**DEPRIVATION OF LIBERTY**

**Court of protection**

If the person who lacks mental capacity doesn’t live in a care home or hospital but is being deprived of their liberty, you must apply to the court of protection to get an order authorising the restriction of their freedom.

DoLS ensures people who cannot consent to their care arrangements in a care home or hospital are protected if those arrangements deprive them of their liberty. Arrangements are assessed to check they are necessary and, in the person’s, best interests. Representation and the right to challenge a deprivation are other safeguards that are part of DoLS. Deprivation of Liberty Safeguards

* The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other settings the Court of Protection can authorise a deprivation of liberty.
* Care homes or hospitals must ask a local authority if they can deprive a person of their liberty. This is called requesting a standard authorisation.

**What is 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'. The Deprivation of Liberty Safeguards 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 in order to keep them safe from harm.

[A Supreme Court judgement in March 2014](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300106/DH_Note_re_Supreme_Court_DoLS_Judgment.pdf) made reference to the 'acid test' to see whether a person is being deprived of their liberty, which consisted of two questions:

* Is the person subject to continuous supervision and control?  *and*

Is the person free to leave? – with the focus, the [Law Society advises](https://www.lawsociety.org.uk/Support-services/documents/Deprivation-of-liberty---chapter-3---cheshire-west/), being not on whether a person seems to be wanting to leave, but on how those who support them would react if they did want to leave. If someone is subject to that level of supervision, and is not free to leave, then it is almost certain that they are being deprived of their liberty. But even with the 'acid test' it can be difficult to be clear when the use of restrictions and restraint in someone's support crosses the line to depriving a person of their liberty. Each case must be considered on its own merits, but in addition to the two 'acid test' questions, if the following features are present, it would make sense to consider a deprivation of liberty application:

frequent use of sedation/medication to control behaviour

* regular use of physical restraint to control behaviour
* the person concerned objects verbally or physically to the restriction and/or restraint
* objections from family and/or friends to the restriction or restraint
* the person is confined to a particular part of the establishment in which they are being cared for
* the placement is potentially unstable
* possible challenge to the restriction and restraint being proposed to the Court of Protection or the Ombudsman, or a letter of complaint or a solicitor’s letter
* the person is already subject to a deprivation of liberty authorisation which is about to expire.

**Restraint and restrictions**

The Mental Capacity Act allows restrictions and restraint to be used in a person’s support, but only if they are in the best interests of a person who lacks capacity to make the decision themselves. Restrictions and restraint must be proportionate to the harm the care giver is seeking to prevent, and can include:

* the use of some medication, for example, to calm a person
* close supervision in the home, or the use of isolation
* requiring a person to be supervised when out
* physically stopping a person from doing something which could cause them harm
* removing items from a person which could cause them harm
* holding a person so that they can be given care, support or treatment
* bedrails, wheelchair straps, restraints in a vehicle, and splints
* repeatedly saying to a person, they will be restrained if they persist in a certain behaviour.

Such restrictions or restraint can take away a person's freedom and so deprive them of their liberty. They should be borne in mind when considering whether the support offered to a person is the least restrictive way of providing that support.

Final decisions about what amounts to a deprivation of liberty are made by courts. The Code of Practice for the Deprivation of Liberty Safeguards gives examples of where courts have found people being and not being deprived of their liberty. These examples, together with other cases which have gone to the courts, should be used as a guide.

**Urgent Authorisation**

A person may need to be deprived of their liberty before the supervisory body can respond to a request for a standard authorisation. In these situations, the managing authority can use an urgent authorisation. Urgent authorisations are granted by the managing authority itself. There is a form that they must complete and send to the supervisory body.

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The managing authority can deprive a person of their liberty for up to seven days using an urgent authorisation. It can only be extended (for up to a further seven days) if the supervisory body agrees to a request made by the managing authority to do this.

When using an urgent authorisation, the managing authority must also make a request for a standard authorisation. The managing authority must have a reasonable belief that a standard authorisation would be granted if using an urgent authorisation. Before granting an urgent authorisation, the managing authority should try to speak to the family, friends and carers of the person. Their knowledge of the person could mean that deprivation of liberty can be avoided. The managing authority should make a record of their efforts to consult others.

**When DoLS cannot be used**

The Deprivation of Liberty Safeguards can only be used if a person is in hospital or a care home. If a person is living in another setting, including in supported living or their own home, it is still possible to deprive the person of their liberty in their best interests, via an application to the Court of Protection.

If a person is in hospital, they should not be subject to the Deprivation of Liberty Safeguards if they meet the criteria for detention under the Mental Health Act.

The Deprivation of Liberty Safeguards should not be used if the main reason is to restrict contact with individuals who may cause the person harm. If it is believed to be in a person’s best interests to limit contact an application should be made to the Court of Protection.

If there is a dispute about where a person should stay, an authorisation does not resolve the dispute. The Code of Practice of the Mental Capacity Act says that unresolved disputes about residence, including the person themselves disagreeing, should be referred to the Court of Protection.