

Mental Capacity Act 2005, Deprivation of Liberty Safeguards

**Factsheet 104 - 28 May 2009
(5 Pages)**

When a person lacks the ability or ‘capacity’ to make decisions about the care or treatment they need in a care home or hospital, and may be at risk if that care is not provided, it is sometimes in their best interests to deprive them of their liberty to prevent them from coming to harm. The Mental Capacity Act 2005 Deprivation of Liberty Safeguards exist to ensure that no one is deprived of their liberty in a care home or hospital without good reason, and that if someone needs to be deprived of their liberty in these circumstances, that person has specific rights. Independent advocates and representatives can be appointed to ensure everyone receives support during the process.

Who are Deprivation of Liberty Safeguards for?

- **Adults aged 18 or over who are;**
- **Receiving care home or hospital based care or treatment that may restrict their movement to an extent where it deprives them of their liberty, and;**
- **Lacks the capacity to consent to being (or not) in a hospital or care home for the purpose of being given that care or treatment**

- To prevent harm being caused to that person
- Where that hospital or care home stay is in the person's best interest
- Where there is no less restrictive option to provide that person's support

What are the safeguards?

Defining what amounts to a deprivation of liberty means taking into account the specific circumstances of an individual's situation at a particular moment in time. The relevant factors from court cases when it was found that unlawful deprivations of liberty had taken place are now used to help us define what situations may mean these safeguards should be used. Some of these factors or indicators are;

- **Restraint is being used – including sedation – to admit a person to a care home or hospital and they are resisting that admission**
- **Staff exercise complete and effective control over a person's care, movement, treatments and the contact they can have with others**
- **The hospital or care home decides not to release a person into the care of others or live somewhere else**
- **The person loses their individuality or autonomy because they are under continuous supervision and control**

It is important to ensure we understand the difference between restriction of movement and a deprivation of liberty when trying to establish whether these safeguards are relevant to a person's

situation.

Adults at risk of abuse

Some people who are at risk of their liberty being deprived, will experience additional circumstances when they will also be at risk of abuse. This might be when the care home or hospital persistently fails to use the Deprivation of Liberty Safeguards when they should and the rights of the vulnerable people they care for are not upheld. When a deprivation of liberty issue is being considered and there are also concerns about risks of abuse, Devon County Council's Safeguarding Adult multi-agency procedures will be used. Information about the Safeguarding Adult procedures can be found at www.devon.gov.uk/safeguarding-adults. In addition, there is a Safeguarding Adults from Abuse factsheet – Factsheet 12 which can be accessed at www.devon.gov.uk/factsheets.

How can I find out more?

A Deprivation of Liberty Safeguards Code of Practice has been published by the Department of Health (DoH). This sets out in more detail what the safeguards are, how and when they should be used and the different roles and responsibilities people have. A copy of the code can be accessed directly through the DoH website at www.doh.gov.uk or www.devon.gov.uk/mentalcapacityact.

Devon County Council has a range of information about these safeguards available at www.devon.gov.uk/mentalcapacityact. The information held on this site includes links to Department of Health publications which can be directly accessed through www.doh.gov.uk.

From 1 April 2009, there will be a Deprivation of Liberty Safeguards information line for queries relating to the safeguards tel: 01392 381676.

How do I make an application or referral on someone else's behalf?

The DoH has created a set of forms to use for this process. Care homes and hospitals are responsible for making any application and have received information directly from the Government. In Devon, relevant applications should be sent to;

**Deprivation of Liberty Safeguards Team
Ground Floor
The Annexe
County Hall
Topsham Rd
Exeter
EX2 4QR**

**Tel: 01392 381676
Fax: 01392 383327**

Email: dols@devon.gov.uk

Applications received outside of office hours will be responded to on the next working day. All applications should be made in writing and receipt will be acknowledged.

If you are concerned about someone who is at risk of their liberty being deprived in a care home or hospital, you should contact the

manager of that organisation in the first instance. If the situation continues, you can contact the appropriate Local Authority or Primary Care Trust direct.

If you have any further questions about these safeguards, please contact 01392 381676.

Further factsheets can be found online at www.devon.gov.uk/factsheets

A large print version of this factsheet is available on www.devon.gov.uk/largeprint-factsheets but if you would like it in a different format such as Braille or audio, or in a different language, please contact our Customer Service Centre on 0845 155 1015 or email customer@devon.gov.uk.

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