Safeguarding liberty
and human rights in care

Are you interested in how changes to human rights law might affect rights to liberty for people in care? Then this plain English guide is for you.

What are human rights?
Everybody has **human rights**. Human rights are needs that everyone has, that governments have to protect.

For example, people have the right to live in their own home, have a family and have privacy.

A law called the **Human Rights Act 1998** says that the government has to protect people’s human rights.

This law sets out when people’s rights can be restricted. For example because of the need to keep them or other people safe.

Hospitals and local authorities have to protect people’s human rights. Sometimes care homes and care providers do as well.

The right to liberty
One of the most important human rights is called ‘**liberty**’. Liberty means being free to choose where you live and what you do.

When people are deprived of their liberty somebody else chooses where they live, and they are not ‘free to leave’ that place.

When people are deprived of their liberty, they may be watched all or most of the time, or other people always know what they are doing. Other people say what they can or cannot do.

Some people who need care and support are deprived of their liberty, because other people think that is needed to keep them safe.
The government thinks that over 300,000 people in hospitals, care homes, supported living and even in their own homes are deprived of their liberty. This includes lots of older people, people living with dementia, and some people with learning disabilities, autism or brain injuries.

What are Deprivation of Liberty Safeguards?
The law says that, if you are deprived of your liberty, then there need to be checks to make sure that it is right, and done properly.

At the moment these checks are called ‘Deprivation of Liberty Safeguards’. In the future they will be called ‘Liberty Protection Safeguards’. These are special rules about when a person is deprived of their liberty by people caring for them. The rules are most often used for people in care homes and hospitals. In the future they will also apply to people in supported living.

The law says that there need to be extra checks to make sure that it is right that other people choose where a person lives, or what they do, or say whether they can leave or not.

These checks are usually done by local authorities or health organisations like hospitals.

There are special people called ‘Best Interests Assessors’. They talk to people who are deprived of their liberty and their families about their feelings and views.

Best Interests Assessors can help find out if there are less restrictive ways to support someone. This might mean being able to choose where you live, or choose who you see. Or having fewer rules about what you can or cannot do.

Someone will also assess a person’s ‘mental capacity’. This means whether or not they can make choices about where they live and what they do.

If you are deprived of your liberty then the council must choose someone to represent you. This might be a relative or a friend.

You might also get an advocate to help you and your family understand what is happening and speak up for what you want.
If you do not like where you are living, or not being allowed to do some things you want to do, then you can challenge this by going to the ‘Court of Protection’.

The Court of Protection listens to what everyone has to say and then a judge makes a decision.

Sometimes the Court says that people should be allowed to go home, or live somewhere else. Sometimes it says they should be allowed to do some things they would like to do. Or sometimes it says that a person’s care is ok as it is.

Usually it costs a lot of money to go to court. But it is free for people who are deprived of their liberty.

The government wants to change the law on ‘deprivation of liberty’

The government says that it wants to change the Human Rights Act 1998. The government does not like the way the law defines ‘deprivation of liberty’. The government says that too many people are now said to be ‘deprived of their liberty’.

At the moment the rules about who gets liberty safeguards are the same for everyone. This is called a ‘universal test’ of deprivation of liberty. The same rules apply to everyone, even if they have dementia or a learning disability or autism.

The rules say that you are deprived of your liberty if:

- You are ‘not free to leave’ the place where you live (somebody would stop you if you tried to leave); and
- You are under ‘continuous supervision and control’ (somebody always knows what you are doing and would stop you if you did something they did not think you should do).

If the rules say you are deprived of your liberty you get ‘liberty safeguards’.

Who should get liberty safeguards?
We will be discussing who should get liberty safeguards in care.
If somebody’s care is supposed to keep them safe, and other people think it is in their best interests, should they still get liberty safeguards to check the care is right and how the person feels?

If a person seems to be happy, should they still get liberty safeguards? What if they just seem to be happy but are not really happy? For example if they are scared to speak up? Or are on strong medication? Or other people do not understand their behaviour means they are unhappy?

Should it matter where a person lives? Should people in care homes get liberty safeguards? What about people in supported living? What about people living in their own home, or with their family?

Do you think the same rules about liberty should apply for people who need care and people who do not?

Where can I hear stories about the deprivation of liberty safeguards?
You can read a BBC news story about a woman called Manuela Sykes, who had dementia. Manuela was put in a care home by her council, but she did not want to live there. With help from a friend she went to court, and the court said she should have the opportunity to try living in her own home again.

There are also some good films online about the deprivation of liberty safeguards.

The Equality and Human Rights Commission have made a film about a man called HL, who was deprived of his liberty while in hospital. HL’s story is the beginning of the deprivation of liberty safeguards.

In 2009 a man called Steven Neary was deprived of his liberty in a care home. He and his father wanted him to live at home again. They used the deprivation of liberty safeguards to ask the Court of Protection to decide. The Court of Protection said he should go home. His father tells his story here.
Where can I find out more?
The British Institute of Human Rights have lots of easy read resources about human rights here. They also have a guide to responding to government consultations about human rights.

Dorset Advocacy have made an Easy Read guide to the Liberty Protection Safeguards, here.

Here is the government’s guide to the deprivation of liberty safeguards. It is quite old now and some bits have changed. Here is a more recent easy read guide to the deprivation of liberty safeguards from the Department of Health.

What is the Safeguarding Liberty workshop about?
At the accessible workshop we will talk about how the deprivation of liberty safeguards have helped some people get their liberty back or be less restricted. We will talk about Steven Neary and Manuela Sykes.

We will talk about what deprivation of liberty means and who gets safeguards.

We will talk about how the government might change the law on what deprivation of liberty means and who gets liberty safeguards.

We will explain how you can tell the government what you think about this, if you want to do so.

Who made this information sheet?
The guide was prepared by Lucy Series, Toby Williamson and Philly Hare.

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