Deprivation of liberty safeguards

Who is this leaflet for?
This leaflet has been produced by Royal Cornwall Hospitals Trust (RCHT) to provide patients and their families with information on Deprivation of Liberty.

What is a Deprivation of Liberty?
If you are stopped from doing the things you want all the time in a hospital this is called being deprived of your liberty.

There is no list of what a deprivation of liberty is, but examples include:
- staff in hospital having control over all of the decisions in your life
- not being allowed to leave the hospital where you are staying
- your family, carers or friends not being allowed to come and see you.

If you are being cared for and treated in this way you must have a special agreement called a Deprivation of Liberty Safeguards Authorisation, which will be put in place to keep you safe. This is the law and the Deprivation of Liberty Safeguards are part of the Mental Capacity Act 2005.

When will the Deprivation of Liberty Safeguards be used?
The Deprivation of Liberty Safeguards are for people who cannot make a decision about the way they are being treated or cared for in hospital, where other people are having to make this decision for them.

Deprivation of Liberty Safeguards are in place to give you the protection you need when you are being cared for or treated in ways that deprive you of your liberty.

There are six requirements which all need to be met. You must:
1. be 18 and over
2. be assessed as suffering from a mental disorder, which includes all people suffering from learning disabilities, but excludes people under the influence of alcohol or drugs
3. be assessed as lacking capacity
4. not have any other existing authority for decision making in place ie Lasting Power of Attorney or Advanced Decision
5. not be detained under the Mental Health Act or on leave from the Mental Health Act or Guardianship, Supervised Community Treatment or Conditional Treatment.
6. need to be deprived of liberty, in your best interests, to prevent harm to yourself.

The Court has now confirmed that to determine whether a person is objectively deprived of their liberty there are two key additional questions to ask, which they describe as the ‘acid test’:

a) Is the person subject to both continuous supervision and control?
AND
b) Is the person not free to leave?
This means that if a person is subject to continuous supervision and control and not free to leave they are deprived of their liberty. If this is the case Royal Cornwall Hospitals Trust will complete an emergency application to deprive you of your liberty. The Trust will write to you and inform you of this.

**Why do we need the Deprivation of Liberty Safeguards?**

Sometimes you may need treatment or care from people like doctors and nurses or care workers if you are staying in a hospital or living in a care home.

People who are lacking capacity need extra protection.

You should be treated or cared for in a way that means you are safe and free to do the things you want to do.

If you are stopped from doing the things you want all the time, this is called being deprived of your liberty.

Sometimes people having treatment or care might be deprived of their liberty to keep them safe. If this happened to you it would have to be in your best interests.

The hospital would have to think very carefully about the decisions they make for you, to make sure those decisions are good for you.

If you are deprived of your liberty you need special protection called safeguards to make sure you are looked after properly and are kept safe. The Deprivation of Liberty Safeguards are the way to give you the special protection you need.

**What happens if I am being deprived of my liberty?**

There is a book of rules that explains what should happen. This is called the Code of Practice and tells RCHT and Cornwall Council what to do.

The Code of Practice says that the people who are caring for or treating you (Royal Cornwall Hospitals Trust, or RCHT) are called the managing authority. If the managing authority thinks they need to deprive you of your liberty, they must make sure they are not breaking the law.

1. RCHT will apply for an Urgent Order to deprive you of your liberty. When this is completed we will write to inform you and your next of kin and provide you with this leaflet.
2. The managing authority (RCHT) must write to the supervisory body (Cornwall Council) to tell them that they think you need Deprivation of Liberty Safeguards.
3. The supervisory body (Cornwall Council) must decide if you need Deprivation of Liberty Safeguards.
4. They will arrange at least two people to check how you are being treated or cared for. These people are called assessors and will visit you in the first seven days.
5. One assessor is called the Best Interests Assessor. The Best Interests Assessor will be a person who does not work with you.
6. The Best Interests Assessor will write a report to tell the supervisory body if you need a Deprivation of Liberty Safeguards Authorisation and for how long this should be. The Deprivation of Liberty Safeguards should be for as short a time as possible and never for longer than a year.
What will happen after the Best Interests Assessor’s report?

