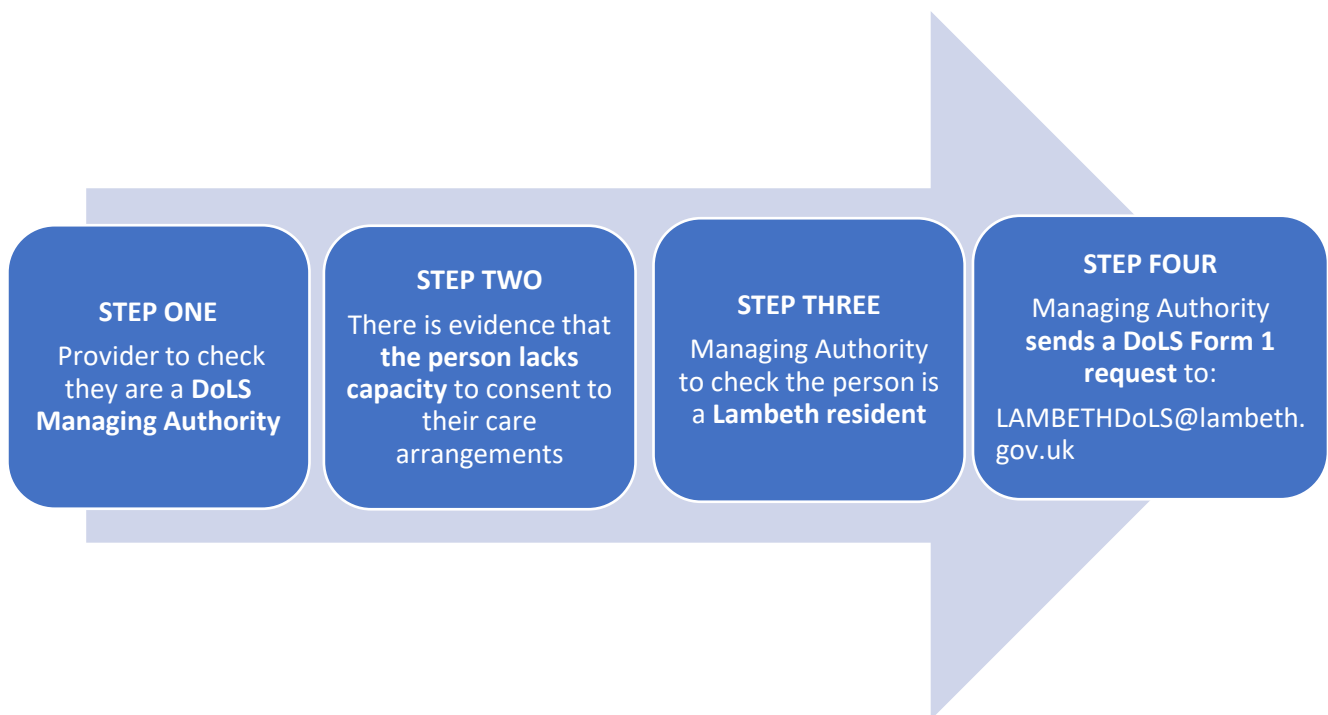


Lambeth DoLS process for Managing Authorities:



Step One: CQC-registered hospital or care/nursing home

A person can be deprived of their liberty in any setting, even their own home. However, the Deprivation of Liberty Safeguards can only be used in registered care/nursing homes and hospitals. Therefore, before sending any DoLS requests, please check that your establishment is a CQC-registered hospital or care/nursing home.

For anyone deprived of their liberty in any other setting, such as Supported Living, Shared Lives, Extra Care Sheltered Accommodation, please do not send a DoLS request. Please instead contact the care management team responsible for the person's placement.

Step two: Person lacks capacity to consent to their care arrangements

For a person to be deprived of their liberty, the Managing Authority must reasonably believe the person cannot consent to their care arrangements. Before sending any DoLS requests please check that you have evidence that the person lacks capacity to consent to their care arrangements.

For new care home placements, Lambeth Brokerage will usually have sent the mental capacity assessment carried out by the allocated worker for the decision where to live to receive care. If you do not receive this from Brokerage, please ensure you ask them for this.

