



Deprivation of Liberty safeguards: what you should know



EasyRead

Before you start

Some ideas in this booklet are hard to understand. You might want to have some support to read it.

Important notice

This booklet is not a Code of Practice under the Mental Capacity Act 2005.

What is in this booklet

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Deprivation of Liberty safeguards – what you should know



The Human Rights convention says that every person has the right to liberty.



Liberty means being free to do the things you want to do and live where you want to live.



Deprivation of liberty means to take someone's freedom away.

Why should I know about this?



A few years ago, someone with a learning disability was taken to a mental health hospital because of the way he was behaving.



His carers said he should come home but the hospital said he should stay.



He wasn't **made to stay** under the **Mental Health Act** but was kept in hospital because staff believed it was in his **best interests**.

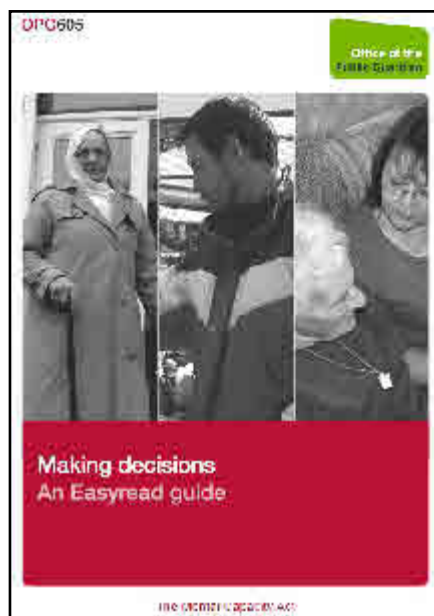


He could not talk but he was clearly unhappy, so this went to court.

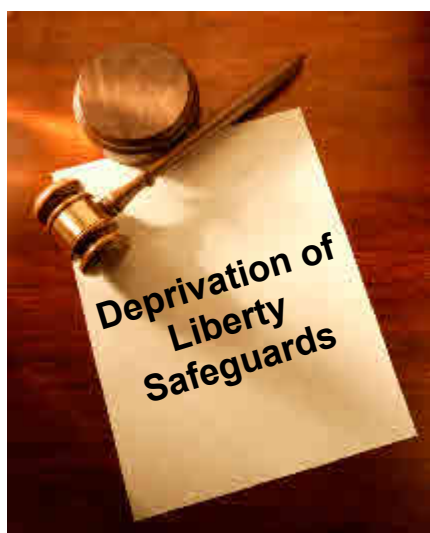
This case was called the Bournemouth case.



Because of this case, new rules were made to protect people who may need to be **deprived** of their **liberty** in hospitals or in care homes in their **best interests**.



The new rules have been put into the **Mental Capacity Act 2005**.



This guide is about those rules. They are called the **Deprivation of Liberty Safeguards**.



Safeguards are rules to keep you safe.



If your **liberty** is taken away, the safeguards make sure that that is the right thing to do for you.



They also make sure that your **liberty** is not taken away for longer than is needed.

How do you know if someone's liberty is being taken away?



There are many ways that someone's **liberty** can be taken away in a hospital or care home.



Some of the things we look out for:

Are staff making all the decisions for someone?



Is someone being made to stay somewhere and not allowed to leave?



Are carers not being allowed to take someone home?



Is someone not allowed to see friends or family when they want?



But every person's case is different.



Later in this guide, we will look at what you can do if you think someone's liberty is being taken away against the rules.



In the next section, we will look at when it is ok to deprive someone of their liberty.

When is it ok to deprive someone of their liberty?

The law says that it is only ok for 3 reasons.



1. It is in someone's best interests.

This means depriving you of your liberty is the best thing to do for you.



2. To stop you getting hurt.



3. It is the best thing to do to stop things from getting bad.

When can a hospital or care home deprive someone of their liberty?



This is so serious that the law says that every effort must be made not to do it.