This will depend on the findings in the Best Interest Assessor’s report. The report will say one of the following:

- **you are being deprived of your liberty and that this is in your best interests.** The supervisory body (Cornwall Council) will then write to the managing authority (RCHT) to tell them this and ask them to explain this to you. You will get a Deprivation of Liberty Safeguards Authorisation to make sure you are safe. Or,

- **you are being deprived of your liberty but some changes are needed** – for example, changes to the way you are cared for. If this is the case, the supervisory body will write to the managing authority to tell them this and ask them to explain this to you. The changes must happen. You will get a Deprivation of Liberty Safeguards Authorisation to make sure you are safe. Or,

- **you should not be deprived of your liberty.** The supervisory body will write to the managing authority to tell them this and ask them to explain this to you. You must not be deprived of your liberty any more, so you will not need a Deprivation of Liberty Safeguards Authorisation.

How do I appeal against being deprived of my liberty under the Deprivation of Liberty Safeguards?

If you (or your representative) are reading this because you are deprived of your liberty, you can contact the Court of Protection at:

**The Court of Protection Customer Services**
PO Box 70185 First Avenue House
42-49 High Holborn
London WC1A 9JA

Telephone: 0300 456 4600 (Phone lines are open from 9am–5pm)
Email: courtofprotectionenquiries@hmcts.gsi.gov.uk

What the words mean

**Assessor** – Someone who checks for the supervisory body that a person is being treated or cared for in the right way.

**Best Interests Assessor** – The person who writes a report to tell the supervisory body if someone needs a Deprivation of Liberty Safeguards Authorisation.

**Code of Practice** – A rule book about the Deprivation of Liberty Safeguards.

**Court of Protection** – A special court which decides whether or not a person should be deprived of their liberty.

**Deprivation of liberty** – Stopping someone from doing the things they want all the time in a hospital or care home.

**Deprivation of Liberty Safeguards** – Rules about giving people the special protection they need in a hospital or care home.

**Deprivation of Liberty Safeguards Authorisation** – A special agreement which says a person can be deprived of their liberty.

**Lacking capacity** – When people cannot make a decision for themselves.

**Managing Authority** – The people who are in charge of the care or treatment of someone who is lacking capacity. Royal Cornwall Hospital Trust (RCHT) is a managing authority.

**Mental Capacity Act** – A law about making decisions and what to do when people cannot make some decisions for themselves.
Mental Capacity Act 2005 Deprivation of Liberty Safeguards – Rules to make sure that people who are lacking capacity can be cared for or treated in a way that is right and keeps the law.

Representative – A person who visits someone who is lacking capacity to check they are looked after in a way that means they are safe.

Review – A check to make sure that a person in a hospital or a care home is being treated in the right way.

Safeguard – Something that keeps a person safe.

Supervisory Body – The people who decide if someone needs Deprivation of Liberty Safeguards. Cornwall Council are the supervising body for people in RCHT.

How to find out more

You can also contact Cornwall Council who are responsible for supervising Deprivation of Liberty. The telephone number is: 01872 323426.

You can also appeal by contacting a solicitor directly. Cornwall Council can also advise you of solicitors who specialise in this type of work in Cornwall.

If you want to know more about the Mental Capacity Act:

You can read a number of booklets from the Office of the Public Guardian at:

https://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act

How to find out more about the Deprivation of Liberty Safeguards

There is a rule book about the Deprivation of Liberty Safeguards called the Code of Practice. Everybody caring for you has to follow these rules. The Code of Practice tells you more about the Deprivation of Liberty Safeguards. You can see it at:


If you would like this leaflet in large print, braille, audio version or in another language, please contact the Patient Advice and Liaison Service (PALS) on 01872 252793