

Monitoring & Inspection of LPS and DoLS during transition



- The role of the CQC and regulating the current DoLS (Deprivation of Liberty Safeguards)
- Key issues for the transition period to LPS (Liberty Protection Safeguards) - and onwards
- Monitoring adherence: now and in the future



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Our purpose and role



- We make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve



- Register
- Monitor and inspect
- Use legal powers
- Speak independently
- Encourage improvement

- People have a right to expect safe, good care from their health and social care services

CQC are committed to equality and human rights throughout our work. It underpins how we register and inspect services and is embedded into the way we perform as an employer.

When we inspect services, we take into account how they consider :

- age
- disability
- sex (gender)
- gender identity
- race



- religion or belief
- sexual orientation (whether you are lesbian, gay, bisexual or heterosexual)
- pregnancy and maternity status
- protect your human rights, treating you fairly, with respect and dignity
- give you choice and control over the care you receive
- take action to ensure equality for their staff, as this will improve the quality of the care that they provide.

Our [human rights approach](#) to regulation helps make sure that everyone receives safe and good-quality care.

The role of the CQC and regulating the current DoLS



Deprivation of Liberty Safeguards (DoLS)

We have a statutory duty to monitor the use of DoLS and to report annually to Parliament on their implementation. We have a wide set of powers that allow us to protect the public and hold registered providers and managers to account. We are also one of the 21 organisations that form the UK's National Preventive Mechanism, which carries out regular visits to places of detention, and we monitor DoLS in these settings.

“The first condition is that a person (“P”) is detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person's liberty”

*Mental Capacity Act 2005
Schedule A1 Part 1 –
amendment in force from April
2009. Applies 18+*

The role of the CQC and regulating the current DoLS



“The inspection bodies for care homes and hospitals will be expected to monitor the manner in which the deprivation of liberty safeguards are being operated by:

- visiting hospitals and care homes in accordance with their existing visiting programme
- interviewing people accommodated in hospitals and care homes to the extent that they consider it necessary to do so, (and)
- requiring the production of, and inspecting, relevant records relating to the care or treatment of people accommodated in hospitals and care homes
- report annually, summarising their activity and their findings about the operation of the deprivation of liberty safeguards”.



The role of the CQC and regulating the current DoLS



Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 13

- “Service users must be protected from abuse and improper treatment in accordance with this regulation.”
- “A service user must not be deprived of their liberty for the purpose of receiving care or treatment without lawful authority.”

Breaches of this regulation may lead to regulatory action including enforcement according to CQC [Enforcement policy](#). CQC must refuse registration if providers cannot satisfy us that they can and will continue to comply with this regulation.



The role of the CQC and regulating the current DoLS



Care Quality Commission (Registration) Regulations 2009: Regulation 18, paragraph 4A



- “The registered person must notify the Commission of the following events, which occur whilst services are being provided in the carrying on of a regulated activity, or as a consequence of the carrying on of a regulated activity”
- “Any request to a supervisory body made pursuant to Part 4 of Schedule A1 to the 2005 Act by the registered person for a standard authorisation:
- “any application made to a court in relation to depriving a service user of their liberty pursuant to section 16(2)(a) of the 2005 Act.”

The role of the CQC and regulating the current DoLS



Care Quality Commission (Registration) Regulations 2009: Regulation 18
“Any notification required to be given in respect of an event in paragraph (4A) shall be given once the outcome of the request or application is known or, if the request or application is withdrawn, at the point of withdrawal and shall include a statement as to—

- the date and nature of the request or application;
- whether the request or application was preceded by the use of an urgent authorisation, within the meaning of paragraph 9 of Schedule A1 to the 2005 Act;
- the outcome of the request or application or reason for its withdrawal; and
- the date of the outcome or withdrawal.”

It is open to CQC to prosecute registered persons directly for a failure to notify us of a relevant incident



The role of the CQC and regulating the current DoLS



When you need to tell us about an application to deprive a person of their liberty

If an application to deprive a person of their liberty is made:

- you only need to send us your notification when you know the outcome of the application or if you withdraw it. You do not need to tell us when the application is first made.
- you must notify us about the application and its outcome or withdrawal at the same time, using the same form.
- you must notify us about the outcome of any application made to the Court of Protection even where you have not made the application yourself, e.g. local authority applications.
- once you know the outcome, you must notify us without delay.

- Information about DoLS can be reported against any of the 5 key questions; but usually in the **Safe** or **Effective** areas.
- We also ask about the MCA in **Provider Information Returns**
- We check during inspection whether services are working within the MCA, whether any restrictions on people's liberty have been authorised and whether any conditions on such authorisations are being met.