This means that they should only take someone's liberty away if it is the only way they can help them.



The law also says that because that person cannot make their own decisions and cannot give their permission, they have to ask permission from someone else.



Who can give permission?



Only Primary Care Trusts or PCTs, local councils and local health boards can give permission.



In Wales, Welsh ministers can also give permission.



This permission is called authorisation.

When will authorisation be given?



First, the hospital or care home must make sure that the person lacks capacity and cannot give their permission.



They must also make sure that person has a mental disorder. Mental disorders include a learning disability.



It does not include mental health problems because of alcohol or drugs.



Health and social care services must do everything they can before deciding that this is the best thing to do.



Deprivation of liberty is the very last thing they should think about doing.





Adam's Story

What a hospital must do before thinking about taking someone's liberty away



My name is Adam. I am 35 years old. I have a learning disability and I live with my parents.



Adam is generally calm and easy to get on with.



When his parents went away on holiday, Adam got to be home on his own.



A paid carer came in to help out while they were away.



While she was there, Adam fell.



The carer was worried that he might have broken his arm so she took him to A&E.



They decided to X-ray Adam's arm.



But because he was in a strange place and was in a lot of pain, Adam got very upset.



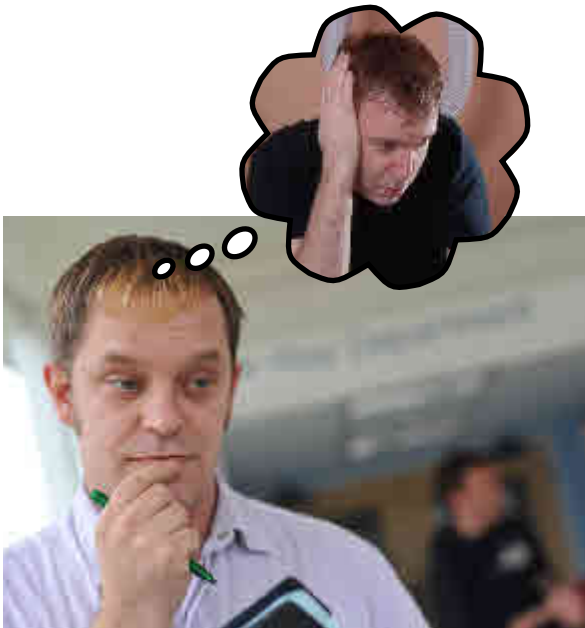
Staff had to keep him still while they did the X-ray.



Luckily his carer was in the room and took him outside to calm down.



While Adam was outside, the doctor in charge of A&E thought about how to treat Adam's injury.



If Adam becomes upset again when he comes back, I might have to make him stay in hospital to treat him.

Adam has a learning disability which the law says is a mental disorder.

But can Adam give his permission to stay in hospital?



The doctor thought he should find out more about Adam before he took the next step - asking the PCT for permission to make Adam stay in hospital.

He gets the number for Adam's parents from his carer and rings them up.



They tell him that Adam cannot give permission because he would not understand what the hospital wants to do.

So Adam has a mental disorder **and** he cannot give permission.



But they also tell him that:

He gets upset when there are lots of people around. But all he needs is a little peace and quiet and his carer with him, and he will calm right down.



The doctor is still not sure, but he must try what they say before deciding to take Adam's liberty away.



