A guide for representatives under the Mental Capacity Act Deprivation of Liberty Safeguards

Adults' Services

Introduction

'Mental capacity' means the ability to make your own decisions.

'Lacking mental capacity' means not being able to make decisions for yourself.

'Liberty' means being free to do the things you want to do, when you want to do them.

The Mental Capacity Act **Deprivation of Liberty Safeguards** (DoLS) scheme was introduced to make sure that no one in a hospital or care home is deprived of their liberty (has their liberty taken away from them) without good reason. If a person is deprived of their liberty in a hospital or care home, they will receive the care they need while continuing to have certain legal rights.

If the person lacks the mental capacity to make certain decisions, they need extra protection. They should be treated or cared for in a way that means they are safe and free to do the things they want to do.

DoLS will only take away someone's liberty if it is in that person's best interests.

You have been given this booklet because you have been selected to be a **representative** to support someone under DoLS. You may be their family member or friend, and they may have chosen you to be their representative before a DoLS authorisation was needed. If they didn't, we will have arranged for you to be their representative. You will be named in the DoLS authorisation.

As the person's representative, you will need to:

- explain to them all about the DoLS authorisation;
- visit them and check they are looked after in a way that means they are safe; and
- help them appeal against the DoLS authorisation (if they want to do this).

This booklet explains how we will make sure that people have a DoLS authorisation to help keep them safe. It also explains the rights people have under DoLS, and your role as representative.

What is deprivation of liberty?

If someone is deprived of their liberty in a care home or hospital, this means that:

- they cannot decide for themselves whether to stay in the hospital or care home;
- staff in the care home or hospital have control over decisions in their life; and
- they cannot leave the care home or hospital without permission.

The person being cared for and treated in this way must have a special agreement, called a DoLS authorisation, to keep them safe.

A person is eligible for DoLS if they:

- live in England or Wales;
- are aged 18 or over;
- have a mental disorder or a learning disability;
- live in a care home, or are staying in hospital, and lack the mental capacity to agree to be there; and
- need to get treatment or care that will protect them from harm.

Who are the managing authority and what do they do?

There is a code of practice that applies to DoLS. This is a book of rules that explains what should happen and tells the people involved in someone's care what to do.

The code of practice says that the hospital or care home that is caring for or treating the person is called the 'managing authority'. If the managing authority thinks someone needs to be deprived of their liberty, it must make sure this is allowed under DoLS.

Who are the supervisory body and what do they do?

We are the supervisory body in West Sussex. The managing authority must write to us to tell us if someone needs a DoLS authorisation.

The code of practice says we must decide whether the person needs a DoLS authorisation. We will do this by arranging for at least two people to check how they are being treated or cared for. These people are called DoLS assessors.

One of the assessors will be a doctor. They will decide whether the person is able to decide for themselves whether to stay in the care home or hospital. They will meet with the person and then give us a report.

The second assessor is called a best interests assessor (BIA). The BIA is a professional who has carried out specialist training to do this role. The BIA must be independent, which means that someone who is already involved in the person's care can't be the BIA.

The BIA will discuss the person's needs with anyone who has a valid power of attorney (is legally allowed to make specific decisions for the person and act on their behalf). If the Court of Protection has authorised someone to act on their behalf, the BIA will also work closely with that person to make sure any decisions that are made about the person's care and support are in their best interests.

A 'best interests' decision can only be made for the person if they are lacking the mental capacity to decide for themselves whether to stay in the hospital or care home.

The BIA will also meet with the person to find out their views and will speak to any family members and friends who are closely involved.

The BIA will write a report to tell us if a DoLS authorisation is needed and, if so, how long it should apply for. The BIA's report will explain if restrictions should be in place so that the person gets the care or treatment they need.

These restrictions must be:

- in the person's best interests;
- necessary to prevent harm; and
- in proportion to the level of harm they aim to prevent.

Sometimes the BIA's report will include 'conditions', which are actions that the care home or hospital must carry out.

What will happen after the BIA's report?

If the BIA's report says that the person is being deprived of their liberty and that this is in their best interests, we will arrange for one of our managers to review the report and confirm the DoLS authorisation needed. We will also write to the hospital or care home to give them details of the DoLS authorisation. The DoLS authorisation is to make sure the person is safe. The authorisation should be in place for as short a time as possible, and never for longer than one year.

