



The Deprivation of Liberty Safeguards

Key messages

- The Deprivation of Liberty Safeguards are an amendment to the Mental Capacity Act 2005. They apply in England and Wales only.
- The Mental Capacity Act allows restraint and restrictions to be used – but only if they are in a person's best interests.
- Extra safeguards are needed if the restrictions and restraint used will deprive a person of their liberty. These are called the Deprivation of Liberty Safeguards.
- The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other settings the Court of Protection can be asked if a person can be deprived of their liberty.
- Care homes or hospitals must ask either a local authority or health body if they can deprive a person of their liberty. This is called requesting a standard authorisation.
- There are six assessments which have to take place before a standard authorisation can be given.
- If a standard authorisation is given, one of the most important safeguards is that the person has someone appointed with legal powers to represent them. This is called the relevant person's representative and will usually be a family member or friend.
- Other safeguards include rights to challenge authorisations in the Court of Protection without cost and access to independent mental capacity advocates (IMCAs).

What is a deprivation of liberty?

The Mental Capacity Act allows restrictions and restraint to be used, but only if they are in the best interests of a person who lacks capacity to make the decision themselves.

Restrictions and restraint can include:

- using locks or key pads which stop a person going out or into different areas of a building
- the use of some medication, for example, to calm a person
- close supervision in the home
- requiring a person to be supervised when out
- restricting contact with friends, family and acquaintances, including if they could cause the person harm
- physically stopping a person from doing something which could cause them harm
- removing items from a person which could cause them harm
- holding a person so that they can be given care or treatment
- bedrails, wheelchair straps, and splints
- the person having to stay somewhere against their wishes
- the person having to stay somewhere against the wishes of a family member.

‘Restrictions or restraint can take away a person's freedom and so deprive them of their liberty’

Restrictions or restraint can take away a person's freedom and so deprive them of their liberty. This may happen if restraint is used frequently or for extended periods, or a number of different restrictions are in place.

It is difficult to be clear when the use of restrictions and restraint crosses the line to depriving a person of their liberty.

‘Care providers don’t have to be experts about what is and is not a deprivation of liberty. They just need to know when a person might be deprived of their liberty and take action.’

Final decisions about this are made by courts. The Code of Practice for the Deprivation of Liberty Safeguards gives examples of where courts have found people being and not being deprived of their liberty. These examples, together with cases which have gone to the courts since the Deprivation of Liberty Safeguards were introduced, should be used as a guide.

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Example

Ben has learning disabilities and Prader-Willi syndrome. There are serious concerns about his health because his weight has been increasing steadily and now stands at 120kg. Staff in his residential home have tried to support Ben to limit what he eats and to make healthy choices but with little effect. Ben has been assessed as lacking capacity to make decisions about the amount and type of food he eats (this is common among people with Prader-Willi syndrome).

It has been proposed that it is in Ben’s best interests to stop him going into the kitchen, and always supervising him when out to prevent him spending all his money on, or stealing food. An application is made by the home manager for standard authorisation because they believe that the restrictions would deprive Ben of his liberty.

similar to adult protection where care providers need to act on suspected abuse, rather than having to be sure it is happening before reporting this to the local authority.

As a rough guide, where one or more of the following is happening a person may be deprived of their liberty:

- A person, by either words or behaviour, challenges the restrictions placed on them.
- There are significant restrictions on a person’s contact with family or friends, or the outside world.
- People disagree about a person’s placement in the service or any restrictions or restraint.

How is deprivation of liberty authorised under the DOL Safeguards?

The Deprivation of Liberty Safeguards can only apply to people who are in a care home or hospital. This includes where there are plans to move a person to a care home or hospital where they may be deprived of their liberty. The care home or hospital is called the **managing authority** in the Deprivation of Liberty Safeguards.

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Where a managing authority thinks it needs to deprive someone of their liberty they have to ask for this to be authorised by a **supervisory body**. They can do this up to 28 days in advance of when they plan to deprive the person of their liberty.

For care homes the supervisory body is the local authority where the person is ordinarily resident. Usually this will be the local

authority where the care home is located unless the person is funded by a different local authority.

For hospitals the supervisory body will usually be the local primary care trust (PCT) in England, or local health board (LHB) in Wales. It may be a different PCT or LHB if the funding for the person's health care comes from a different body.