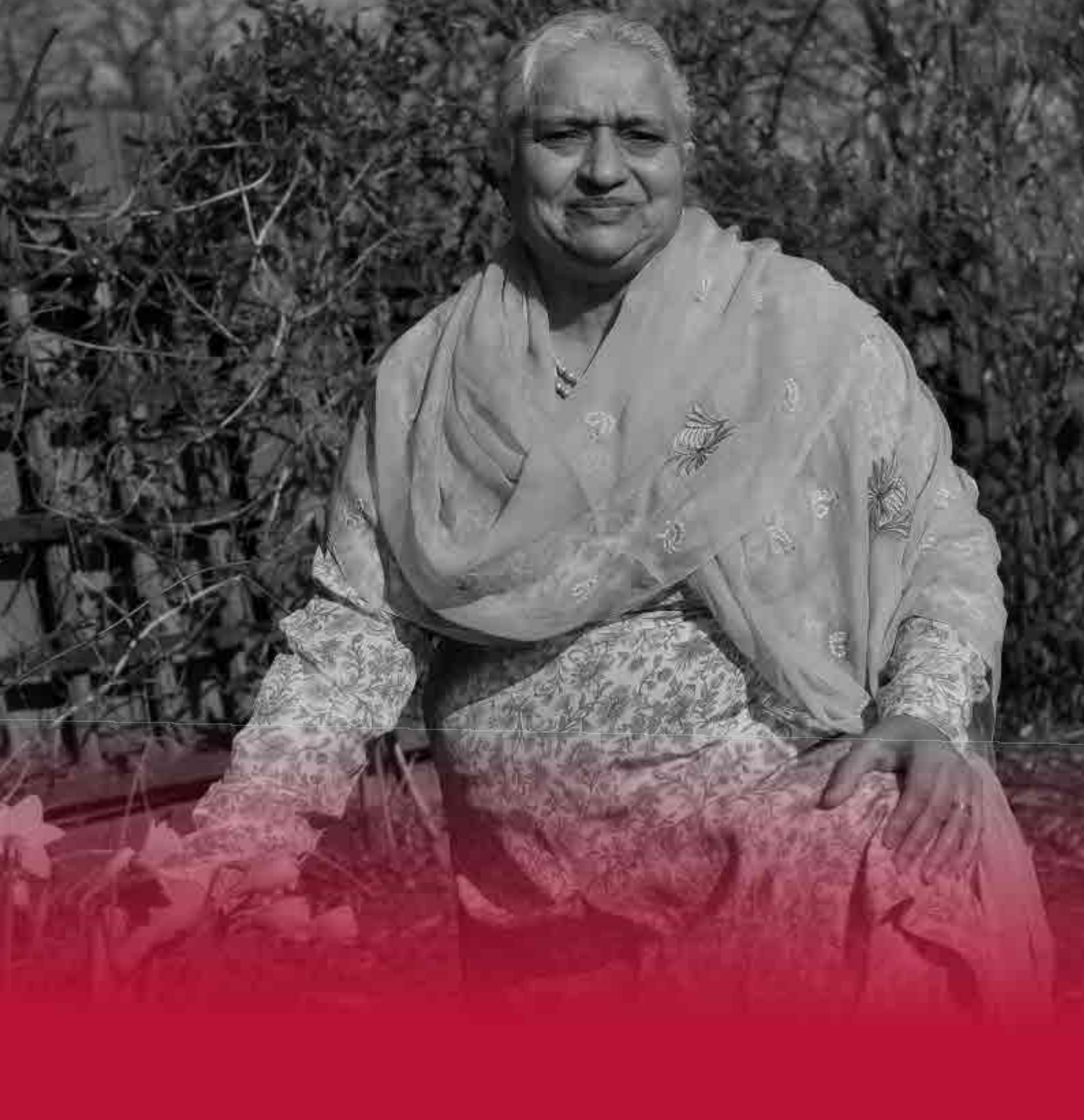
The law says that staff must do as much as they can not to take someone's liberty away.



The doctor gives Adam some medicine to stop the pain and sees that Adam does not need to stay in hospital at all.



The doctor decides that it is in Adam's best interests to go home with his carer.



Mrs Kumar's Story

What happens when a care home asks permission to take someone's liberty away



My name is Mrs Kumar. I am 84 years old and I live in Sunnydale care home.

Mrs Kumar has dementia. This is a mental disorder.



This means she sometimes forgets where she is and what she is doing.

Lately, her dementia has got worse.



