

# The Deprivation of Liberty Safeguards Briefing

Mary Johnson  
Lorraine Currie

# Objectives

By the end of the session you will be able to

- Confirm existing knowledge
- Identify changes to be implemented due to recent case law
- Discuss the ‘ Acid Test’
- Be aware of the effects of the above in procedure and practice

# The beginning thoughts

## **Article 5: Right to Liberty and Security**

*1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law -*

# And

*Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*



*The Bournemouth case....* HL was subject to an informal admission under “common law-best interests”

European Court of Human Rights found he had been deprived of his liberty unlawfully **without legal procedure or safeguards**

The Department of Health committed to

**“close the “Bournemouth gap”**



after 3 months consultation the  
Government then produced .....

## **The Deprivation of Liberty Safeguards**

This is essentially a lawful way to detain a person who lacks capacity to consent to be in hospital or a care home, but needs to be there.

# What are restrictions?

Before we look at the 'Safeguards' we will spend some time looking at restrictions.

Then we will look at when they could become a deprivation

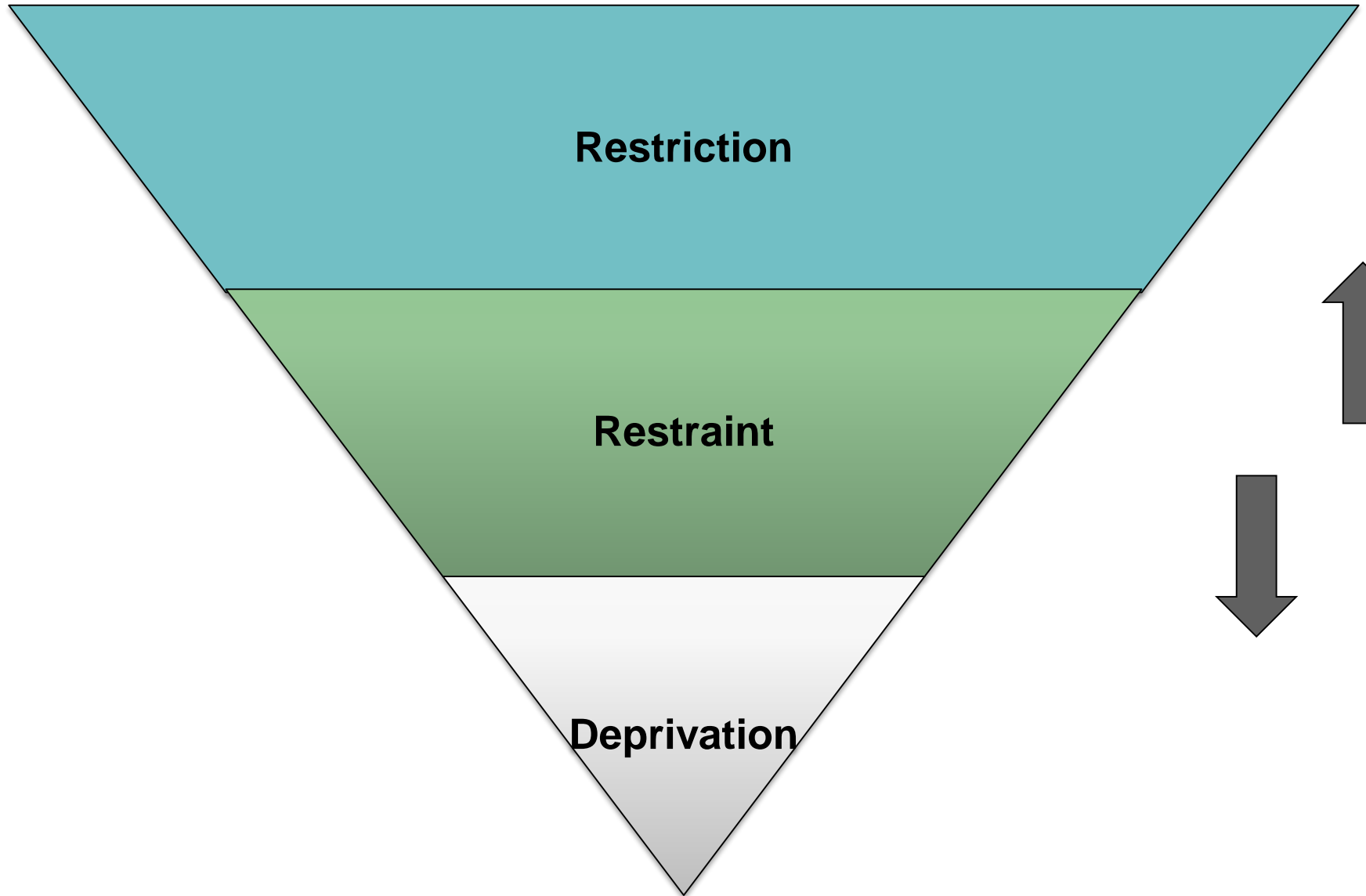
What are the restrictions that may be in place for service users, patients



# Examples of restrictions

- Physical restraint
- Locked doors
- Coded doors
- Being kept in bed
- Use of side rails
- Use of a lap belt
- Only leaves building with support
- Covert medication
- 1:1 or 2:1 supervision
- Sedation
- Behaviour management plans
- Medication for behavioural issues
- Limits on contacts
- Restricted access to outdoors
- Prevented from leaving





# Restriction is allowable under MCA deprivation isn't



## HL v The United Kingdom 2004 (Bournewood)

“ The distinction between deprivation of and restriction upon liberty is merely one of degree or intensity and not one of nature or substance”

