



# **Guidelines for Deprivation of Liberty**

# GUIDELINES FOR DEPRIVATION OF LIBERTY

Based on existing case law, the following factors have been considered by the courts to be relevant when considering whether a deprivation of liberty is occurring:

- The person is not allowed to leave the facility.
- The person has no, or very limited, choice about their life within the care home or hospital.
- The person is prevented from maintaining contact with the world outside the care home or hospital.

## The person is not allowed to leave the facility

Relevant factors to consider are:

- Would the person be prevented from leaving either by using distraction techniques, locked doors or restraint?
- Is the person led to believe that they would be prevented from leaving if they tried?
- A person is not deprived of their liberty simply because they lack the physical ability to leave or the mental capacity to form a genuine intention to leave.
- But someone who lacks either physical ability or mental capacity in these terms and whose behaviour does not indicate a wish to leave could still be deprived of their liberty if:
  - Family, friends or carers, who might reasonably expect to take decision under the Mental Capacity Act 2005 in relation to the person, are prevented from moving them to another care setting or from taking them out at all.
  - Taking account of the limitations of their condition, the person in care is not given reasonable opportunity to go outside of the home or hospital (escorted or otherwise) even though it would be possible for them to do so and it seems likely that they would enjoy it, it would reduce their distress or anxiety, or it would be beneficial in some way or,
  - A decision has already been taken to prevent the person from leaving.

## The person has no, or very limited, choice about their life within the care home or hospital

- Deprivation of liberty can arise when a person is not allowed to make any choices at all about issues such as:
  - Where they can be within the care home or hospital.
  - What they can do.

- Who they can associate with, or
- When and what they can eat.

(This could equally apply if choices were available but the care given to the person did not enable them to make any choices.)

- If a person is not allowed any freedom of movement within the care home or hospital, for example if they are not allowed to leave their room for long periods of time, they are probably deprived of their liberty. Similarly, controlling a person's behaviour and movement through regular use of medication or seating from which a person cannot get up may constitute a deprivation of liberty.
- Restrictions that are unavoidable in a group living situation, and which apply to all residents, would be unlikely in themselves to constitute a deprivation of liberty but this would depend on the context and the extent of other restrictions imposed on the person concerned.

### The person is prevented from maintaining contact with the world outside the care home or hospital

- Deprivation of liberty may occur if restrictions are placed on who the person in the care home may contact, who may visit them or when they can use the telephone. This does not in general apply to proportionate restrictions for the benefit of the running of the unit and the other patients/residents, such as general restrictions on early morning or late evening visits, or on numbers of visitors at any one time.
- However, if the effect of these restrictions would be to cut the particular individual off from people with whom they would otherwise keep in contact, this may be deemed to be a deprivation of liberty. For example, if someone's family or friends are realistically only ever able to visit late in the evening then restrictions on visiting times could cut them off from their family and so lead to a decision that they are being deprived of their liberty.

### Restraint

*Restraint may lawfully be used on admission or to administer treatment or care under section 6 of the Mental Capacity Act. If this is necessary, it should be seen as an indicator that a person's wishes may be being over-ridden. Therefore, in these circumstances, the managing authority should consider whether the person is being deprived of their liberty (in which case they are doing more than restraining the person and authorisation is needed.)*

In the case of a person in, or being considered for admission to, hospital for mental health treatment, the need for restraint is likely to indicate that they are objecting to treatment or to being in hospital. A person who objects to mental health treatment, and who meets the criteria for detention under the Mental Health Act 1983, is ineligible for an authorisation under the deprivation of liberty safeguards. If it is necessary to detain them, use of the Mental Health Act 1983 should be considered.

## DEPRIVATION OF LIBERTY SAFEGUARDS KEY WORDS AND PHRASES

WORD/PHRASE	DESCRIPTION
Advance decision to Refuse treatment	A decision to refuse specified treatment made in advance by a person who has capacity to do so. This decision will then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment.
Advocacy	Independent help and support with understanding issues and putting forward a person's own views, feelings and ideas.
Age Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether the relevant person has reached age 18.
Approved Mental Health Professional	A social worker or other professional approved by a local social services authority to act on behalf of a local social services authority in carrying out a variety of functions.
Assessor	A person who carries out a deprivation of liberty safeguards assessment.
Best Interest Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether deprivation of liberty is in a detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm.
Bournewood judgment	The commonly used term for the October 2004 judgment by the European Court of Human Rights in the case of HL V the United Kingdom that led to the introduction of the deprivation of liberty safeguards.
Capacity	Short for mental capacity. The ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in s.2 of the Mental Capacity Act 2005.
Care Home	A care facility registered under the Care Standards Act 2000.
Care Quality Commission	The new integrated regulator for health and adult social care
Carer	Someone who provides unpaid care by looking after a friend or neighbour who needs support because of sickness, age or disability.
Conditions	Requirements that a supervisory body may impose when giving a standard deprivation of liberty authorisation, after taking account of the recommendations made by the best interests assessor.
Consent	Agreeing to a course of action- specifically in this document, to a care plan or treatment regime. For consent to be legally valid, the person giving it must have the capacity to take the decision, have been given sufficient information to make the decision, and not have been under any duress or inappropriate pressure.