It has become bad enough that staff feel that they will need to watch over her nearly all the time or she might hurt herself.



If she wants to go out, a staff member will have to go with her to make sure she's ok. Like crossing the road safely.



By doing this, they would be stopping Mrs Kumar from having any freedom.

They would be taking away her liberty.



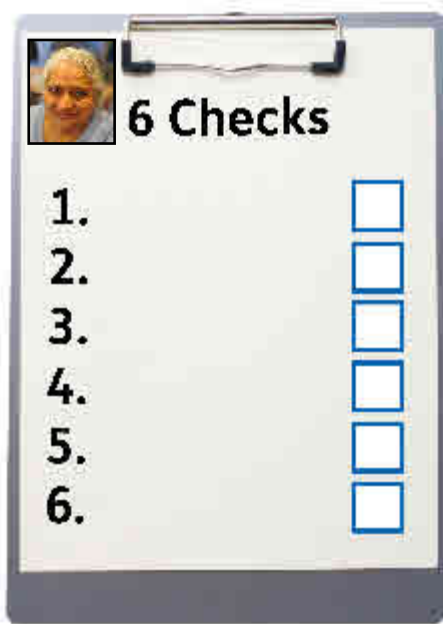
They need Mrs Kumar's permission before they can do this.



Staff try to talk to Mrs Kumar about what they are doing but she does not understand what they are asking her about.



The staff decide to ask for authorisation from the local council.



Before the council can give authorisation, it must do 6 different checks to make sure that this is the right thing to do.

All 6 checks have to agree for authorisation to be given.

21 Days						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Once the council agrees to do the checks, they must be done within 21 days.

This is so that Mrs Kumar can get the help she needs as soon as possible.

Who will do the checks?



There must be at least 2 different people doing the checks.

They have to know what they are doing and have the right skills.



They need to be able to talk with Mrs Kumar.



They cannot be from Mrs Kumar's family.



They cannot be paid by the care home or have anything to do with the care home.



The person who does the best interests check must be independent.



They cannot be someone who is caring or supporting Mrs Kumar.

They must be covered in case anything goes wrong. This is called insurance and indemnity.

The 6 checks

2 of the checks are to see if Mrs Kumar has a mental disorder and whether it is in her best interests.

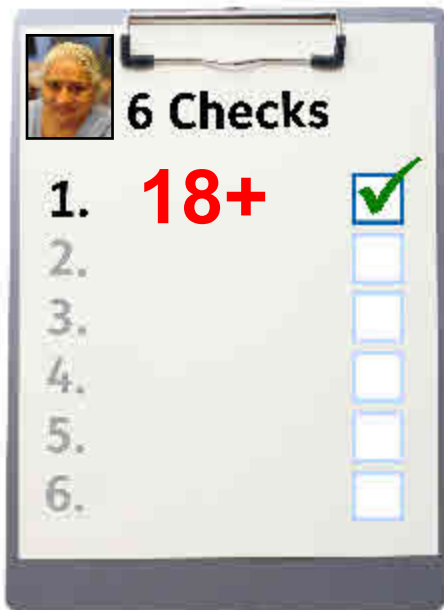
These checks must be done by 2 different people.



Dr Chandra will do the mental health check.



Miss Sim will do the best interests check.



**Check 1:
Is Mrs Kumar old enough?**

This is really just to make sure that Mrs Kumar is not under 18 years old.

Yes, Mrs Kumar is old enough.



**Check 2:
Are there earlier decisions that could stop the authorisation?**

This could be another decision made by a Lasting Power of Attorney, a Deputy from the Court of Protection, or an Advanced Decision.

There is more information about these in our booklet called the Mental Capacity Act.





**Check 3:
Can Mrs Kumar make her own
decision?**

The answer must be no for
authorisation to be given.



Miss Sim knows a lot about Mrs
Kumar's illness. She knows that just
because she is ill does not mean
she does not understand.



After talking to her, Miss Sim
decides that Mrs Kumar cannot
make this decision about her care.

