



Deprivation of Liberty Safeguards (DoLS) application and
authorisation process.

January 2009
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Glossary

The Deprivation of Liberty Safeguards introduces a range of new terminology, below is a guide to this new terminology. For a full glossary please see the DoLS code of practice.

| Terminology | Explanation |
|-------------------------------------|---|
| Managing Authority | Has responsibility for applying for authorisation of deprivation of liberty for any person who may come within the scope of the deprivation of liberty safeguards: In the case of a care home or a private hospital, the Managing Authority will be the person registered, or required to be registered, under part 2 of the Care Standards Act 2000 in respect of the hospital or care home. |
| Supervisory Body | Is responsible for considering requests for authorisations, commissioning the required assessments and, where all the assessments agree, authorising the deprivation of liberty. The supervisory body for care homes is normally the local authority where the relevant person is ordinarily resident (i.e. where they lived prior to residential care/hospitalisation), or the organisation who commissions the placement (i.e. PCT for CHC) |
| Best Interest Assessor (BIA) | A person who carries out a deprivation of liberty safeguards assessment. This can be an approved mental health professional, a Social Worker, a state registered occupational therapist or a registered nurse who has undertaken the prescribed Mental Capacity Act training. The BIA must be independent of the admissions/care planning process. |

| Terminology | Explanation |
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| Mental Health Assessor | A registered medical practitioner with at least three years' post-registration experience in the diagnosis or treatment of mental disorders, such as a GP with a special interest or a registered medical practitioner who is approved under section 12 of the Mental Health Act 1983. This includes doctors who are automatically treated as being section 12 approved because they are approved clinicians under the Mental Health Act 1983. Again even if Section 12 approved the doctor must have undertaken the prescribed Mental Capacity Act training. The preference will always be for a medical practitioner who is familiar with the relevant person. |
| Approved Mental Health Practitioner (AMHP) | A social worker or other professional approved by the local social services authority to act on their behalf in carrying out a variety of functions. |
| Independent Mental Capacity Advocate (IMCA) | Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them. The IMCA service was established by the Mental Capacity Act 2005 and is not the same as an ordinary advocacy service. |
| Relevant Person | A person who is, or may become, deprived of their liberty in a hospital or care home. |
| No refusal assessment | An assessment, for the purpose of the deprivation of liberty safeguards, of whether there is any other existing authority for decision-making for the relevant person that would prevent the giving of a standard deprivation of liberty authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney. |
| Mental capacity assessment | An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment. |

| Terminology | Explanation |
|---------------------------------------|---|
| Best Interest Assessment | An assessment prepared by the appointed BIA for the purpose of the deprivation of liberty safeguards, of whether deprivation of liberty is in the detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm. |
| Eligibility Assessment | An assessment, for the purpose of the deprivation of liberty safeguards, of whether or not a person is rendered ineligible for a standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983. |
| Age Assessment | An assessment, for the purpose of the deprivation of liberty safeguards, of whether the relevant person has reached age 18. |
| Mental Health Assessment | An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person has a mental disorder. |
| Relevant person representative | A person, independent of the relevant hospital or care home and the relevant supervisory body, appointed to maintain contact with the relevant person, and to represent and support the relevant person in all matters relating to the operation of the deprivation of liberty safeguards. |

Introduction

This procedure is to be used by staff working with individuals who may be or may need to be deprived of their liberty. This document does not replace the Deprivation of Liberty Safeguards (DoLS) Code of Practice.

The DoLS legislation gives no definition of what constitutes a deprivation of a person's liberty; however the DoLS codes of practice suggest that the following characteristics may indicate that a person is being or would need to be deprived of their liberty.

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- Staff exercise complete and effective control over the care and movement of a person for a significant period.
- Staff exercise control over assessments, treatment, contacts and residence.
- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff within the institution consider it appropriate.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts because of restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

Who can make an application for a DoLS assessment?

Referrals will ordinarily be received from the Registered Manager as described under part 2 of the Care Standards Act 2000, or the person acting in this capacity in their absence. The Registered Manager is expected to complete the Deprivation of Liberty (DoL) form 4 and send this to the Supervisory body immediately on becoming aware that a person living within their services may come within the scope of the safeguards. In addition to the information to be included on the relevant DoLS form the Managing Authority has a duty to advise relevant family members, friends and carers that it has applied for a deprivation of liberty authorisation.

All forms can be downloaded from the department of health website via

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772

If anyone involved in the care and support of a person living in a care home has reason to believe that person may be being illegally deprived of their liberty they should in the first instance raise their concerns with the registered manager. The person raising the concern may wish to complete DoL Standard letter 1 to record their concern and pass this to the registered manager of the care home.

