



# Deprivation of Liberty Safeguards Policy

Reviewed	Date of Next Review	Responsibility
October 2023	October 2024	Registered Manager

## Our Mission:

**'To enable young people to live and work without barriers'**

## Our Values:

- **Teamwork** – we hold ourselves and each other to account and are better when we work together
- **Compassion** – we act with trust, honesty and kindness in everything we do
- **Inclusion** – we treat each other fairly and with respect
- **Innovation** – we encourage thoughtful, creative and aspirational ideas
- **Pride** – we encourage each other to be proud of who we are and what we do

## Purpose

- To comply with The Deprivation of Liberty Safeguards (DOLS) regulations, which are an amendment to the Mental Capacity Act (MCA) 2005.
- To prevent breaches of the European Convention of Human Rights. "The safeguards provide a framework for approving the deprivation of liberty "for people who lack the capacity to consent to treatment or care in either a hospital or care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty." The safeguards legislation contains detailed requirements about when and how deprivation of liberty may be authorised. It provides for an assessment process that must be undertaken before deprivation of liberty may be authorised and detailed arrangements for renewing and challenging the authorisation of deprivation of liberty." (Dept. of Health 2008)

## Scope

- Anyone dealing with people aged 18 years or over who has a mental disorder and who lacks the ability to give consent, may be deprived of their liberty.

## Policy

- The Deprivation of Liberty Safeguards Code of Practice, published by the Ministry of Justice, will always be followed and adhered to. A link to the Code of Practice can be found at the end of this document.
- The Deprivation of Liberty Safeguards - Forms and Record Keeping Guide for Managing Authorities in England (Hospitals and Care Homes) will be used to manage DOLS. A link to these forms can be found at the end of this document.
- This policy should be read in conjunction with the following policies:
  - Mental Capacity Act 2005 Policy and Procedure

## Procedure

- Good practice indicates that the care home must take all reasonable steps to try and avoid a deprivation of liberty occurring. These steps include:
  - Effective Care Planning is reviewed regularly.
  - Involvement of the young person, their family/advocates in decision making.
  - Exploring alternative and less restrictive ways of providing care consistent with what is important to as well as what is important to the person, protecting the person from harm is paramount however where possible positive risks should be encouraged.
  - Assessing the person's capacity to make decisions about their care.
- Where a person may be being deprived of their liberty, the managing authority has responsibility for applying for an authorisation of the deprivation. In the case of the person being in an NHS hospital, the managing authority is the NHS hospital. In the case of the person being in a care home or private hospital, the managing authority is the person registered as manager under part 2 of the Care Home Standards Act 2000. The managing authority should apply to the supervisory body for the area in which the person is ordinarily resident.
- In England and Wales, for people in care homes, the supervisory body is the local authority. For people in NHS hospitals in England the supervisory body is also the local authority. For people in hospitals in Wales, the supervisory body is the Local Health Board in the area where the hospital is situated.

- In applying for an authorisation, the care home or hospital should use the forms and procedures contained in The Deprivation of Liberty Safeguards - Forms and Record Keeping guide for Managing Authorities in England (Hospitals and Care Homes) which can be found in the Useful Documents section of the QCS system (in your Quick Links box).
- The managing authority must keep a written record of each application and the reasons for the request.
- The managing authority should tell the person's family, carers, and any Independent Mental Capacity Advocate (if there is one already involved) that it has applied for an authorisation, unless it is impractical or impossible to do so, or it would be undesirable in the interest of the person's health or safety.

## The Deprivation of Liberty Safeguards

### Summary

The safeguards do not apply to people residing or staying in situations other than hospital or care home, such as a supported living or supported tenancy situation. For people in such situations who are being deprived of their liberty, this would be in violation of Article 5 of the European Convention on Human Rights. For such a deprivation of liberty to be lawful, the deprivation would need to be authorised by the Court of Protection. For domiciliary care agencies, or other professionals working with people in such situations, advice should be sought from the local authority.

These safeguards apply to people who have a mental disorder and lack capacity to consent to arrangements made for their care or treatment, and that care or treatment is being provided in a way that amounts to a deprivation of liberty. This applies to people living in a hospital or care home. Hospitals and care homes will need to be aware of the distinction between mere restrictions and deprivation of liberty.

A person can only be lawfully deprived of their liberty if it:

- Is in their best interest to protect them from harm.
- It is a proportionate response to the likelihood and seriousness of the harm.
- There is no less restrictive alternative.