Example report text (not real service) : “DoLS authorisations had expired and applications had not been made in advance of their expiration for three people. There was a folder used to monitor DoLS but it had not been utilised. We alerted the registered manager to this and subsequently applications were submitted to the supervisory body”

Sharing findings from NHS Digital Data collection on DoLS [21.11.2019]



- “There were 240,455 applications for DoLS received during 2018-19, relating to 200,225 people. The number of applications has increased by an average of 15.0% each year since 2014-15”
- “The proportion of standard applications completed within the statutory timeframe of 21 days was 22.0% in 2018-19. The average length of time for all completed applications was 147 days”

A Supreme Court ruling in March 2014 ('Cheshire West') clarified the definition of deprivation of liberty and expanded the criteria used to identify when someone is being deprived of their liberty.¹⁵² This 'acid test' can be described as applying:

- when a person is under continuous or complete supervision and control, and
- is not free to leave, and
- the person lacks capacity to consent to these arrangements.

Use of the Deprivation of Liberty Safeguards in 2018/19

- Local authorities continue to deal with high volumes of applications under the Deprivation of Liberty Safeguards (DoLS), often with limited resources. This can lead to people waiting too long, and risks infringing their human rights.
- The gap between the number of applications received and those completed narrowed between 2014/15 and 2017/18. We have seen that good communication and partnership working between local authorities and providers can support the implementation of the DoLS process.
- Lack of understanding and confusion around the DoLS legislation remains one of the primary reasons for poor practice among providers. While we have seen some evidence of increasing awareness through our inspections, progress has not been good enough.
- Involving a Relevant Person's Representative and consulting friends, families and carers in the DoLS process can be key to making sure the person's human rights and needs are kept at the forefront. However, we have heard that the process can be confusing and families can experience a lack of information. Involving these groups will be even more important as the Liberty Protection Safeguards come into force in October 2020 and care provided in people's own homes comes into scope.
- Clear and committed leadership and culture around DoLS and the Mental Capacity Act, alongside in-depth and practical training, can help staff to engage better with the legislation. Training and culture will play an important part in providers preparing their staff for the new Liberty Protection Safeguards legislation.

Key issues for the transition period



- Mental Capacity Act Amendment Act (2019) is based on Law Commission draft Bill published as part of its report *Mental Capacity and Deprivation of Liberty* (2017).
- Repeals DoLS and sets out the new scheme (known as Liberty Protection Safeguards) for authorising arrangements enabling the care and treatment of persons who lack capacity to consent to those arrangements, which give rise to a deprivation of liberty.
- Only a responsible body (local authorities, NHS hospitals and CCG's) will be able to authorise arrangements giving rise to a deprivation of a person's liberty. Local authorities have the option of giving care home manager's a co-ordinating but not authorising role under "care home arrangements" set out in the Act.



Key issues for the transition period

- Coverage of Liberty Protection Safeguards – any care setting that may give rise to a deprivation (DoLS covers only care homes and hospitals)
- Includes those aged 16+, but 18+ for the purposes of adult “care home arrangements”
- CCQ are working closely with the Department of Health and Social Care (DHSC) to plan alignment of our current DoLS monitoring activities to the new Liberty Protection Safeguards (LPS)
- CQC are working with DHSC and stakeholders in supporting the development of a new Code of Practice for the LPS. The Code will have statutory force.



Monitoring adherence: now and in the future



- All CQC registered providers need to continue to meet the requirements of the current DoLS system until it is fully replaced.
- Implementation date of LPS
- DoLS will run alongside the LPS for a year after implementation begins to support any transition/ending of existing authorisations.
- The code of practice will describe the settings and circumstances in which the LPS applies – no definition of deprivation on the face of the Act



Monitoring adherence: now and in the future



- CQC anticipate that the new LPS Code of Practice will set out CQC’s role in monitoring the implementation and use of the LPS for people in CQC registered services, including with respect to “care home arrangements” where appropriate.
- The Code is anticipated to be subject to public consultation in due course.
- CQC anticipate monitoring the DoLS and LPS alongside each other for the first year of implementation.
- CQC anticipate some changes to the notification system.

Monitoring adherence: now and in the future



- CQC are currently focussing with key partners on addressing in particular how best to monitor the LPS in light of:
 - Increased scope in adult social care services
 - The particular role of care home managers
 - Children 16-17yrs old in scope
 - New 'Responsible Bodies' and CQC's relationship with them
 - Working with other overview bodies
 - Opportunities for data collection
 - The overarching human rights context
 - Learning from the past

Monitoring adherence: now and in the future – The Person at the Centre



[Anonymised recent care home inspection report extract]



Staff and people had great relationships that enabled people to thrive. People said how caring and kind staff were. One person told us “All the staff are really nice. They’ve helped me with anything I need and if I’ve had any problems. The staff help me to do my money and sort my days out”

The same person’s relative told us “The staff are very good, we’re pleased with it all. [Person's name] has made a home here now.”

Staff spoke warmly about people in the home. A member of staff told us “I know how much it means for [person's name] to have friends and see family. We’re going on a trip to London soon and will be staying overnight”

“Equally Outstanding” CQC Report Findings November 2018

[Link to report](#)



Committed leadership

Embedding equalities and HR issues into organisational values

Continuous learning and curiosity



Culture of staff equality

Use external help and be courageous

Apply equality and human rights thinking to improvement issues

Put people who use services at the centre

See staff as improvement partners

Thank you



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