

Deprivation of Liberty: What families need to know?

How do they apply to people
living in the community?

Deprivation of Liberty & Care in the Community

Many people need care and support from care workers, health professionals and often from their families and friends. This care is sometimes received in the person's own home or in a family home and as with other care settings this care must be delivered in a way that keeps them safe and does not restrict their freedom unnecessarily.

This is particularly important for people who lack the 'mental capacity' to make their own decisions about their care and treatment.



Mental capacity is the ability to make a decision for yourself. People who cannot do this are said to 'lack capacity'. This might be due to injury, a learning disability, mental health problem or a condition such as dementia. The Mental Capacity Act (MCA) provides guidance about making decisions for people who cannot make decisions about their care or treatment.

Sometimes, when people are unable to make some decisions for themselves they may also be seen as being 'deprived of their liberty'.

In 2014, deprivation of liberty was defined in law as being when a person is:

- Unable to make decisions about their care and treatment and,
- not free to leave, and
- is under constant supervision and control

In these situations, the person deprived of their liberty must have their human rights safeguarded like anyone else in society and this is done through periodic independent checks that review the persons care arrangements to ensure they are in the person's best interests. When the local authority

becomes aware that someone is potentially being deprived of their liberty in the community, they must apply to the Court of Protection for authorisation of that deprivation. It is the Court of Protection who independently checks that the care arrangements are in the person's best interests.

It's not always easy to determine what a deprivation of liberty is or looks like. A person who lacks capacity, temporarily or otherwise, may have to be safeguarded from harming themselves and the law requires evidence that these interventions are proportionate. Examples of interventions that may indicate that a person is deprived of their liberty would include:

- The use of medication to manage behaviours that challenge others
- The giving of physical support with the majority of aspects of daily living, especially where that support is provided according to a timetable set not by the individual but by others;
- The use of real-time monitoring within the home environment (for instance by use of CCTV or other assistive technology)
- The use of physical interventions by families or paid care workers to keep the person safe
- The door being locked, and where the individual does not have the key and is unable to come and go as they please
- The individual regularly being locked in their room (or in an area of their home) or otherwise prevented from moving freely about their home;



If the local authority believe that someone may be being deprived of their liberty we will first consider whether there is any less restrictive way of caring for them. As part of this process, family members, friends and carers will be consulted to give their views.

If it is not possible to care for someone in a less restrictive way, then the local authority will apply to the appropriate Court to seek permission to deprive the person of their liberty. This process can take some time and the Social Worker responsible for the case will keep those caring for the person and those interested in their welfare updated on the process and progress of the application.

Families and friends of the person must always remember that if a person is seen to be deprived of their liberty, by the local authority or Court of Protection that this doesn't mean that anyone is doing anything wrong.