

15 minute Worksheet



## Planning care in advance

# 5: Deprivation of liberty safeguards (DoLS)

Intermediate level

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### Aim of this worksheet

To understand why it may be necessary to apply for a deprivation of liberty authorisation

### How to use this worksheet

- You can work through this worksheet by yourself, or with a tutor.
- Read the case study below, and then turn to the Work page overleaf.
- Work any way you want. You can start with the exercises on the Work page using your own knowledge. The answers are on the Information page - this is not cheating since you learn as you find the information. Alternatively you may prefer to start by reading the Information page before moving to the exercises on the Work page.
- This CLiP worksheet should take about 15 minutes to complete, but will take longer if you are working with colleagues or in a group. If anything is unclear, discuss it with a colleague.
- If you think any information is wrong or out of date let us know.
- Take this learning into your workplace using the activity on the back page.

### Case study

**Bill is a 54 year old man with epilepsy who developed weight loss and intermittent diarrhoea. Investigations showed a carcinoma of the colon with liver metastases. He developed a bowel obstruction, which needed urgent surgery and required admission to critical care with a septicaemia.**

**Although physically better, Bill has developed a temporary delirium that is causing him to be paranoid, aggressive and agitated.**

**He has already threatened (but never hit) two nurses and a patient. The consultant suggests he should be restrained and sedated for his safety and that of others.**

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## INFORMATION PAGE: Deprivation of liberty safeguards (DoLS)

### What constitutes a deprivation of liberty?

Examples from court cases include the following:

- Physical restraint used to control a person in hospital, hospice, care home or in an ambulance.
- Medication given to restrict a patients freedom to leave of change their care
- Staff exercising control over the care and movements of a person
- Staff taking decisions on a person's behalf, including choices relating to assessments, treatments, visitors and where they can live
- Hospital or care home staff taking over responsibility for deciding if a person can be released into the care of others or allowed to live elsewhere
- Preventing or restricting a person from seeing friends or family

*Answers:* all four of these descriptions have been found by the court of protection to be a deprivation of liberty.

### Who is covered by the Mental Capacity Act DoLS?

A person must

- be aged 18 or over in a care home or hospital
- lack the capacity to consent to their accommodation or care is given
- be unable to leave or change their care
- be under continuous supervision (ie staff need to know that persons whereabouts and activity)
- require their care to be restricted in their own best interests to protect them from harm
- not be under the requirements of the Mental Health Act

If the Mental Capacity Act DoLS applies then the individual has

- the right to a representative to act for them and protect their interests
- rights of challenge to the Court of Protection against unlawful deprivation of liberty
- rights for their deprivation of liberty to be reviewed and monitored on a regular basis.

*True or false answers:*

1. **F** DoLS legislation only applies to hospitals and care homes. In other settings an application must be made directly to the Court of Protection.
2. **F** DoLS exists to protect the rights of an individual who is already being deprived of their liberty.
3. **T** But only if it can be shown that all options were considered.
4. **F** An application must be made by the hospital or care home (the 'managing authority) to the 'supervising authority' (usually the local authority).
5. **T** This would important in Bill's situation where circumstances may be changing daily.

### What happens if an individual's liberty needs to be restricted?

People are entitled to be cared for in the least restrictive way possible and care decisions should always consider if there are other, less restrictive options available to avoid unnecessary deprivation of liberty.

**The DoLS would *not* apply if** the person a) is aged under 18yrs (but can be applied for through the Court of Protection), b) has capacity to make the required care decision, c) needs to be detained under the Mental Health Act and d) has problems which will soon resolve.

The process for Bill would therefore be

- 1) Go through the best interests process to explore all available options
- 2) Consider whether his delirium will resolve soon (eg. within 72 hours)
- 3) Choose the *least restrictive* option
- 4) If this option still requires a deprivation of liberty, then ask the hospital or care home to apply for a DoLS assessment, while authorising a temporary authorisation.
- 5) Review and monitor on a daily basis.

### A DoLS is unlikely to apply if

An individual lacking capacity is dying of natural causes and in the last days of life.

A delirium is likely to resolves within days and no restraint has been needed.

