Alzheimer's Society
Leading the fight against dementia

Deprivation of Liberty Safeguards (DoLS)

Sometimes, caring for a person with dementia involves reducing their independence or restricting their free will in some way. If they are receiving care in a hospital or care home, their routine may be decided for them, and they may not be allowed to leave. If the person has not freely chosen where they will live in order to receive care, or the type of care that they receive, it is possible that this care will take away some of their freedom. In some cases, this may amount to a 'deprivation of liberty'. This is not always a bad thing, and it is often necessary when caring for someone, but it should only happen if it is in the person's best interests.

The Mental Capacity Act 2005 includes the Deprivation of Liberty Safeguards (DoLS) – a set of checks that aims to make sure that any care that restricts a person's liberty is both appropriate and in their best interests. This factsheet explains what counts as a deprivation of liberty, what the safeguards are, and how to go about getting a deprivation of liberty authorised and reviewed.

DoLS only apply for people in care homes and hospitals. There is a separate system for people in 'supported living arrangements' – where people live and receive care in the community. They also only apply to people living in England and Wales. At the time of writing (March 2016) there is no similar system in Northern Ireland.

What is a deprivation of liberty?

Examples of making decisions or placing restriction on someone with dementia could include deciding on the person's routine, stopping them from walking about at night, or preventing them from leaving. Care home or hospital staff should make sure that all care a person receives involves as little restriction as possible. However, sometimes it will be necessary to take away some of the person's freedom to provide them with the care they need.

Sometimes, taking away a person's freedom in this way can amount to a 'deprivation of liberty'. A deprivation of liberty occurs when:

> 'The person is under **continuous supervision and control** and is **not free to leave**, and the **person lacks capacity to consent** to these arrangements.'

Examples of how this definition can be broken down are shown below.

Continuous supervision and control

The kind of care that people receive in care homes or hospitals will usually involve both supervision and control. Staff will monitor and watch residents or patients, they will decide activities, and they will control things such as meals, leisure time and bedtimes. This care is often what a person needs, but it can deprive people of their freedom, if they have not consented to it.

A person may be deprived of their liberty if they are being supervised and controlled on a continuous basis. This does not mean that someone needs to be watched and controlled 24 hours a day. If there are significant periods of the day where they are being watched and controlled, this could count as a deprivation of liberty.

Not free to leave

If a person is not free to leave the place where they are being cared for, they may be deprived of their liberty. It is important to note that this can be hypothetical. The person may not be physically able to leave by themselves, but the question is still the same – if they tried to leave, would they be stopped? If the answer is yes – ie they did not consent to this care and are not free to leave – then they are being deprived of their liberty.

The person lacks capacity to consent

The care a person receives can only deprive them of their liberty if they have not consented to it. If the person has freely chosen and consented to their situation, then they have not given up any of their freedom. A deprivation of liberty can only occur in cases where someone lacks the ability to decide themselves, known as 'mental capacity', where they will live and what care they will receive.

To have capacity to make a decision, someone must be able to:

- understand the information about the decision – in these cases, the options for care and living arrangements

- retain that information long enough to be able to make a decision

- weigh up the information available and understand the consequences of the decision

- communicate the decision – this could be by any possible means, such as talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

For more information about mental capacity see factsheet 460, **Mental Capacity Act 2005**.

What are Deprivation of Liberty Safeguards (DoLS)?

If a care home or hospital plans to deprive a person of their liberty in the ways listed above, they must get permission. To do this, they must follow strict processes called the Deprivation of Liberty Safeguards (DoLS). DoLS are a set of checks that are designed to ensure that a person who is deprived of their liberty is protected, and that this course of action is both appropriate and in the person's best interests.

The definition of what counts as a deprivation of liberty is wide, and so most people with dementia living in care homes and hospitals will receive care that falls under the definition. This isn't a bad thing, however. It is often necessary to provide care in this way. DoLS offer protection to ensure that, when someone's freedom is restricted, it is both in their best interests and, where possible, done in the least restrictive way.

The key elements of these safeguards are:

- to provide the person with a representative – a person who is given certain rights and who should look out for and monitor the person receiving care (see The 'relevant person's representative' below)

- to give the person (or their representative) the right to challenge a deprivation of liberty through the Court of Protection (see 'Other useful organisations')

- to provide a mechanism for a deprivation of liberty to be reviewed and monitored regularly (see 'Reviews' below).

The DoLS assessment

An assessment will decide whether the deprivation of liberty is allowed to happen or not. A DoLS assessment will take place if a person with dementia is in a care home or hospital setting and it is felt that they are being, or will be, deprived of their liberty.

If the person with dementia is living in supported living, there is a different system for having a deprivation of liberty authorised. This is outlined towards the end of this factsheet – see 'Supported living'.

Who requests the assessment?

