

## Case study: Deprivation of Liberty in a hospital

*The CQC report on a case where a deprivation of liberty was successfully challenged.*

Mr & Mrs Anderson have been married for 61 years. They both are now living with some degree of dementia. Following a fall, Mrs Anderson was admitted to hospital. She wasn't happy there: she didn't like the noise, or the food, or the other patients, and she wanted to go home. Mr Anderson visited her daily, though it was a long bus ride to the hospital. He too wanted her back home, but encouraged her to get a bit better first.

As her physical condition improved, Mrs Anderson became more agitated about wanting to leave. She was brought back from the car park more than once. A physician in the hospital then prescribed sedative medication, to reduce her anxiety. She became very drowsy, and stopped trying to 'escape', though still muttering that she wanted to go home.

The hospital began considering her discharge. In a trial of her abilities in the ward kitchen, she couldn't work the electric kettle at all, but tried to put it on top of the cooker. Staff considered that she would not be safe at home, and should live in a care home.

When they told Mr Anderson of their decision, he was angry. He wanted his wife at home. If the hospital disagreed, he said, he'd take her home himself on the bus. Hospital staff said at this point that they'd heard the couple arguing in raised voices, and that there was a risk that Mrs Anderson would be mistreated by her husband if she went home.

The hospital gave itself an urgent authorisation under the Deprivation of Liberty Safeguards, and applied for a standard one. Their intention was both to make it lawful to keep her in hospital until a suitable care home could be found, and also to prevent Mr Anderson from visiting, for fear he would take her home on the bus.

The best interests assessor (BIA), Prakash, decided that Mrs Anderson certainly was deprived of her liberty, being not free to leave the hospital and under continuous supervision and control. He also decided that this was not necessary to prevent harm to Mrs Anderson, nor proportionate to the risk and seriousness of that harm. He explained that, where a relative is bitterly opposed to the authorisation, DoLS cannot be used, and the hospital must decide speedily whether to refer to the Court of Protection to seek authorisation. Finally he identified that there had been no exploration at all of the least restrictive option, that she should return home.

Prakash discussed the medication with the prescribing physician, who agreed it was no longer necessary. Within a very few days, Mrs Anderson was active again. The BIA also told the hospital that their best interests process had been inadequate and flawed. Mrs Anderson's strong wish to live at home was ignored; Mr Anderson should have been consulted, instead of simply informed; the 'kitchen test' set Mrs Anderson up to fail, taking no account of how heavily medicated she was, or of the

fact that, as the BIA learned, they didn't have an electric kettle at home. And their GP reported that they did bicker, but he had no safeguarding concerns. Mrs Anderson returned home with her husband. They still bicker happily.