

Deprivation of Liberty Safeguards (DOLS)

What is the test for determining whether a person is deprived of their liberty?

This is an objective test and the criteria below should be applied to determine whether a person is potentially deprived of their Liberty.

The DOLS process will apply when a patient or resident **lacks the capacity** to consent to make a decision to receive medical treatment and/or be accommodated in the care setting.

- 1) Consideration must be given as to whether the patient or resident is not **free to leave** the place where they are living. The person may not be asking to go or showing by their actions that they want to, but the issue is about how the staff would react if the person did try to leave or if relatives/friends ask to remove them.
- 2) Is the person subject to **continuous supervision and control**? You should carefully consider cases where intensive levels of support are being provided to the person as part of their care package.

What if the patient or resident is compliant with care and has never asked to leave or made an attempt to leave?

These factors are no longer relevant to the identification of a Deprivation of Liberty. To clarify further, the following are **not relevant** and **have no bearing** on whether a person is deprived of their liberty:

- Whether or not they are complying with the requirement to live in their place of care and or treatment and or support
- Whether or not they are able physically and or cognitively able to undertake the actions necessary to leave their place of care and or treatment and or support
- Whether or not there is consensus on the person's place of care or treatment and or support.
- Whether or not they have supported access to universal services and other services such as day services
- whether or not that support, to access universal services, is required for their own safety
- whether or not they have unrestricted access to family and other significant others
- What the reason or the purpose is for the placement or care package.

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What are 'urgent' and 'standard' authorisations?

Urgent:

An urgent authorisation can last up to seven days and is given when

- it is believed that the requirement for deprivation of liberty is so urgent that deprivation needs to begin before a standard request is made, or
- when a request for a standard authorisation is made but the need for deprivation has become so urgent that it needs to begin immediately
- An urgent request should never be given without simultaneously submitting a request for standard authorisation.

Standard:

A managing authority must request a standard authorisation when it appears likely that, at some time during the next 28 days, someone will be accommodated in its hospital or care home in circumstances that amount to a deprivation of liberty. **Whenever possible, authorisation should be obtained in advance.**

The request must be made to the Supervisory Body.

A person may be deprived of their liberty if

- It is in their best interests to protect them from harm
- It is a proportionate response to the likelihood and seriousness of the harm
- If there is no less restrictive alternative

Six assessments are required before a standard authorisation may be given and these are undertaken by Best Interest Assessors and Mental Health Assessors.

Who does the assessment?

DoLS assessments are carried out by at least two people. They are:

- the best interests assessor
- the mental health assessor.

They are appointed by the local authority (or health board), who must ensure that they have had the appropriate level of training and experience.

The best interest assessor must be a qualified social worker, nurse, occupational therapist or chartered psychologist. They must not be involved in the person's care or in making any other decisions about it. The mental health assessor must be a doctor who is able to assess whether a person has a 'mental disorder' (the term used in law to describe a set of mental health conditions, including dementia) and how a deprivation of liberty will affect their mental health.

What does the assessment involve?

There are six parts to the assessment. These are divided between the two assessors. Their job is to decide whether the person and the care that they receive meet the criteria for authorization. The six parts are as follows:

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1. **Age** – Is the person aged 18 years or over?
2. **Mental health** – Does the person have a ‘mental disorder’?
3. **Mental capacity** – Does the person lack ‘capacity’ (the ability) to make their own decisions about treatment or care in the place that is applying for the authorisation?
4. **Best interests** – Is a deprivation of liberty taking place? If so, is it:
 - in the person’s best interests?
 - **necessary** to keep the person safe from harm?
 - a **proportionate** response to the likelihood of the person suffering harm (including whether there are any less restrictive options and if they are more appropriate)?
5. **Eligibility** – Is the person already liable to detention under the Mental Health Act 1983, or would they meet the requirements for detention under this Act? If they are, the Mental Health Act should apply and not DoLS (for more information see factsheet 459, [The Mental Health Act 1986 and guardianship](#)).
6. **No refusals** – Does the authorisation contradict or conflict with any [advance decision](#) the person has made refusing treatment, or with any decisions made by, for example, a court-appointed [deputy](#) or someone with [Lasting power of attorney](#)

When the criteria are not met

- If the assessors decide that the person or the proposed care doesn’t meet the criteria, they will inform the local authority of this and the reasons for it. The deprivation of liberty would then not be authorised, and it should not happen. What happens next will depend upon the reasons why the criteria were not met.
- For example, if the assessment showed that the person has capacity to consent to and make the decision about their care and where they will live, they should be empowered to make their own decision, and this should be followed.
- If an assessment failed because it was decided that there are less restrictive options, these should then be pursued. An example of this might be that the care home proposes to lock a person’s bedroom door at night to stop them from walking round the care home and into other residents’ rooms. An assessment may decide that this is not allowed as there are less restrictive options, such as making it possible for the person to stay up later, and having staff on hand to talk to them and encourage them to not enter people’s bedrooms.