Usually, the care provider – the care home or hospital – will request the DoLS assessment. In England, they would request the assessment from the local authority. In Wales, for assessments of people in care homes it would be the local authority, but for people in hospitals it would be the local health board.

Can anyone else request an assessment?

If you feel that someone is being deprived of their liberty, you should speak to the person in charge of their care. In hospital this may be a doctor, nurse or administrator, and in residential care it will be the care home manager. The first step is to talk about whether changes can be made to the way care is provided so that the person’s freedom is not restricted. However, if the person in charge of their care believes that restricting the person’s freedom is necessary to keep them safe, they must apply for a deprivation of liberty authorisation.

If they have not got an authorisation, and they do not think that an authorisation is necessary, you should talk to the local authority (or local health board in Wales). You should ask them to look into the person’s care arrangements and carry out an assessment, if necessary. There are template letters at the end of this factsheet that you can use.

Who does the assessment?

DoLS assessments are carried out by at least two people. They are:

- the best interests assessor

- the mental health assessor.

They are appointed by the local authority (or health board), who must ensure that they have had the appropriate level of training and experience.

Generally, the best interests assessor is a qualified social worker, nurse, occupational therapist or chartered psychologist. They must not be involved in the person's care or in making any other decisions about it. The mental health assessor must be a doctor who is able to assess whether a person has a 'mental disorder' (the term used in law to describe a set of mental health conditions, including dementia) and how a deprivation of liberty will affect their mental health.

What does the assessment involve?

There are six parts to the assessment. These are divided between the two assessors. Their job is to decide whether the person and the care that they receive meet the criteria for authorisation. The six parts are as follows:

- **Age** – Is the person aged 18 years or over?

- **Mental health** – Does the person have a 'mental disorder'?

- **Mental capacity** – Does the person lack 'capacity' (the ability) to make their own decisions about treatment or care in the place that is applying for the authorisation?

- **Best interests** – Is a deprivation of liberty taking place? If so, is it:

– in the person's best interests?
– needed to keep the person safe from harm?
– a reasonable response to the likelihood of the person suffering harm (including whether there are any less restrictive options and if they are more appropriate)?

- **Eligibility** – Is the person already liable to detention under the Mental Health Act 1983, or would they meet the requirements for detention under this Act? If they are, the Mental Health Act should apply and not DoLS (for more information see factsheet 459, **Mental Health Act 1986 and guardianship**).

- **No refusals** – Does the authorisation contradict or conflict with any advance decision the person has made refusing treatment, or with any decisions made by, for example, a court-appointed deputy or someone with Lasting power of attorney?

If someone meets all the criteria, the assessors will report back to the local authority (or local health board) that the deprivation of liberty should be authorised, ie given the legal ‘go ahead’.

When the criteria are not met

If the assessors decide that the person or the proposed care doesn’t meet the criteria, they will inform the local authority (or local health board) of this and the reasons for it. The deprivation of liberty would then not be authorised, and it should not happen. What happens next will depend upon the reasons why the criteria were not met.

For example, if the assessment showed that the person has capacity to consent to and make the decision about their care and where they will live, they should be empowered to make their own decision, and this should be followed.

If an assessment failed because it was decided that there are less restrictive options, these should then be pursued. An example of this might be that the care home proposes to lock a person’s bedroom door at night to stop them from walking round the care home and into other residents’ rooms. An assessment may decide that this is not allowed as there are less restrictive options, such as making it possible for the person to stay up later, and having staff on hand to talk to them and encourage them to not enter people’s bedrooms.

Urgent DoLS

In an emergency, or in situations where there is no time to go through the assessment process, the hospital or care home management can grant themselves an urgent DoLS authorisation. This is valid for seven days, but they must also apply for the normal DoLS assessment and authorisation at the same time. If the assessment has not been carried out in the following seven days and the deprivation of liberty is still needed, the urgent DoLS authorisation can be extended for a further seven days.

Before an urgent DoLS authorisation is given, steps should be taken to consult with a person's carers and family members.

After authorisation

If a deprivation of liberty has been authorised by the local authority or local health board, there are still a number of safeguards to ensure that the person continues to be protected.

The 'relevant person's representative'

If a person's care is authorised following a DoLS assessment, they must have a representative appointed, called the 'relevant person's representative'. Often this is a family member, friend or other carer. They are appointed during the best interests assessment.

If the person with dementia doesn't have a relative or friend who is able to take on this role, or it is felt that that they may not be appropriate, the local authority must appoint a paid representative. The paid representative will be a professional who is trained and experienced in these matters and will act as the person's representative.

The job of the representative is to stay in close contact with the person with dementia. They should look to see if the person's care arrangements change, be given access to documents about decisions, and if necessary ask for a review of an assessment decision. The representative can also appeal against the DoLS authorisation, and should do so where the person under DoLS disagrees with it, even if they themselves do not.

