

Policy/Procedure Name:	Deprivation of Liberty Safeguards: Practice and Procedures Policy		
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Policy/Procedure Author:	Head of Safeguarding		
Policy/Procedure Owner:	Principal		
Management Committee Approved By:	TLT		
Governor Committee (where appropriate) Approved By:	Not applicable		
For Action By:	All student facing staff		
For Information to:	All staff		
Approval requested to upload on the Treloar Website:	Yes X <input type="checkbox"/> (tick if requested)		
Who is carrying out EIA?	Head of Safeguarding	Date of EIA?	3 rd September 2014
Have we shown due regard for the 9 protected characteristics within the policy/procedure?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Are all opportunities to promote equality taken within the policy/procedure?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Refer Policy/Procedure to EDI Co-ordinator for further assessment	Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>		

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1. AIM

To detail practice and procedures in relation to Deprivation of Liberty Safeguards as they apply to Treloar.

2. INTRODUCTION

The Deprivation of Liberty Safeguards (DoLS) provide legal protection for vulnerable people over the age of 18, who are or may become, deprived of their liberty (a Human Right under the European Convention on Human Rights) in a hospital or care home environment, whether placed there under public or private arrangements.

Any DoL must be only put in place if:

- *It is in their own best interests to protect them from harm*
- *it is a proportionate response to the likelihood and seriousness of the harm,*

And

if there is no less restrictive alternative available.

Use of the DoLS Authorisation can avoid breaches of human rights and provides protection for people who fulfill the relevant criteria.

In March 2014 the Supreme Court delivered a ruling that revised the definition of deprivation of liberty noting that it applies to people who:

- Who lack the mental capacity to consent to remaining at Treloar's
- Who are subject to continuous supervision and control.

AND

- Who are not free to leave, regardless of how happy they appear to be or whether they have asked or attempted to leave.

The Mental Capacity (Amendment) Act was passed in 2019, introducing the concept of "Liberty Protection Safeguards" (LPS) in place of DoLS. This is aimed at addressing some of the identified issues within the DoLS system since it's introduction, expanding it to cover 16-17 year olds and clarifying a number of other aspects. Any reference to DoLS within this policy will likely also apply to LPS.

DoLS are underpinned by the five key principles of the Mental Capacity Act:

- A presumption of capacity - every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone concludes that they cannot make their own decisions;
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions;
- Best interests – anything done for or on behalf of people without capacity must be in their best interests; and

- Least restrictive intervention – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms

The Deprivation of Liberty Safeguards require that a hospital or care home (a 'managing authority', i.e. Treloar's) must seek authorisation from the 'supervisory body' in order to be able to deprive someone who has a mental disorder, and who lacks capacity to consent, of their liberty. The 'supervisory body' is the Local Authority.

NOTE: The *Mental Capacity (Amendment) Bill* is currently receiving parliamentary scrutiny and seeks to replace the Deprivation of Liberty Safeguards (DoLS) with Liberty Protection Safeguards (LPS), to address concerns about the original act. This policy will be updated or replaced as appropriate given any changes in legislation.

3. PURPOSE

This policy outlines the legal framework around DoLS and details procedures that should be followed by Treloar's staff when working with students who may lack mental capacity and are or may become deprived of their liberty.

This policy is based on the statutory Mental Capacity Act Code of Practice (<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>) and the DoLS Code of Practice .

Both Codes of Practice are available on the Safeguarding Adults departmental intranet site and also on the Department of Health website: www.dh.gov.uk

It is a requirement of our registration with the Care Quality Commission (CQC) that they be notified of all applications for a DoLS authorisation and their A copy of the DoLS application forms must be sent to the Head of Safeguarding who will notify QCQ.

4. SCOPE

Some students at Treloar's may lack the mental capacity to consent to their placement here and if they were to leave they would put themselves and at unacceptable risk. In these cases it may be necessary to deprive that student of their liberty in their best interests, in order to protect them from harm.

DoLS only applies to care homes and hospitals. Treloar's College is registered as a care home providing further education

DOLS authorisations can only be granted for persons aged 18 years and over.

Queries regarding 16 and 17 year olds who may lack capacity and were they to leave they would be at unacceptable risk of harm should be directed to the Head of Safeguarding. Treloar will consider such cases on their merits, and will if necessary request that the placing body seek legal advice as to whether a Court of Protection application be made to authorise any deprivation of liberty that may be taking place.

