

Keeping vulnerable adults safe

Things you need to know

Deprivation of liberty

April 2009

Deprivation of Liberty Safeguards fact sheet – for people who work with adults
Basic Introduction to the Safeguards

Introduction

The Mental Capacity Act 2005 provides a framework for making decisions on behalf of people who don't have the mental capacity to do so for themselves. The Deprivation of Liberty Safeguards is a new provision in the act that will be implemented in April 2009.

Background

The Deprivation of Liberty Safeguards were introduced following the Bournemouth judgement made in October 2004 by the European Court of Human Rights. This case involved a man with severe learning disability and autism (H), H had lived in Bournemouth Hospital for 30 years before leaving to live with carers. Following an incident of self-harm at a day centre he was re-admitted to Bournemouth. This was challenged through the courts, going all the way to the European Court, where it was judged to have been unlawful to deprive him of his liberty in this way without safeguards. The new safeguards are an attempt to address this.

Who is covered?

The safeguards apply to people in England and Wales who lack capacity to consent to the arrangements made for their care or treatment, but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary to protect them from harm and appears to be in their best interests. A large number of these people will be those with significant learning disabilities, or older people who have dementia or some similar disability, but they can also include those who have certain other neurological conditions (for example as a result of a brain injury).

The safeguards apply to people over 18 years in care home and hospital settings.

What is the aim of the safeguards?

The aim of the safeguards is to:

- make sure people can be given the care they need in the least restrictive regimes
- prevent arbitrary decisions that deprive vulnerable people of their liberty
- provide safeguards for vulnerable people
- provide the rights of challenge against unlawful detention.

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What is and isn't deprivation of liberty?

There may be some confusion over what is a deprivation of liberty and what is a restriction. The safeguards don't stop the use of reasonable restraint or suggest that simply using a locked door or a key pad to keep people safe would automatically amount to deprivation of liberty. However there are a number of common indicators for deprivation of liberty:

- Choice and control – unnecessary restrictions within the care home and unnecessary control from staff
- The outside world - people not able to keep contact with friends, relatives and carers
- Restraint (including medical restraint) - unreasonable or disproportionate use of restraint.

What if it is in someone's best interest to deprive them of their liberty?

There are some occasions when a person may need to be deprived of their liberty. To make sure this only happens when there are no other alternatives care homes will need to apply to Kirklees Adult Services. Kirklees will make sure that a full assessment is done. These assessments will be carried out by Best Interest Assessors (these will be Senior Social Workers in Access and Assessment).

Kirklees will let the Care Home know if the application is approved or declined within 7 days for urgent cases and 21 days for standard cases although temporary transitional arrangements for April 09 extend these timeframes for the first month of implementation. If the application is approved a time period will be put in place when the situation should be reviewed.

If authorised, a person independent of the care home will be appointed to support the resident and identify if any changes in circumstances might trigger a review or an appeal. This is called a Relevant Person's Representative.

Where do I go for more information?

We will keep you informed through the intranet and future newsletters. You can find out more about the Deprivation of Liberty Safeguards on the Department of Health Website at

<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

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For more information

For information on health and social care please contact your local Gateway to care on 01484 414933, NHS Kirklees PALS Service on 01484 466172.

Information in other formats

Kirklees Adult Services is committed to ensuring that its communication is clear, plain and available for everyone. This information can be made available in languages other than English. It can also be made available in large print, audio CD, audiotape and Braille by telephoning 01484 225274.

یہ معلومات انگریزی کے علاوہ دوسری زبانوں میں، بڑی لکھائی میں، سی ڈی یا ٹیپ پر اور بریل میں بھی فراہم کی جاسکتی ہے۔ براہ مہربانی اس نمبر پر فون کر لیں: 01484 225274 (Urdu)

આ માહિતી અંગ્રેજી સિવાયની બીજી ભાષાઓમાં, મોટી છપાઇમાં, ઓડિઓ સી.ડી., ઓડિઓ ટેપ અને બ્રેઇલમાં ઉપલબ્ધ કરી શકાય છે. મહેરબાની કરી 01484 225274 નંબર પર ટેલિફોન કરો. (Gujarati)

اسے معلومات انگریزی تھئی علاوہ دونیاں زبانوں، موٹی لکھائی، سی ڈی یا ٹیپ پر تہ بریل وچ وی لپی سکئی اہہ۔ مہربانی کری تہ ہس نمبر اپر فون کری کینو: 01484 225274 (Pahari)

ਇਹ ਜਾਣਕਾਰੀ ਅੰਗ੍ਰੇਜ਼ੀ ਤੋਂ ਇਲਾਵਾ ਹੋਰ ਬੋਲੀਆਂ, ਵੱਡੇ ਆਕਾਰ ਦੀ ਛਪਾਈ, ਆਡੀਓ ਸੀ ਡੀ, ਆਡੀਓ ਟੇਪ ਅਤੇ ਬ੍ਰੇਲ ਵਿਚ ਵੀ ਮਿਲ ਸਕਦੀ ਹੈ। ਕ੍ਰਿਪਾ ਕਰਕੇ 01484 225274 'ਤੇ ਟੈਲੀਫੋਨ ਕਰੋ। (Punjabi)

这些资料备有其它语文、大字体、语音光碟、录音带和凸字版本可供索取。请致电 01484 225274 查询详情。(Chinese)

Te informacje można nabyć w różnych językach, w powiększonym druku, na płycie kompaktowej lub na taśmie i Braille. Proszę telefonować na numer 01484 225274. (Polish)