

Mental Capacity Act 2005 Deprivation of Liberty Safeguards

*A guide for family, friends and
unpaid carers*



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1. About this booklet

You have been given this booklet because doctors or health and social care professionals are thinking about changing the way a family member, friend or someone you provide care for is looked after in hospital or in a care home.

They are thinking about introducing a care plan in which your family member or friend will be deprived of their liberty in a hospital or care home. The doctors or other professionals are thinking about this because they believe that:

- this care plan would be in the best interests of your family member or friend
- your friend or family member does not have the capacity to consent to the care plan themselves, and
- it would not be possible to deliver the care they recommend without depriving your family member or friend of their liberty.

As a family member or friend of the relevant person (this is the person who needs to be deprived of liberty), you may have an opinion about whether the proposed care plan is appropriate. You may also want to know more about how long your friend or family member will be deprived of their liberty, and how this will be monitored.

This is where the Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS) come in. These safeguards have been introduced to ensure that no one is deprived of their liberty in a hospital or care home setting without good reason, and that people who are deprived of their liberty receive the care they need while retaining specific rights.

This booklet contains all the information you need to understand what the MCA DOLS are all about. Importantly, it helps you to:

- understand your rights to have a say in your friend or family member's care
- ensure that all possible steps are being taken to protect the interests of your friend or family member while they are being deprived of their liberty.

2. Understanding the MCA DOLS: an overview for friends, family members and other unpaid carers

This section helps you to understand the MCA DOLS so you can represent the interests of your friend or family member more effectively.

What are the MCA DOLS?

The MCA DOLS provide protection for vulnerable people who are accommodated in hospitals or care homes in circumstances that amount to a deprivation of their liberty and who lack the capacity to consent to the care or treatment they need.

It is anticipated that the majority of people who will require the protection of the MCA DOLS are those people with more severe learning disabilities, older people with any of the range of dementias or people with neurological conditions such as brain injuries.

The MCA DOLS provide that deprivation of liberty:

- should be avoided whenever possible
- should only be authorised in cases where it is in the relevant person's best interests and the only way to keep them safe

- should be for as short a time as possible
- should be only for a particular treatment plan or course of action.

Why were the MCA DOLS introduced?

The MCA DOLS were introduced following the legal judgment given by the European Court of Human Rights about an autistic man with a learning disability, who lacked the capacity to decide whether he should be admitted to hospital for treatment. He was admitted to hospital on an informal basis, but was then prevented from leaving the hospital with his carers.

His carers challenged the hospital and took the case to the court, who found that he had been deprived of his liberty unlawfully, which is a breach of the European Convention on Human Rights.

To prevent further breaches of the Convention, and to provide legal protection for vulnerable people who may need to be deprived of their liberty in their best interests in a hospital or care home, the MCA DOLS were introduced. They put in place rules about when a person can be deprived of their liberty and what rights they have if they are deprived of their liberty.

Important terms

There is no simple definition of '**deprivation of liberty**'. It will depend on the circumstances of each individual case. A number of previous court cases give some indication of situations where deprivation of liberty has occurred. Lots of factors must be taken into account, such as whether:

- the person is resisting or other people, such as carers, want the person to be discharged
- staff have total control over the person's care and movement
- staff control who the person can see and what kind of treatment they have
- the person has lost all autonomy.

Deprivation of liberty is different from **restraint**, although the difference is often one of degree or intensity. Certain actions could move up the scale and become a deprivation of liberty. However, the courts do recognise that restraint may be appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood and seriousness of harm. For example, preventing a person from leaving a care home or hospital on their own because there is a risk that they would try to cross a road in a dangerous way is likely to be seen as a proportionate restraint to prevent the person from coming to harm.

For more information about deprivation of liberty, read Chapter 2 of the MCA DOLS Code of Practice.

The '**capacity to consent**' refers to a person's mental capacity to agree to a treatment. Under the Mental Capacity Act 2005, a person is said to lack capacity if they are unable to understand and make a particular decision at the time it needs to be made. There are lots of reasons why a person might lack capacity. Some are short term (for example, they are unconscious) while others are long term (for example, they have dementia).

