

Deprivation of Liberty Safeguards (DoLS) – Supreme Court Ruling – changes you need to be aware of – effective immediately

Briefing 2

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THE NEW DoL TEST

A simple guide for practice

3 KEY QUESTIONS

1 Is the person under continuous supervision and control and not free to leave?

★ This is still important, but it is not the whole test. You must look at the person's whole situation, including:

- What restrictions are in place?
- How long have they been there?
- What is daily life like?
- How restrictive is the placement compared to ordinary life?
- What is the purpose of the arrangements?

2 Does the person understand their living situation at a basic level?

The person does not need legal mental capacity to make accommodation decisions.

Instead ask:

- Do they know where they are living?
- Do they understand what is happening around them?
- Can they express views about their situation?

3 Are they genuinely accepting the arrangements?

If a person:

- Understands their situation at a basic level
- Appears settled
- Expresses agreement
- Does not object

then their acceptance may amount to valid consent for Article 5 purposes, even if they lack capacity under the Mental Capacity Act.

WHAT "CONSENT" LOOKS LIKE (EVEN WITHOUT CAPACITY)
It's about a positive attitude to the restrictions, shown consistently over time. This can be through words, behaviour, facial expression or body language.

Look for:

- Calm and relaxed demeanour
- Engaging in daily life
- No attempts to leave
- Agreeing or showing no objection when asked or when changes occur
- Consistent over time, not just once

Check over time – not just in the moment.

✗ If they resist, object, try to leave, or show distress – this suggests NO consent and may be a DoL.

IMPORTANT: Where there is significant uncertainty, mixed messages, fluctuating views, or any evidence of objection – **do not assume consent.**

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Further information can be found at: [DCC-i 7 Minute Briefing - Deprivation of Liberty after UKSC/2025/0042](#)

With thanks to dcc-i for allowing us to share their graphic