



**Leeds Safeguarding
Adults Board**

Practice Guidance:

Reporting a Deprivation of Liberty and Safeguarding Adults

Version:	Version 3
Ratified by:	Safeguarding Adults Board
Date ratified:	February 2015
Author/Originator of title:	Policy, Protocols and Procedures Sub-group / MCA LIN
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Date issued:	March 2015
Review date:	March 2017
Target audience:	Service providers, members of the public, practitioners and safeguarding coordinators

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1. Introduction

This practice guidance provides advice on how to respond to concerns that care and treatment provided to a person who lacks mental capacity, amounts to a deprivation of liberty.

It is a serious issue to deprive someone of their liberty, but sometimes it is necessary in order to provide a particular care plan that is in the person's best interests. In these situations the person must be provided with the safeguards afforded to them in law.

This guidance outlines what a deprivation of liberty is, how to report your concerns and seek advice, and whether it is appropriate to raise a safeguarding adults concern.

2. What is a Deprivation of Liberty?

The Mental Capacity Act provides a framework to empower and protect people who may lack mental capacity to make certain decisions for themselves.

The Act makes it clear who can make decisions in which situations, and how they should go about this. Anyone who works with or cares for an adult who lacks mental capacity must adhere to the Mental Capacity Act.

The Mental Capacity Act allows for care and treatment arrangements to include restrictions on a person's liberty where it is necessary to prevent harm to a person who lacks capacity, providing that:

- it is in their best interests, and
- it is a proportionate response to the likelihood and seriousness of that harm.

However, the Mental Capacity Act does not allow for a person to be deprived of their liberty to receive care and treatment. Authorisation for a deprivation of liberty is by use of the Deprivation of Liberty Safeguards (DoLS) in hospitals and care homes, and the Court of Protection in 'domestic settings'.

The difference between a deprivation of liberty and restriction upon liberty is one of degree or intensity. It may therefore be helpful to envisage a scale, which moves from 'restraint' or 'restriction' to 'deprivation of liberty'.

Where an individual is on the scale will depend on the concrete circumstances of the individual taking into account a whole range of factors, such as the type, duration, effects and manner of the arrangements.

On 19th March 2014, the Supreme Court established the 'Acid Test, for when a person is deprived of their liberty for purposes of Article 5 of the European Convention on Human Rights:

“The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements”.

What does continuous supervision and control mean?

All care environments will have an element of supervision. Sometimes the provision of care and treatment also requires some restrictions on the person's particular choices, movement or decisions. These kinds of restrictions can usually be decided upon in the person's best interests under the Mental Capacity Act 2005.

In terms of a deprivation of liberty, 'continuous supervision and control' means complete and effective control of the person. Continuous does not necessarily mean every minute of the day, it is more about the overall impact on the person's life.

The following examples are likely to amount to continuous supervision and control:

- the adult needs constant or frequent supervision for their safety, or
- the adult would not be left on their own for more than a short period, even if they asked to be; or
- carers are effectively deciding all or many aspects of their daily life (e.g. when to get up and go to bed, where to sit, when to watch the television, when to eat, when and where to go out; or
- the adult needs support with all or many everyday tasks (e.g. cooking, shopping, bathing) and would be stopped from trying to do them if no carer was available to help or supervise them at the time; or
- their care plan or carers impose significant restrictions on their contact with their family.

The use of physical restraint and/or use of medication to control behaviour might also indicate 'continuous supervision and control'.

What does 'not free to leave' mean?

'Not free to leave' does not mean that a person without mental capacity to decide about their accommodation is deprived of their liberty if they are prevented from going out unsupervised due to risks for their safety. These kinds of restrictions can usually be decided upon in the person's best interests under the Mental Capacity Act 2005. This may, however, indicate that the person is subject to 'continuous supervision and control'.

In terms of a deprivation of liberty, 'not free to leave' means that a person without mental capacity to decide about their accommodation is required to live there for a sustained period.

For example;

- The person would not be allowed to go back to live in their family home, even if the family was happy to have them;
- The person would not be allowed to go back to live in their previous home, even if it were still available for them.

It is not important whether the person has said they want to live elsewhere, or tried to leave, the relevant point is that they would be prevented from doing so, if they did.

Each individual's circumstances are unique and consideration must be given to the overall impact on the person. Because of this, there can be no definitive description of situations that amount to a deprivation of liberty. This summary should be used only as a guide for when a deprivation of liberty may be occurring and when specialist advice may be required.

3. Deprivations of liberty in hospitals and care homes

3.1 What are the Deprivation of Liberty safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) were introduced to protect people in **hospitals** and **care homes** that cannot make decisions about their care and treatment when they need to be cared for in a particularly restrictive way.

