

Includes  
Mini  
Guide

# Deprivation of Liberty Information for Care Homes and Hospitals



Sheffield **Adult**  
Safeguarding Partnership

## Background

The Mental Capacity Act 2005 provides a legal framework for assessing whether a person has mental capacity to make specific certain decisions. It also defines how others can make decisions on behalf of someone who lacks mental capacity. These must be made in the best interests of the person.

Since April 2009, the Mental Capacity Act has allowed for the detention (deprivation of liberty) of people who lack capacity. This power is only available if the person detained meets the Deprivation of Liberty Safeguards criteria and is resident in a care/ nursing home or hospital.

Detention in another setting (eg. supported living) can only be authorised via the Court of Protection.

The power to detain under Deprivation of Liberty Safeguards may be necessary when restraint is not sufficient to keep someone safe. The Deprivation of Liberty Safeguards recognise that some patients/residents require care that involves a level of control and/ or restriction that this deprivation is in their best interest.

**If people are deprived of their liberty in your care home or hospital, it does not mean that you are a poor care provider and it should not be seen as a criticism.**

## Terminology

**Managing Authority** - care home or hospital where a person is likely to come under the Deprivation of Liberty Safeguards

**Supervisory Body** - the department within the Local Authority responsible for authorisations under the Deprivation of Liberty Safeguards.

**In Sheffield the Supervisory Body is:**

**Sheffield City Council Mental Capacity Act Office**

Floor 10 Redvers House  
Union Street  
Sheffield S1 2JQ

Tel: 0114 273 6870

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## Why use the deprivation of liberty safeguards?

- It is a **legal requirement** for hospitals and care homes to use Deprivation of Liberty Safeguards where a person's care and treatment is provided in an environment that deprives them of their liberty.
- Deprivation of Liberty Safeguards may be the most appropriate legal means to detain someone and may be crucial to ensure they **receive care and treatment** necessary to **prevent harm**.
- Deprivation of Liberty Safeguards ensure that any restrictions or limitations on a person's freedom will be **monitored and if appropriate, challenged**.
- Hospitals and care homes using Deprivation of Liberty Safeguards will need to review and reassess their practices to ensure that they are the **least restrictive**.
- Staff in hospitals and care homes can be **assured of legal protection** for the actions they take to detain a person provided they work in accordance with the Deprivation of Liberty Safeguards

**Consideration must always be given to the least restrictive options for delivering care and treatment that avoid depriving someone of their liberty wherever possible.**

## Role of the Managing Authority

**To be covered by the Deprivation of Liberty Safeguards legislation the person must lack capacity to decide whether or not they should be accommodated in the hospital or care home to be receive care and treatment.**

### Assessing Capacity

To determine if the person lacks capacity to decide whether or not they should be accommodated in the hospital or care home to be given care and treatment, the following needs to be considered and recorded:

- Can the person **understand** the decision that needs to be made, and why it needs to be made? Can they foresee the likely implication of the decision?
- Can the person **retain** the information about the decision long enough to consider the options?
- Can they **weigh up** the information and consider the likely consequences including risks involved?
- Can they **communicate** their decision (via any method)?

If they cannot do the above it is likely that they lack capacity to make this decision.

### Recognising a deprivation of liberty

Managing Authorities must be able to recognise when a person who lacks capacity is being deprived of their liberty. Unfortunately there is no simple definition to assist, however the European Court of Human Rights and UK Supreme Court have considered a number of cases and indicated that the following factors are relevant:

- The person is **not free to leave** should they choose to
- Those treating or looking after the person are exercising **complete and effective control over their care and movements (see mini guide)**

- There is a need to **restrict the access of relatives and friends** to the person
- The **placement is opposed by relatives/carers**
- **A request by relatives to have the person discharged to their care has been denied**

## What to do when you identify a deprivation of liberty

The hospital/care home (known as the **Managing Authority**) has responsibility to apply for authorisation of a Deprivation of Liberty.

If the Managing Authority is considering depriving someone of their liberty they must consult the person, their carers and family members.

Once the Managing Authority has identified a Deprivation of Liberty, they can issue themselves an **urgent authorisation** which will cover them legally for 7 days to take measures to keep the person safe. An urgent authorisation **is not legal** without a request to the Supervisory Body for a **standard authorisation**.

An application is made on combined **forms 1 and 4** which is available from the Mental Capacity Act office.

If a Deprivation of Liberty is anticipated to be required within the next 21 days, a standard authorisation can be requested by completing form 4 only.

## What happens after an application is made?

Sheffield City Council (known as the **Supervisory Body**) is responsible for considering requests for authorisations, commissioning the required assessments and where appropriate authorising the deprivation of liberty.

The Managing Authority is responsible for ensuring that it does not deprive a person of their liberty without authorisation. Where a request for an authorisation is turned down the Managing Authority must review the actual or proposed care arrangements to ensure that a deprivation of liberty is not allowed to either continue or commence.

## The role of the Supervisory Body

The Supervisory Body will **appoint a Best Interest Assessor and a Mental Health Assessor** who will both visit the person at the hospital or care home, talk to those caring for and supporting the person, including family members and read the care notes.

It is the **Best Interest Assessor's role** to:

- Establish that the person is over the age of 18
- Establish that an authorisation to deprive the person of their liberty will not conflict with any existing decision making authority for the person eg an advanced decision to refuse treatment that is proposed, or conflict with a decision of a donee or deputy.
- Establish that the person lacks mental capacity to decide whether or not they should be accommodated in the hospital or care home to be given care and treatment.
- Establish if the circumstances amount to a deprivation of liberty, and if so is it in the person's best interests, necessary to prevent harm and a **proportionate** response to the likelihood and seriousness of the harm.

