



This is your guide to Challenging a Deprivation of Liberty Safeguards (DoLS) Authorisation

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About this guide

Sometimes it is necessary to restrict a person's movements so they can receive the care and treatment they need within a residential or hospital setting. We refer to this as a 'deprivation of liberty'.

If a person is objecting to being 'deprived of their liberty', and you are their named Relevant Persons Representative (RPR), you may have concerns about what you should do.

This guide will help to explain:

- the process you should follow to challenge a DoLS Authorisation;
- the role of the Court of Protection.

How do I challenge a DoLS Authorisation?

If the person you represent is objecting to their care arrangements, you have an obligation to support them to exercise their rights of review under section 21A of the Mental Capacity Act and make an application to the Court of Protection. We refer to this as a Section 21a Objection.

What is the Court of Protection?

The Court of Protection is a specialist court, which deals with decisions affecting people aged 16 or over, who may lack capacity to make specific decisions. Generally, the court has a range of powers, including making decisions about:

- whether a person has capacity to make a particular decision;
- whether an action is in a person's best interests;
- whether a person is being deprived of their liberty;
- the validity of lasting and enduring powers of attorney;
- the appointment of deputies.

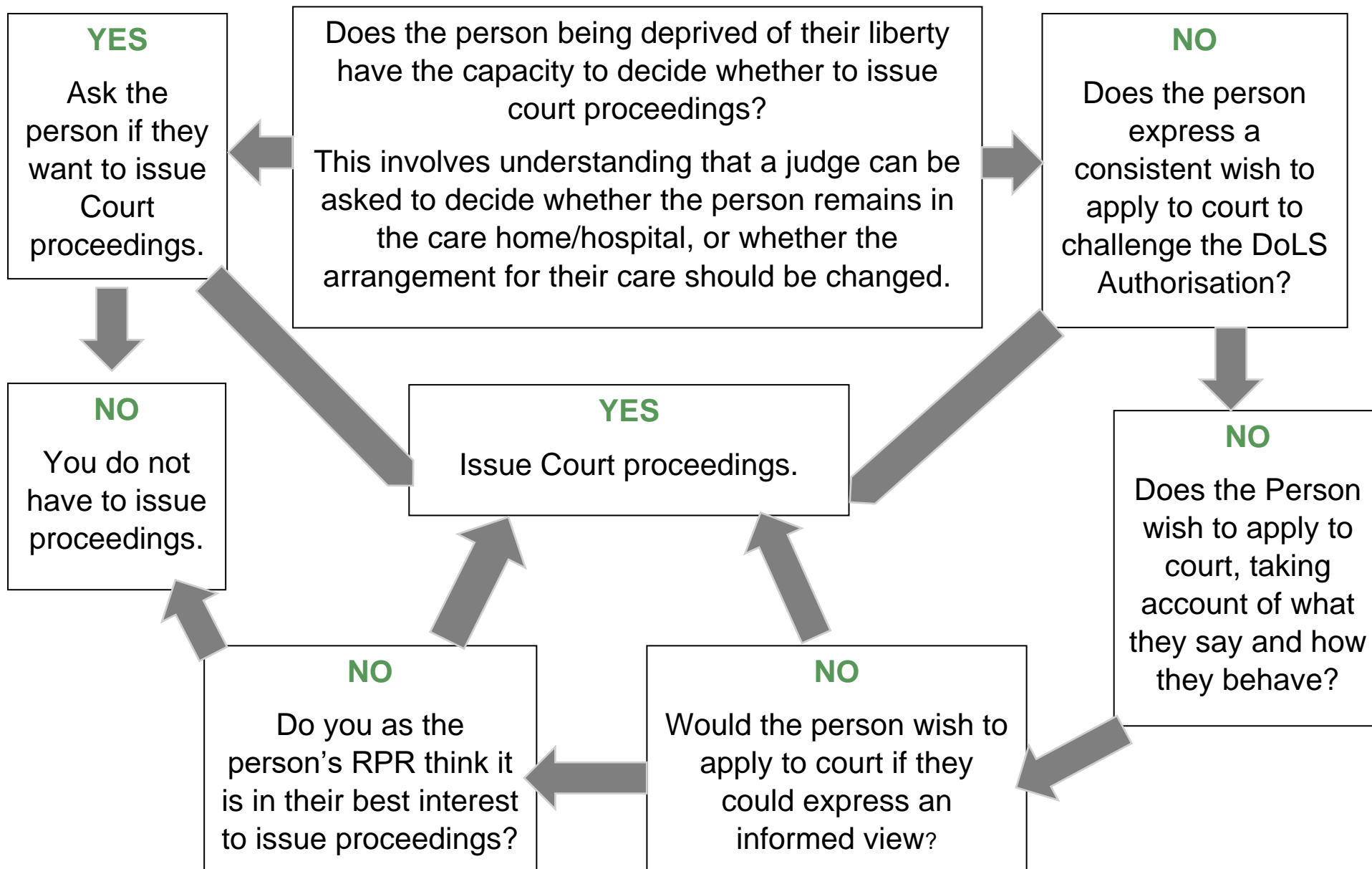
If a person subject to a standard authorisation under the DoLS, applies to have this reviewed by the Court of Protection (under section 21A of the Mental Capacity Act), the Court may consider:

- whether the qualification requirements for the DoL have been met;
- the duration of the authorisation;
- the purpose of the authorisation;
- any conditions set;
- varying or terminating the authorisation;
- whether the DoL is in the person's best interests;
- whether the person has capacity to decide on the restrictions;
- termination of the DoLS.

When should I bring court proceedings to challenge a DoLS Authorisation?

You may be uncertain as to whether the person you represent is objecting to being deprived of their liberty and therefore whether an application ought to be made to the court or not. For example, the person maybe at times inconsistent in their views or may only object to their placement in times of high distress. As the RPR you are duty bound to assist the person to make an application to the Court of Protection where it appears that the person wishes, or would wish, to make an application.

You may find it useful to use the flowchart below to help you in making this decision:



How do I make an application to the Court of Protection?

When making an application to the Court of Protection you are advised to contact a solicitor with experience of completing applications.

When speaking to the solicitor, you will need to explain that:

- you are the appointed RPR for the person deprived of their liberty; and
- you would like to apply for legal aid and to challenge the Deprivation of Liberty authorisation under a Section 21A challenge.

The solicitor can complete on your behalf or support you to complete all the necessary paperwork. They will generally apply for legal aid in the name of the person being deprived of their liberty and name you as the litigation friend.

If you are an unpaid RPR you also have a statutory right to be supported by a specialist Independent Mental Capacity Advocate (IMCA). If you or the person being deprived of their liberty requires the support of an IMCA you must request that the Council instruct an IMCA to act on your behalf.

The role of the IMCA is to provide you and the person being deprived of their liberty with extra support and to help make the best possible use of the review process and the Court of Protection.

What will Legal Aid cover?

Legal aid funding will cover the costs associated with the application, legal representation and court proceedings.

What does the Section 21A challenge process involve?

The Court of Protection has a designated team dealing with DoLS applications to ensure applications are placed before a judge as soon as possible to give some case management directions. The court will try to arrange for the first hearing to take place within 5 days of the application being issued.

The Council who authorised the DoLS will be made the respondent to the application. The person's social worker, and others with an interest in the case will be made parties to proceedings. The person's family (if details are known) will be notified of the application.

It is unlikely that the proceedings will be concluded at this hearing. The Court will usually require further documents or evidence, including witness statements from the applicant (the person's solicitor) and from respondents (the Council). They may also require further reports from health professionals. The Court will determine how the views of the person being deprived of their liberty can be shared, and they may request an expert report to assist with this.

The court will list a further hearing to try to finalise the proceedings. The Court will try to complete the proceedings promptly, and in many cases, they will be concluded within several weeks. However, if all the information is not available to the Court a further date may need to be set for the court to make a final decision.

What will be included in the Witness Statements?

Witness statements can include anything that the judge deems as relevant information to support them in making a decision. For example, details of alternatives to the current deprivation, benefits and negatives of the alternatives, and any associated costs.

As the RPR, if you wish to include your views, you can discuss this with the person's allocated social worker. The social worker can then include your views in the witness statement they provide.

What are the possible outcomes of the Court ruling?

Once the Court has all the required information to make a decision, the judge will make an order at a final hearing. This order will confirm either:

- that the DoLS Authorisation should continue, and that no changes will be made to the current deprivation;
- that an alternative more appropriate deprivation should be actioned, or
- that the person should not be deprived of their liberty.

If you need any support to understand this guide please speak to your health or social care worker or contact Adult Social Care on 01642 771500.

Adult Social Care Contact Details

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Our normal office hours are:

Monday to Thursday: 8.30 am - 5.00 pm

Friday: 8.30 am - 4.30 pm

If you need help in emergency when our offices are closed, you can contact the

Emergency Duty Team: Telephone: 01642 524552.

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