The representative should be kept informed about the person's care and treatment and any changes to it. The local authority or local health board should work together with the care home or hospital to make sure that both the person and their representative understand the DoLS process and know their rights.

If a representative requires support, they can ask to talk to an independent mental capacity advocate (IMCA). The local authority can put you in touch with your local IMCA service.

How long is the deprivation of liberty allowed for?

A DoLS authorisation should last for as little time as possible, and only up to a maximum of 12 months. Each individual DoLS authorisation will state the date it lasts until. However, during this time both the care provider and local authority (or health board) should:

- make regular checks to see if the authorisation is still needed

- remove the authorisation when it is no longer needed

- provide the person's representative with information about their care and treatment.

Reviews

A review of a deprivation of liberty authorisation is a formal process to decide whether the care that deprives someone of their liberty is still necessary. This can take place at any time, and doesn't have to be at the end of the authorised period. It is up to the care home or hospital to make regular checks to see if the requirements for the authorisation are still needed, and they must inform the local authority or local health board if circumstances change.

This means that a review should take place if there is a change in circumstances, and also if it is felt that the criteria are no longer met. Therefore, if the deprivation is no longer in someone's best interests, or if it is not managed in the least restrictive way, then this should be looked at again in a review.

The person under the authorisation, or their representative or IMCA, can request a review if the situation has changed. The local authority or local health board are responsible for carrying out the review and must ensure that all parties are kept informed and involved throughout the process.

If a person subject to DoLS dies

If a person with dementia who is subject to an authorised deprivation of liberty dies, there is one final safeguard. This is that their death will be reported to the coroner, as opposed to the GP. This means that the coroner can ensure that the reasons for the person's death were not due to any abuse, or caused as a result of the deprivation of liberty. It is extremely rare that this would have been the case, but this check still must happen.

This will almost certainly be a very difficult time for the person's family and friends, and the involvement of the coroner can increase anxiety and upset. The law in this area is currently being reviewed and it is hoped that there will be changes made to make this process less upsetting for families involved.

Supported living

Supported living is a general term that refers to people living and receiving care in the community. This can apply to someone who lives in their own home or in rented accommodation, and receives care and support directly from, or organised by, their local authority. The purpose of supported living is to give the person more control over their care.

A person with dementia who is living in supported living can still be deprived of their liberty. This will usually only apply to people who receive a lot of care and support, as they must be under 'continuous supervision and control'.

If a person is living in supported living, a deprivation of liberty will still need to be authorised. The purpose of the authorisation is the same as in a care home or hospital, and the same criteria apply. However, the process is slightly different.

In order to authorise a deprivation of liberty, the local authority will need to take the case to the Court of Protection, rather than authorise the deprivation of liberty themselves. If you feel that you or someone you know is in this position, you can ask the local authority to seek authorisation. You can use Template letter 4 – see 'Template letters' below. You may also find it helpful to speak to the Court of Protection for further guidance and information (see 'Other useful organisations').

Examples

The following examples show situations where DoLS could be put in place, reviewed and challenged.

Deprivation of Liberty Safeguards and moving into care

Brenda lives at home with her husband. Since being diagnosed with Alzheimer's disease, Brenda has found that she needs more care and support at home. As time goes by she becomes unable to make her own decisions about her care and where she will live to receive that care.

Her husband feels that she now needs more care and support than he can offer and that she may need full-time care. He arranges for the local authority to come out and assess her care needs, and the social worker agrees that she needs full-time care.

The next steps are to arrange the move into a care home, and the social worker explains that there will be a Deprivation of Liberty Safeguards assessment. This is needed as Brenda lacks capacity to make the choice to move into a care home, and so by moving there she will be deprived of her liberty. This is because her care needs mean that she will be under continuous supervision and control by staff and she will not be allowed to leave the care home.

Two assessors come out to assess Brenda and the proposed care she will receive. As part of this process they speak to her husband about his feelings on the proposed care. They agree that depriving Brenda of her freedom in this way is the right thing to do for her, and so this deprivation of liberty is authorised by the local authority. Brenda then moves to the care home, and her husband is appointed as her representative.

Asking for a review

Susan's dad has been in a care home for just over five months. He originally moved into the care home following a fall at home in which he broke his ankle. Due to his vascular dementia, he lacked capacity to consent to his care. It was felt that the care home was the best place for him following discharge from hospital as they could provide him with full-time care and support.

As he kept trying to get up and walk about, staff used various distraction techniques, as well as installing bed rails, to prevent him from trying to walk on his broken leg. As this was depriving him of his liberty, a DoLS assessment was carried out and the deprivation of liberty was authorised.

