

What is a Relevant Person's Representative (RPR)?

Every person who is subject to a Deprivation of Liberty Safeguards authorisation must have a 'Relevant Person's Representative' whose role is to support and advocate for the person.

The representative is appointed by the supervisory body authorising the deprivation. Usually it will be a family member or friend, or other carer, and they would normally have been involved in the assessment.

Changes to the arrangements when someone in a care home dies with a DOLS authorisation in place

From Monday 03 April 2017, coroners no longer have a statutory duty to undertake an inquest into the death of every person who is subject to an authorisation under the Deprivation of Liberty Safeguards.

For any person subject to a DOLS authorisation, who dies on or after 03 April 2017, their death need not be reported to the coroner unless the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the persons death.

The future of the DOLS

On 13 March 2017, The Law Commission published their Report which included their recommendations about replacing the DOLS with alternative arrangements - the Liberty Protection Safeguards.

The Government will now consider about how to take forward their recommendations. In the meantime the statutory requirements of the DOLS are to be followed when the thresholds for doing so are met.

For more information on this project see the Law Commission's Website;

www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/

Further details regarding the Mental Capacity Act and the Deprivation of Liberty Safeguards can be accessed on the Suffolk MCA Website; www.suffolk.gov.uk/mca

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The Deprivation of Liberty Safeguards

The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to make sure that people in care homes and hospitals are looked after in a way that does not inappropriately restrict their freedom.

The safeguards should ensure that a care home or hospital only deprives someone of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them.

The safeguards are there to protect people.

What is a deprivation of liberty?

The Supreme Court provided guidance regarding what is meant by the term 'deprivation of liberty' in a decision on 19 March 2014.

The Court clarified that a deprivation of liberty occurs when 'the person:

- lacks the mental capacity to consent to their care and treatment
- is under continuous supervision and control and
- is not free to leave

Who are protected by the Deprivation of Liberty Safeguards?

The Deprivation of Liberty Safeguards protect people who lack the mental capacity to make their own decisions about treatment or care. They can only be used in care homes and in hospitals.

What is meant by mental capacity?

The Mental Capacity Act is designed to protect and restore power to those vulnerable people who lack capacity.

Mental capacity means being able to make your own decisions.

To have capacity a person must be able to:

- understand the information that is relevant to the decision they want to make
- retain the information long enough to make the decision
- weigh up the information available to make the decision
- Communicate their decision by any possible means

Why are these Safeguards needed?

Sometimes people may need treatment or care from professionals such as doctors and nurses if they are staying in a hospital or from care workers if they are living in a care home.

People who are lacking capacity need extra protection.

People should be treated or cared for in a way that means they are safe and are free to do the things that they would like to do.

Sometimes people without the mental capacity to consent who are having treatment or care might be deprived of their liberty to keep them safe.

If this happens it would have to be in the person's "best interests."

Professionals have to think very carefully about the decisions they make for a person, to make sure those decisions are appropriate.

If a person is deprived of their liberty they need special protection called Safeguards to make sure they are looked after properly and are kept safe. The DOLS give this special protection.

If however the care provided by the care home or hospital is not in the person's "best interests" it would be unlawful and it must cease immediately.

What happens if a person is deprived of their liberty?

Where assessed to be in a person's "best interests", an application is made by the Managing Authority (the care home or hospital) to the Supervisory Body (Suffolk County Council).

The application requests six assessments to be completed. These will be undertaken by two assessors; the Best Interests Assessor (BIA) is a specially qualified social worker and the Mental Health Assessor is a doctor. These are organised by the supervisory body.

The Six Assessments

Age Assessment — This confirms that the person is aged 18 years or over.

Mental Health Assessment - This decides whether the person is suffering from a mental disorder or has a learning disability. Mental disorder is the term used in law to describe a set of mental health conditions, including dementia.

Mental Capacity Assessment — This determines whether the person lacks the mental capacity to make their own decisions about the treatment or care that they are receiving.

Best Interests Assessment — This establishes whether there is a deprivation of liberty and if it is in the person's best interests.

Eligibility Assessment — This determines whether the person would meet the requirements for detention under the Mental Health Act 1983; if so this would make them ineligible for an authorisation.

No refusals—This determines whether the person has made an advance decision about their treatment, and whether authorisation would conflict with a decision made by; a court-appointed Deputy or someone with an applicable and valid Lasting Power of Attorney.

An authorisation for the Deprivation of Liberty Safeguards cannot be granted unless all of these requirements are met.