

Deprivation of Liberty and young people under 18

What professionals and families
need to know

Opening Statement

Before explaining what is meant by Deprivation of Liberty, it is vitally important that families, friends and professionals supporting a young person who may be deprived of their liberty remember, that if a person is perceived to be deprived of their liberty, this doesn't mean anyone is doing anything wrong. In fact, it typically will mean the care being delivered is being done in a way that restricts the person's liberty as little as possible and that this is being done in their best interests and in a way that is less restrictive. When the word 'safeguard' is used (Deprivation of Liberty Safeguards) this is very different to 'Safeguarding' as it only means that a process will have to be followed.

This factsheet is focusing on deprivation of liberty for under 18's. If you want to find out more about the process for deprivation of liberty for people 18+ in care homes and hospitals click [here](#), and to understand the process for people 18+ in the community click [here](#).



Introduction

Many young people (16+) and children with learning disabilities, autism or any form of special educational needs may require care and support in their lives. This support is often given from families, friends, care workers and health professionals. This care must be delivered in a way that keeps them safe and at the same time does not restrict their freedom unnecessarily.

This is particularly important for people who are 16 years or over, who lack the mental capacity to make their own decisions about their care and treatment and where families and professionals are making decisions for them in the persons best interests.

The Mental Capacity Act 2005 is a law that protects people 16 and above around decision-making. It says that: *'Every adult, whatever their disability, should be able to make their own decisions wherever possible'*.

But if a decision is too big or complicated for a person to make, even with appropriate information and support, then people supporting them must make a decision for them in their best interests in a proportionate manner.

To find out more about the Mental Capacity Act, access either of the following guides:

- [Supporting people: Using the Mental Capacity Act - a guide for family and friends](#)
- [Mental Capacity Act resource pack - for family carers of people with a learning disability](#)

What is meant by deprivation of liberty

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

- subject to continuous supervision and control? and
- not free to leave? – with the focus, being not on whether a person seems to be wanting to leave, but on how those who support them would react if they did want to leave where they are living.

In addition to this, if the person lacks the capacity to consent to their care and support arrangements (no matter who was providing the support), the person would be seen as being deprived of their liberty and their rights would need to be protected and a process would then need to be followed. This is done through periodic independent checks that review the person's care arrangements to ensure they are in the person's best interests and as least restrictive as possible. This is the 'safeguard' component of deprivation of liberty.



Deprivation of Liberty: Children and Young People (16-17)

If a local authority becomes aware that a young person is potentially being deprived of their liberty, professionals, typically working in social care, will have to consider the following points:

1. Does the young person's care arrangements indicate that they are potentially being deprived of their liberty, i.e. the young person is:
 - not free to leave and
 - under continuous supervision and control.
 - In addition to this, is the care being delivered more restrictive than what you would typically find for a another young person of the same age.

2. Is there consent for these care arrangements? Consent for the care arrangement can only be given by the young person, if they are able to make the relevant decision. Since a recent Supreme Court decision, parents are not able to consent to care arrangements that amount to a deprivation of liberty for 16 or 17 year olds.

If the young person's care arrangements potentially indicate that they are being deprived of their liberty and the young person (16 and 17) lacks the capacity to consent to the care arrangements, the local authority will need to explore whether the person is deprived of their liberty.

It's not always easy in practice 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 (which in law are described as restraints, restrictions) are proportionate.

Examples of measures that may be seen as potentially liberty restricting 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 young person, but by others;
- The use of real-time monitoring within the home environment (for instance, the 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;
- Having constant supervision whilst out in the community to keep the person safe.

If the local authority believe that a young person is being deprived of their liberty they 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 have to 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.

It may appear this is a bureaucratic process, and the government have acknowledged this and they plan to have a more person centred process in place sometime after October the 1st 2020.