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The 'relevant person's representative'

- If a person's care is authorised following a DoLS assessment, they must have a representative appointed, called the 'relevant person's representative'. Often this is a family member, friend or other carer. They are appointed during the best interest assessment.
- If the person with dementia doesn't have a relative or friend who is able to take on this role, or it is felt that that they may not be appropriate, the local authority must appoint a paid representative. The paid representative will be a professional who is trained and experienced in these matters and will act as the person's representative.
- The job of the representative is to stay in close contact with the person with dementia. They should look to see if the person's care arrangements change, be given access to documents about decisions, and if necessary ask for a review of an assessment decision. The representative can also appeal against the DoLS authorisation, and should do so where the person under DoLS disagrees with it, even if they themselves do not.
- The representative should be kept informed about the person's care and treatment and any changes to it. The local authority should work together with the care home or hospital to make sure that both the person and their representative understand the DoLS process and know their rights.
- If a representative requires support, they can ask to talk to an independent mental capacity advocate (IMCA). The local authority can put you in touch with your local IMCA

How long is the deprivation of liberty allowed for?

A DoLS authorisation should last for as little time as possible, and only up to a maximum of 12 months. Each individual DoLS authorisation will state the date it lasts until. However, during this time both the care provider and local authority should:

- make regular checks to see if the authorisation is still needed
- remove the authorisation when it is no longer needed
- provide the person's representative with information about their care and treatment

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Responsibilities for Care Managers

It is the responsibility of the Care manager to read the DOLS assessment, make themselves aware of any conditions and /or recommendations and ensure these are actioned within the recommended timescales. Be aware of the expiry date make sure care managers liaise with the Managing Authority where necessary to ensure the DOLS does not expire making an individual unlawfully deprived of their liberty.

Deprivation of Liberty outside of hospitals, care homes and young people

16-17

Although the DOLS scheme only applies to Hospital and Care Homes, the definition of a Deprivation of Liberty applies to all settings, in which care is provided, including a person's own home and/ or supported living and residential college/accommodation for young people 16-17. A Deprivation of Liberty in such a situation must be authorised by a Court of Protection Order under the Mental Capacity Act Deprivation of Liberty Safeguards.

Guidance notes for Managing Authorities

To make an application for a Deprivation of Liberty or request for an authorisation, the Managing Authority needs to contact the **Cheshire East DOLS team on 01625 378192**.

Please send completed forms to: mcadols@cheshireeast.gov.uk

Cheshire East DOLS website

http://www.cheshireeast.gov.uk/pdf/care_and_support/dols-guidance-notes-for-managing-authorities.pdf

http://www.cheshireeast.gov.uk/pdf/care_and_support/dols-post-authorisation-checklist.pdf

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APPENDIX 1: Deprivation of Liberty Safeguards – Deciding if an Authorisation may be needed

MANAGING AUTHORITY
(Hospital/Care Home) identifies

- 1 Patient lacks mental capacity to consent to admission
- 2 Under continuous supervision and control
- 3 Not free to leave

The person meets eligibility for assessment:

- Over the age of 18
- Has a mental disorder (e.g. mental illness, acquired brain injury, learning Disability)
- Lacks consent to consent to care/treatment of admission.
- Is not subject to any powers of the Mental Health Act, 1983 that would conflict with the Dols process.
- Does not have any valid decision making authorities (Advanced Decision, Lasting Power of Attorney, and Court Appointed Deputy) that would conflict with a Dols authorisation.

When a Deprivation is Occurring

Deprivation already occurring and must continue in the persons best interests - Managing Authority must apply for an **URGENT AUTHORISATION** to provide authority for a period of **7 calendar days**

Please complete Form 1 (*All Pages*)

Please evidence the following:

- The date of a recent capacity assessment
- Date of Admission
- Evidence less restrictive care and treatment has been considered

Managing Authority must submit a **REQUEST FOR STANDARD AUTHORISATION** at the same time that the Urgent Authorisation is submitted to the Supervisory Body (Local Authority). The Standard Authorisation can be granted for a period of **up to 12 months**.

When a Deprivation is likely to occur within the next 28 days

Deprivation of Liberty is not already occurring but is likely to occur within the next 28 days. Request for **STANDARD AUTHORISATION**

Please completed form 1 (*Pages 1- 5*)

Please evidence the following:

- The date of a recent capacity assessment
- Date of Admission
- Evidence less restrictive care and treatment has been considered

FORM 1: REQUEST FOR STANDARD AUTHORISATION
Please find this form on Cheshire East DOLS Website.

Completed forms to be submitted to the:-
MCA/DOLS TEAM
Email: mcadols@cheshireeast.gov.uk

Or contact our Triage number on 01625 378192

Best Interest Assessor (BIA) will be allocated to complete assessment

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APPENDIX 2: Deprivation of Liberty Safeguards –Request for Further Standard Authorisation

MANAGING AUTHORITY

(Hospital/Care Home) identifies

- 1 Patient lacks mental capacity to consent to admission
- 2 Under continuous supervision and control
- 3 Not free to leave



The person meets eligibility for assessment:

- Over the age of 18
- Has a mental disorder (e.g. mental illness, acquired brain injury, learning Disability)
- Lacks consent to consent to care/treatment of admission.
- Is not subject to any powers of the Mental Health Act, 1983 that would conflict with the Dols process.
- Does not have any valid decision making authorities (Advanced Decision, Lasting Power of Attorney, and Court Appointed Deputy) that would conflict with a Dols authorisation.



FORM 2: The Supervisory Body requests the Form 2 no later than 3 weeks before the current Authorisation is due to expire.

Any Breaches in the Authorisations will be subject to a Safeguarding notification to CQC.
Please find this form on Cheshire East DOLS Website.



Completed forms to be submitted to the:-

MCA/DOLS TEAM

Email: mcadols@cheshireeast.gov.uk

Or contact our Triage number on 01625 378192