

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

## **Briefing 3**

In view of the changes made by the Supreme Court ruling, the existing Trust DoLS Policy & Procedure have been removed from Key Documents page.

Instead, you will find the latest Department for Health & Social Care Guidance published on the 15<sup>th</sup> June 2026.

### **When does DoLS apply?**

Deprivation of liberty still applies in hospitals and care homes for people **aged 18 and over**.

### **Does DoLS apply to children?**

Yes, however, for children and young people, DoLS can only be authorised through the Court.

### **Do I apply for a DoLS in the same way as before ?**

Yes, however you must ensure that you have considered the new guidance and reflected this in your urgent authorisation and standard authorisation application process / recording.

### **What do I need to reflect in the patient's records ?**

#### **Assessing deprivation of liberty**

The judgment is clear that the starting point is a **multifactorial assessment** of the proposed arrangements before considering whether a person could be said to validly consent, through an expression of their wishes and feelings, to those arrangements.

For the avoidance of doubt, there is no longer an acid test when it comes to assessing the objective element of deprivation of liberty, although these factors remain relevant as part of the multifactorial assessment.

The multifactorial assessment considers:

- the **type of restrictions** (for example, locked doors, physical control, supervision, sedating medication social isolation and so on)
- the **duration** of those restrictions
- the **effects** of the restrictions **on the person**
- the **manner of implementation** of the restrictions
- **whether the person objects**
- how far removed the case is from the situation of **detention in a prison cell**
- the **relative normality** of the arrangements (for example, greater restrictions would be required at home in order for deprivation of liberty to arise)
- the **purpose of the arrangement**, for example whether the arrangements are for care and protection, rather than punishment or coercion

**For there to be a deprivation of liberty, there must be an element of restriction being imposed on a person against their will.** This means that it is unlikely to be a deprivation of liberty if a person's liberty is constrained by their own illness, condition or impairment. For example, if someone's physical disabilities prevent them from leaving a particular setting and they are unable to form any desire to leave, this will likely not be considered a deprivation of liberty.

### **Determining objection**

It should be noted that the issue of whether a person is objecting to the confinement is relevant to the question of objective deprivation of liberty. Where a person is objecting, then it follows that valid consent is unlikely to be present. If there is an absence of objection when the person is capable of objecting, then it is more likely that the person is not being confined.

**Any objection would point towards a deprivation of liberty.** Objection could take a number of forms and could include:

- **attempts to leave** the setting where the arrangements take place, such as a care home, hospital or supported living
- **refusing care or treatment and/or physical rejection of care** (for example, pushing staff away when care is being provided)
- **physical restraint or one-to-one care** to manage behaviour
- **covert medication** if objecting to medication
- **sedating medication** to manage behaviour if it impacts on an individual's ability to object

## Determining someone's wishes and feelings

A person may be able to give valid consent in relation to a deprivation of liberty even if they lack legal capacity to consent to their care and residence under the MCA 2005.

Compliance does not automatically mean someone is consenting. A critical question to consider could be 'how do we know what this individual actually understands and wants?' rather than 'are they compliant?'.

When assessing wishes and feelings, consideration should be given to what the person is communicating both verbally (if they are able) and through their actions and behaviour. For example:

- do they appear happy or unhappy?
- are they trying to leave or are they distressed in any way?
- are they able to express a view?

Consideration should also be given to the individual's **previously expressed wishes and feelings or previously observed behaviour that could indicate an objection to the current arrangements.**

People should be given all support necessary to enable communication of their wishes and feelings. Assessment should also require a thorough review of care and/or medical notes and speaking to family and staff. It may require multiple visits.

All practitioners assessing wishes and feelings should be alert to circumstances that may impact someone's ability to express their wishes and feelings, for example:

- sedating medication
- fear of consequences
- perceived pressure
- feeling that they do not want to be a burden

## Seeking further advice

Where practitioners are in **doubt** about whether someone is objecting to their confinement or, in instances where people **fluctuate between appearing content and appearing to object to their confinement**, a referral should be made to the local authority for consideration of a DoLS authorisation, or the Court of Protection.

**Practitioners should continue to use DoLS processes and court applications where there is any doubt as to whether arrangements constitute a deprivation of liberty. This**

includes where there are any doubts about valid consent, where restrictions are significant or where it appears ECHR article 5 may be engaged.