If the concerned person has raised the matter with the managing authority, and the managing authority;

- Does not apply for an authorisation within a reasonable period (this would normally be 24 hours)
- grant an urgent authorisation

The concerned person can ask the supervisory body to decide whether there is an unauthorised deprivation of liberty. The person raising the concern should advise the supervisory body of the name of the person they are concerned about and the name of the care home, and as far as they are able, explain why they think that the person is deprived of their liberty. The supervisory body will then determine whether an assessment is required to determine whether there is in fact a deprivation of liberty situation, any such assessment must be completed within 7 days of receipt of the request from the carer/supporter. The carer/supporter will be notified of the outcome of any assessment and if there is no assessment, the reasons for this.

The decision of Bracknell Forest Council is that all DoLS applications must be made using the standard forms issued by the Department of Health. The application form **MUST** be either sent via fax or e-mail to the DoLS Administrator.

Fax Number 01344 351596

E-mail: dols.application@bracknell-forest.gov.uk

What happens when Bracknell Forest Council receives a referral?

The actions that must be taken on receipt of a DoLS application are as follows: - (For further details refer to the DoLS code of practice).

| Action | Subsequent action needed | Who is to action | Timescales |
|---|--|---|--|
| 1. Is the application complete? | If incomplete contact the referring person and obtain complete information. If complete confirm receipt in writing to the Managing Authority | DoLS administrator following discussion with DoLS Lead or a BIA | Immediately on receipt of application being received |
| 2. Deprivation or restriction | Form a view as to whether the application demonstrates that deprivation is likely to be occurring | DoLS administrator to discuss application with a BIA or DoLS lead | Immediately on receipt of application being received |
| 3. Check if Bracknell Forest is the Supervisory Body | If not refer to correct Supervisory Body and ensure they accept application. If they do not accept the application BFC to act as Supervisory Body | DoLS administrator | Immediately on receipt of application being received |
| 4. Consider if Bracknell Forest is both the Supervisory Body and Managing Authority | Where this is the case (i.e. if the relevant person is a resident at Heathlands, Ladybank, Bridgewell or Waymead) the DoLS Administrator should refer to the Mutual Exchange Protocol with Wokingham Borough Council | DoLS administrator | Day of application being received |
| 5. Input basic details into DoLS Database | | DoLS administrator | Day of application being received |
| 6. Check if there is an urgent authorisation already in force. | Pass this information to the BIA | DoLS administrator | On day of application being received |

| Action | Subsequent action needed | Who is to action | Timescales |
|--|--|--|--|
| 7. Instruct the appropriate BIA to start the assessment process clearly stating the timescales by which the work is to be completed. | If urgent authorisation is in place, timescales to be adjusted as appropriate. Inform BIA of this. | DoLS administrator | Day of application being received |
| 8. Consider the need for an IMCA to be instructed. An IMCA would only be instructed if the relevant person has no one other than paid staff to support them. | Where appropriate instruct an IMCA. | DoLS administrator following discussion with the BIA | Immediately on receipt of application being received |
| 9. Instruct Mental Health Assessor | Following the completion of the BIA assessments | DoLS administrator following discussion with BIA | Following the BIA assessments. For further details please see box titled assessment stages |
| 10. Provisional date for DoLS Panel to consider application for authorisation to be set. | Written confirmation will be sent once the authorisation is confirmed. | DoLS Administrator. | To be set within 2 working days of application being received. |

Assessment stages

The BIA will advise the DoLS administrator when to instruct a Mental Health Assessor. Clarification will be sought as to which assessments the Mental Health Assessor is to undertake. A Mental Health Assessor will only be instructed once the BIA has assessed that the circumstances leading to the application may amount to a deprivation of liberty.

The Six Assessments and their purposes are:

| Assessment and order they are to be done in. | Propose | Lead |
|---|---|--|
| 1. No refusals Assessment | To ensure that any Deprivation of liberty authorised would not conflict with an existing authority for decision making for that person | Best Interest Assessor |
| 2. Mental Capacity Assessment | To establish if the relevant person retains capacity to make the decision in question | Best Interest Assessor Or Mental Health Assessor |
| 3. Best Interests Assessment | The purpose of the best interests assessment is to establish, firstly, whether deprivation of liberty is occurring or is going to occur and, if so, whether: <ul style="list-style-type: none"> • it is in the best interests of the relevant person to be deprived of liberty • it is necessary for them to be deprived of liberty in order to prevent harm to themselves, and • Deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm. | Best Interest Assessor |
| 4. Eligibility Assessment | This assessment relates specifically to the relevant person's status, or potential status, under the Mental Health Act 1983. | Mental Health assessor or a BIA but only if they are an AMHP |
| 5. Age Assessment | To confirm the relevant person is 18 years or over | Best Interest assessor |
| 6. Mental Health Assessment | The purpose of the mental health assessment is to establish whether the relevant person has a mental disorder within the meaning of the Mental Health Act 1983. | Mental Health Assessor |

If an IMCA is instructed and there are differences of opinion between the IMCA and either of the assessors, this should be resolved locally. It may be appropriate to call a meeting of the assessing team and the IMCA to resolve these issues. In these circumstances no member of the DoLS panel can participate in this meeting.

