

LEGAL EAGLE



WITH BETHANY SYMONDS

If a relative wants to leave a care home

Do you have a relative who lacks mental capacity and is detained in a hospital or care home, but who has not been 'sectioned'?

If they tried to leave the hospital or care home would they be stopped or restrained?

Are they being detained against their will, or do they lack the mental capacity to agree to the detention?

If the answer to those questions is yes, your relative may be detained under the Deprivation of Liberty Safeguards (DOLS).

The DOLS were introduced to protect those who don't have mental capacity from harm. For exam-

ple, someone who suffers a stroke may be released from hospital with medication to take and physical rehabilitation to complete.

However, if that person lacks mental capacity they may not be able to administer that medication or look after themselves properly at home.

The local authority therefore detains them to ensure they get the medical treatment they need and don't come to further harm.

Everybody has a basic human right to freedom, and the local authority must follow a strict procedure in order to lawfully detain someone.

A rigorous six-stage assessment must be carried

out, and the local authority must be certain that it's in the patient's best interests for them to be detained.

However, if the patient feels strongly that detention is not in their best interests they can bring a legal challenge through the Court of Protection.

In addition, each patient detained under DOLS must have a named representative, which is usually a close family member.

The representative can also bring the legal challenge if they feel it is not in the patient's best interests to be detained.

If the challenge falls to you as a representative, you can get advice from the patient's Independent Mental

Capacity Advocate (IMCA). IMCAs are paid by the local authority to offer the help and advice you need.

You can also get help from a solicitor, as everyone patient and their representative are entitled to free legal aid regardless of their income.

This means that you can seek professional independent legal advice for free, and a solicitor will guide you through the process of challenging the detention in court.

Because everybody has a basic human right to freedom, the courts take DOLS challenges very seriously and there will be an initial court hearing within five days of making your application

to the court. The court will look to make sure that the local authority has carried out their six stage assessments correctly, and will closely scrutinise the patient's case to assess whether their detention should continue.

The court will consider the reasons why the patient has been detained, how long they have been detained already and how long the local authority plans to keep them detained.

Any conditions to the detention will be assessed, and the courts have wide powers to vary or terminate the patient's detention.

There is no limit to how many times a patient or their representative can challenge the detention.

The law in this area can be complicated and each patient's case is very different.

If you're in doubt about whether your relative should be detained, the best thing you can do is get professional advice without delay.

● Bethany Symonds is a trainee solicitor at David Gray Solicitors LLP. You can call for an appointment with Bethany or any member of the Court of Protection team on 0191 243 8160 or Chat Live 24/7 by visiting www.davidgray.co.uk



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