In other words it's not what you do, it's to what extent and for how long

## “Deprivation” and “Restriction” are not the same thing

- It is acceptable under MCA to restrict a persons liberty but not to deprive them of it
- It is essential to understand the distinction between the two
- Every effort should be made to avoid instituting deprivation of liberty care regimes
- A DoLS should be the final option

# Deprivation of liberty Safeguards



## **Liberty**

“The state of being free within society from oppressive restrictions imposed by authority on one's behaviour or political views”

“The power or scope to act as one pleases”

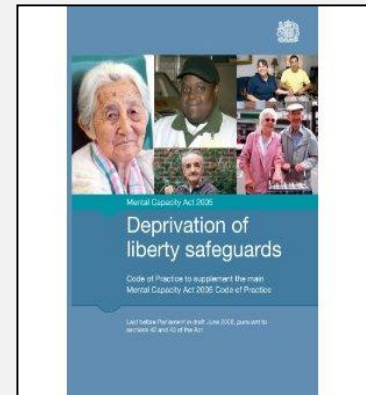
This is the concept

## **Deprivation of Liberty Safeguards**

This is the procedure to safeguard the person.

# For a deprivation of liberty

- There is no one definition
- We have an “acid test” established by the Supreme Court in March 2014
- Subject to this we have some “indicators” of deprivation
- We have the Code of Practice



# What may indicate a deprivation of liberty?

- Restraint is used including sedation to admit the person who is resisting
- Staff exercise control over care, movement of a person for a significant period
- Staff exercise control over assessments, treatment, contact and residence
- A decision has been taken by the institution that the person will not be released into the care of others or permitted to live elsewhere unless the staff consider it appropriate.

- Limited choice about their life in the facility
- Request by carers for the person to be discharged would be refused
- The person unable to maintain social contacts
- Loss of autonomy due to continuous supervision and control



The acid test  
After Supreme court ruling 2014

Deprivation of liberty means the person is:

Not free to leave **AND**

Under continuous supervision **AND** control

Every aspect of this must be satisfied

When assessing whether a deprivation of liberty is occurring, it is necessary to consider the **combined** impact of **all restrictions** placed upon the individual.



## The cumulative effect of restrictions



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## Deprivation of liberty - Cheshire West Supreme Court 2014

An adult with a learning disability living in a bungalow with two other residents, with two members of staff on duty during the day and one 'waking' member of staff overnight. The adult requires prompting and help with all the activities of daily living, getting about, eating, personal hygiene and continence. He sometimes requires further intervention when he exhibits challenging behaviour, but is not prescribed any tranquilising medication. He is unable to go anywhere or do anything without one to one support; he gets 98 hours a week to enable him to leave the home frequently for activities and visits

An 18 year old with a moderate to severe learning disability and problems with her sight and hearing, who require assistance crossing the road because she is unaware of danger, living with a foster mother whom she regards as 'mummy.' Her foster mother provides her with intensive support in most aspects of daily living. She is not on any medication. She has never attempted to leave the home by herself and showed no wish to do so, but if she did, her foster mother would restrain her. She attends a further education unit daily during term time and is taken on trips and holidays by her foster mother

# Two routes



To authorise a deprivation of liberty;

1. Deprivation of Liberty Safeguards
2. Court of Protection

# When is deprivation of liberty authorised by the Court of Protection?

- People deprived in their own home
- Or supported living
- Or any setting which is not a hospital or care home
- Where the 'acid test' applies



# When is deprivation authorised by DoLS

- Patients in hospitals and people in registered care homes
- Aged 18 and over
- Who suffer from a mental disorder *and*
- Lack capacity to consent to the arrangements for their care *and*
- Need to receive care or treatment in a way that amounts to a deprivation of their liberty, *in their best interests*



## How it works

- Care home or hospital realise that a restrictive care plan is necessary
- They identify that this exceeds restrictions permitted under MCA
- There is no less restrictive way of providing care
- Referral made to DoLS team to authorise this (Standard request and /or Urgent)
- Authorisation granted or refused

There are two versions of an authorisation

- Standard
- Urgent



# Urgent authorisation

- Wherever possible authorisations should be obtained in advance
- Where this is not possible the M.A must give itself an urgent authorisation
- An Urgent is a standard that can't wait!
- Lasts for 7 calendar days from the **date you sign it**



# Standard authorisation

- Can be obtained up to 28 days in advance
- Must be considered on admission
- Supervisory body have 21 calendar days to complete assessments
- Maximum period 12 months



- Give a copy to the person and any IMCA
- Explain it to them and their right to apply to CoP
- Inform their family, friends, carers so they can support the person
- Record the steps you have taken to involve family friends, carers etc

## DoLS team

- Shropshire - Ptarmigan House, Sitka Drive,  
Shrewsbury Business Park, Shrewsbury

Tel: 01743 255850

Fax: 01743 255840

e.mail: [dols@shropshire.gov.uk](mailto:dols@shropshire.gov.uk)

- Telford – Care & Support 3A Darby House

Tel: 01952 381207

Fax: 01952 381217

# What happens then?

- Request arrives in DoLS Team
- Assessors are commissioned
- Appointments made, times discussed with Managing Authority
- Assessors will visit (one BIA one Dr)
- Reports compiled on DoLS Forms

# Ending a DoLS Authorisation

- An authorisation cannot be allowed to run out
- Either the person is still being deprived and a renewal must be requested or
- They are no longer deprived and a review must be requested



# Most important

- Restrictions are not “wrong”
- DoLS does not mean “bad practice”
- What is necessary to keep people safe
- Being alert and sending in referrals protects you and the service user