

## **Deprivation of Liberty Safeguards (DoLS)**

### **Deprivation of liberty**

A deprivation of liberty is a breach of the Article 5(1) right to liberty as set out in the European Convention on Human Rights. Following a Supreme Court judgement delivered in March 2014, what constitutes a deprivation of liberty was clarified in an “acid test”. A person is considered to be deprived of their liberty, for the purposes Article 5 of the European Convention on Human Rights if they;

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

All three elements must be present for the acid test to be met. Detailed guidance on what is meant by ‘continuous supervision and control’ and ‘not free to leave’, can be found in the Law Society’s [“Deprivation of Liberty: A Practical Guide”](#) available on their [website](#)

The Supreme Court ruling also clarified the factors which are NOT relevant to determining whether a person is deprived of their liberty, which are;

- The person’s compliance or lack of objection to the proposed care/treatment
- The reason or purpose behind a particular placement
- The relative normality of the placement given the person’s needs.

The Deprivation of Liberty Safeguards (DoLS) provide a legal framework for authorising, monitoring and challenging Deprivations of Liberty of people who lack capacity. DoLS will be applied to people who are, or may become deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights in a hospital, hospice, care home or nursing home, whether placed under public or private arrangements.

These safeguards provide protection to people in hospitals and care homes (managing authorities) who do not have mental capacity to decide whether or not they should be in the relevant care home or hospital to be given care or treatment. They do not provide the authority for care or treatment to be given

It is the care home or hospital’s responsibility to identify those at risk of deprivation of liberty and request authorisation from the supervisory body.

The DoLS Code of Practice

All decisions on care and treatment must comply with the [Mental Capacity Act and the Mental Capacity Act Code of Practice](#). Which is available on [CQC website](#)

Managing authorities must make requests to a local authority supervisory body for authorisation to deprive someone of their liberty.

The contact details for the Hertfordshire supervisory body are set out below:

**Phone:** 01438 843800

**Fax:** 01438 844312

**Email:** [dolsteam@hertfordshire.gov.uk](mailto:dolsteam@hertfordshire.gov.uk)

**Postal address:** SFAR 016 Ground Floor, Farnham House, Six Hills Way, Stevenage, Herts, SG1 2FQ

In the event that a Deprivation of Liberty is occurring in the community the Supreme Court Judgment on 19<sup>th</sup> March 2014 in the cases of *P v Cheshire West and Chester Council* and *P&Q v Surrey County Council* is clear that the Court of Protection must be approached for these to be authorised under Section 16 of the Mental Capacity Act. The judgment indicates that the “acid test” is that an individual is under constant control and supervision and is not free to leave and this is imputable to the State. In these circumstances legal advice must be sought regarding making an application to the Court.