The Mental Health Assessor will share their assessment with the Best Interest Assessor and provide written copies of their assessments using the Standard Forms issued by the Department of Health.

What happens following completion of the assessments?

There are two possible outcomes from the DoLS assessment process

1. Criteria for Deprivation of liberty are not met.

The Best Interest Assessor will record their reasons in the Best Interests Assessment if they assess that deprivation of liberty is **not** occurring. In such cases the assessments will not be presented to the DoLS panel. The Supervisory Body **cannot** give a standard authorisation if any of the requirements are not fulfilled. The Supervisory Body will inform the Managing Authority of this decision in writing.

2. Criteria for Deprivation of Liberty are met.

If the six assessments conclude that deprivation of liberty is occurring or needs to occur the Best Interest Assessor should pass the completed assessments to the DoLS administrator as soon as the assessments are completed, and no later than 3 days prior to the panel meeting, for standard authorisations and the day prior to panel meeting in the case of a review of an urgent authorisation having been granted by the Supervisory body.

DoLS panel

The DoLS panel will consider all assessments where the BIA and the Mental Health Assessor conclude that the person is being unlawfully deprived of the liberty or where it is deemed appropriate this occurs. Full details of the DoLS panel are contained within the Panel Terms of Reference (Appendix B). The BIA's and Mental Health Assessor assessments should be available to the DoLS panel 3 working days prior to panel meeting unless it is an application to convert an urgent into a standard authorisation in which case the same day as the panel meeting will be acceptable. The DoLS panel will meet with the BIA in order that any questions/ clarifications can be sought. DoLS Panel decisions will be communicated to the Managing Authority, Relevant Person (and IMCA where applicable) in writing.

Review.

When a person is deprived of their liberty, the managing authority has a duty to monitor the case on an ongoing basis to see if the person's circumstances change – which may mean they no longer need to be deprived of their liberty.

The managing authority must set out in the care plan clear roles and responsibilities for monitoring and confirm under what circumstances a review is necessary. For example, if a person's condition is changing frequently, then their situation should be reviewed more frequently.

There are certain statutory grounds for carrying out a review. If the statutory grounds for a review are met, the supervisory body must carry out a review. If a review is requested by the relevant person, their representative or the managing authority, the supervisory body must carry out a review. Standard letters are available for the relevant person or their representative to request a review. There is also a standard form available for the managing authority to request a review. A supervisory body can also decide to carry out a review at its own discretion.

The statutory grounds for a review are:

- The relevant person no longer meets the age, no refusals, mental capacity, mental health or best interest's requirements.
- The relevant person no longer meets the eligibility requirement because they now object to receiving mental health treatment in hospital and they meet the criteria for an application for admission under section 2 or section 3 of the Mental Health Act 1983.
- There has been a change in the relevant person's situation and, because of the change, it would be appropriate to amend an existing condition to which the authorisation is subject, delete an existing condition or add a new condition.
- The reason(s) the person now meets the qualifying requirement(s) is (are) different from the reason(s) given at the time the standard authorisation was given.

A managing authority must request a review if it appears that one or more of the qualifying requirements is no longer met, or may no longer be met.

The Supervisory Body will endeavour to ensure that the Review is undertaken by the same Best Interest assessor.

What happens when a DoLS authorisation ends?

- When an authorisation ends a managing authority cannot lawfully continue to deprive a person of their liberty
- If the managing authority considers that a person will still need to be deprived of their liberty after the authorisation ends, they need to request a further standard authorisation to begin immediately after the expiry of the existing authorisation.
- When a standard authorisation ends, the supervisory body must inform in writing; the relevant person, the relevant person's representative, the managing authority and every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

Deprivation of Liberty Safeguards (DoLS) Panel - Terms of Reference.

Purpose of panel.

The DoLS panel is in place to ensure that Bracknell Forest Council meets its statutory obligations in relation to applications for Deprivation of Liberty Safeguards under the Mental Capacity Act 2005.

Membership of panel.

- Chief Officer: Adults and Commissioning
- The Head of Adult Safeguarding may be requested to attend to advice panel on specific issues.

Remit of panel.

Panel will either authorise or refuse the application. If authorisation is granted it will;

- agree who will act as the relevant persons representative
- Consider whether an IMCA needs to be appointed (if not already appointed) to act as the relevant person representative either in the long term or as an interim measure until another representative can be appointed. If so the panel will instruct an IMCA to act setting out the purpose of their role.
- Agree appropriate conditions that should be attached to the authorisation. These may be conditions relating to contact, cultural or other significant issues.
- These conditions should be explained within the BIA report. However only conditions that are directly related to the DoL will be agreed by this process.

The Panel will also consider if there are any trends in authorisation that should be referred to either the Safeguarding Adults or Care Governance processes. In reaching a decision the Panel is entitled to consult further with the BIA or any other person involved in the assessment process. It should if reasonably practicable consult with the BIA further if any of the BIA's recommendations are likely not to be followed by the Panel.