



## **Practice Guidance:**

# **Reporting An Unauthorised Deprivation Of Liberty And Considerations In Making A Safeguarding Adult Referral**

Version:	Version 2
Ratified by:	Policy, Protocols and Procedures Sub-group
Date ratified:	January 2012
Author/Originator of title:	Policy, Protocols and Procedures Sub-group
Sub-group Chair:	Kieron Smith, Leeds Safeguarding Adult Partnership Support Unit
Date issued:	February 2012
Review date:	February 2014
Target audience:	Safeguarding coordinators / safeguarding professionals

< This page is intentionally blank >

## Executive Summary

Deprivation of Liberty Safeguards (DoLS) provide protection for people who are without the mental capacity to consent to care or treatment in a hospital or a care home, in a manner that amounts to them being deprived of their liberty. The term unauthorised deprivation of liberty refers to situations where a person is deprived of their liberty without the legal authorisation process being followed.

This practice guidance is intended to provide advice on how to respond to concerns that a person is subject to an unauthorised deprivation of liberty. This includes guidance on what situations may amount to deprivation of liberty, how to report concerns to the hospital or care home and if necessary their supervisory body, and whether a referral into the safeguarding adult process is required.

The practice guidance does not set out the process of applying for Deprivation of Liberty Safeguards (DoLS). However, alternative sources of support and guidance in relation to applying for deprivation of liberty safeguards are identified within Appendix C.

### Contents:

1. What are deprivation of liberty safeguards	2
2. Responsibilities of hospitals and care homes to avoid an unauthorised deprivations of liberty	3
3. How to report a concern that someone has been deprived of their liberty without authorisation	3
4. Is a referral into the safeguarding adult process required?	5
5. Version Control Record	5
Appendices:	
A: Standard Letter: Letter to managing authority (hospital or care home) concerning unauthorised deprivation of liberty	6
B: Standard Letter: Letter to supervisory body (NHS Airedale, Bradford and Leeds or Leeds Adult Social Care) concerning unauthorised deprivation of liberty	7
C: Sources of guidance in relation to applying for deprivation of liberty safeguards	8

## 1. What are deprivation of liberty safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) exist to protect people who cannot make decisions about their care and treatment when they need to be cared for in a particularly restrictive way. They set out a standard process that **hospitals** and **care homes** should follow if they think it will be necessary to deprive a person of their liberty, in order to deliver a particular care plan in the person's best interests.

It is a serious issue to deprive someone of their liberty and every effort should be made to prevent a deprivation of liberty occurring. However, there are some circumstances in which depriving a person of their liberty is necessary to protect them from harm, and is in their best interests. To ensure that the deprivation of liberty is appropriate and in order to safeguard the person's rights, it is essential that any person deprived of their liberty within a hospital or care home is protected by the Deprivation of Liberty Safeguards.

'Whether a deprivation of liberty is occurring depends on the specific circumstances of each individual case. As a result, there is no single definition or a standard checklist that can be used to identify where people are being deprived of their liberty. However, a number of cases concerning deprivation of liberty have come before the European Court of Human Rights and the UK courts.

The following list is based upon the judgments in several of these cases and indicates what circumstances have led to the courts deciding that a person may have been deprived of their liberty:

- restraint was used to admit a person to a hospital or care home when the person is resisting admission
- medication was given forcibly, against a patient's will
- staff exercised complete control over the care and movements of a person for a long period of time
- staff took all decisions on a person's behalf, including choices relating to assessments, treatments, visitors and where they can live
- hospital or care home staff took responsibility for deciding if a person can be released into the care of others or allowed to live elsewhere
- when carers requested that a person be discharged to their care, the hospital or care home staff refused
- the person was prevented from seeing friends or family because the hospital or care home has restricted access to them
- the person was unable to make choices about what they wanted to do and how they wanted to live, because the hospital or care home staff exercised continuous supervision and control over them'.

(Extract DH (2009) Deprivation of liberty safeguards: A guide for hospitals and care homes)

NB: The safeguards do not apply to people detained under the Mental Health Act 1983.

## **2. Responsibilities of hospitals and care homes to avoid an unauthorised deprivation of liberty**

It is necessary to deliver care without restricting people's personal freedoms wherever possible. Health and social care staff may however, in specific circumstances, believe that it is necessary to deprive someone of their liberty in order to give them care or treatment that is in the person's best interests and protects them from harm.

It may be possible to plan in advance so that DoLS authorisation can be obtained before a deprivation of liberty begins. There will however be some circumstances where the need for deprivation of liberty is so urgent that it is in the best interests of the person for it to begin, whilst the application is being considered.

In the event that a hospital or care home realises that it has deprived a person of their liberty or will do so with planned amendments to a care plan, it must:

- alter the way services are being provided or are planned to be provided, such that the deprivation of liberty does not occur; or
- if a person's needs cannot be met by services being provided in an alternative way, the hospital or care home must apply for Deprivation of Liberty Safeguards authorisation.

