

**What are the ....**

**Deprivation of Liberty Safeguards?**

If you have any queries after reading this leaflet or require any further information please contact:

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To find out what, how and why personal information is obtained and used in Bury with regard to this process please view our privacy notice which can be found on the Bury Council website under the “deprivation of liberty web page” or by following the link below.

[**https://www.bury.gov.uk/index.aspx?articleid=16290**](https://www.bury.gov.uk/index.aspx?articleid=16290)

**What are the Deprivation of Liberty Safeguards (DoLS)?**

Sometimes care homes and hospitals have to limit people’s freedom to keep them safe.

The Deprivation of Liberty Safeguards (DoLS) provide a legal framework that helps to ensure a person’s human rights are protected.

DoLS is part of the Mental Capacity Act 2005. It says that people can only be deprived of their liberty when they lack mental capacity to make decisions about their care and accommodation, and it is in their best interests.

DoLS were introduced in 2007 after a European Court of Human Rights ruling.

The ruling found that a man with autism had been unlawfully deprived of his liberty in Bournewood Hospital because the hospital had not used any legal framework to detain him. This meant that his carers experienced real difficulty in trying to get him released from the hospital, as there was no system to appeal against his admission.

How do they work?

In 2014 the Supreme Court said that a person is deprived of their liberty if they are:

1) Under continuous supervision and control and

2) Are not free to leave.

A person can be deprived of their liberty even if the restrictions are in their best interests and even if they or their families are not objecting.

**Care homes, Nursing homes and Hospitals** must apply to their local authority for authorisation to deprive a person of their liberty.

The local authority will send out two independent assessors to assess whether the qualifying #1 requirements for the DoLS are met, the assessors are:

* Mental Health Assessor (MHA) A specially trained doctor – usually a Consultant Psychiatrist. They will confirm there is a mental health disorder and if DoLS is appropriate.
* Best Interest Assessor (BIA) A qualified Social Worker. They will speak to the person, their family and / or friends about the persons best interests. They will also identify whether a deprivation of liberty is happening and if it is a proportionate response to their care needs.

**N.B. Either assessor (or both) may be asked to complete a mental capacity assessment**

#1 There are six separate elements (qualifying requirements) to the assessment process - all of which must be completed before a Supervisory Body can grant an authorisation. In addition to Mental Capacity – which either assessor can complete, assessments regarding ‘age’, ‘no refusals’ and ‘best interest’ are undertaken by a Best Interest Assessor. ‘mental health’ and ‘eligibility’ assessments are undertaken by a Mental Health Assessor.

**What happens if a Deprivation of Liberty authorisation is granted?**

An authorisation can be granted for a maximum period of 12 months. You will be sent a copy of the “Deprivation of Liberty Safeguards Form 5 – Standard Authorisation Granted”. This will give more information about how the person is being deprived of their liberty and will also detail how long the authorisation will last for.

Once a deprivation of liberty authorisation is given it cannot just end, it will be reviewed if circumstances change or the process will be repeated at the end of the authorisation period. In each case a decision will be made to either grant a further authorisation or to “Cease the Authorisation”.

If an authorisation is granted, a ‘Relevant Persons Representative’ (RPR) will be appointed to help the person to exercise their rights. This is often a relative, but it could be somebody with experience acting as an advocate. The person and their representative are entitled to help from an ‘Independent Mental Capacity Advocate’ (IMCA).

The person and their representative have a right to request a review of the DoLS by the local authority. They also have a right to non-means tested legal aid to appeal against the deprivation of liberty authorisation in the Court of Protection. The Court of Protection will review whether the person lacks capacity and whether the detention is in their best interests. Sometimes the DoLS can run into tricky technical questions; the Court can also give guidance for these cases.

An authorisation will not, in most cases, alter the way in which the person is cared for. However, the Best Interest Assessor may make some recommendations on how to reduce the number of restrictions placed on the person. These are called “conditions” the care / nursing home or hospital has to comply with these.

For more information on what it means to be an RPR please see pages 5,

**Additional Information**

* Sometimes deprivation of liberty occurs in settings other than care homes and hospitals, for example in supported living. If that occurs, the service provider - Bury Council must seek authorisation directly from the Court of Protection. If you are worried that somebody in supported living or a similar setting is deprived of their liberty you should inform the provider and the local authority.
* Answer: If the person has appointed a ‘Lasting Power of Attorney’ (LPA) or has a ‘Deputy’ for health & welfare decisions, they can only be deprived of their liberty under DoLS with the agreement of that Attorney.
* If you think somebody may be deprived of their liberty without proper authorisation, ask the care provider to apply to the local authority for authorisation. Or contact the Bury DoLS Team (details at the start of this leaflet)
* If the person has made an Advance Decision refusing a particular treatment, then DoLS cannot be used to deprive them of their liberty to deliver that treatment.
* Don’t be afraid to exercise your right to request a review or apply to the Court of Protection if there is a serious disagreement. An IMCA may be able to help you locate a solicitor.
* If you are subject to DoLS, or represent somebody who is, an IMCA can help you with understanding the process and your rights. For more information contact Bury DoLS Team (details at the start of this leaflet). There is no charge for the IMCA service.

**Becoming a Relevant Persons Representative**

You may be asked, by the Best Interest Assessor, whether you would like to become a Relevant Persons Representative (RPR) on behalf of the person who is being supported under the DoLS process.

There are, however, certain criteria that you must be able to fulfill for you to be considered for this role. You must:

1. Maintain contact with the person who is subject to DoLS
2. Represent the person in matters relating to, or connected with, their deprivation of liberty.
3. Support the person in matters relating to, or connected with, the standard authorisation.

In short this means maintaining **regular** contact with the person and being prepared to put forward their views and wishes, even if they conflict with your own views. This includes raising a challenge to the DoLS

Where families / friends cannot meet the above criteria, where agreement cannot be reached on who should advocate for the person or where there would be conflict with another decision, Bury Council will appoint an independent advocate. **note** - This may also happen if contact cannot initially be made with family or friends.

**Challenging the Deprivation of Liberty**

In some circumstances, as RPR, you must be prepared to challenge the Deprivation of Liberty Authorisation if the person you are representing wishes to do so. However, before a challenge is instigated, and if you haven’t already done so, you may want to consider:

* Speaking to the person’s care provider about any concerns you have about how their care is being delivered.
* Speaking to the care provider to see whether there would be anything that could be done differently to improve the situation for the person or.
* Speaking to a social worker to request a review of the placement.

If you feel, as RPR, that the person subject to DoLS would like to take a challenge to the Court of Protection, and you have considered the above options. Please contact the DoLS team, in the first instance, to discuss whether a review of the person’s DoLS authorisation would be appropriate.

A challenge should be raised if you think:

1. The person is being unlawfully deprived of their liberty when there is no authorisation in place.
2. An authorisation is in place but the requirements are not met; for example, the person has capacity to decide for themselves not to remain in the care home or hospital, or the deprivation of liberty is not in their best interests.
3. The person is clearly and consistently objecting (whether verbally or non-verbally) to the arrangements made to support them **and** they want to (or it can be reasonably assumed that they would want to) take their case to Court.

**NOTE:** where the person cannot verbalise their wishes, the RPR should consider what those wishes would be or would have been if they were able to communicate them, including previous wishes and feelings.

**Remember:** Every person who is subject to a DoLS has the right to challenge the authorisation. It is your duty, as RPR, to ensure that their challenge is taken forward – even if you and others hold the view that the care arrangements and restrictions are in their best interests.

For more information on how to raise a challenge, please contact Bury Dols Team (details at the start of this leaflet)