For more information on mental capacity, read Chapter 4 of the Mental Capacity Act 2005 Code of Practice.

When can someone be deprived of their liberty?

The MCA DOLS set out clear guidelines on when someone can be deprived of their liberty.

1. It must be to provide a specific treatment or care plan that is in the person's best interests.
2. Doctors or care professionals must be satisfied that there is no suitable alternative care plan that would not deprive the person of their liberty.
3. The managing authority (the hospital or care home where the person is staying) must apply to its supervisory body (the primary care trust or local authority responsible for the hospital or care home) for authorisation to begin the care plan.
4. The supervisory body must conduct six assessments to confirm that deprivation of liberty is lawful and appropriate:

- age assessment: to check whether the person is aged 18 or over
- no refusals assessment: to ensure that the proposed treatment does not conflict with a valid decision already made by an attorney or deputy on the person's behalf, or with a decision made in advance by the relevant person themselves
- mental capacity assessment: to confirm whether the person being deprived of liberty lacks capacity to consent to the arrangements made for their care and treatment
- mental health assessment: to check whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983. If they are, different rules may apply
- eligibility assessment: to confirm whether the person is eligible to be deprived of liberty under the MCA DOLS
- best interests assessment: firstly to establish whether the proposed care plan would deprive the person of their liberty, and secondly to confirm whether it is:
 - in the best interests of the person to be subject to the authorisation
 - necessary in order to prevent them from coming to harm
 - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

If the answer is Yes to all six assessments, then an authorisation will be granted to carry out the proposed care plan or treatment.

What happens once an MCA DOLS authorisation is granted?

The supervisory body will set how long the authorisation will last, based on the proposed care plan. This should be for as short a time as possible (and for no longer than 12 months).

The care plan or treatment can then be given.

While the authorisation lasts, if at any point the person no longer needs to be deprived of their liberty or their circumstances change, then the authorisation should be reviewed and, where appropriate, end.

Urgent authorisations

In some cases, a hospital or care home may think it is necessary to deprive someone of their liberty immediately – for example, if the person's circumstances change and particular treatment is needed urgently.

In this situation the managing authority can issue itself an urgent authorisation. The managing authority must apply for a standard authorisation at the same time and the assessments must complete within seven calendar days.

3. What can you do to support your friend or family member?

There are several points in the process where, as a friend or family member, you can have a say. At some points, you should be consulted. At other points, you should be informed. This section explains more about your rights.

When should a friend or family member be consulted?

Friends or family members previously named by the relevant person (or someone acting on the relevant person's behalf) should be consulted at the following points:

- before a managing authority applies for an authorisation – the managing authority should discuss the proposed care plan with any named friends or family members, to see if they agree that it is appropriate and that the deprivation of liberty would be necessary. This is essential for a standard authorisation, and where possible it should happen before an urgent authorisation is made
- by the person carrying out the best interests assessment – the person carrying out this assessment should ask any named friends or family members whether they agree that the proposed treatment or care plan is in the relevant person's best interests

- if anyone challenges the authorisation or care plan after it has begun – if someone (such as another friend or family member, or someone appointed to represent the relevant person) challenges the authorisation, because they think it is no longer necessary or for any other reason, named friends or family members may be asked for their views.

When should a friend or family member be informed?

Every named friend or family member should be kept informed about the relevant person's treatment. In particular, you should be informed in writing:

- when the assessments have been completed, to let you know whether the authorisation has been issued or not
- when the authorisation comes to an end
- if the managing authority requests a new authorisation after any reviews or challenges to the care plan.

Acting as a relevant person's representative

Everyone who is deprived of their liberty under the MCA DOLS is entitled to a relevant person's representative (RPR). This is normally a friend or family member, who should be consulted and informed about all matters relating to the care or treatment of the relevant person while the authorisation lasts.

The RPR is also able to make decisions on behalf of their friend or family member, and has legal rights to:

- request a review of the authorisation at any time

- ask for an Independent Mental Capacity Advocate (IMCA) to be appointed, to provide extra support to the relevant person and their representative if they do not already have a professional representative.

