

01 Background:

Article 5 of the European Convention of Human Rights has the intention of preventing arbitrary or unjustified deprivations of liberty. In order to meet the requirement of lawfulness, detention must be “in accordance with a procedure prescribed by law” and as a result the Deprivation of Liberty Safeguards (DOLS) have been introduced; in conjunction with the Mental Capacity Act 2005. They provide a legal framework for people aged 18+ who lack capacity, who are accommodated in either a care home or hospital and whose care amounts to a deprivation of their liberty. Staying in a hospital or care home may also; in some circumstances, affect a person’s Article 8 rights to have a private and family life.

Assessing Capacity: 02

The test for capacity is two-fold. 1) Does the person have an impairment of the mind or brain? 2) If so, does that impairment mean that the person is unable to make the decision in question at the time it needs to be made?

In order to make a decision, a person must be able to generally *understand* what the decision is and why it needs to be made, *remember the information* long enough to make the decision, be able to *consider the pros and cons* of the decision and then *communicate their wishes*.

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What to do?

For queries or DOLS requests contact dols@rochdale.gov.uk

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Identifying a Deprivation of Liberty:

The person who lacks capacity to consent to their care/treatment is deprived of their liberty where they are:

- 1) under continuous supervision and control and
- 2) is not free to leave, and
- 3) their care arrangements are the responsibility of the state.



Deprivation of Liberty Safeguards

Commonly used terms:

- Managing Authority = The care home or hospital
- Supervisory Body = the Local Authority
- DOLS = Deprivation of Liberty Safeguards
- MCA = Mental Capacity Act

Information:

Where the support provided in order to protect the person from harm may restrict their freedom to the point where they may be deprived of their liberty an “authorisation” must be in place, to make sure that the care provided is lawful. A care home or hospital can apply to the Local Authority up to 28 days in advance of when they feel the care provided is likely to deprive the person of their liberty, by requesting a standard authorisation. In some circumstances, care homes and hospitals can issue themselves an urgent authorisation lasting up to 7 days. This must be sent to the Local Authority along with a request for a standard authorisation..

Examples of restrictive care practices:

- Using locks or key pads which stop a person going out or into different areas of a building. The use of some medication, for example, to calm a person. Requiring a person to be supervised outside. Physically preventing a person from doing something which could cause them harm.
- Holding a person so that they can be given care, support or treatment
- Bedrails, wheelchair straps, restraints in a vehicle, and splints

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