

Hertfordshire Provider Guidance: Deprivation of Liberty Safeguards



Written in collaboration with Hertfordshire County Council DoLS team

Hertfordshire Proactive Approach to Deprivation of Liberty Safeguards

Practical guidance for Hertfordshire care providers following the recent Supreme Court judgment

Who this is for	Care homes and care providers in Hertfordshire.
Why it matters	Providers should use a proactive, person-centred and evidence-based approach when considering whether a person may be deprived of their liberty.
Core message	Do not rely only on the traditional “Acid Test”. Consider the person, the impact of the arrangements, how long they last, and how they are applied in practice.

Important note

This is intended as practical operational guidance for Hertfordshire care providers. It is not legal advice and should not replace provider judgement, professional advice, local authority guidance or legal advice where needed. HCPA and Hertfordshire County Council accepts no liability for how this guidance is used, interpreted or applied by individual providers or other organisations. Providers remain responsible for making their own decisions, keeping appropriate records and seeking suitable advice for complex, disputed or high-risk cases.

Page 2: The 10 key messages

1	Start with the person Look at the person's individual circumstances, wishes, feelings, communication and behaviour.	→	2 Check capacity Complete and record decision-specific Mental Capacity Act assessments where relevant.	 continue to step 3
3	Record best interests Set out best interests reasoning clearly, including how least restrictive options have been considered. <i>Consider using voice Recording (AVT)</i>	→	4 Identify restrictions Describe supervision, control, locked doors, restraint, limits on movement or other restrictions.	 continue to step 5
5	Consider duration and impact Think about how long arrangements last and how they affect the person day to day.	→	6 Use a multifactorial approach Do not rely on the "Acid Test" alone. Look at the full picture in practice.	 continue to step 7
7	Make or maintain DoLS applications Continue to apply where there is doubt or where a person may be deprived of liberty.	→	8 Contact the DoLS Team if unsure Seek early advice from Hertfordshire County Council's DoLS Team for uncertain, complex or disputed cases.	 continue to step 9
9	Keep clear evidence for CQC Maintain records showing case-by-case MCA, DoLS, best interests and least restrictive practice. <i>Consider using voice Recording (AVT)</i> <i>Note: Ideally this should be carried out by a person with high level responsibility such as RM or Deputy</i>	→	10 Take practical next steps Review current arrangements, update records, use the ADASS prioritisation tool and include clear information in applications.	Complete ✓

Page 3: Further provider guidance

✓	Apply the MCA principles and complete decision-specific capacity assessments.
✓	Record best interests decisions and least restrictive reasoning clearly.
✓	Keep care plans, risk assessments and restriction records up to date.
✓	Submit DoLS applications where an adult may be deprived of their liberty or where there is doubt.
✓	Escalate uncertain, complex, disputed or high-risk situations for advice.

Suggested wording for families, representatives or advocates

Providers may find the following wording helpful when explaining the approach:

“Following the recent judgment, we are reviewing arrangements carefully and individually. We are not making rushed or blanket decisions. We will continue to apply the Mental Capacity Act, consider the person’s wishes and feelings, look at the individual impact of any restrictions, and seek advice from Hertfordshire County Council where we are unsure. Where a DoLS application or review is needed, we will follow the proper process.”

What to avoid

!	Do not make blanket decisions about groups of people.
!	Do not assume that a person being settled, happy or not objecting automatically means valid consent.
!	Do not cancel existing DoLS authorisations or Court orders without the proper review process.
!	Do not leave restrictions undocumented or fail to involve the right people where concerns are raised.