5. DEFINITIONS

Deprivation of Liberty Safeguard – a legal authorisation that allows a managing authority to deprive someone who lacks mental capacity of their liberty.

Mental capacity -

A person lacks capacity at a certain time if they are unable to make a decision for themselves in relation to a matter, because of impairment, or a disturbance in the functioning of the mind or brain. An impairment or disturbance in the brain could be as a result of (not an exhaustive list):

- A stroke or brain injury
- A mental health problem
- Dementia
- A significant learning disability
- Confusion, drowsiness or unconsciousness because of an illness or treatment for it
- Substance misuse

Lacking capacity is about the ability to make a particular decision at a certain time, not a range of decisions. If someone cannot make complex decisions it does not mean they cannot make simple decisions.

It does not matter if the impairment or disturbance is permanent or temporary but if the person is likely to regain capacity in time for the decision to be made, delay of the decision should be considered. Therefore Capacity Testing may be required at various periods.

Capacity cannot be established merely by reference to a person's age, appearance or condition or aspect of their behaviour, which might lead others to make an assumption about their capacity. An assumption that the person is making an unwise decision must be objective and related to the person's cultural values.

There are five key principles underpinning the MCA as follows:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The Mental Capacity Act applies to all people over the age of 16, except when making a lasting power of attorney (LPA); making an advance decision to refuse treatment and making a will; in these situations, a person must be aged 18 or over.

Managing Authority - the organisation responsible for the care home or hospital applying for the DoLS authorisation i.e. Treloar's College. No student can be deprived of liberty at the school

Supervisory Body / Authority – the Local Authority which covers the person’s normal place of residence. Local Authorities are responsible for considering a DoLS request, arranging the required assessments and agreeing or denying a DoLS authorisation.

6. DUTIES AND RESPONSIBILITIES

Principal To ensure that the College complies with relevant legal and statutory requirements related to the Deprivation of Liberty Safeguards.

CQC Registered Residential Manager is responsible for considering the care and support provided to those residing in their care. They are responsible for identifying potential deprivation of liberty, and for requesting an authorisation if one is required.

All College managers, including education, clinical and residential services should have a working knowledge of the MCA Code of Practice and will act as decision makers and are responsible for ensuring their teams complete the relevant assessments and documentation.

All staff - To be aware of and comply with this policy and any associated guidelines

Head of Safeguarding is responsible for **production of guidance**, collation of DoLS data and reporting of any known instances of an unauthorised Deprivation of Liberty.

7. PROCESS

1. Can we Apply for a DoLS Authorisation?

A person is deprived of their liberty if they:

- lack capacity to consent to the relevant care and support arrangements;
- are subject to continuous supervision and control;
and
- are not free to leave. They may seem happy to stay, but the issue is about how we would react if the person did try to leave or if relatives/friends asked to remove them permanently;

In all cases the following are not relevant to the application of the test:

- The person’s compliance or lack of objection to the care arrangements.
- The reason or purpose behind a particular placement; and
- The relative “normality” of the placement (whatever the comparison made). This means that the person should not be compared with anyone else in determining whether there is a Deprivation of Liberty – each consideration should be made on it’s own merits.

A DoLS authorisation **cannot** be used in order to force treatment or care on a person who has the mental capacity to make a decision about the proposed treatment, care and the manner and location in which it is to be provided. This means that if an individual who has not been assessed as lacking capacity objects to their care, treatment or residence at Treloar we cannot obligate them to comply or remain - to do so would be *unlawfully* depriving them of their liberty.

Many students at Treloar's cannot leave without assistance. If a student engaged an outsider to help them leave they will be allowed to do so unless the above criteria apply. It does not matter whether or not Treloar's know the helper. If it is felt that a student may be in danger, but the criteria for DoLS do not apply, a referral to Hampshire County Council Safeguarding Team or to Hampshire Police should be made.

If the above criteria do not apply and the student requests to leave, Treloar's should start the process to enable the student to do this. This will usually involve contacting the student's family of local authority.

The law draws a distinction between a 'restriction of movement' (i.e. restraint) and a 'deprivation of liberty'. Restriction of movement does not need to be authorised under the DoLS provisions (although it may need to be if constituting "constant supervision or control"). The principles of the Mental Capacity Act 2005 apply to any lawful restraint or restriction of movement. In particular, if it should be deemed necessary to do so in the person's best interest, it must be a proportionate response to the assessed risks and for as short a period as necessary.