Leeds City Council: Adult Social Care acts as the Supervisory Body for DoLS in Leeds, and will arrange for a series of assessment to be undertaken to determine whether the deprivation of liberty occurring is lawful and appropriate. This comprises:

- Age Assessment – the person must be 18 or over
- No Refusals Assessment – This makes sure that the proposed care plan does not conflict with a decision already made by an attorney or deputy on the person's behalf, or with a decision made in advance by the person
- Best Interests Assessment – This assessment first confirms that the person will indeed be deprived of their liberty. If so, it ensures that it is in the best interests of the person and necessary in order to stop the person coming to harm and is proportionate to the likelihood and the seriousness of that harm.
- Mental Capacity Assessment – This checks that the person does not have mental capacity to make a decision about their care or treatment.
- Mental Health Assessment – This checks whether the person has a mental disorder as defined by the Mental Health Act 1983.
- Eligibility Assessment – This confirms that they are eligible to be deprived of their liberty under this law.

The Deprivation of Liberty Safeguards (DoLS) serves to help ensure that the arrangements are in the person's best interests and that the person:

- Is appointed a representative
- Has a right of appeal about their situation
- Has their situation reviewed

Please note:

Where a person is detained under the Mental Health Act 1983, this provides appropriate authority and legal safeguards for the person to be deprived of their liberty. Neither the Deprivation of Liberty Safeguards (DoLS), nor the Court of Protection need to be additionally considered.

3.2 Responsibilities of hospitals and care homes to avoid an unauthorised deprivation of liberty?

In the event that a hospital or care home assesses that the care and treatment amounts to a deprivation of liberty, it must review the care and treatment that is provided or planned so as to avoid, where possible, depriving the person of their liberty.

If the care and treatment cannot be provided in a less restrictive way, the hospital or care home must apply to Leeds City Council: Adult Social Care for Deprivation of Liberty Safeguards authorisation. Where the need for authorisation is urgent, the hospital or care home may also need to issue an Urgent Authorisation.

The DoLS Helpline may be contacted for advice as to the process to be followed. Telephone (0113) 855 2347; Email DoLS.Support@leeds.gov.uk

3.3 How to report a concern that someone has been deprived of their liberty in a hospital or care home without authorisation?

Whenever anyone is concerned that a hospital or care home has or may have been deprived a person of their liberty without applying for DoLS authorisation they should report their concerns.

In the first instance, advise the hospital or care home of your concerns wherever possible, so they can review the arrangements in light of your views. The hospital or care home can itself issue an Urgent Authorisation that lasts for 7 days, whilst it applies to Leeds City Council: Adult Social Care for authorisation. You can ask them to consider doing this. A standard Letter is provided in Appendix A that can be used for this purpose.

If after a reasonable period, normally considered to be 24 hours, you remain concerned that the hospital or care home is continuing to deprive someone of their liberty without seeking authorisation, you should inform Leeds City Council: Adults Social Care. Leeds City Council is the supervisory body for both hospital and care homes.

To do this, you can either:

- Telephone the Leeds City Council: Adult Social Care: DoLS Helpline (0113) 855 2347, or
- Write to them at: The DoLS Team, Leeds City Council: Adult Social Care, St. Mary's House, 1st Floor South Wing, St. Mary's Road, Leeds, LS7 3JX

You may want to use the standard letter in Appendix B.

The DoLS Helpline will also provide advice to hospital and care homes, staff and members of the public on any matter relating to Deprivation of Liberty Safeguards (DoLS).

4. Deprivation of liberty in domestic settings

The Deprivation of Liberty Safeguards (DoLS) only apply to people in hospitals and care homes. However, if the care and treatment is arranged, commissioned or provided by the local authority/NHS or any other body acting on behalf of the state, a person can also be deprived of their liberty in domestic settings, such as in their own home or in supported tenancies.

If you are concerned that a person lacks mental capacity to consent to care and treatment in domestic settings, and the arrangements may amount to being deprived of their liberty, you can seek advice from the Adult Social Care: DoLS Helpline.

In some circumstances it may be appropriate to apply to the Court of Protection to authorise the care and treatment arrangements required, in the person's best interests.

5. Deciding whether to Raise a Safeguarding Concern

From April 2015, the term 'Raise a Safeguarding Concern' replaces, 'make a safeguarding alert' within the Multi-Agency Safeguarding Adults Policy and Procedure.

Deprivations of liberty of a person without capacity to consent to be accommodated for care and treatment should always be addressed with urgency through the appropriate authorisation process.

However, there may be some occasions where an unauthorised deprivation of liberty amounts to possible abuse and in these cases a safeguarding concern should also be raised.

In deciding whether to raise a safeguarding concern it is necessary to reach a decision that is proportionate to the nature of the concerns and in the best interests of the adult at risk.

