



Deprivation of liberty

NCF

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Aims for this session:

- Refresh our understanding of deprivation of liberty
- Identify where deprivation may be occurring
- Build confidence in using the procedures

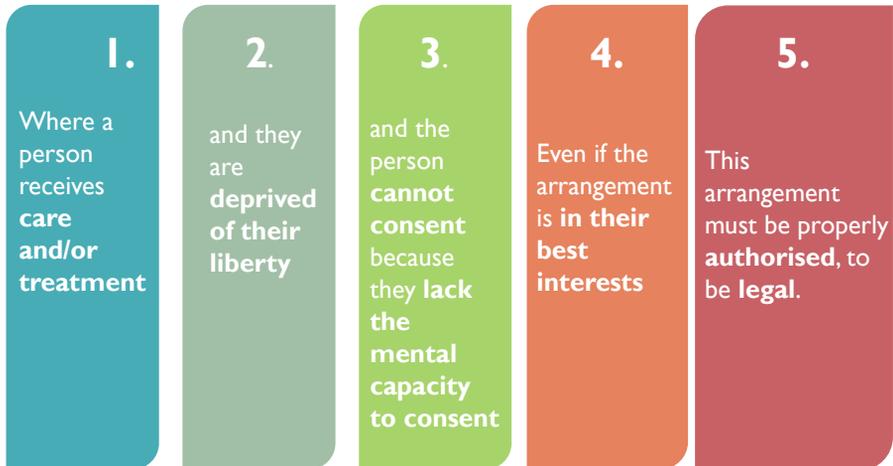


Desired outcomes for your service:

- *Effective use of appropriate protective measures*
- *Empowered and protected customers*
- *Satisfied regulators: Effective services*



What is deprivation of liberty all about?



Is the person deprived of their liberty?

1. The acid test:

- Is the person under continuous supervision or control?
- Are they “not free to leave”?

If the answer to both questions is “yes”, the person is deprived of their liberty.

2. Capacity and consent

- Does the person have capacity to consent to the arrangement (MCA capacity assessment needed)?
- Does the person consent?

If the answer to both questions is “yes”, no formal authorisation is needed.

If the person is deprived of their liberty and can consent and does consent

No formal deprivation of liberty authorisation is needed.

But – need careful and fully documented assessment,

If the person is deprived of their liberty and can consent but does not consent

The person is free to leave

Involve the local authority urgently

Best practice:
Involve the local authority in the assessment process

Beware
Risk of criminal and civil action

If the person is deprived of their liberty and cannot consent?

Consider:

- The age of the person, and
- The setting

to determine the appropriate authorisation process

If the person is 18 or over, and in a registered care home or hospital, the “Deprivation of Liberty Safeguards” or “DoLS” apply

In **ALL** other circumstances, an application must be made to the **Court of Protection** for authorisation.

**For all DoLS customers:
where you identify a person may be deprived of
their liberty:**

Ask the local authority if you can deprive the person of their liberty – “request a standard authorisation”.

The LA then undertake six assessments

If granted, a “relevant person’s representative” is appointed, with legal authority to represent the person

A standard authorisation cannot be extended. Make a further request to the LA, if appropriate, before it expires

**For all DoLS customers:
Action in relation to a standard authorisation:**

Formally notify the CQC when the authorisation is applied for AND is granted

Document in the PCSP and ensure all staff are aware

Note and implement conditions

Diarise expiry/review dates

Continually seek opportunity to minimise restrictions

**For all DoLS customers:
Action in relation to a standard authorisation:**

Relevant Person's Representative

Are they an appropriate person for this role?

In re AJ (Deprivation Of Liberty: Safeguards)
[2015] EWCOP 5 ; [2015] WLR (D) 64

Are they fulfilling their duties towards the "Relevant Person"

**For all non-DoLS customers:
where you identify a person may be deprived of
their liberty:**

Formally notify the relevant local authority

Ask the LA to apply to the Court of Protection

If the LA does not respond and act, ask again

If the LA continues to fail to respond, seek legal advice

Case study: DoLS conditions

Sammy

Sammy, was placed in a residential service under the protection of the DoLS, and had been extremely agitated.

An IMCA who was supporting him as his paid relevant person's representative found out that he used to play pool and would still like to play pool as much as he could. She arranged for a condition to be added to the authorisation that allowed him to have planned accompanied visits to the pool hall each week.

This contributed to a change in attitude, made Sammy happy, and improved his quality of life by enhancing his freedom & autonomy.

Case study: the whole picture

Jas

- Is 20 and lives in a small residential home with 4 others
- Has his own care team
- Has tetraplegia cerebral palsy and has a serious risk of choking
- Has a tendency to put any food he finds into his mouth

Staff are putting food out of Jas' reach (apart from meal/snack times). There is concern that Jas may be deprived of his liberty.

Is Jas deprived of his liberty?

What further action should be taken?



Deprivation of liberty: What do you need to do now?

1.

Ensure you know how to identify a deprivation of liberty

Ensure you know which procedure to apply

2.

Think about the people you support

Who is deprived of their liberty?

Is an appropriate authorisation in place?

3.

Think about your staff

Can they identify a deprivation of liberty?

Do they know about any authorisation in place?

4.

Think about your policies

Apply them

Monitor reporting, record keeping & reviews

5.

Think about your culture & environment

Always seeking to minimise restriction

Talk about the issue, share stories and experience



Any questions?

If you have any further questions please contact Sheree Green of Anthony Collins Solicitors LLP on 0121 212 7404 or sheree.green@anthonycollins.com

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