



ISLINGTON

# The Mental Capacity Act 2005

and

## Deprivation of Liberty Safeguards

*A guide for family, friends  
and unpaid carers*



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# About This Booklet

You have been sent this booklet because a family member, friend or someone you provide care for is being looked after in hospital or in a care home and may be entitled to the **Deprivation of Liberty Safeguards (DoLS)**.

All councils are now required to carry out DoLS assessments for anyone placed into residential care or in hospitals that may lack the mental capacity to consent to being there. These DoLS assessments were introduced to safeguard people lacking mental capacity and ensure they are being cared for in the least restrictive and best way possible.

As a family member or friend of the relevant person (this is the person who needs to be assessed under DoLS), you are entitled to be consulted about their care.

These DoLS safeguards have been introduced to ensure that no one is deprived of their liberty in a hospital or care home setting without good reason, and that people who are deprived of their liberty receive the care they need while retaining specific rights.

**This booklet contains all the information you need to understand what the MCA DoLS are all about. Importantly, it helps you to:**

- **understand your rights to have a say in your friend or family member's care**
- **ensure that all possible steps are being taken to protect the interests of your friend or family member while they are being deprived of their liberty.**

# Understanding the MCA DoLS:

An overview for friends, family and other unpaid carers

**This section helps you to understand the MCA DoLS so you can represent the interests of your friend or family member more effectively.**

## **What are the Mental Capacity Act Deprivation of Liberty Safeguards (MCA DoLS)?**

The MCA DoLS provides protection for people who are accommodated in hospitals or care homes in circumstances that amount to a deprivation of their liberty and who lack the capacity to consent to the care or treatment they need.

The majority of people who will require the protection of the MCA DoLS are those people with moderate to severe learning disabilities, older people with any of the range of dementias or people with neurological conditions such as brain injuries.

## **Why were the MCA DoLS introduced?**

The MCA DoLS were introduced following the legal judgment given by the European Court of Human Rights about an autistic man with a learning disability, who lacked the capacity to decide whether he should be admitted to hospital for treatment. He was admitted to hospital on an informal basis, but was then prevented from leaving the hospital with his carers.

His carers challenged the hospital and took the case to the court, who found that he had been deprived of his liberty unlawfully, which is a breach of the European Convention on Human Rights.

To prevent further breaches of the Convention, and to provide legal protection for vulnerable people who may need to be deprived of their liberty in their best interests in a hospital or care home, the MCA DoLS were introduced in April 2009. They put in place rules about when a person can be deprived of their liberty and what rights they have if they are deprived of their liberty.

## Important terms

There is no simple definition of 'deprivation of liberty'. It will depend on the circumstances of each individual case. However following a ruling by the Supreme Court in March 2014 (The Cheshire West case) far more people than before are now entitled to the deprivation of liberty safeguards. The Supreme Court also confirmed the use of an 'acid test' to help determine whether or not someone is entitled to the deprivation of liberty safeguards. The two key parts of this test are:

- Whether the person is or is not free to leave **and**;
- Is the person under continual supervision and control?

The '**capacity to consent**' refers to a person's mental capacity to agree to a treatment. Under the Mental Capacity Act 2005, a person is said to lack capacity if they are unable to understand and make a particular decision at the time it needs to be made. There are lots of reasons why a person might lack capacity. Some are short term (for example, they are unconscious) while others are long term (for example, they have dementia).

For more information on mental capacity, read Chapter 4 of the Mental Capacity Act 2005 Code of Practice.

## When can someone be deprived of their liberty?

The MCA DoLS sets out clear guidelines on when someone can be lawfully deprived of their liberty.

1. It must be to provide a specific treatment or care plan that is in the person's best interests.
2. Doctors or care professionals must be satisfied that there is no suitable alternative care plan that would not deprive the person of their liberty.
3. The managing authority (the hospital or care home where the person is staying) must apply to its supervisory body (the local authority) for authorisation of the deprivation of liberty of the relevant person.
4. The supervisory body must conduct six assessments to confirm that the deprivation of liberty is lawful and appropriate:
  - age assessment: to check whether the person is aged 18 or over
  - no refusals assessment: to ensure that the proposed treatment does not conflict with a valid decision already made by an attorney or deputy on the person's behalf, or with a decision made in advance by the relevant person themselves
  - mental capacity assessment: to confirm whether the person being deprived of liberty lacks capacity to consent to the arrangements made for their care and treatment
  - mental health assessment: to check whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983. If they are, different rules may apply
  - eligibility assessment: to confirm whether the person is eligible to be deprived of liberty under the MCA DoLS
  - best interests assessment: firstly to establish whether the proposed care plan does deprive the person of their liberty, and secondly to confirm whether it is:
    - in the best interests of the person to be subject to the authorisation
    - necessary in order to prevent them from coming to harm
    - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

If the answer is Yes to all six assessments, then an authorisation will be granted by the local authority.

## What happens once an MCA DoLS authorisation is granted?

The supervisory body will set how long the authorisation will last, based on the person's individual circumstances. This can be for any period up to a maximum of 12 months.