The review date on the order was set at 12 months, however after five months Susan decides that the authorisation should be looked at because her dad is now able to put some weight back on his leg. As a result, she feels the bedrails are no longer needed and he is being caused unnecessary distress. She speaks to staff at the care home, who tell her that because the DoLS order is valid for a full year, they are allowed to continue to use the rails and to stop him from moving about or leaving the care home.

Susan is her dad's representative, so she is able to ask the local authority for a review. They agree to carry out a review, and as a result, her dad's care is changed. Though he is still under a DoLS order because he is supervised by staff and is not allowed to leave the care home, changes have been made to his care. The bedrails are no longer allowed and he has been given more freedom to walk about the care home and the gardens.

Appealing against a DoLS authorisation

Fatima’s aunt is rushed into hospital following a fall. Staff at the hospital become concerned about her weight loss. Her medical records indicate that she has recently lost some weight, and they feel this is the result of her memory problems caused by dementia. They suggest that when she is discharged she moves into a care home.

Fatima doesn’t agree with the decision and makes it clear at the discharge meeting. Her aunt also makes it clear that she does not want to move into a care home, although she lacks the capacity to be able to make this decision herself. Despite the fact that both Fatima and her aunt are against the idea, it is decided that she should be moved into a local care home.

At the care home, a DoLS assessment is carried out because Fatima’s aunt’s care means that she is under continuous supervision and control by staff – they decide on her daily activities and routine, keep an eye on her and provide her with all her care and support. It is clear that if she was to try to leave, they would stop her.

Fatima is appointed as her aunt’s representative, and she visits her a couple of times each week. Her aunt tells her during these visits that she wishes to return home, and Fatima wonders what she can do. She speaks to staff at the care home who tell her that due to the DoLS authorisation her aunt cannot return home. Fatima feels that the care she receives is disproportionate, and that with the right level of support her aunt could return home.

Fatima gets some help from the local independent mental capacity advocate who helps her appeal against the DoLS authorisation. As a result, it is decided that her aunt can return home as long as the right level of care and support is provided for her.

Other useful organisations

Court of Protection

PO Box 70185
First Avenue House
42–49 High Holborn
London WC1A 9JA

T 0300 456 4600 (9am–5pm weekdays)
E courtofprotectionenquiries@hmcts.gsi.gov.uk
W www.gov.uk/court-of-protection

The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare.

Office of the Public Guardian

PO Box 16185
Birmingham B2 2WH

T 0300 456 0300 (customer services,
9am–5pm weekdays)
E customerservices@publicguardian.gsi.gov.uk
W www.gov.uk/opg

The OPG supports and promotes decision-making for those who lack capacity or would like to plan for their future, within the framework of the Mental Capacity Act 2005. The OPG provides a range of useful information online on the gov.uk website, including the Mental Capacity Act Code of Practice.

Department of Health

Richmond House
79 Whitehall
London SW1A 2NS

E dhmail@dh.gsi.gov.uk
W www.dh.gov.uk

The government department responsible for health, social care, and the National Health Service (NHS). Information about all aspects of the Mental Capacity Act and Deprivation of Liberty Safeguards can be found on the website.

Social Care Institute for Excellence (SCIE)

Kinnaird House
1 Pall Mall East
London SW1Y 5BP
T 020 7766 7400
W www.scie.org.uk

SCIE’s purpose is to improve health and social care services by sharing knowledge and good practice. Their website contains lots of information about DoLS.

Template letters

The following are four template letters which you might find helpful if you are considering contacting a care provider, local authority or local health board about a deprivation of liberty.

Template letter 1 – To the care home or hospital, requesting that they issue an urgent deprivation of liberty authorisation and apply for a standard deprivation of liberty authorisation. Download from **alzheimers.org.uk/dolsrequest**

Template letter 2 – To the local authority (or local health board), requesting they investigate a possible unauthorised deprivation of liberty. Download from **alzheimers.org.uk/dolinvest**

Template letter 3 – To the local authority (or local health board) from the relevant person's representative requesting a review of a standard deprivation of liberty authorisation. Download from **alzheimers.org.uk/dolsreview**

Template letter 4 – To the local authority (or local health board) requesting they investigate a possible unauthorised deprivation of liberty in supported living. Download from **alzheimers.org.uk/dolinvestsupp**

Factsheet 483LP

Last reviewed: March 2016
Next review due: March 2019

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This factsheet has also been reviewed by people affected by dementia.

A list of sources is available on request.

Health & care information you can trust
The Information Standard Certified Member

Alzheimer's Society National Dementia Helpline

England, Wales and Northern Ireland:
0300 222 1122

9am–8pm Monday–Wednesday
9am–5pm Thursday–Friday
10am–4pm Saturday–Sunday

alzheimers.org.uk

Alzheimer's Society is the UK's leading support and research charity for people with dementia, their families and carers.

Alzheimer's Society
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Registered charity no. 296645. A company limited by guarantee and registered in England no. 2115499