

Quick Guide to DoLS 16 – 17 yrs

What is a Deprivation of Liberty Safeguard

The Deprivation of Liberty Safeguards (DoLS) is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

Under the Human Rights Act 1998 it is stated that everyone (of whatever age) has the right to liberty and can only be deprived of their liberty in limited circumstances and subject to strict legal procedures which allow processes of appeal.

Children/Young People Aged 16 and 17 - the Mental Capacity Act 2005 applies. An application must be made to the Court of protection.

Care and support can be provided to children and young people in a very broad range of living arrangements and a deprivation of liberty can arise in any of them. They include, the family home, foster homes, adoptive homes, children's homes.

The local authority should cease to impose the deprivation as soon as either:

The statutory criteria are no longer met; or

The reasons justifying the deprivation of liberty no longer subsist.

Case-law makes clear that each case must be decided on its own facts, and legal advice must be sought as necessary.

Capacity

In law, under the Mental Capacity Act 2005, all young people aged 16 and over are presumed to have capacity.

If the young person has capacity to consent to the confinement and gives their consent, there will be no deprivation of liberty - whereas if the young person does not consent to the confinement, the young person will be deprived of their liberty.

If the young person is unable to consent to the confinement it will not be possible for the young person's parents to consent to the confinement on their child's behalf. Accordingly, the young person will be deprived of their liberty.

If the young person can understand, retain, use and weigh the information about their confinement, and communicate a decision to agree to it, but does not give that consent, then no one can seek to override that refusal. The young person must therefore be seen as deprived of their liberty.

If the young person cannot understand, retain, use and weigh the information about their confinement and communicate their decision to agree to it, then they cannot give consent to it, and will therefore be deprived of their liberty, for which it will be necessary to seek an authorisation.

This will be so even if the young person appears to be compliant, acquiescent, or even actively to be content with the arrangements. Compliance, therefore, does not constitute consent.

A Supreme Court judgement in March 2014 made reference to the 'acid test' to see whether a person is being deprived of their liberty, which consisted of two questions:

Is the person subject to continuous supervision and control? and

Is the person free to leave? (permanently) – with the focus, the Law Society advises us, being not on whether a person seems to be wanting to leave, but on how those who support them would react if they did want to leave.

Any intervention in the life of a YP should be the least restrictive option and should result in the least possible separation from family, friends and their community.

Where there is a deprivation there needs to be an option to appeal process, and a time frame for scheduled reviews.

Further information and links

<https://dols.trixonline.co.uk/chapter/mental-capacity-act-and-deprivation-of-liberty#young-people-aged16-17-years>

[Mental Capacity Act Code of Practice - GOV.UK
\(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362207/Mental-Capacity-Act-Code-of-Practice-2018.pdf)

[joint_deprivation-of-liberty-and-young-people_web.pdf
\(researchinpractice.org.uk\)](https://researchinpractice.org.uk/joint_deprivation-of-liberty-and-young-people_web.pdf)