What rights do people have under a DoLS authorisation?

- They can have a representative to support them. They can choose their own representative, such as a family member or a friend, before a DoLS authorisation is needed. If they cannot make this decision for themselves, but someone else has powers to make health and welfare decisions under a power of attorney, that person can choose someone to be their representative. If there is no one to do this, we will select a representative.
- They can ask for a review. If they are not happy about the DoLS authorisation, or they think the BIA got some things wrong in the report, they can ask for a review to make sure they are being treated in the right way.
- They can ask us about any conditions in the DoLS authorisation. These are things the care home or hospital have to do or change. If they do not think the care home or hospital is meeting the conditions, they (or you as their representative) should tell the care home or hospital. They can also tell us, or they can ask the Court of Protection to help.
- They can ask for a special kind of advocate. If they (or you as their representative) need help to challenge the decision to put the DoLS authorisation in place, they can ask for an independent mental capacity advocate to help with this.

What else do I need to be aware of as the person's representative?

- The role is unpaid.
- You cannot be the person's representative if you are working with them in the care home or hospital.
- You will be named as the representative in the DoLS authorisation.
- You will need to explain to the person all about the DoLS authorisation.
- You will need to visit the person regularly to check that they are getting as much freedom as they should have.

- You will need to check that the care home or hospital is keeping to any conditions in the DoLS authorisation.
- You will need to speak up for the person and help them to ask for a review of any part of the DoLS authorisation (if they want to do this).
- You will need to help the person to appeal to the Court of Protection (if they want to do this).

The Court of Protection can decide whether or not the person should be deprived of their liberty. Depending on the person's health conditions, they may be able to let you know that they are not happy about the DoLS authorisation and want to appeal. People express their views in different ways. For example, some people show this through a change in their behaviour or through non-verbal communication.

Court of Protection

The Court of Protection can provide information on how to appeal. Legal aid is available for all appeals to the Court of Protection.

Write to: Court of Protection, PO Box 70185, First Avenue House, 42-49 High Holborn, London, WC1A 9JA.

Phone: **0800 0699 784**. (a free helpline for information and guidance). **0300 456 4600**.

Email: courtofprotectionenquiries@justice.gov.uk.

Websites: visit the Court of Protection page and the Deprivation of Liberty orders page of the gov.uk website.

If you need help to understand the DoLS authorisation or to challenge the decision about the DoLS authorisation, you can ask us to arrange for an independent mental capacity advocate to help you and the person who is being deprived of their liberty. Contact our DoLS Team for more information.

Deprivation of Liberty Safeguards (DoLS) Team

Phone: **0330 222 3691**. Calls using Relay UK: **18001 0330 222 3691** (for deaf callers from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone)

Email: dols@westsussex.gov.uk.

What if I need to speak to a solicitor?

There are specialist solicitors who can give you advice on mental capacity and DoLS.

You can get information about local solicitors at local branches of Citizens Advice in England. Find out more on the Citizens Advice website call **0800 144 8848** (Monday to Friday, 9am to 5pm). The number for calls using Relay UK is **18001 0800 144 8848**. (This service allows deaf callers to make phone calls from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone.)

Or you can use the Law Society's 'Find a Solicitor' scheme. Find out more at the Find a Solicitor page on the Law Society website, or call 020 7320 5650 (Monday to Friday, 9am to 5.30pm).

Civil Legal Advice is a type of legal help that is available to individuals and families who cannot afford to hire a solicitor. It can help with a variety of issues, including family law, housing law, benefits law, and more. Find out more on the Community Legal Advice website.

Adults' CarePoint

Phone: 01243 642121. Calls using Relay UK: 18001 01243 642121 (for deaf callers from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone).

Website: visit the How to get adult social care support page of the West Sussex County Council website and fill in the 'Contact us' form.

Write to: Adults' CarePoint, County Hall, Chichester, West Sussex, PO19 1RG.

Other formats

If you would like more copies of this booklet or need this information in another format, for example, in large print or Easy Read, on audio CD or in a different language, please contact us. Please see our contact details above.

Current versions of all our public information are available on the West Sussex County Council website on the Adults' social care publications page.

We are committed to equality, celebrating diversity and preventing unlawful discrimination. We value the people we support, our staff and partners for who they are, and we actively promote fairness and respect for all. We also expect our staff to be treated politely and with respect by the people we support.