The hospital or care home can seek advice from the Leeds Deprivation of Liberty Safeguards Helpline: (0113) 2952347 (Monday to Friday 09.00 - 16.30) as to whether a deprivation of liberty may be occurring and how to go about the process of seeking authorisation.

## **3. How to report a concern that someone has been deprived of their liberty without authorisation**

In the event that any person (this may be a friend or family member, a social worker, a nurse, an advocate or any other professional) is concerned that a hospital or care home has or may have deprived a person of their liberty without applying for authorisation they can gain advice from the Leeds Deprivation of Liberty Safeguards Helpline: (0113) 2952347 (Monday to Friday 09.00 - 16.30). The advice line can advise on what circumstances may amount to a deprivation of liberty and the process for raising concerns.

In summary the process of raising concerns is as follows:

- The person should advise the hospital or care home of the possible deprivation of liberty so that they can consider and act on these concerns. A standard Letter (Appendix A) can be used for this purpose.
- If the hospital or care home is unable to reassure the person, or does not bring the deprivation of liberty to an end or apply for Deprivation of Liberty Safeguards authorisation within a reasonable period (normally considered to be 24hours). The concerned person should formally notify the supervisory body (NHS Airedale, Bradford and Leeds or Leeds Adult Social Care).

Contact should be via the DoLS Administrative Team either by using the standard letter (Appendix B) or verbally via the DoLS Helpline. The supervisory body can then arrange for an assessment to determine if a deprivation of liberty is occurring.

Further guidance and explanation can be found within the Deprivation of Liberty Safeguards Code of Practice, Chapter 9. Accessible on [www.leedssafeguardingadults.org.uk](http://www.leedssafeguardingadults.org.uk)

#### 4. Is a referral into the safeguarding adult process required?

Unauthorised deprivations of liberty should be addressed with urgency through the procedures described in Section 3. Consideration should also be given to the need for safeguarding procedures to be followed. This guidance should be used by practitioners in deciding in what circumstances a safeguarding referral is appropriate. For ease of description, these circumstances have been grouped into 3 categories:

- A. Unauthorised Deprivation of Liberty within a Hospital or Care Home – Where a person is being deprived of their liberty but the hospital or care home has not gained the legal authorisation to do this.

For example;

- A safeguarding adult referral is likely to be required if a hospital or care home does not apply for a DoLS authorisation or does not do so within in a *timely manner*, after the deprivation of liberty has been drawn to their attention.

The Deprivation of Liberty Safeguards Code of Practice states that a ‘timely manner normally means within 24hours’. A safeguarding referral may not be required if this timescale is exceeded providing the delay is reasonable in all the circumstances and the hospital or care home is demonstrating intent to seek appropriate legal authorisation.

- B. Unauthorisable Deprivation of Liberty under DoLS– This is where a person is being deprived of their liberty but it cannot be authorised under DoLS.

For example;

- Where a DoLS application cannot be approved because the actions taken by the hospital or care home are too restrictive (and/or not in the person’s ‘best interests’) and the hospital or care home has not amended the care plans upon this advice.
- The deprivation of liberty is occurring in a setting where Deprivation of Liberty Safeguards do not apply (for example, a persons own home or a supported tenancy) and this has not been authorised by the Court of Protection. In the event that neither an application to the Court of Protection nor the ending of the deprivation of liberty has occurred, despite these concerns being drawn to the attention of relevant persons, consideration should be given to a safeguarding referral to ensure the persons safety and wellbeing.

NB: Deprivation of Liberty Safeguards only apply to hospital or care home settings. Where a person is detained under the Mental Health Act, neither Deprivation of Liberty Safeguards nor applications to the Court of Protection are required in relation to the deprivation of liberty.

C. Where, as a result of a failure to adhere to the law/code of practice/guidance in relation to Deprivation of Liberty Safeguards, a person experiences harm or is being placed at a risk of harm

For example;

- If an unauthorised deprivation of liberty has resulted in a person experiencing harm then a referral into the safeguarding process should be made, even if the authorisation process is now taking place.
- Deprivation of Liberty Safeguards remain in place unnecessarily because the care arrangements have not been appropriately reviewed or continues after the authorisation has ended.

Additional Considerations:

- Consideration should be given to the additional benefits that a safeguarding investigation will bring when an authorisation process is already underway to address a deprivation of liberty.
- A person will often need to make a professional judgement as to whether a safeguarding adult referral is required. It may be necessary to consult with ones line manager and or seek advice from the Leeds Safeguarding Partnership Advice Line 0113 2243511 in reaching a decision.
- This guidance may not cover all the scenarios that may occur. Deprivation of liberty is a serious matter. If a person remains in doubt as to whether or not to make a safeguarding referral, they should make the referral.