An individual is in critical care as an emergency or agreed to be admitted after surgery

### Would Bill need a DoLS?

This depends on the cause of his delirium. If this is already resolving and he is likely to return to normal rapidly, then a DoLS authorisation would not be needed. However, there is still a requirement to use the least restrictive options. If the delirium and the behaviour is persisting, then a DoLS may be needed. If physical restraint is needed an urgent DoLS authorisation is likely to be needed.

### But DoLS is changing....

The Law Commission and others have realised there are serious problems with the DoLS legislation and the proposal is for it to be replaced with new legislation.

## Choose

What do you think is meant by Deprivation of Liberty?  
Underline any description that fits with your view:

1. Giving regular medication to calm an agitated individual
2. Staff requiring to know the whereabouts or actions of an individual
3. Making choices over aspects of care on the individual's behalf
4. Care staff taking over responsibility about place of discharge

True  
 or  
 false

1. DoLS legislation applies to all care settings	True	False
2. DoLS deprives someone of their liberty	True	False
3. Depriving a patient of liberty is allowed if it is the least restrictive option	True	False
4. If a an individual is safer having their freedom of care restricted, all that needs to be done is to document the reasons in the notes	True	False
5. Any deprivation of liberty must be monitored and reviewed	True	False

## Reflect

Is DoLS likely to apply in these situations?

Semiconsciousness caused by dying naturally of advanced cancer

Acute delirium likely to resolve within a few days

Unconscious in critical care

## Reflect

Do you think a DoLS authorisation should be made for Bill?

## FURTHER ACTIVITY: Deprivation of liberty safeguards (DoLS)

Think back to the last person who did not have capacity and whose behaviour was a risk to themselves or others.

- Did you notice any deprivation of liberty?
- Do you think there should have been a DoLS authorisation should have been made

## FURTHER READING: Deprivation of liberty safeguards (DoLS)

### Key documentation

Law Society guidance: <https://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>

Deprivation of Liberty Safeguards: Code of Practice.

[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085476](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

Mental Capacity Act: <https://www.legislation.gov.uk/id/ukpga/2005/9>

MCA Code of Practice: <https://assets.publishing.service.gov.uk/.../Mental-capacity-act-code-of-practice.pdf>

Capacity, care planning and advance care planning in life limiting illness: a guide for health and social care staff. NHS End of Life Care Programme, 2011: <http://www.ncpc.org.uk/publication/advance-care-planning-guide-health-and-social-care-staff>

### Journal articles

Boyle G. The Mental Capacity Act 2005 Deprivation of Liberty Safeguards and people with dementia: the implications for social care regulation. *Health & Social Care in the Community*. 2009; **17**(4): 415-22.

Lepping P, Sambhi RS, Williams-Jones K. Deprivation of liberty safeguards: how prepared are we? *Journal of Medical Ethics*. 2010; **36**(3): 170-3.

Maxmin K, Cooper C, Potter L, Livingston G. Mental capacity to consent to treatment and admission decisions in older adult psychiatric inpatients. *International Journal of Geriatric Psychiatry*. 2009; **24**(12): 1367-75.

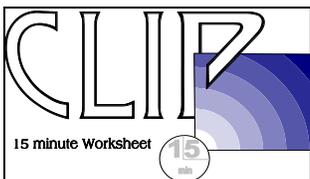
Shah A, Banner N, Heginbotham C, Fulford B. A pilot study of the early implementation of the Mental Capacity Act 2005 in England and Wales: the experience of consultants in old age psychiatry. *Medicine, Science & the Law*. 2010; **50**(3): 131-5.

### Further resources

e-lfh: e-Learning for Healthcare contains a range of online self-learning programmes, including several relating to end-of-life care (e-ecla). Registration is required but is free.

Court of Protection: [www.justice.gov.uk/guidance/courts-and-tribunals/courts/court-of-protection/](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/court-of-protection/)

IMCA service: [www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet06.pdf](http://www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet06.pdf)



**Current Learning in Palliative care**  
An accessible learning programme for health care professionals

### 15 minute worksheets are available on:

- An introduction to palliative care
- Helping the patient with pain
- Helping the patient with symptoms other than pain
- Moving the ill patient
- Psychological and spiritual needs
- Helping patients with reduced hydration and nutrition
- Procedures in palliative care
- Planning care in advance
- Understanding and helping the person with learning disabilities
- The last hours and days
- Bereavement

Available online on  
[www.clip.org.uk](http://www.clip.org.uk)