

The Mental Capacity Act Deprivation of Liberty Safeguards (MCA DoLs)

Listening | Supporting | Enabling | Empowering



This legislation is about ensuring vulnerable who lack the capacity to consent are not deprived of their liberty unless it is in their best interests.

The Mental Capacity Act *Deprivation of Liberty Safeguards* are commonly referred to as 'DoLs'. They were introduced into the **Mental Capacity Act (MCA) 2005** through the **Mental Health Act 2007**. 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. In such cases, DoLs provide a lawful way to deprive someone of their liberty, provided that this is in their own best interests or is necessary to keep them from harm.

The MCA DoLS were introduced to prevent breaches of the *European Convention on Human Rights* (ECHR) following the legal judgment given by the *European Court of Human Rights* (ECtHR) in the case of *HL v United Kingdom*, commonly referred to as the 'Bournemouth judgment'. This case concerned an autistic man (HL) 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 under common law but was prevented from leaving the hospital with his carers. This decision was challenged by his carers and the ECtHR found there had been a breach of HL's rights under the ECHR. The reasons given for the verdict were that:

- ✓ HL had been deprived of his liberty and the deprivation of liberty had not been in accordance with 'a procedure prescribed by law' and was, therefore, in breach of Article 5(1) of the ECHR
- ✓ there had been a contravention of Article 5(4) of the ECHR because HL had no means of applying quickly to a court to see if the deprivation of liberty was lawful.

What is a Relevant Person's Representative (RPR)?

Everyone who has a DoLs authorisation must have a relevant person's representative (RPR). It is the role of the RPR to make sure that any conditions of the DoLs are being met and to inform the person of their rights and how to exercise those rights. This is an important role in ensuring the person deprived of their liberty is safeguarded. An RPR can be a family member or a friend.

There are certain rules guiding who can be an RPR. To be eligible you must be:

- ✓ 18 years of age or over
- ✓ Able to keep in contact with the relevant person
- ✓ Willing to be appointed.

You must not be:

- ✓ Financially interested in the hospital or care home where the relevant person is being deprived of their liberty, or be a relative of a person who has a financial interest
- ✓ Employed by, or providing services to, the care home in which the relevant person is residing or employed by the hospital in which the relevant person is residing in a role that is, or could be, related to their treatment or care
- ✓ Employed to work in the relevant person's supervisory body in a role that is, or could be, related to the relevant person's case.

The role of the RPR

RPRs must have regular, face-to-face contact with the person being deprived of their liberty, to ensure that their interests are being safeguarded. This means that the hospital or care home where the person is staying (the managing authority) should allow you to visit them at reasonable times. As the RPR, your name should be recorded in the person's health and social care records. If you have insufficient contact with the relevant person for whatever reason, they may not have full opportunities to have their case reviewed or to appeal against their deprivation of liberty to the Court of Protection.

As an RPR, you have a legal duty to comply with the **Mental Capacity Act Code of Practice**.

Managing authorities and supervisory bodies (local authorities or NHS bodies) should keep you informed about sources of support and information available to help you in your role, including how to access the support of an Independent Mental Capacity Advocate (IMCA).

As soon as possible after a standard deprivation of liberty authorisation is given, the managing authority must make sure that both you and the relevant person understand:

- ✓ The effect of the authorisation
- ✓ The formal and informal complaints procedures that are available to both of you
- ✓ Your right to request a review
- ✓ your right to make an application to the Court of Protection to seek variation or termination of the authorisation
- ✓ Your right, where the relevant person does not have a paid 'professional' representative, to request the support of an IMCA.

The role of an RPR ends when relevant person's authorisation comes to an end.