<b>WORD/PHRASE</b>	<b>DESCRIPTION</b>
Court of Protection	The specialist court for all issues relating to people who lack capacity to make specific decisions.
Deprivation of Liberty	Deprivation of liberty is a term used in the European Convention on Human Rights about circumstances when a person's freedom is taken away. Its meaning in practice is being defined through case law.
Deprivation of Liberty safeguards	The framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interests for care or treatment and who lack the capacity to consent to the arrangements made for their care or treatment.
Deprivation of liberty safeguards Assessment	Any one of the six assessments that need to be undertaken as part of the standard deprivation of liberty authorisation process.
Deputy	Someone appointed by the Court of Protection with ongoing legal authority, as prescribed by the Court, to make decisions on behalf of a person who lacks capacity to make particular decisions.
Donee	Someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.
Eligibility assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether or not a person is rendered ineligible for a standard authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983.
European Convention on Human Rights	A convention drawn up with the Council of Europe setting out a number of civil and political rights and freedoms, and setting up a mechanism for the enforcement of the obligations entered into by contracting states.
European Court of Human Rights	The court to which any contracting state or individual can apply when they believe that there has been a violation of the European convention on human rights.
Guardianship under the Mental Health Act 1983	The appointment of a guardian to help and supervise patients in the community for their own welfare or to protect other people. The guardian may be either a local authority or a private individual approved by the local authority.
Independent Mental Capacity Advocate (IMCA)	Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them. The IMCA service was established by the Mental Capacity Act 2005 and is not the same as an ordinary advocacy service.
Lasting Power of Attorney	A power of Attorney created under the Mental Capacity Act 2005 appointing an attorney (donee) or attorneys, to make decisions about the donor's personal welfare, including health care, and/or deal with the donor's property and affairs.
Managing Authority	The person or body with management responsibility for the hospital or care home in which a person is, or may

WORD/PHRASE	DESCRIPTION
	become, deprived of their liberty.
Maximum Authorisation period	The maximum period for which a supervisory body may give a standard deprivation of liberty authorisation, which must not exceed the period recommended by the best interests assessor, and which cannot be for more than 12 months.
Mental Capacity Act 2005	Legislation that governs decision-making for people who lack capacity to make decisions for themselves or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this.
Mental Capacity Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment.
Mental Disorder	Any disorder or disability of the mind, apart from dependence on alcohol or drugs. This includes all learning disabilities.
Mental Health Act 1983	Legislation mainly about the compulsory care and treatment of patients with mental health problems. It covers detention in hospital for mental health treatment, supervised community treatment and guardianship.
Mental Health Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person has a mental disorder.
No Refusals Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether there is any other existing authority for decision-making for the relevant person that would prevent the giving of a standard deprivation of liberty authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney.
Qualifying requirement	Any one of the six qualifying requirements, (age, mental health, mental capacity, best interests, eligibility, and no refusals) that need to be assessed and met in order for a standard deprivation of liberty authorisation to be given.
Relevant hospital or care home	The hospital or care home in which the person is, or may become, deprived of their liberty.
Relevant person	A person who is, or may become, deprived of their liberty in a hospital or care home.
Relevant Person's representative	A person, independent of the relevant hospital or care home, appointed to maintain contact with the relevant person, and to represent and support the relevant person in all matters relating to the operation of the deprivation of liberty safeguards.
Restraint	The use of threat of force to help carry out an act that the person resists. Restraint may only be used where it is necessary to protect the person from risk of harm.
Restriction of Liberty	An act imposed on a person that is not of such a degree or intensity as to amount to a deprivation of liberty.
Review	A formal, fresh look at a relevant person's situation when

<b>WORD/PHRASE</b>	<b>DESCRIPTION</b>
	there has been, or may have been, a change of circumstances that may necessitate an amendment to, or termination of, a standard deprivation of liberty authorisation.
Standard Authorisation	An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in the relevant hospital or care home.
Supervised community treatment	Arrangements, under which people can be discharged from detention in hospital under the Mental Health Act 1983, but remain subject to the Act in the community rather than in hospital. Patients on supervised community treatment can be recalled to hospital if treatment in hospital is necessary again.
Supervisory body	A local authority that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty.
Unauthorised deprivation of liberty	A situation in which a person is deprived of their liberty in a hospital or care home without the deprivation being authorised by either a standard or urgent deprivation of liberty authorisation.
Urgent Authorisation	An authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days by a supervisory body, that gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken.

## DEPRIVATION OF LIBERTY CONCERN LOG

Name of Resident: .....

DATE AND TIME	DESCRIPTION OF INCIDENT	RISKS HIGHLIGHTED	RESTRICTIVE MEASURES IN PLACE	RESTRICTIVE ADDITIONAL MEASURE REQUIRED	NAME, ROLE AND SIGNATURE