

Deprivation of Liberty procedure for care providers

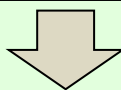
1. Does the person have the mental capacity to decide to stay in your hospital or care home?

A person may be content or happy in a care home or hospital (or any placement) but that does not mean they have the mental capacity to consent to being there. To have the mental capacity to make a decision the person must be able to:

Understand relevant information* + Retain it + Use or weigh that information + Communicate their decision

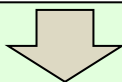
(*for a list of the relevant information see chapter *Mental capacity assessment*)

Yes: they have capacity - ask for their consent to stay No: they lack capacity – go to next box



2. What restrictions are in place?

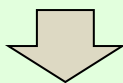
A person who lacks capacity to consent to be resident for care will often have restrictions placed on them to ensure they receive the care they need and to keep them safe. Restrictions can take a number of forms: (a) *Actual restrictions* such as physical restraint (b) *what if restrictions* – what would staff do if the person stopped washing or tried to leave (c) *restricted access* – access to kitchen (locked), access to outside world (escorted). Consider the type + duration + effect + manner + degree or intensity of each restriction in the care plan (*Guzzardi v Italy 1980*).



3. Do the restrictions mean the person is under complete supervision and control AND not free to leave?

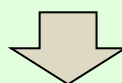
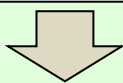
Complete supervision and control? This usually (often) means 24 hour oversight but it does not have to mean one to one staffing. It could involve a number of actions such as not allowing the person out alone, controlling what they do during the day or when they eat and go to sleep. A person can be under complete supervision and control despite having unescorted leave if the care provider controls when and/or how long a person can go out and when the person must return.

Not free to leave? This question is not asking whether the person is free to go out (with or without staff) for an outing of some sort but rather asking whether the person is free to discharge themselves and live somewhere else of their choosing without conditions (regardless of whether they actually have the mental capacity to make such a choice).



Yes

The person is deprived of their liberty, go to the box below.



No

The person is not deprived of their liberty. Record the assessment and keep it under review in case the restrictions do become a deprivation of liberty in the future.

Are they aged 18 or over and in a registered care home or hospital (not under the MHA)?

Yes – make a DoLS application using DoLS Form 1 and the supervisory body will arrange the necessary assessments. You may need to follow up and check at regular intervals if there is a delay in your area.

No – Instead of an application to the DoLS office, an application using form COPDOL11 to the Court of Protection will be required.

Note: This chart does not state all the legal criteria required for DoLS, a Court of Protection order or the circumstances when the Mental Health Act should be used instead.