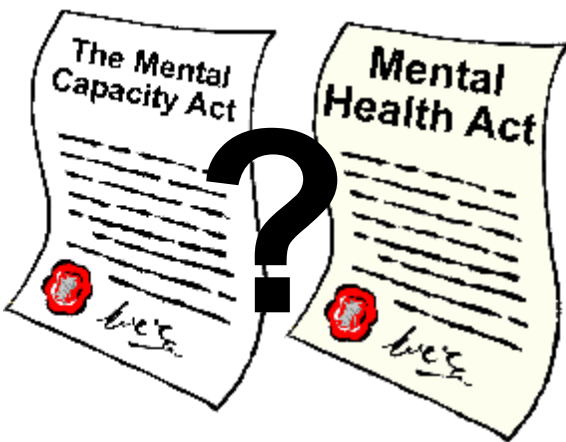


**Check 4:
Does Mrs Kumar have a mental disorder?**

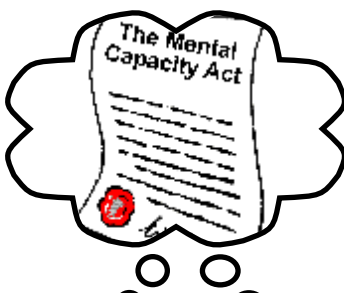


The law says that only a doctor who is expert in mental health can do this check.

Dr Chandra is and decides that Mrs Kumar does have a mental disorder.



**Check 5:
Which law needs to be used?**



Miss Sim and Dr Chandra both agree that Mrs Kumar's case comes under the Mental Capacity Act.





**Check 6:
Is it in Mrs Kumar's best
interests?**



This check actually does 3 things.

1. It looks at what the care home plans to do.

Does it take away Mrs Kumar's liberty?



2. If the answer is yes, Miss Sim must look to see whether this is the right thing to do for Mrs Kumar.



To do this, she will talk to Mrs Kumar's carers as well as her friends and family.



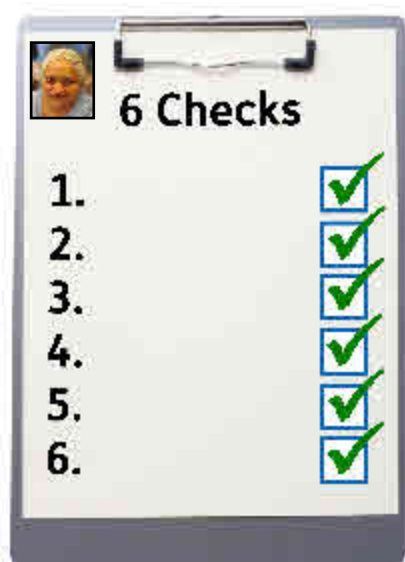
She talks to Mina, Mrs Kumar's granddaughter who is very close to Mrs Kumar.



3. Miss Sim will look at all the choices the care home has made to help Mrs Kumar.



She must make sure that taking away Mrs Kumar's liberty is the best thing the care home could do to help her.



All the checks agree that what the care home wants to do is best for Mrs Kumar.

Authorisation is given.



The local council must now get a representative for Mrs Kumar.



A representative speaks up for someone who has had their liberty taken away.

The law says that the representative must:

18+

- **Be over 18 years old.**



- **Be able to keep in touch with Mrs Kumar.**



- **Be well enough to do the job.**



- **Agree to do the job for Mrs Kumar.**



- **This person cannot work for the care home or the council.**



- **Mrs Kumar can choose her own representative if she wants to and is able to.**



If she can't or does not want to, the local council will choose someone for her.



Mrs Kumar says she wants her granddaughter, Mina, to be her representative.

What does a representative do?



This is a very important job. Mina will be making decisions for Mrs Kumar when she cannot make them herself.



If Mrs Kumar wants to stop the authorisation, Mina can help her ask the Court of Protection for help.