The managing authority must fill out a form requesting a standard authorisation (form 4). This is sent to the supervisory body which has to decide within 21 days whether the person can be deprived of their liberty.

‘The supervisory body appoints assessors to see if the conditions are met to allow the person to be deprived of their liberty under the safeguards.’

The supervisory body appoints assessors to see if the conditions are met to allow the person to be deprived of their liberty under the safeguards. They include:

- The person is 18 or over (different safeguards apply for children).
- The person lacks capacity to decide for themselves about the restrictions which are proposed so they can receive the necessary care and treatment.
- The restrictions would deprive the person of their liberty.
- The proposed restrictions would be in the person's best interests.
- Whether the person should instead be considered for detention under the Mental Health Act.

If any of the conditions are not met, deprivation of liberty cannot be authorised. This may mean that the care home or hospital has to change its

care plan. For example, if it would be in the person's best interests to be supported in a less restrictive way.

If all conditions are met, the supervisory body must authorise the deprivation of liberty and inform the person and managing authority in writing. It can be authorised for up to one year.

The person does not have to be deprived of their liberty for the duration of the authorisation. The restrictions should stop as soon as they are no longer required.

Conditions on the standard authorisation can be set by the supervisory body. These must be followed by the managing authority.

Standard authorisations cannot be extended. If it is felt that a person still needs to be deprived of their liberty at the end of an authorisation, the managing authority must request another standard authorisation.

Example

Claire has an acquired brain injury. Her GP has referred her to the local hospital for a minor operation on her foot. The doctor assessed Claire as lacking capacity to make the treatment decision herself and so after consulting Claire's mother is proposing that it is in her best interests to have the surgery. From past experience it is known that Claire will need to be sedated throughout her stay in hospital. This is to stop her removing the dressing and picking at the wound.

On the advice of the GP, the hospital makes an application for a standard authorisation for the use of sedation which is granted before she is admitted.

Urgent authorisations

A person may need to be deprived of their liberty before the supervisory body can respond to a request for a standard authorisation. In these situations the managing authority can use an urgent authorisation. Urgent authorisations are granted by the managing authority itself. There is a form that they have to complete and send to the supervisory body (form 1).

‘The managing authority can deprive a person of their liberty for up to seven days using an urgent authorisation.’

The managing authority can deprive a person of their liberty for up to seven days using an urgent authorisation. It can only be extended (for up to a further seven days) if the supervisory body agrees to a request made by the managing authority to do this (form 2).

When using an urgent authorisation the managing authority must also make a request for a standard authorisation (form 4). The managing authority must have a reasonable belief that a standard authorisation would be granted if using an urgent authorisation.

Before granting an urgent authorisation, the managing authority should try to speak to the family, friends and carers of the person. Their

Example

Brian has been living in a nursing home for the past three years. Recently he has become very agitated and distressed which is thought to be linked to his dementia. He tells people he wants to go home not remembering that he had to give his flat up when he moved into the home. He also spends a lot of time trying to open the front door which has a key pad lock on. An incident has occurred where he climbed out of his ground floor bedroom window and was only found a couple of hours later on a main road. The nursing home asks the PCT for a standard authorisation. They want to continue to use the key code so that Brian does not go out unaccompanied, and to put safety locks on some of the windows.

Because of the seriousness of the recent incident, the home manager completes the form for the urgent authorisation and arranges the window locks to be fitted the same day.

knowledge of the person could mean that deprivation of liberty can be avoided. The managing authority should make a record of their efforts to consult others.

What are the safeguards for people who may be deprived of their liberty?

The first safeguard is the assessment process for a standard authorisation which involves at least two independent assessors who must have received training for their role. There will always be one mental health assessor and one best interests assessor who will stop deprivation of liberty being authorised if they do not think all the conditions are met.

Family, friends and paid carers who know the person well should be consulted as part of the assessment process. They may have suggestions about how the person can be supported without having to deprive them of their liberty. Those people who don't have family or friends who can represent them have a right to the support of an independent mental capacity advocate (IMCA) during the assessment process.

‘If the person has an unpaid relevant person's representative, both they and their representative are entitled to the support of an independent mental capacity advocate.’

If standard authorisation is granted the following safeguards are available:

- The person must be appointed a relevant person's representative as soon as possible. Usually this will be a family member or friend who agrees to take this role. If there

is no-one willing or able to take this role on an unpaid basis, the supervisory body must pay someone, such as an advocate, to do this.

