

## 7 Minute Briefing: Deprivation of Liberty Safeguards in a Domestic Setting

1. Depriving someone of their liberty is a very serious issue and should only be undertaken to protect the person from serious harm.

It is unlawful to deprive a person of their liberty without a legal framework in place to authorise it.

### 2. Why must we act upon the Deprivation of Liberty in a Domestic Setting

Liberty is a Human Right afforded to all. It is set out as part of the European Convention on Human Rights and in England and Wales it is enshrined in law within the Human Rights Act 1998. Article 5 of the Human Rights Act (HRA) 1998 is 'The Right to Liberty and Security'. No-one can interfere with this absolute Human Right without a legal process in place to authorise it. The legal process must enable the person access to a Court of Law to authorise/challenge the arrangements which interfere with Article 5 HRA. Within our Health and Social Care core functions people can become subject to arrangements for their care and treatment that have the effect of depriving them of their liberty (to protect them serious harm in their best interests) within their own homes or residential school settings. When this happens there is a duty/obligation to seek legal authorisation from the Court of Protection.

### 7. Making an Application to the Court.

-Applications are made to the Court of Protection using a streamlined process referred to as the Re X process. This means the Judge determines whether to authorise the arrangements based on the paperwork you provide. It is not usually necessary to attend the Court in person unless a complex or contentious issue arises during proceedings. However, such issues would normally come to light beforehand thus making this type of application to the Court inappropriate. It will be necessary to provide the Legal Team with assessments and information about the DoL. There is a 'Making an Application Guidance Pack' available to support you through each step of the process. It incorporates Exemplars, Checklists, Template Letters and a DoL Screening Tool. The MCA Lead will also provide you with guidance, answer questions and support you. They will quality check your paperwork before you give it to the Legal Team to make sure there are no obvious omissions or mistakes. The Legal Team responsible for making the Application to the Court will depend on whether the arrangements are NHS or Local Authority funded. Again, the MCA Lead will help you to determine this and to make your submission to the correct place. The maximum timescale the Court can authorise the arrangements is up to 12 months, at which point the Application may be required again if they still amount to a DoL. All information books, Guidance Pack, DoLS Code of Practice and MCA Lead contact details can be accessed on the DoL ICON link:



[Pages - Deprivation of Liberty Safeguards \(torbayandsouthdevon.nhs.uk\)](https://www.torbayandsouthdevon.nhs.uk/pages-deprivation-of-liberty-safeguards)

### 6. What is Continuous Supervision/ Control and Not Free to Leave?

#### Continuous supervision/ control:

Ask yourself: Is someone responsible to know where the person is and what they are doing all of the time, even if they are not directly watching them or are with them? Are there restrictive care plans or interventions in place that exert control over the person's life? e.g. for the Activities of Daily Living, Accessing the Community, Finance, Contact and Communication, Behaviour, Medication, Environment, Observation Levels. Both aspects of Continuous Supervision and Control need to be evident

#### Not free to leave:

The focus is not on the person's ability to express a desire to leave, but on what those with control over their care arrangements would do if they sought to leave. Therefore, if someone would try to stop them or divert them from leaving (as they were concerned about their safety) than the person is not free to leave.

If the above circumstances are evident because you have implemented/ funded the arrangements or you know that it is happening, and the person lacks the mental capacity to consent to such arrangements, then the person will be deprived of their liberty. This will be a breach of their Article 5 Right to Liberty

You will need to seek lawful authorisation from the Court of Protection.

### 5. What is a restrictive measure in practice? Some examples not exhaustive

You may see the following restrictions within care/treatment stay vigilant for them:

**Mechanical:** Straps/belts/bed rails, mits controlling freedom of movement

**Pharmaceutical:** Sedative medication

**Observations:** Watching people, monitoring movements and whereabouts

**Environmental:** Locked doors, windows, gardens.

**Personal effects:** Personal items removed or access to personal items limited or controlled by someone else.

**Access to the outside/wider community:** Only access wider community with supervision/frequency and duration decided by others.

**Food and Drink:** Meal types and times of meals decided by others.

**Finance:** Money controlled by others/ access to personal finance limited or managed by others.

**Communication/ Contact:** Contact/telephone calls stopped, limited or monitored or letters and social media accounts controlled by others.

These are a serious breach of Article 8 of the HRA (Right to Respect of Privacy and Family Life). Always speak to your MCA Lead.

**Care/treatment planning:** Plans developed/ reviewed by others meaning others have 'Total and Effective Control' over residence /care.

### 3. Recognising Deprivation of Liberty in Practice

People can become deprived of their liberty in their own homes. This includes Supportive Living and Shared Care arrangements as well as Residential School Settings

**1).** The person must be 16 years or over and assessed as lacking capacity to consent to be accommodated for the purpose or receiving care and or treatment. **2).** The person must have a mental disorder within the meaning of the Mental Health Act 1983 (this includes disorders of the mind such as delirium). **3).** The arrangements in place for the person must be imputable to the state, this means a Public Body such as the NHS or Local Authority or Regulator is either responsible or partly responsible for the arrangements, or is aware of them taking place.

**4)** The arrangements in place for the person's care and or treatment mean:

**The person is under continuous supervision and control and the person is not free to leave.**

This is referred to as the **Acid Test** following a Supreme Court ruling in 2014: *P v Cheshire West and Chester Council and P and Q v Surrey County Council*.

### 4. Restrictive measures in care/treatment planning

-It is important to consider the arrangements/interventions in place for a person in their entirety when care or treatment planning. This enables an overarching view and better understanding of the impact the arrangements/interventions have on the person's freedom of movement, personal autonomy, freedom of choice and right to liberty.

Often as plans are developed it becomes necessary to implement restrictive measures to protect the person from harm.

It's really important that staff recognise restrictive measures in practice and act upon them.

Therefore, where there is a restrictive measure the following questions must always be asked and answered:

Is the measure necessary? Is the measure to protect harm? Is the measure proportionate to the harm and the seriousness of the harm? Can the restrictive measure be safely reduced? Is the measure the less restrictive option available? If not why not? Is the measure in the person's best interest considering S 4 of the MCA 2005?