The care home must make sure that Mina understands what is being done for her grandmother.

They must also tell Mina any plans they have to change what is happening to Mrs Kumar.



Mina can also ask for a review of Mrs Kumar's case at any time.



The council and care home will also make sure that Mina is doing her job properly.



They can get someone else to do the job if they think that Mina:

- is not keeping in touch with Mrs Kumar enough



- is not acting in Mrs Kumar's best interests.

Review



This part of the story is about what happened after Mrs Kumar got better.



The medicine has made a difference and she can make more decisions.



Mrs Kumar thinks that the staff do not need to watch over her as much anymore.



The authorisation has 3 months left and staff think they should keep watch at least until then.



Mrs Kumar is helped by Mina to ask for a review from the council.



She has written a clear letter. It shows that she understands what is happening.



The council asks Miss Sim to do a review.



What happens at a review?

Miss Sim will look to see what checks need to be done again.



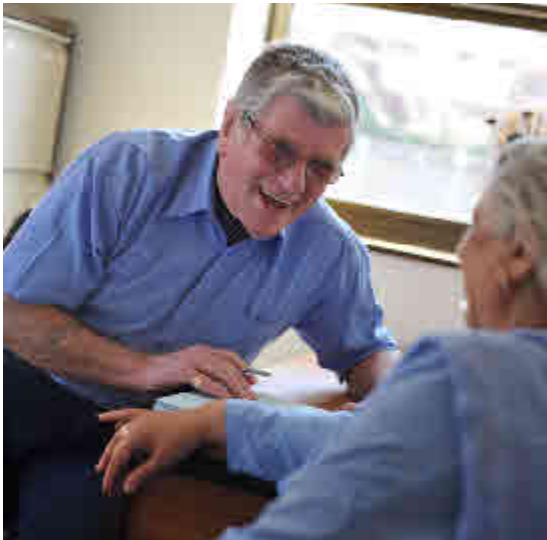
She decides that the mental capacity check needs to be done again.



If the check shows that Mrs Kumar can make her own decisions, the authorisation will stop straight away.



The council must write to the home, Mrs Kumar and Mina to tell them authorisation has stopped.



Dr Chandra talks to Mrs Kumar and Mina.

He decides that Mrs Kumar does understand what is happening and can make her own decisions.



The authorisation for deprivation of liberty for Mrs Kumar is stopped.



Richard's Story

When a care home thinks it needs
urgent authorisation

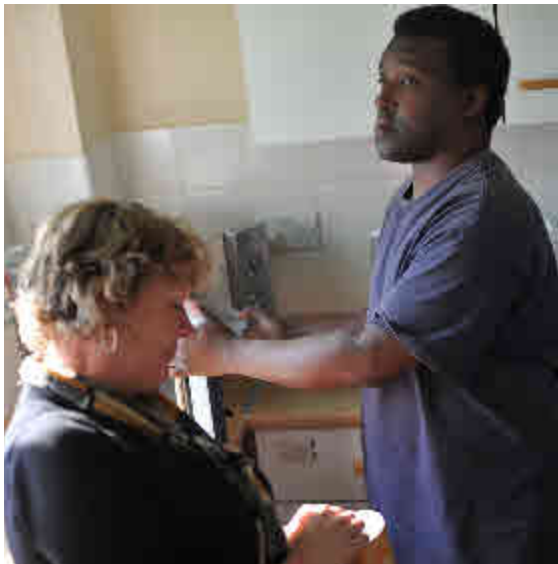
Richard's story



Richard is in a care home because his brain injury had become worse.



He has gotten better, but not enough to go home and carry on living on his own.



Richard keeps forgetting what he is doing.



He takes his clothes off a lot and wanders around the home naked.



The care home has made a care plan with Richard to give him as much freedom as they can.



But he thinks they want to lock him up and keeps trying to run away.



This means the care home has to put even more controls on Richard to keep him safe.