The RPR should be appointed as soon as possible after a standard deprivation of liberty authorisation is given.

To ensure that this is the case, the person carrying out the best interests assessment is asked to recommend someone to act as the RPR.

As a friend or family member, you may be asked if you would be willing to act as the RPR. If so, you should decide if:

- you are willing to do so
- you are able to keep in regular contact with the relevant person during the authorisation period
- you are confident that you can act in their best interests.

For a more detailed explanation of the roles, responsibilities and rights of an RPR, read **Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for relevant person's representatives**. For details of how to get a copy, see page 17.

Contacting your friend or family member

If your friend or family member is being deprived of their liberty, you should still be able to keep in contact with them. The hospital or care home should make sure this is possible.

Challenging unlawful deprivation of liberty

If you believe that your friend or family member is being deprived of their liberty unlawfully (i.e. without the appropriate authorisation in place), you must inform the hospital or care home immediately. Standard letters are available for this purpose on pages 18 and 19.

In the first instance, you should ask the managing authority to apply for an authorisation if it wants to continue with the care regime, or to change the care regime immediately. Given the seriousness of deprivation of liberty, the hospital or care home must respond to you quickly – normally within 24 hours.

Asking for an authorisation to be reviewed

If you think that an authorisation is no longer necessary, you can ask for it to be reviewed. Normally, you should do this through the relevant person's representative or by contacting the managing authority.

4. Further information

The following documents may be useful to you:

- **Mental Capacity Act 2005 Code of Practice** – a document that covers the entire Mental Capacity Act. In particular, it provides information about what mental capacity is, and how it is defined.
- **MCA DOLS Code of Practice** – a document that explains the MCA DOLS in more depth. In particular, it looks at what deprivation of liberty is, how the assessment process should be carried out and how authorisations should be monitored and reviewed.
- **Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for relevant person's representatives** – this guide explains the role of the RPR in more depth. Anyone appointed as an RPR should be given a copy, but it may also be useful for you if you are considering whether to become an RPR.

All of these documents are available online at www.dh.gov.uk

For more information on the MCA DOLS, visit our website at:
www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm

To request printed copies of any of these documents, order:

Online: www.orderline.dh.gov.uk

By email: dh@prolog.uk.com

By telephone: 0300 123 1002

Deprivation of Liberty Letter 1

Letter to managing authority concerning unauthorised deprivation of liberty

[Sender's address]
[Contact telephone number]
[Date]

[Name and address of managing authority]

Dear Sir/Madam,

Re [name of person/resident]

I am writing to you about the above-named person, who is accommodated in your hospital/care home [delete as applicable].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc].

It appears to me that this person lacks capacity to consent to the arrangements made for their care or treatment and is subject to an unauthorised deprivation of liberty. I am therefore writing, in accordance with the provisions of the Mental Capacity Act 2005, to ask you to give an urgent deprivation of liberty authorisation and to request a standard authorisation from the supervisory body.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [briefly state reasons].

As I am sure you know, if you do not request a standard authorisation within a reasonable period, I may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully,

[Signature]

[Name of sender in block capitals]

Notes

The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.

Letter to supervisory body concerning unauthorised deprivation of liberty

[Sender's address]
[Contact telephone number]
[Date]

[Name and address of supervisory body]

Dear Sir/Madam,

Re [name of person/resident]

I am writing to you about the above-named person, who is accommodated in [name and address of hospital or care home].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc].

On [enter date], I wrote to/spoke with [delete as applicable] the managing authority of the [name of hospital or care home]. I informed them that it appeared to me that this person lacked capacity to consent to the arrangements made for their care or treatment and was subject to an unauthorised deprivation of liberty. I asked them to give an urgent deprivation of liberty authorisation and to request a standard authorisation, in accordance with the provisions of the Mental Capacity Act 2005.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [briefly state reasons].

I understand that the managing authority has not requested a standard authorisation.

I am therefore writing to make a formal request that you now decide whether or not this person is subject to an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully,

[Signature]

[Name of sender in block capitals]

Notes

The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.

Notes



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294019 1p 200K Mar 09 (HH)
Produced by COI for the Department of Health

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