- The person and their representative can require the authorisation to be reviewed at any time. A review looks at whether the criteria to deprive the person of their liberty are still met, and if so whether any conditions need to change.

‘The person and their relevant person’s representative have a right to challenge the deprivation of liberty in the Court of Protection at any time.’

- The person and their relevant person’s representative have a right to challenge the deprivation of liberty in the Court of Protection at any time. They do not have to pay a fee to make the application or for legal support.
- If the person has an unpaid relevant person’s representative, both they and their representative are entitled to the support of an independent mental capacity advocate (Section 39D IMCA). It is good practice for supervisory bodies to always arrange for an IMCA to explain their role directly to both when a new authorisation has been granted.

When the Deprivation of Liberty Safeguards cannot be used

The Deprivation of Liberty Safeguards can only be used if a person is in hospital or a care home. If a person is living in another setting, including in supported living, it is still possible to deprive the person of their liberty in their best interests. To do so an application needs to be made to the Court

of Protection (see, for example, [2009] EW Misc 10 (EWCOP)).

If a person is in hospital they should not be subject to the Deprivation of Liberty Safeguards if they can instead be detained there under the Mental Health Act (see *GJ v The Foundation Trust in DH*, 2010).

The DOL Safeguards should not be used if the main reason is to restrict contact with individuals who may cause the person harm. If it is believed to be in a person’s best interests to limit contact an application should be made to the Court of Protection (see *DH*, 2010).

If there is a dispute about where a person should stay, an authorisation does not resolve the dispute. The Code of Practice of the Mental Capacity Act says that unresolved disputes about residence, including the person themselves disagreeing, should be referred to the Court of Protection (8.28).

Example

The local authority is following safeguarding proceedings for Mavis, a woman with dementia who is currently living at home with her husband. They are concerned her needs are not being met because her husband is refusing the support that is being offered. It is believed that he has untreated mental health needs. Mavis was assessed as lacking capacity to decide on her residence, though clearly communicates a wish to remain in her own home.

It has been proposed that a placement in a care home would be in Mavis’ best interests. It is also believed that in the care home she will need a high level of restrictions to give her appropriate care and treatment.

Because the move is against Mavis’s wishes and those of her husband, the local authority makes a fast-track application to the Court of Protection to make a decision in her best interests. If the court authorises a move to the care home, an application will be made by the home for a standard authorisation under the Deprivation of Liberty Safeguards.

What should I do if I think a person is being deprived of their liberty without it having been authorised?

If you are working in a care home or hospital where you think a person is being deprived of their liberty, you should see if care could be provided in a less restrictive way. If depriving the person of their liberty seems unavoidable, an application should be made for a standard authorisation at the same time as an urgent authorisation is given.

If you come across someone in another setting who may be deprived of their liberty you should bring this to the attention of the manager so they either change their care or seek authorisation. Other options are to inform the supervisory body, to make a safeguarding alert to the local authority, or to challenge what may be an unlawful deprivation of liberty in the Court of Protection.

How to keep up to date in this area

Court of Protection judgements can be found on the Bailii website. This includes cases to decide whether a person is being deprived of their liberty. www.bailii.org/ew/cases/EWHC/COP/

The Mental Capacity Act and Deprivation of Liberty Safeguards community of practice is an internet forum to share information, good practice, policies and procedures.

www.communities.idea.gov.uk/comm/landing-home.do?id=8606690

There is a free email yahoo group where members can ask questions about the Mental Capacity Act. <http://groups.yahoo.com/group/MHAandMCA/>

39 Essex Street is a legal firm which produces a free newsletter covering cases in the Court of Protection.

www.39essex.com/newsletters/

References and resources

The Department of Health has web pages on the Deprivation of Liberty Safeguards. These can be found by searching Deprivation of Liberty on www.dh.gov.uk They include:

- The Deprivation of Liberty Code of Practice.
- The standard forms.
- Contact details for supervisory bodies.
- Briefing on the Deprivation of Liberty Safeguards (2010).

SCIE's At a glance summaries have been developed to help you understand as quickly and easily as possible the important messages and practice advice in SCIE's reports and guides. These summaries will give you an overview of the messages or help direct you to parts of the guide that you may find most useful. You can also use them as training resources in teams or with individuals.

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