It is the **Mental Health Assessors role** to:

- Establish that the person has an impairment of the mind or brain.
- Establish that the person is eligible for detention under the Mental Capacity Act rather than the Mental Health Act.

If all the assessments conclude that the person **meets the requirements** the Supervisory Body will authorise a Deprivation of Liberty Safeguard and set a timescale. This will be for the shortest period possible and cannot exceed 12 months.

If any one of the assessments concludes that the **person does not meet the requirements** the assessment process will cease and written confirmation of this will be sent by the Supervisory Body to the Managing Authority.

## Role of the Relevant Persons Representative

The Supervisory Body must appoint a Relevant Persons Representative for every standard authorisation given. The role of the Relevant Persons Representative is to:

- Maintain contact with the person subject to the Deprivation of Liberty Safeguards
- Represent and support the person in all matters relating to the Deprivation of Liberty Safeguards including compliance with conditions. (see below)

This is a crucial role to provide the person with independent support. If the person does not have a friend or family member to fulfil this role the supervisory body will appoint a paid representative.

The person deprived of their liberty and their friend or family RPR have a statutory right to the support of an Independent Mental Capacity Advocate.

## Conditions

Where there is some doubt as to whether the Deprivation of Liberty is the least restrictive option and/or is in the person's best interests, the authorisation will set out conditions to reduce the restrictions.

These conditions, agreed between the Best Interest Assessor and the Supervisory Body, are **legally binding**. They can be appealed against by the Managing Authority otherwise they must be acted upon.

**Failure of the Managing Authority to act on a condition directed to them could result in safeguarding adults procedures being initiated against them.**

## When an authorisation ends

If the Managing Authority considers that a person will still need to be deprived of liberty at the end of the authorisation period granted, they will need to request a further authorisation to begin immediately after the authorisation ends by sending a new form 4 to the Supervisory Body.

A standard authorisation can be reviewed by the Supervisory Body **up to 28 days** before the expiry date of the Deprivation of Liberty Safeguards authorisation.

**The Managing Authority must request a review if it appears that one or more of the Deprivation of Liberty Safeguards requirements is no longer met.**

This request is made to the Supervisory Body on Form 19.

## Deprivation of Liberty Safeguards Mini Guide for Managing Authorities

Being familiar with and using the Deprivation of Liberty Safeguards (DOLS) is key to protecting and promoting the Human Rights of people who lack capacity to make a decision about where they live and their care or treatment. Use this mini guide to help you work out if your organisation is working within the law.

Compliance with this legislation will be monitored by the Care Quality Commission.

## WHAT YOU MUST DO

Understand your duty to uphold the rights of people using your service by applying the DOLS.

Understand fully what constitutes a deprivation of liberty and identify what this means for each person in terms of exercising complete and effective control.

Ensure any care provided is the least restrictive option available.

Ensure staff know who to talk to and what to do if they think a person MIGHT be deprived of their liberty.

If unsure make a referral for a DOLS assessment.

Have a Mental Capacity Act and DOLS Policy and Procedure that identifies a named person as the lead and covers levels of responsibility within the process.

Ensure staff know how and when to assess and record a person's capacity.

Identify if the person does not have family or friends to enable the appointment of an Independent Mental Capacity Advocate by the Supervisory Body.

## SHOULD DO

Have a framework and arrangements in place that enables the organisation to pick up when care provided moves beyond restriction and restraint towards being complete and effective control and therefore a deprivation of liberty.

Provide guidance on care planning that explains how the DOLS support an effective care plan and when to review.

Have and display information for people and their families about DOLS (see leaflets produced by Mental Capacity Act Support Team).

Produce guidelines for staff about the review of care plans and the action to take when an authorisation is coming to an end or needs to be reviewed.

Use a person's care plan to evidence how their liberty is being promoted and how the person is being supported to maintain contact with family and friends.

Consult and use the DOLS code of practice.

## COULD DO

Display contact information for the local Mental Capacity Act support team.

Develop a procedure to enable assessors access to a person's care plan and records.

Ensure staff know where to find application forms.

Make available information about the organisations complaints procedures.

Explore across the organisation how the principles of the Mental Capacity Act can be applied, promoted and championed to ensure quality of the service.

Ensure that any DOLS application and assessments form part of the person's care plan.

Consult with the person, their family and friends if you believe the person may be deprived of their liberty.

Have a system for staff training on the safeguards so that they know how to assess for deprivation of liberty when care goes beyond restriction/ restraint to exercising complete and effective control and therefore a deprivation of liberty.

Ensure any conditions attached to a standard authorisation are part of and clearly visible within the person's care plan.

Enable DOLS Assessors access to the relevant person's notes and care plan.

Request a review using form 19, if it appears one or more of the requirements for DOLS are no longer met.

Work with the person, their family and representative to understand what an authorisation means for that person and ensure they are aware of their right to request a review at anytime.

Report DOLS authorisation applications and outcomes to the Care Quality Commission.

Keep a record of actions taken to meet conditions attached to a standard authorisation.

Inform the Supervisory Body of any changes in the person's situation.

Implement a programme of audit work to cover application of DOLS within the organisation to identify areas for improvement.

Develop a working relationship with the Mental Capacity Act DOLS team.

This document can be supplied in alternative formats, please contact 0114 273 6870

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Safeguarding Adults  
[www.sheffield.gov.uk](http://www.sheffield.gov.uk)



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