

Deprivation of Liberty Guidance – Checklist

The difference between deprivation of liberty and restrictions upon liberty is one of degree and intensity. It may therefore be helpful to envisage a scale, which moves from 'restraint' to 'restrictions' to 'deprivation of liberty'. Where an individual is on the scale will depend on the concrete circumstances of the individual, and may change over time. (See MCA DOLS Code of Practice, Chapter 2. 2.3, p17.)

The care plan is key to identifying whether a person needs to be deprived of his or her liberty. The following questions are intended as guides only. They will assist in considering each person's needs and circumstances. The questions are not exhaustive, and it is not necessary for all of them to apply for authorisation to be required.

Does the care plan...

- **Record how the person was admitted to the facility?**
 - Was deception or restraint or force used to admit?
 - Was the person resisting?
 - Did the person's relatives or carers object to the person being admitted?
 - Did the arrangements require an exceptionally long journey or one that was otherwise very onerous for the person?

- **Determine that the person cannot be allowed to choose to live or be elsewhere?**
 - Does the person express the wish to live or be elsewhere (wherever that may be)? Does the person not wish to be in the facility?
 - Does the person make persistent and purposeful attempts to leave the premises to go elsewhere?
 - Is restraint or force used to prevent them? What is the nature of the restraint and the circumstances when it is to be implemented? What is the harm from which the person is being protected?
 - Does the care plan explain why it is in the person's best interests that they cannot be allowed to choose to live or be elsewhere?

- **Determine that the person cannot be discharged to the care of relatives or carers?**
 - Has there been a request from relatives or carers that has been formally denied? Do the relatives or carers not want the person to be in the facility?
 - If not, would such a request be denied?
 - Does the care plan explain the best interests reasons why the person cannot be discharged to the care of relatives or carers?

- **Determine that there needs to be restrictions placed on the person's access to relatives or carers?**
 - Are visits supervised?
 - Are relatives or carers denied access to the person, either in person or by contact etc?
 - Can visitors take the person out of the premises?
 - Do the restrictions apply to particular visitors or are they more general?
 - Does the care plan explain the best interests need for the restrictions?

- **Determine that the person must be restricted from leaving the premises?**
 - Is restraint to be used? What is the nature of the restraint and the circumstances when it is to be implemented? What is the harm from which the person is being protected?
 - Does the person require accompaniment at all times when leaving the premises?
 - Do the restrictions apply to particular times or are they more general?
 - Does the care plan explain the best interests need for the restrictions?

- **Determine that the person requires being restricted within the premises?**
 - Is there a risk to the person or to others if the person did have freedom of association within the premises?
 - Does the person require supervision when in communal areas?
 - Does the person require restriction from communal areas?
 - Does the care plan explain the best interests need for the restrictions?

- **Determine that restraint or force is required to ensure that the person receives necessary care or support?**
 - What is the harm from which the person is protected?
 - What is the nature of the restraint? Bedsides? Harnesses? Sedation? Interventions that prevent mobility? Etc...
 - Are the restrictions the less restrictive option?
 - In what circumstances are the restrictions to be implemented?
 - How are the staff trained in implementing the restrictions?
 - Does the care plan record that the person lacks capacity around the restriction?
 - Does the care plan explain the best interests need for the restrictions?

- **Recognise that the person lacks the capacity to consent to the medication regime?**
 - How was capacity assessed?
 - What support was provided to the person to make the decision?
 - How is the medication administered?
 - Does it include sedation? Under what circumstances?
 - Is force/ restraint used to administer the medication? (including covert medication?)
 - Does the care plan refer to the GP/ Medical best interests decision taken to arrange the medication?

- **Recognise that the person lacks the capacity to agree to the care plan?**
 - What support has been provided to involve the person in the care plan?
 - How relatives / carers been involved in the care plan?
 - How is the care plan to be reviewed?

While it is unlawful to deprive a person of their liberty without authorisation, Managing Authorities should consider that unnecessary applications for standard authorisations in circumstances that don't constitute deprivation of liberty place undue stress on the person being assessed, and on their families and carers.

Where deprivation of liberty is likely, consideration must first be given to establishing whether the individual's care or care plan can be adjusted to avoid deprivation of liberty. (See MCA DOLS Code Chapter 2, 2.16, p21.)