

July 2021



Dorset Advocacy

Liberty Protection Safeguards



Contents



1. Introduction

2. Story: Steven Neary



3. Mental Capacity Act

4. Keeping People Safe



5. Why the Deprivation of Liberty Safeguards must change

6. Liberty Protection Safeguards

7. Care Planning



8. Checking the right things are happening

9. What next?

1. Introduction

Your right to liberty



Everyone has a right to liberty - to be free.

For example;

- Freedom to leave your home alone.
- Freedom to go where you want to go.

But there are some exceptions where people cannot be free:



- If a person has committed a crime
- If it would be dangerous for them to be free to do what they want to do, **and** they cannot understand the risks



Taking away a person's freedom is a serious thing to do. There are **laws** that protect **all of us**. The Courts decide whether these laws are being followed properly or not.

People can appeal if they think their freedom has been taken away unlawfully. **Advocates** help people's views and wishes to be heard by the judge.



2. Story: Steven Neary

Hillingdon Council decided that a young autistic man called Steven **couldn't go home** after staying in a local respite centre.



Steven's Dad thought he would be away for **a few days**. But instead the Council sent Steven to a secure "positive behaviour unit". **He was not allowed to leave.**



Steven was **extremely distressed** in the unit. He wanted to **go home**. His Dad wanted him to go home too.



He was away from home for **over a year**. His case went to Court. **The judge agreed with Steven and his family.**

He now lives in his own home with a team of support workers.

The judge said:



- The **Council** should **not** have stopped Steven living with his Dad.



- The **Council** should have taken his case to **court**, because Steven did not want to be in the unit.



- The **Council** should have followed the law about **mental capacity** and **taking away people's freedom**.



- The **Council** should have thought properly about what was in Steven's **best interests**.



- **Steven's views and wishes** should have been listened to.



3. Mental Capacity Act

The Liberty Protection Safeguards will add to the Mental Capacity Act. The Act says:



1) Always assume that a person is **able to make a decision**, unless it is shown that they are not.

2) Give people **as much support as possible** with making decisions.



3) People **can make unwise decisions**, if they understand what they are doing.



4) If someone cannot make a decision, it can be made in their **best interests**. Their **views and wishes** are still very important.



5) Always find the **least restrictive** way of protecting the person.

[Easy Read guide to the Mental Capacity Act.](#)

4. Keeping people safe



Sometimes people need to be kept safe.

For example, if a person has dementia and they are likely to get **lost** or **injured** if they go out alone.



Someone may **agree** to being supervised and stopped from going out. Or, they might **object**. There are many ways that people might communicate that they are unhappy.



We must find ways to keep people **safe**, protect their **rights**, and respect their **views and wishes**.

Laws and guidance help us to make sure this is always done in the way that is best for the person.



We use the [Deprivation of Liberty Safeguards](#) (DOLS) to do this in hospitals and care homes at the moment.

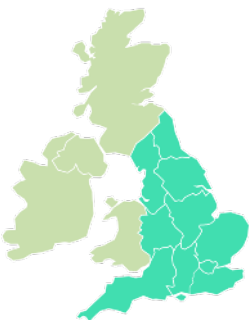


5. Why the Deprivation of Liberty Safeguards (DOLS) must change

- DOLS is **complicated**
- The rules are **out of date**
- The process can be **slow**



- DOLS only applies in **care homes** and **hospitals**. People are deprived of their liberty in lots of other places too.



- In England, Local Councils are responsible for **all** DOLS, even if the Council is not responsible for the person's care.



For example, if they are in a hospital or Assessment and Treatment Unit (ATU).

6. Liberty Protection Safeguards

What will change?



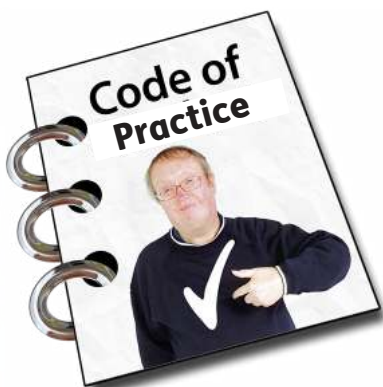
Hospitals and other **NHS organisations** will be responsible for deprivation of liberty, as well as Councils.



The rules will apply to **everyone** who is deprived of their liberty, not just people in care homes and hospitals. This includes people in their own home.



Everyone aged **16+** will be protected by the safeguards.



Guidance about how the Liberty Protection Safeguards work will be written in a **Code of Practice**.



7. Care Planning

A person's **mental capacity** and **best interests** must be thought about when planning their care.

Mental Capacity

The person's ability to make a decision.

Best Interests

If a person cannot make a decision, this is the process to decide on the **best option** for them. The person's views and wishes **must** be considered.



The Liberty Protection Safeguards say that people who plan care must ask:

- Does the person have to be **supervised** and have what they do **controlled**?
- What might happen if we **don't** supervise them and control what they do?
- What is the **least restrictive** option? How can we give the person the **most freedom** possible?





8. Checking that the right things are happening

The organisation who is looking after the person is responsible for following the Liberty Protection Safeguards.

For example:



If the person is in hospital or other inpatient unit, this will be the **NHS Trust**.



If the person is at home, in supported living, or in a care home, this will be the **Council** in most cases.

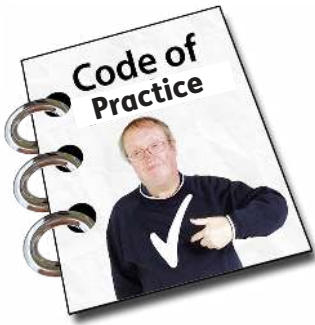
These people are also very important:

- **Family and friends**
- **Advocates** - to help you to get your views and wishes heard
- **The Court of Protection** - to protect your legal and human rights.



An advocate can ask the judge to look at your case if you are unhappy about being deprived of your liberty.

9. What next?



We are waiting for the LPS Code of Practice to be published. This will tell us much more about all the different roles and responsibilities.



We will make another Easy Read document about the Code of Practice when we have it.



Dorset **Advocacy**



made with
photosymbols[®]

Designed by Clare Tarling

With many thanks to:

Mark and Steven Neary (father and son in case study)
Katie Turner (Independent Advocate)
Alex Ruck Keene (Barrister)