

What are The Deprivation of Liberty Safeguards?

The law tells us that people who are being looked after in hospitals, care homes or supported living should be able to make choices about their life and to be as independent and as safe as possible. We need to make sure that we are getting the right balance between allowing people to do what they want, and go where they want, while keeping people safe and protected at the same time. The Deprivation of Liberty Safeguards are simply a way of achieving that.

The safeguards apply to vulnerable people aged 18 or over who have mental health needs (this includes dementia), who are in hospitals and care homes and who **do not have the mental capacity (ability) to make decisions about their care or treatment**. If they lack capacity (or are unable) to make these decisions then the law allows us to make decisions for them in their best interests. To meet the requirements for an assessment under the Deprivation of Liberty Safeguards the following criteria must be met:

1. The person **MUST lack capacity to consent to their care or treatment in the care home, hospital or other supported living arrangement**.
2. The person is not **free to leave**. That means the person is not free to live where they want or with who they want.
3. The person is **under continuous supervision and control**. For example: Do staff always need to be aware of where the person is, who they are with and make checks and take action if there is any doubt about this?

We also need to consider if the living situation is in the person's best interests and if so, if it is the least restrictive option to their rights and freedom.

What happens when a request for an assessment is made?

As part of the Deprivation of Liberty Safeguards we carry out a number of independent assessments alongside a doctor. The safeguards ensure that they speak to those who mean the most to the person or to those who have some legal right to represent the person. We provide the person with a representative for the safeguards and give the person (or their representative) the right to challenge a deprivation of liberty through the Court of Protection. If the above criteria are met then we decide how long the authorisation will last for (maximum of 12 months) and then we speak to all concerned to review the authorisation.

Any other living accommodation

If the above criteria are met and the person is being deprived of their liberty in any other living accommodation, then the Local Authority may need to apply to the Court of Protection to seek authorisation. If so, then we would need to consult with the person, their carers, relatives and representatives.

Further information

The safeguards apply in England and Wales, but Northern Ireland (which does not have a Mental Capacity Act) has no such system in place. The safeguards do not apply when someone is detained. ('sectioned') under the Mental Health Act 1983.