

Simple guides

What are the Deprivation of Liberty Safeguards (DoLS)?



The Deprivation of Liberty Safeguards (DoLS) are a response to an amendment to the Mental Capacity Act 2005. DoLS is the procedure, prescribed in law, of a situation where the person (aged 18 years or older) has been assessed to lack capacity at that time, to consent to their care and treatment and where it is in their best interests to deprive a person of their liberty in order to keep them safe from harm.

In this guide:

- The DoLS 'acid test'
- How DoLS is administered
- When DoLS cannot be used
- When would the use of restraint or restrictions for a patient be necessary?
- Consent and Capacity (adult)



Introduction

DoLS ensures that people who cannot consent to their care arrangements in a hospital or within a community care setting are protected, in law, if those care arrangements deprive them of their liberty. Arrangements are assessed and made to check that DoLS is necessary and in the person's best interests. Representation and the right to challenge a deprivation are other safeguards that are part of DoLS.

The DoLS 'acid test'

In 2014, the Supreme Court defined the 'acid test' to see whether a person is being deprived of their liberty, this consists of two key questions:

- › Is the person subject to continuous supervision and control?
- › Is the person free to leave? The person may not be saying they want to leave or acting on it but the issue is about how staff would react if the person did try to leave

It can be challenging at times to be clear when the plan of care or the use of restrictions or restraints, in someone's best interests, becomes a deprivation of liberty for that person.

Each individual situation must be considered on its own merits. If the following features are present, as part of an agreed best interests plan, it would be necessary to make a deprivation of liberty application:

- › use of sedation or other medication to control behaviour, for longer than 24 to 48 hours
- › use of physical restraint to control behaviour, for longer than 24 to 48 hours
- › use of a mechanical restraint device, for longer than 24 to 48 hours
- › use of covert medication, for longer than 24 to 48 hours
- › use of enhanced care or increased levels of observation, for longer than 24 to 48 hours
- › the person is confined to a particular part of the establishment in which they are being cared for
- › the person concerned objects verbally or physically to the restriction and/or restraint

“DoLS ensures that people who cannot consent to their care are protected by law if deprived of their liberty”



- › objections from family and/or friends to the restriction or restraint, or proposed legal objections
- › the person is already subject to a deprivation of liberty authorisation within another care setting and the best interests care plan is unchanged

How DoLS is administered

If hospital staff believe that it is necessary to deprive a patient of their liberty, a DoLS application is submitted to the relevant DoLS supervisory body by the patient's care team.

In most cases this is to Gloucestershire's county wide DoLS Team at Gloucestershire County Council. Most hospital applications are made in response to an emergency DoLS need with self-authorisation requested for 7 days. An application can also be made in advance, for a planned patient admission, if DoLS is indicated as part of the admission preparation.

Urgent authorisation

Hospitals can make urgent authorisations to deprive someone of their liberty for up to seven days and must make an application to the DoLS supervisory body in doing so.

An urgent application can be extended for up to a further seven days if the hospital makes an application. Gloucestershire's countywide DoLS Team are then required to make their assessments.

When DoLS cannot be used

If a patient is cared for in hospital and detained under a section of the Mental Health Act a DoLS application would not be indicated as the patients' rights are upheld by 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 be considered to be causing 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 any dispute about where a person should stay, a DoLS authorisation does not resolve the dispute. Under the Mental Capacity Act unresolved disputes about residence, including the person themselves disagreeing, should be referred to the Court of Protection. Seek guidance from Caroline Pennels, Head of Legal Services. Direct Dial 0300 422 3555

When would the use of restraint or restrictions for a patient be necessary in best interests?

The Mental Capacity Act allows restrictions or restraint to be used in the best interests of a person who lacks capacity providing that these are proportionate to the harm that Trust care staff are seeking to prevent and can include:

- › using locks or key pads which stop a person going out or into different areas of a building
- › the use of appropriate medication to calm a person
- › close supervision
- › restricting contact with friends, family and acquaintances, including if they could cause the person harm
- › physically stopping a person from doing something which could cause them harm
- › safe holding of a person
- › floor level bed, soft mitts, nasal bridge, bedrails, wheelchair straps, splints or any mechanical restraint device
- › threat of the use of restraint

Consent and Capacity (adult)

Only an adult with capacity can give valid consent. For every decision about patient treatment or change of accommodation you must:

- Know the capacity status of each patient.
- The starting point is an assumption of capacity. However:
- For any patient with confusion, cognitive impairment, or any disturbance of mind or brain you **must** assess that the patient can understand, weigh up the pros and cons of treatment and retain the information and communicate their decision at that time.
- The only legal test to assess capacity is the 2 stage test. **Your assessment and the outcome must be documented.**
- Capacity or lack of capacity is decision and time-specific, i.e. it should be assessed **each** time a decision is taken.
- Follow the Trust Capacity Assessment and Decision Making Flowchart. Use with the appropriate consent form where indicated.
- If the patient is assessed to lack capacity for that decision, at that time, you have a **legal duty** to consult with "appropriate others" and to act in best interests.
- Is there any person with legally appointed decision making powers (LPA or legal power of attorney) or an advanced directive?
- For any patient who lacks capacity, a best interests discussion is required and a best interests meeting may also be indicated. Follow the Trust Best Interest Checklist.
- If there is no one to support the patient other than paid carers, you must refer for an Independent Mental Capacity Advocate (**IMCA**).

If not free to leave the ward or there are any restrictions relating to DoLS, always contact:

Trust Safeguarding Adult at Risk Advisory Team
8:30am – 4:30pm (Mon – Fri), 07813 002455 or bleep 3214

ghn-tr.ghnhsftsafeguardingadultsteam@nhs.net
or Trust Head of Legal Services via switchboard.

Example 1

Claire's story: an example in practice.

Claire is a young lady aged 25 who has been admitted to hospital with an acquired brain injury. Claire has been assessed to have an unsafe swallow and is not able to take any food, fluid or medication orally at this time. Use of nasogastric feeding is clinically indicated.

The doctor assesses Claire as lacking capacity, at that time, to make the treatment decision herself in relation to use of the nasogastric tube and enteral feeding. The capacity assessment is documented in Claire's health record by the doctor. The care team consult with Claire's mother and are proposing that it is in Claire's best interests to have a nasogastric tube placed to provide hydration, nutrition and to enable medication to be administered.

Claire can be restless at times and it is also proposed that a nasal bridle be fitted along with the nasogastric tube. The use of soft mitts is also proposed, to prevent self-removal of the tube and to minimise the risk of aspiration.

The ward care team and family are in agreement to the best interests plan and an urgent DoLS application is completed and faxed to Gloucestershire's countywide DoLS Team by the ward team. The Trust Safeguarding Adults at Risk Advisory Team are also informed, by the ward team, of the DoLS application.

When the outcome of the DoLS application is confirmed, the Trust Safeguarding Adult at Risk Advisory Team complete the required DoLS Outcome Notification to the Care Quality Commission (CQC) as this is required by law.

For more information visit

- Staff intranet: [DoLS pages](#)
- Follow the guidance of the Trust DoLS screening checklist and DoLS flow chart
- Contact the Trust [Safeguarding Adults at Risk](#) team for guidance and advice on completing a DoLS application
- [Social Care Institute for Excellence](#)
- [Department of Health](#)