2. When cannot DoLS be applied for?

- If the person is under 18 years of age;
- If the use of the safeguards would conflict with a decision of the persons attorney or a Deputy of the Court of Protection;
- If there is an advance decision relating to treatment that would conflict with the deprivation of liberty

If any of the above are true, but there are concerns about the student being deprived of their liberty then the Head of Safeguarding should be informed, as it may be necessary to consider what changes can be made, or whether their responsible local authority needs to apply to the Court of Protection for oversight of this arrangement.

3. Completing forms to apply for Deprivation of Liberty Safeguards:

Consideration should be given to the capacity of students to consent to their own care and treatment at Treloar. This should be explored both in the application process, and on an ongoing basis whilst at Treloar. The following needs to be considered:

- Do they lack capacity under the Mental Capacity Act (MCA) 2005 to consent to reside and receive treatment at Treloar's? This must be the subject of a formal assessment and recorded. This assessment will take place in consultation with the student's family, funders, social worker and other interested parties. The MDT will agree who should lead the assessment and is likely to be someone who knows the student well.
- If the student chose to leave (regardless of whether they had tried or expressed a wish to do so), would they be prevented?
- If they lack capacity, is it in the student's interest to remain at treloar's? This must also be in consultation with those noted above. The person carrying out the decision will also be the best interest decision maker
- If in their best interest to remain, does the student need to be subject to continuous supervision and control? ¹

If the answer to all of the above questions is yes an application for DoLS must be made to the student's home authority or if from overseas, to Hampshire County Council.

The application form can be found at <https://www.gov.uk/government/publications/deprivation-of-liberty-safeguards-forms-and-guidance> This form should be used for Urgent and Standard Authorisations for all local authorities.

If during the admission process it is believed a deprivation of liberty will, or is likely to occur then a Standard Authorisation can be applied for in advance. Standard Authorisations can be granted for differing lengths of time, dependent on the individual circumstances.

When the need for deprivation of the liberty of a resident occurs suddenly, and cannot be avoided or delayed, Treloar's as the managing authority must apply for an **Urgent Authorisation**. For all Urgent Authorisations a Standard Authorisation must also be completed at the same time.

Once DoLS forms are completed and signed it is legal to prevent the person leaving Treloar's. An Urgent Authorisation lasts for only 7 days, with day 1 being the day of application. Treloar's notes however that currently there is significant delay in local authorities responding to DoLS applications, and that there is therefore an onus on our continually reviewing DoLS applications that have not been granted so as to consider their appropriateness and whether they still need to be applied.

The forms can be completed electronically or by hand.

7.1. Who completes the DoLS forms?

It is the responsibility of the registered residential manager of the provision where the student resides to apply for a DoLS authorisation in consultation with the Head of Safeguarding or other senior manager.

7.2. What happens to the forms once completed?

The DoLS form needs to be sent to the relevant DoLS office. The office should be telephoned and details will be given how to affect this. The relevant DoLS office will be based in the local authority that places the student at Treloar's. If they have no address in the UK they should be sent to Hampshire CC.

Forms sent electronically must be encrypted or be password protected.

7.3. Who else needs a copy of the forms?

- The original forms should be scanned and stored in the student's YPP on Caresys.
- The student must be given a copy of the DoLS forms, and they must have it explained to them. Head of Safeguarding Email electronic copy of the forms (or scan and email hand written forms)

It is a requirement of our registration with the Care Quality Commission (CQC) that we inform them of all DoLS applications and outcomes. This is managed by the Head of Safeguarding.

7.4. What happens next?

The Supervisory Body makes arrangements for the required assessments to be undertaken. Treloar's staff should support this assessment process but do not undertake the assessments themselves. Access to the student's records will be required by the assessors.

The assessments will be undertaken by a Best Interest Assessor and will normally be within the 7-day period of the Urgent Authorisation. If for any reason the assessment process will take longer, then the Supervisory Body will advise Treloar's. The Residential Manager will be responsible for applying for any extension in consultation with the Supervisory Body

On completion of the assessment process, the Supervisory Body will either grant or deny the DoLS authorisation. The DoLS Office will send the outcome forms to Treloar's and these forms must be scanned and file in Caresys. A copy will also be sent to the Head of Safeguarding.

7.4.1. A Standard DOLS Authorisation is granted

The care plan should include ongoing review of the YPP and the need for a continuing DoLS order.