## 5. Version Control Record

Version	Version or document being superseded	Changes from previous version (record origins of document if new)
2	Version 1 (26.5.11) ratified by safeguarding board.  Version 2 amendments ratified by sub-group on 26.1.12 , amendments notified to Board February 2012.	Amendments reflect safeguarding thresholds clarified within 2012 Leeds Safeguarding Adult Partnership Multi-Agency Policy and Procedures – specifically the replacement of references to ‘adverse effects’ with ‘harm or risk of harm’.  In addition: title page added; version control system added; references to NHS Leeds have been replaced by NHS Airedale, Bradford and Leeds reflecting organisational restructures.

**Appendix A: Standard Letter: Letter to managing authority (hospital or care home) concerning unauthorised deprivation of liberty**

<b>Deprivation of Liberty Letter 1</b>
<b>Letter to managing authority concerning unauthorised deprivation of liberty</b>
<p style="text-align: right;">Sender's address</p> <p style="text-align: right;">Contact telephone number Date</p> <p>Name and address of managing authority</p> <p>Dear Sir/Madam</p> <p style="text-align: center;">Re [name of person/resident]</p> <p>I am writing to you about the above-named person, who is accommodated in your hospital/care home [delete as applicable].</p> <p>I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc].</p> <p><b>It appears to me that this person lacks capacity to consent to the arrangements made for their care or treatment and is subject to an unauthorised deprivation of liberty. I am therefore writing, in accordance with the provisions of the Mental Capacity Act 2005, to ask you to give an urgent deprivation of liberty authorisation and to request a standard authorisation from the supervisory body.</b></p> <p>My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that .... [briefly state reasons]</p> <p>As I am sure you know, if you do not request a standard authorisation within a reasonable period, I may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.</p> <p>Thank you for your consideration of this matter.</p> <p>Yours faithfully</p> <p>Signature</p> <p>Name of sender in block capitals</p>
<p><b>Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.</b></p>

**Appendix B: Standard Letter: Letter to supervisory body (NHS Airedale, Bradford and Leeds or Leeds Adult Social Care) concerning unauthorised deprivation of liberty**

Deprivation of Liberty Letter 2

**Letter to supervisory body concerning unauthorised deprivation of liberty**

Sender's address

Contact telephone number Date

The DoLS Administrative Team  
St. Mary's House  
1<sup>st</sup> Floor South Wing  
St. Mary's Road  
Leeds  
LS7 3JX

(The DOLS Administrative Team receives notifications on behalf of NHS Airedale, Bradford and Leeds as well as Adult Social Care. They can be contacted using this letter or verbally via the DoLS Helpline: (0113) 2952347))

Dear Sir/Madam

Re [name of person/resident]

I am writing to you about the above-named person who is accommodated in [Name and address of hospital or care home].

I am the person's [state relationship or interest in the matter, e.g. 'child', 'friend', 'representative', etc]

**On [enter date], I wrote to/spoke with the managing authority of the [name of hospital or care home]. I informed them that it appeared to me that this person lacked capacity to consent to the arrangements made for their care or treatment and was subject to an unauthorised deprivation of liberty. I asked them to give an urgent deprivation of liberty authorisation and to request a standard authorisation, in accordance with the provisions of the Mental Capacity Act 2005.**

My reasons for believing that this person is subject to an unauthorised deprivation of liberty are that .... [briefly state reasons]

**I understand that the managing authority has not requested a standard authorisation.**

**I am therefore writing to make a formal request that you now decide whether or not this person is subject to an unauthorised deprivation of liberty.**

Thank you for your consideration of this matter. Yours

faithfully

Signature

Name of sender in block capitals

**Notes: The use of this letter is not mandatory. However, any oral or written request should include the information in bold in the above letter.**

## **Appendix C: Sources of guidance in relation to applying for deprivation of liberty safeguards (DoLS)**

Useful guidance on how to apply for Deprivation of Liberty Safeguards can be obtained from the following:

- Leeds Deprivation of Liberty Safeguards Helpline: (0113) 2952347  
(Monday to Friday 09.00 - 16.30)
- The Leeds Safeguarding Adult Partnership Website [www.leedssafeguardingadults.org.uk](http://www.leedssafeguardingadults.org.uk) which includes the following guidance:
  - Deprivation of Liberty Safeguards Code of Practice;
  - Deprivation of liberty safeguards: A guide for hospitals and care homes,
  - Deprivation of Liberty Poster
- Department of Health website ([www.doh.gov.uk](http://www.doh.gov.uk)). In particular, the pages titled: Mental Capacity Act 2005: Deprivation of Liberty Safeguards - standard forms and guidance for managing authorities (hospitals and care homes), that are located at:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_103874](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_103874)