What are the ....

Deprivation of Liberty Safeguards?
What are the Deprivation of Liberty Safeguards (DoLS)?

Sometimes care homes and hospitals have to limit people’s freedom to keep them safe.

The Deprivation of Liberty Safeguards (DoLS) provide a legal framework that helps to ensure the person’s human rights are protected.

The DoLS are part of the Mental Capacity Act 2005. They say that people can only be deprived of their liberty when they lack mental capacity to make decisions about their care and accommodation, and it is in their best interests.

The DoLS were introduced in 2007 after a European Court of Human Rights ruling.

The ruling found that a man with autism had been unlawfully deprived of his liberty in Bournewood Hospital because the hospital had not used any legal framework to detain him. This had meant that his carers experienced real difficulty in trying to get him released.

How do they work?

In 2014 the Supreme Court said that a person is deprived of their liberty if they are:

1) Under continuous supervision and control and are;
2) Not free to leave.

A person can be deprived of their liberty even if the restrictions are in their best interests - even when they or their families are not objecting.

Care/Nursing homes and hospitals must apply to their local authority for authorisation to deprive a person of their liberty.

The local authority will send out two independent assessors to assess whether the qualifying requirements for the DoLS are met, the assessor are:

- **Mental Health Assessor** who is a specially trained doctor. They will clarify that the person lacks the mental capacity to agree to their place of residence and care.

- **Best Interest Assessor** who will speak to the person and their family and friends about the person’s best interests. They are also the person that identifies whether a deprivation of liberty is happening and whether it is a proportionate response to that person’s care needs.
What happens if a Deprivation of Liberty authorisation is granted?

An authorisation can be granted for a maximum period of 12 months. You will be sent a copy of the “Deprivation of Liberty Safeguards Form 5 – Standard Authorisation Granted”. This will give more information about how the person is being deprived of their liberty and will also detail how long the authorisation will last for.

Once a deprivation of liberty authorisation is given it cannot just end, it will be reviewed if circumstances change or the process will be repeated at the end of the authorisation period and in each case a decision will be made to either give a further authorisation or to “Cease the Authorisation”.

If authorisation is granted, a ‘Relevant Persons Representative or RPR’ will be appointed to help the person to exercise their rights. This is often a relative, but it could be somebody with experience acting as an advocate. The person and their representative are entitled to help from an ‘Independent Mental Capacity Advocate’ (IMCA).

The person and their representative have a right to request a review by the local authority. They may also be entitled to legal aid to appeal against the deprivation of liberty authorisation in the Court of Protection. The Court of Protection will review whether the person lacks capacity and whether the detention is in their best interests. Sometimes the DoLS can run into tricky technical questions, and the court can give guidance for these cases.

An authorisation will not, in most cases, alter the way in which the person is cared for – however the Best Interest Assessor may make some recommendations on how to reduce the amount of restrictions placed on the person. These are called “conditions” and the care/nursing home or hospital has to comply with these.
What happens if someone dies whilst on a Deprivation of Liberty Authorisation?

The following is information for families given by the local (Rochdale) Coroner Mr Simon Nelson.

We understand that this is a very sensitive subject and could cause distress, however it is important you are made aware of these changes, and understand what these changes mean for you and your family. The information below has been put together to help guide you through this process. If you have any further enquires please contact your local Deprivation of Liberty Team or the Coroner’s office (contact details at the bottom of this page).

What happens if your relative/friend dies whilst subject to a Deprivation of Liberty Authorisation?

↓ Firstly the care home/hospital where your relative/friend dies must notify the local Coroner.
↓ The doctor who is called to confirm death will not be able to issue a death certificate but will be asked to confirm death has occurred.
↓ Your relative/friend will then be taken to either the Royal Oldham Hospital or Fairfield General Hospital. If they are already in hospital they will probably remain there.
↓ The local Coroner’s Office will make contact with family members/friends, the certifying doctor and the care home to establish facts about your relative/friend’s death and their care.
↓ The local Coroner will then make a decision as to whether a post mortem needs to be conducted. We know that this is part of the process that can upset people the most. However, a post mortem will only be conducted if the cause of death is not known or there are circumstances around the death which give rise to concern.
↓ The Coroner will issue an interim death certificate so that the burial/cremation can go ahead and this can be used to inform other agencies E.g. Banks and Building Societies
↓ The Coroner will hold an inquest and family members will be approached to provide a witness statement should they wish to do so.
• After the inquest is concluded the Coroner will notify the Register Office, who will then register the death. You will not be required to attend the register office. The register office will inform you when the death has been registered so you can then apply for death certificates.

Commonly asked questions:
Q - Will there be any delay to arranging a funeral?

A - This depends on the circumstances of your friend’s/relative’s death. The Coroner’s Office need to make initial enquires and establish whether a post mortem is needed. However, they will do all that they can to ensure that there is as short a delay as possible. Coroners are sensitive to the needs of particular faith groups and again will do all that they can to ensure things are moved along as quickly as possible.
Q: How long will it take to hold the inquest and will this hold up the funeral?

A: This will depend on how busy the local Coroners Court is at the time. An inquest could be held within a few weeks or after a few months. Funeral arrangements will not normally be held up by the timing of the inquest as the Coroner will issue an interim death certificate which will allow the funeral to go ahead.

Q: What do I do about registering my relative/friends death at the Register Office?

A: The death cannot be registered until after the inquest has taken place. After the inquest is concluded the Coroner will notify the Register Office, who will then register the death. You will not be required to attend the register office. The register office will inform you when the death has been registered so you can then apply for death certificates.

Contact details
Rochdale Coroners Office (covering Bury, Oldham and Rochdale)
The Phoenix Centre
L/Cpl Stephen Shaw MC Way (formerly Church Street)
Heywood
OL10 1LR

Telephone:  01706 924815
Fax:  0844 963 2386
Email:  coroners.office@rochdale.gov.uk

Office opening hours
8.30am-4.30pm Monday to Friday.
Sometimes deprivation of liberty occurs in settings other than care homes and hospitals, for example in supported living. If that occurs, the service provider Bury Council must seek authorisation directly from the Court of Protection. If you are worried somebody in supported living or a similar setting is deprived of their liberty you should inform the provider and the local authority.

If you think somebody may be deprived of their liberty without proper authorisation, ask the care provider to apply to the local authority for authorisation. Or speak to Bury DoLS Team (0161 253 5644).

Don’t be afraid to exercise your right to request a review or apply to the Court of Protection if there is a serious disagreement. An IMCA may be able to help you locate a solicitor.

If a person has a Lasting Power of Attorney or deputy for welfare decisions, then they can only be deprived of their liberty under the DoLS with the agreement of that Attorney.

If a person has made an Advance Decision refusing a particular treatment, then the DoLS cannot be used to deprive them of their liberty to deliver this treatment.

If you are subject to the DoLS, or represent somebody who is, an IMCA can help you with understanding the process and your rights. Again contact Bury Council DoLS Team (0161 253 5644). There is no charge for the IMCA service.