Step three: Lambeth resident

Lambeth will only accept DoLS requests for people who are Ordinarily Resident in Lambeth. If Lambeth CCG is funding the placement, this does not mean the person is a Lambeth resident. Before sending any DoLS requests please check that before going into the care system the person used to live in Lambeth.

Step four: Submit request

If steps one to three are met, please complete a DoLS Form 1 request (see end of document) and send it to LAMBETHDoLS@lambeth.gov.uk

Lambeth DoLS process for Managing Authorities in more detail:

What is deprivation of liberty (DoL)?

Deprivation of liberty has three elements: objective, subjective and state imputability. All three elements must be present for a person to be deprived of their liberty.

State imputability

This element is easy to evidence as being met: if any state body is aware of the care arrangements, or should be aware of the care arrangements, then those care arrangements are imputable to the state. Managing Authorities need not concern themselves with this aspect of DoL, as mere involvement as a care home or hospital means this element is already met.

Objective element

When people ask whether a person is deprived of their liberty, they are usually referring to the objective element; that is, whether or not the care arrangements for the person amount to DoL, rather than being merely restrictive.

In March 2014 the Supreme Court “Cheshire West” [judgment](#) clarified that for someone to be objectively deprived of their liberty they must be subject to **continuous supervision and control** and **not free to leave**.

Following Cheshire West, it has become clear that even a relatively unrestrictive care plan, if it is being executed in a care home or hospital, will usually amount to continuous supervision and control. If the person is not allowed to self-discharge, and/or they cannot come and go from the accommodation without agreement from the staff, then they are also not free to leave.

Therefore, it is likely that every person accommodated in a care home or hospital is objectively deprived of their liberty.

Subjective element

The subjective element is whether or not the person has given their **valid consent to the care arrangements**. A person could be subject to care arrangements that amount to an objective DoL, but if they have capacity to consent to the arrangements, and they give their consent to the arrangements, they are not deprived of their liberty.

A person can only be deprived of their liberty if they have not validly consented to the care arrangements. Under the DoLS, consent is determined by assessing the person’s capacity to choose for themselves whether or not to be accommodated in the care home/hospital to receive the proposed care/treatment. In other words, **if a person is accommodated in a care home or hospital and lacks capacity to consent to their care arrangements, they will come under the scope of the DoLS**.

Who needs a DoLS authorisation?

It is for the Managing Authority to decide whether to request a DoLS authorisation. In practice, the commissioners of the placement, in most cases, will be able to give a view on

whether or not the person is deprived of their liberty, and therefore whether or not the Managing Authority should apply for a DoLS authorisation.

For a placement where the commissioners have not given their view on whether the person is deprived of their liberty, if the answers to the following questions are yes, a DoLS authorisation request should be submitted:

1. Is the person **accommodated in a care home or hospital**?
2. Does the person **lack capacity to consent to their care arrangements**?

Assessing mental capacity

In all instances, the starting point is always to assess whether the person has the mental capacity to make an informed decision for themselves, even if that decision may be considered “unwise” by professionals involved in their care. Full guidance on assessing mental capacity can be found in the MCA Code of Practice, which is well-written and clear to follow.

Assessing mental capacity is not purely the remit of Doctors or Health and Social Care professionals. Everyone should know what the test for assessing someone’s capacity is. Having said this, the capacity assessment for consent to care arrangements need not be anything more than recording conversations with the person about their care arrangements; the questions asked, and the answers given. The record of these conversations can be used as evidence as to why you have found the person has/lacks capacity to consent to their care arrangements.

As a bit of a further steer, when assessing capacity for care arrangements the relevant information which the person would need be able to understand, retain and use or weigh might be (though is not limited to)

- what areas the person needs support with;
- what sort of support the person needs;
- who will be providing the person with support;
- what would happen if the person did not have any support or the person refused it;
- that carers might not always treat the person properly and that the person can complain if they are not happy about their care.

Please also note that you do not have to be 100% sure that the person lacks capacity. The assessment is made “on the balance of probabilities”. This means that you might only be 51% sure the person lacks capacity, and likewise you may find on the balance of probabilities that the person has capacity for the decision.