A student held under DoLS may be held at the College until:

- Arrangements have been made for on-going care to continue in another location The DoLS is judged to no longer be required. The Residential Manager must inform the DoLS Office and the Head of Safeguarding.
- The DoLS expires. If the person still need to be deprived of their liberty then an extension to the Standard Authorisation will be required. DoLS form 4 should be completed again and sent off to the DoLS Office as above.

Or

- **The person's mental capacity returns and they are able to make their own decision about continuing with treatment and care.** In this circumstance the DoLS is no longer valid, even if the person decides to leave Treloar's or refuses to comply their YPP. NB if the student's actions make it not possible to provide care, they may be asked to leave, but they cannot be forced to follow any decision if they have capacity.

A DoLS Authorisation is specific to the Managing Authority that applied for the authorisation. Therefore it is permissible to transfer a patient who is held under a DoLS to another part of Treloar's, however any movement should be undertaken in the person's best interest

In the event of the death a person who is subject to a DoLS Authorisation the Coroner must be informed, as this may be considered a death in custody.

7.4.2. A Standard DoLS Authorisation is refused

If the authorisation is refused or cannot be granted because the qualifying criteria have not been met, then the care plan should be reviewed again to see if less restrictive alternatives can be put in place. In this way the student may consent to remain in hospital, but they cannot be prevented should they choose to leave.

Equally, an authorisation could be refused on the grounds that the person has capacity to consent to their own care and treatment – in this case the person is able to make their own decisions about care and treatment in line with the mental capacity act.

If there are major concerns about the student's safety should they leave Treloar's, the student's family, local authority and Hampshire Adult Safeguarding Team should be contacted.

7.5. Unauthorised Deprivations of Liberty

If staff are concerned that an unauthorised deprivation of liberty has occurred or is likely to occur within Treloar's' the MDT should review the situation as a matter of urgency and steps taken to avoid any further inappropriate deprivation of liberty, or prevent a potential future deprivation of liberty. In order to achieve this it may be necessary to apply for an Urgent Authorisation. This should be reported to the Head of Safeguarding.

All unlawful DoL will be reported to the CQC, Hampshire County Council Adults Safeguarding Team, the student's social worker and funders. The Head of Safeguarding will coordinate notifications.

8. TRAINING REQUIREMENTS

All staff should have a basic understanding of DoLS. An introduction will be included in Mental Capacity training on induction.

All designated Treloar's signatories for DoLS authorisations must undertake additional training.

Each line manager has the responsibility to ensure that their staffs are afforded the opportunity to undertake all essential skill training. In the event of failure to undertake the training the Essential Skills Framework policy will be invoked with regard failure to comply with Trust policy.

9. COMMUNICATION REQUIREMENTS

How will the Policy/procedure be communicated:	HoDs Moodle
Who will ensure the above communication is carried out::	Head of Safeguarding
Do the changes made to this policy/procedure affect any other policies/procedures? If yes, has this been communicated to the policy/procedure author/owner	MCA policy, Safeguarding Policy. Same author.

10. MONITORING AND REVIEW

The policy will be monitored through the DoLS assessment process by the Head of Safeguarding.

11. Revision history

Changes to following new application form
Changes to make Residential Manager key; this reflects practice.

12. REFERENCES AND ASSOCIATED DOCUMENTATION

Mental Capacity Act 2005 – found at:
http://www.opsi.gov.uk/acts/acts2005/ukpga_20050009_en_1

Mental Capacity (Amendment) Act 2019 - <http://www.legislation.gov.uk/ukpga/2019/18/enacted>

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Deprivation of Liberty Safeguards: A guide for hospitals and care homes. DH. 2009

What are the Mental Capacity Act 2005 Deprivation of Liberty Safeguards? DH. 2008

Mental Health Act 2007 – found at: <http://www.legislation.gov.uk/ukpga/2007/12/contents>

The Mental Capacity Act 2005 Deprivation of Liberty Safeguards and you. Easy Read. DH. 2009

- See this link for more detail and summaries of the cases considered by the Supreme Court.
http://www.cqc.org.uk/sites/default/files/media/documents/20140416_supreme_court_judgment_on_deprivation_of_liberty_briefing_v2.pdf

QUICK REFERENCE GUIDE

For quick reference the guide below is a summary of actions required. This does not negate the need for the document author and other involved in the process to be aware of and follow the detail of this policy.

Application for DOLS Authorisation

APPENDIX 1

