, notices, requests and other documents concerning the resident and their deprivation of liberty.

The Director of Operations (supported by the quality manager) is required to monitor all DoLS activity and this will involve regular auditing of relevant records to ensure that correct procedures are being followed.

4.9. Training & Guidance

The registered manager and all relevant care and support staff should be appropriately trained to implement the deprivation of liberty safeguards.

The registered manager should ensure that staff have access to the Mental Capacity Act 2005 Code of Practice and the supplementary Deprivation of Liberty Safeguards Code of Practice. The registered manager should also identify the name and contact details of their local DoLS Regional Lead.

4.10. The Care Quality Commission

The Care Quality Commission monitors the operation of DoLS. The CQC will have the power to visit the care home and interview people involved in each case. They will also be able to access and view all relevant records to ensure that residents are being adequately protected.

In accordance with regulation 18 of the Care Quality Commission (Registration) Regulations 2009, the registered manager should notify the CQC of each DoLS application once the outcome of the application is known.

5. Finance, Value for Money & Social Value

N/A

6. Supported Appendices

APPENDIX 1: An overview of the DoLS process – Flowchart

7. Linked Policies

Mental Capacity Act (C015P)
Consent to Treatment and Personal Care (C009P)
Statutory Notifications of Events (C028P)
Appropriate use of Restraint (C005P)

8. Legislation/Regulation

Mental Health Act 1983
Mental Capacity Act 2005
Deprivation of Liberty Safeguards Code of Practice
Mental Capacity (Amendment) Act 2019
[Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#)
[The Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) Regulations 2015](#)

9. Review

Every 3 years, subject to any regulatory or legislative updates.

10. Procedure/Guidance

All forms and related guidance can be downloaded here:

<https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance>

Appendix 1

An overview of the DoLS process