The following are examples of where the raising of a safeguarding concern should be considered:

- Where a person is deprived of their liberty without appropriate authorisation, and this is overly restrictive and is not addressed in timely manner given all the circumstances.
- Where a person is deprived of their liberty without appropriate authorisation, resulting in the person experiencing harm. This may include physical harm or emotional/psychological distress, or the loss of fundamental human rights.
- Where a hospital or care home repeatedly or seriously fails in its responsibilities to seek appropriate authorisation, to review the arrangements in place, or to end a deprivation of liberty after it is no longer required.

If you need advice as to whether you should raise a safeguarding concern, you can seek advice from a line manager and/or seek advice from the Leeds Safeguarding Adults Board Advice Line: 0113 224 3511.

6. Considerations for Safeguarding Coordinators

In determining whether a safeguarding concern should be taken forward within the safeguarding adults procedures, it is necessary to consider the unique circumstances of the person's situation.

Distinguishing between poor practice in relation to seeking appropriate authorisation and abuse will often require a professional judgement. It is important to consider the impact on the adult at risk.

Poor practice can usually be addressed by other processes, such as contract monitoring processes, care management reviews or complaint investigations for example. The most appropriate and proportionate response should be considered, to deliver an outcome consistent with the wishes and best interests of the adult concerned, and the safety of any others who could be at risk.

7. Sources of further information

For additional information on the issues raised in this guidance, consider the following:

- A. Leeds City Council: Adult Social Care
Deprivation of Liberty Safeguards Helpline: (0113) 855 2347
(Monday to Thursday 09.00 – 17:00; Friday 09:00 – 16:30)
Email: For advice & support: DoLS.Support@leeds.gov.uk
For referrals: ASC.DoLS.Referrals@leeds.gov.uk
- B. The Leeds Safeguarding Adults Board Website
www.leedssafeguardingadults.org.uk which includes the following guidance:
 - o Deprivation of Liberty Safeguards Code of Practice;
 - o Deprivation of liberty safeguards: A guide for hospitals and care homes
- C. Department of Health website (www.doh.gov.uk)
- D. Mental Capacity Act 2005: Deprivation of Liberty Safeguards - standard forms and guidance for managing authorities (hospitals and care homes)
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_103874

8. Version Control Record

Version	Version or document being superseded	Changes from previous version (record origins of document if new)
3	Version 1 (26.5.11) ratified by safeguarding board. Version 2 amendments ratified by sub-group on 26.1.12, amendments notified to Board February 2012.	Version 3: Renamed from 'Unauthorised deprivation of liberty and considerations in making a safeguarding adults alert'. Revised throughout to reflect recent case law i.e. P v Cheshire West. Indicators for when to raise a safeguarding concern updated.

Appendix A: Standard Letter to Managing Authorities (hospitals / care homes)

Letter to managing authority concerning unauthorised deprivation of liberty	
	Sender's address Contact telephone number Date
Name and address of managing authority (Care Home or Hospital)	
Dear Sir/Madam	
Re [name of person/resident]	
I am writing to you about the above-named person, who is accommodated in your hospital/care home [delete as applicable].	
I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc].	
It appears to me that this person lacks capacity to consent to the arrangements made for their care or treatment and is subject to an unauthorised deprivation of liberty. I am therefore writing, in accordance with the provisions of the Mental Capacity Act 2005, to ask you to give an urgent deprivation of liberty authorisation and to request a standard authorisation from the supervisory body.	
My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [briefly state reasons]	
As I am sure you know, if you do not request a standard authorisation within a reasonable period, I may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.	
Thank you for your consideration of this matter.	
Yours faithfully	
Signature	
Name of sender in block capitals	
Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.	

Appendix B:
Standard Letter to Supervisory Body (Leeds City Council: Adult Social Care)

Letter to supervisory body concerning unauthorised deprivation of liberty

Sender's address
Contact telephone number
Date

The DoLS Administrative Team
Leeds City Council: Adult Social Care
St. Mary's House
1st Floor South Wing
St. Mary's Road
Leeds
LS7 3JX

Dear Sir/Madam

Re [name of person/resident]

I am writing to you about the above-named person who is accommodated in [Name and address of hospital or care home].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc]

On [enter date], I wrote to/spoke with the managing authority of the [name of hospital or care home]. I informed them that it appeared to me that this person lacked capacity to consent to the arrangements made for their care or treatment and was subject to an unauthorised deprivation of liberty. I asked them to give an urgent deprivation of liberty authorisation and to request a standard authorisation, in accordance with the provisions of the Mental Capacity Act 2005.

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that [briefly state reasons]

I understand that the managing authority has not requested a standard authorisation.

I am therefore writing to make a formal request that you now decide whether or not this person is subject to an unauthorised deprivation of liberty.

Thank you for your consideration of this matter.

Yours faithfully

Signature

Name of sender in block capitals

Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.