While the authorisation lasts, if at any point the person is no longer deprived of their liberty or their circumstances change, then the authorisation will be reviewed and, where appropriate, end.

### Urgent authorisations

In some cases, a hospital or care home may think it is necessary to deprive someone of their liberty immediately – for example, if the person's circumstances change and particular treatment is needed urgently.

In this situation the managing authority can issue itself an urgent authorisation. The managing authority must apply for a standard authorisation at the same time and the assessments must be completed within seven calendar days.

# What can you do to support your friend or family member?

**There are several points in the process where, as a friend or family member, you can have a say. At some points, you should be consulted. At other points, you should be informed. This section explains more about your rights.**

## **When should a friend or family member be consulted?**

Friends or family members previously named by the relevant person (or someone acting on the relevant person's behalf) should be consulted at the following points:

- before a managing authority applies for an authorisation – the managing authority should discuss the proposed care plan with any named friends or family members, to see if they agree that it is appropriate and that the deprivation of liberty would be necessary. This is essential for a standard authorisation, and where possible it should happen before an urgent authorisation is made
- by the person carrying out the best interests assessment – the person carrying out this assessment should ask any named friends or family members whether they agree that the proposed treatment or care plan is in the relevant person's best interests
- if anyone challenges the authorisation or care plan after it has begun – if someone (such as another friend or family member, or someone appointed to represent the relevant person) challenges the authorisation, because they think it is no longer necessary or for any other reason, named friends or family members may be asked for their views

## **When should a friend or family member be informed?**

Every named friend or family member should be kept informed about the relevant person's treatment. In particular, you should be informed in writing:

- when the assessments have been completed, to let you know whether the authorisation has been issued or not
- when the authorisation comes to an end
- if the managing authority requests a new authorisation after any reviews or challenges to the care plan.

## Acting as a relevant person's representative

Everyone who is deprived of their liberty under the MCA DoLS is entitled to a relevant person's representative (RPR). This is normally a friend or family member, who should be consulted and informed about all matters relating to the care or treatment of the relevant person while the authorisation lasts.

The RPR is also able to make decisions on behalf of their friend or family member, and has legal rights to:

- challenge or request a review of the authorisation at any time
- ask for an Independent Mental Capacity Advocate (IMCA) to be appointed, to provide extra support to the relevant person and their representative if they do not already have a professional representative.

The RPR should be appointed as soon as possible after a standard deprivation of liberty authorisation is given.

To ensure that this is the case, the person carrying out the best interest's assessment is asked to recommend someone to act as the RPR.

As a friend or family member, you may be asked if you would be willing to act as the RPR. If so, you should decide if:

- you are willing to do so
- you are able to keep in regular contact with the relevant person during the authorisation period
- you are confident that you can act in their best interests.

For a more detailed explanation of the roles, responsibilities and rights of an RPR, read **Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for relevant person's representatives**. For details of how to get a copy, see page 12.

## Contacting your friend or family member

If your friend or family member is being deprived of their liberty, you should still be able to keep in contact with them. The hospital or care home should make sure this is possible.

## Challenging an unlawful deprivation of liberty

If you believe that your friend or family member is being deprived of their liberty unlawfully (i.e. without the appropriate authorisation in place), you must inform the hospital or care home immediately.

In the first instance, you should ask the hospital or care home to apply for an authorisation if it wants to continue with the care regime, or to change the care regime immediately. Given the seriousness of deprivation of liberty, the hospital or care home must respond to you quickly – normally within 24 hours. If you don't get a response you should contact Islington DoLS office, contact details are on the back of this leaflet.

## Asking for an authorisation to be reviewed

If you think that an authorisation is no longer necessary, you can ask for it to be reviewed. Normally, you should do this through the relevant person's representative or by contacting the hospital or care home.

# Further Information

The following documents may be useful to you:

**Mental Capacity Act 2005 Code of Practice** – a document that covers the entire Mental Capacity Act. In particular, it provides information about what mental capacity is, and how it is defined.

**MCA DoLS Code of Practice** – a document that explains the MCA DoLS in more depth. In particular, it looks at what deprivation of liberty is, how the assessment process should be carried out and how authorisations should be monitored and reviewed.

**Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for relevant person's representatives** – this guide explains the role of the RPR in more depth. Anyone appointed as an RPR should be given a copy, but it may also be useful for you if you are considering whether to become an RPR.

All of these documents are available from Islington's Deprivation of Liberty Safeguards Office and can be down-loaded from our website or by contacting the DoLS office.

For more information on the MCA DoLS, visit Islington council's website

[www.islington.gov.uk](http://www.islington.gov.uk)

**If you have any questions regarding the deprivation of liberty safeguards please contact Islington's Deprivation of Liberty Safeguards Office Open between 9am – 5pm**

Email: [dolsoffice@islington.gov.uk](mailto:dolsoffice@islington.gov.uk)  
Telephone 020 7527 3828

**The Access and Advice Team is the first point of contact for adult social care - providing information, advice and care support. Contact the team for all initial queries and adult safeguarding. Open between 8am-6pm.**

Email: [access.service@islington.gov.uk](mailto:access.service@islington.gov.uk)  
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