*The Mental Capacity Act does not include a definition of what constitutes a deprivation of liberty. However, a judgement in the Supreme Court (P v Cheshire West and Chester Council [2014] UKSC 19) clarified that there is a deprivation of liberty for the purposes of Article 5 of the European Convention on Human Rights in the following circumstances: "The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements. "The Supreme Court held that factors which are not relevant to determining whether there is a deprivation of liberty include the person's compliance or lack of objection and the reason or purpose behind a particular placement. A link to a guidance notes issued by the Department of Health in the light of this judgement is included at the end of this policy.*

*The Code of Practice to the Deprivation of Liberty Safeguards (Ministry of Justice 2008) includes some indicators of where the level of restraint is such that it constitutes a deprivation of liberty:*

- *Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.*
- *Staff exercise complete and effective control over the care and movement of a person for a significant period.*

- Staff exercise control over assessments, treatment, contacts and residence.
- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contact because of restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

## **The Liberty Protection Safeguards**

**On 5 April 2023, the UK Government announced that the introduction of the LPS would be delayed “beyond the life of this Parliament.”**

The Trust will continue to keep up to date with all updates and changes to ensure compliance.

## **Summary**

**The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are or who need to be deprived of their liberty in order to enable their care or treatment and lack the mental capacity to consent to their arrangements.**

**People who might have an LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.**

**The LPS were planned to come into force in April 2022. (Gov-Dept of Health & Social Care)**

Further consultation has delayed this and is now planned to come into force in late 2023,

For the Living Well Service, advice will be sought from the local authority. However Mental Capacity Assessment and Best Interest will be completed in line with current Trust Policies and procedures

- When making an application, if there is no family member or advocate appropriate to consult, the Trust will inform the supervisory body who must then instruct an Independent Mental Capacity Advocate (IMCA).

## **How can a DOL be authorised?**

- The Trust has responsibility for applying for an authorisation. Where a person may be deprived of their liberty. The Trust must apply to the supervisory body for their area for an authorisation of the deprivation, where it appears that the Person meets the six qualifying requirements of the DOLS regulations which are:
  - The age requirement.
  - The mental health requirement.
  - The mental capacity requirement.
  - The best interest's requirement.
  - The eligibility requirement.

- The no refusals requirement.
- The Trust has a procedure in place to allow for consideration of an application for authorisation of deprivation of liberty. (The DOLS Code of Practice includes a flowchart contained in Annex 2 that can guide the Trust in this process, The Code of Practice gives full information regarding the six qualifying requirements).
- When making an application, if there is no family member or advocate appropriate to consult, the Trust must inform the supervisory body who must then instruct an Independent Mental Capacity Advocate (IMCA).
- A supervisory body is responsible for considering the request, commissioning six statutory assessments and, if appropriate, authorising the DOL. Where the DOL concerns someone in an NHS hospital, that body shall be the CCG, or where the person is in a care home, the body shall be the local authority in which the person is ordinarily resident. The supervisory body is responsible for ensuring sufficient assessors are available to meet their needs.
- The 6 statutory assessments to be undertaken before a DOL can be authorised are as follows to determine whether the person meets the qualifying requirements:
  - Age assessment.
  - No refusals assessment.
  - Mental capacity assessment.
  - Mental health assessment.
  - Eligibility assessment.
  - Best interests' assessment.
- Assessments should be completed within 21 days of the supervisory body receiving the request for a standard deprivation of liberty authorisation. However, where the deprivation will commence before the authorisation has been obtained, the managing authority can give itself an urgent authorisation. The Trust will follow best interest and duty of care to ensure the person is safeguarded whilst the process awaits authorisation. The managing authority should have reasonable expectation that the six qualifying requirements for a standard authorisation will be met. Forms and guidance on urgent authorisations can be found in a link at the end of this policy.

By Order of the Board

**Registered Manager**

October 2023

**Links to external documents:**

[Department of Health letter regarding Deprivation of Liberty Safeguards 28.3.2014](#)

<https://www.scie.org.uk/mca/lps/latest>

[Deprivation of Liberty Safeguards forms for managing authorities](#)

[Urgent authorisations](#)

[The Deprivation of Liberty safeguards Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice](#)

**Key Lines of Enquiry Table**

Key Line of Enquiry	Primary	Supporting	Mandatory
How are people protected from bullying, harassment, avoidable harm and abuse that may breach their human rights?	✓		✓
Is consent to care and treatment always sought in line with legislation and guidance?	✓		✓
How are people's individual needs met by the adaptation, design and decoration of the service?	✓		

**Note: All Fairfield Trust Policies are reviewed annually, more frequently, or as necessary.**