

7 Minute Briefing: Deprivation of Liberty Safeguards in a Hospital or Care Home environment

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 Safeguards.

- Liberty is a Human Right afforded to all people. 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 to access a Court of law to challenge their detention should they wish to, or for someone to do it on their behalf in their best interest.
- In hospitals and Care Homes 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. When this happens the Hospital/Care Home have a duty to seek legal authorisation.

7. Making a DoLS application:

If the arrangements are already in place and meet the Acid Test for a DoL it will be necessary to complete an Urgent Authorisation and request a Standard Authorisation on a DoLS Form 1.

An Urgent Authorisation will last for 7 days from the date that you sign it and will provide a legal basis upon which to implement the arrangements.

If, after the 7 days, the person's arrangements still meet the Acid Test you can request an 'Extension' of the Urgent Authorisation for up to a further 7 days.

This will keep a legal process in place whilst a decision is made by the Local Authority to either Grant or Refuse a Request for Standard Authorisation. Form 1 covers all of these issues.

In addition, you must set out within Form 1 the restrictive measures that form part of the care or treatment plan. It is a requirement that you tell the person and their family that you have made an Application and to keep a copy of Form 1 on the person's file.

It is important that you provide information about the process to the person and family. Applications will be required to be sent to the Local Authority DoLS team where the person is Ordinarily Resident. Within Torbay via secure mail to dolstorbay@nhs.net. If hospital staff please also copy tsdft.hospitaldolsapplications@nhs.net

DoLS Forms including Form 1 /Information Books/Code of Practice/MCA Lead contact details can be accessed and downloaded from the ICON DoLS link:

[Pages - Deprivation of Liberty Safeguards \(torbayandsouthdevon.nhs.uk\)](#)



3. Recognising Deprivation of Liberty in Practice

The Deprivation of Liberty Safeguards apply to people in Hospital and Care/Nursing Home environments. **1).** The person must be 18 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*.

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

Continuous supervision/ control:

Ask yourself: Do you know where the person is and what they are doing all of the time, even if you 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. If you were to try to stop them or divert them from leaving (as you 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 than 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 for the arrangements to be in place.

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

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, wards, windows, gardens, use of side rooms

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: Meals and times of meals decided by others

Finance: Money controlled 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 and care.

4. Restrictive measures in care/treatment planning

-It's important to consider the arrangements/interventions in place for a person in their entirety. 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?