For new care home placements, Lambeth Brokerage will usually have sent not only the care plan, but also the mental capacity assessment carried out by the allocated worker for the decision where to live to receive care. If you do not receive this from Brokerage, please ensure you ask them for this. For any new people you accept into your care homes, if you have a capacity assessment completed by a Lambeth worker which shows **the person has capacity to choose for themselves where to live to receive the care they need**, then you **should not send a DoLS request** – this is because the subjective element is not met.

How to apply for a DoLS authorisation

Please only send DoLS requests to Lambeth DoLS Service if you are sure the person is a Lambeth resident. If Lambeth Council is funding the placement, this is a good indication that the person is Ordinarily Resident in Lambeth, so their DoLS request should be sent to Lambeth DoLS Service. However, please note that a person funded by Lambeth CCG is not necessarily Ordinarily Resident in Lambeth. For people who are not funded by Lambeth Council, you should always check where they used to live before they went into the hospital/care home.

For hospitals, if you get someone admitted from a care home in Lambeth, please also be mindful that although the person lives in Lambeth, they might not be Ordinarily Resident in Lambeth. It may, for example, have been another local authority that placed the person in the Lambeth care home. Any DoLS requests for such people need to be sent to the local authority in which the person is Ordinarily Resident.

For self-funders in care homes, DoLS requests should be sent to the care home's local authority.

Here is a **checklist** to go through before sending a DoLS request to Lambeth:

1. Is the person in a CQC-registered **hospital or care/nursing home**?
2. Is the person a **Lambeth resident**?
3. Do you have evidence that the person **lacks capacity re their care arrangements/ where to live to receive care**?

If the answers are all yes, please complete a DoLS Form 1 request (see below) and send it to LAMBETHDoLS@lambeth.gov.uk

What happens after you submit a DoLS request?

- Lambeth DoLS Service (also known as the Supervisory Body) acknowledges receipt of the standard request (we are currently using an auto-response email for this).
- Lambeth DoLS Service instructs all necessary assessors (including a DoLS Section 39A IMCA (Independent Mental Capacity Advocate) where required)
- All necessary assessments are completed and returned to the DoLS Service.
- Assessments are scrutinised by the Signatory on behalf of the Supervisory Body and a Decision is made whether or not to grant the standard authorisation request.
- The DoLS Service informs the Managing Authority of the outcome of the standard authorisation request.
- As soon as possible after disposing of the authorisation request, the Supervisory Body sends copies of all the relevant paperwork to all involved parties, including the Managing Authority.
- The Managing Authority takes all practical and possible steps to ensure that the relevant person understands the outcome of the authorisation request; if granted, this will be the effect of the authorisation and their rights around it. Appropriate information must be given both orally and in writing.

Once a DoLS standard authorisation is granted

- The London Borough of Lambeth advocates that the relevant person's copy of the paperwork be kept on their file where they are physically located (while the Managing Authority's copy might be kept centrally in an office, for example).
- The Supervisory Body ensures the Relevant Person's Representative (RPR) has been officially appointed (i.e. the RPR has signed confirming acceptance of role).
- Should the appointed RPR be a friend or family member, the Supervisory Body may instruct a DoLS Section 39D IMCA to support the RPR.
- The Managing Authority accommodates visits by the RPR at reasonable times. The name of the relevant person's RPR is recorded in the relevant person's health and social care records.
- If the RPR does not maintain an appropriate level of contact with the relevant person, the Managing Authority informs the Supervisory Body.
- The Managing Authority monitors the case on an ongoing basis (using Lambeth's authorisation monitoring form) to see if the relevant person's circumstances change – which may mean they no longer need to be deprived of their liberty.
- 28 days prior to the expiry of the standard authorisation the Managing Authority submits a Form 2 DoLS request to LAMBETHDoLS@lambeth.gov.uk

If you have any queries you can contact the Lambeth DoLS Service on 020 7926 5998/ 7748/ 8070 or LAMBETHDoLS@lambeth.gov.uk.



Form-1-Standard-and-Urgent-Request-



Form-2-Further-Authorisation-Request-