The care home manager is worried that this means they are depriving Richard of his liberty.



The care home manager decides to apply for authorisation.

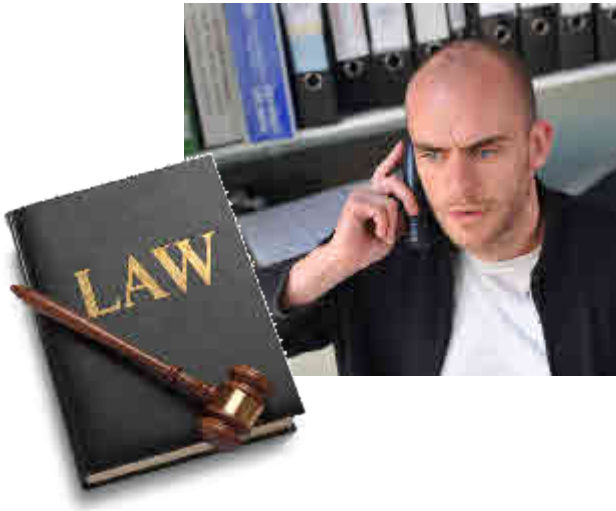


But an authorisation could take a month before it is given and Richard tries to run away every day.

He needs to act now.



The care home manager has looked at all the things he can do to keep Richard safe and decides that those controls are the best he can do for Richard.



The law says he can give himself urgent authorisation but he must apply to the council for standard authorisation at the same time.

What is an urgent authorisation?



There are 2 types of authorisations.

The first is a standard authorisation which we saw in Mrs Kumar's story.

The second type is called an urgent authorisation.

It can only be given when a hospital or care home believes that they **must act now** to keep someone safe.





The 6 checks must be done in 7 days.

But they must apply for a standard authorisation at the same time.



The care home manager tells the council that he is giving himself urgent authorisation.

The council sends a Best Interests Assessor to see him.

An assessor is somebody who does a check.



Because Richard does not have close friends or family to help him, the council asks an Independent Mental Capacity Advocate or IMCA to support Richard.

Charlie is Richard's IMCA.

Charlie's job is to make sure Richard's rights are kept safe.



Charlie talks to Richard and finds out as much as he can about him.



Charlie also talks to all the people doing Richard's checks.



Charlie must also look at whether the care home was right to do an urgent authorisation.



If he disagrees, he can go to the Court of Protection for Richard and ask for it to be stopped.



The Court of Protection will decide what is best for Richard.



After talking to everyone, Charlie is not sure that the care home's plans are good for Richard.



Richard says that he does not like it there.



Charlie takes him to another care home called Sunshine to see if he likes it better there.

Richard seems to like it better.



After talking with Charlie and everyone involved in Richard's care, Miss Sim thinks there are other ways to keep Richard safe.



She tells the council that they should not give authorisation to the care home manager.



Mrs Baker's Story

What to do if you think someone has had their liberty taken away against the rules

Mrs Baker's Story



Miss Chan and Mrs Baker have been friends for a long time.

Miss Chan visits every month. She usually spends the whole day with Mrs Baker.



One day, a care worker at the home tells Miss Chan that she can only stay for an hour.

Miss Chan is surprised and asks Mrs Baker what is going on.



I had a bit of a funny turn the other day and I shouted at some of the staff. I think I broke a cup as well. I'm alright now but they think I'm going to go off on one again.



After her visit, Miss Chan is worried that her friend is being deprived of her liberty.

She decides to visit again the next week.



This time the care home says that Mrs Baker has been given some medicine to calm her down to stop her from getting hurt.

She had been shouting and throwing things around.



Miss Chan asks if Mrs Baker has had a mental health check.

The staff say that they have asked a doctor to see Mrs Baker soon.



Miss Chan is really worried now.



She writes a letter to the manager of the care home about her worries for Mrs Baker.

Miss Chan knows that the care home manager should answer quickly.



She expects to get a call from the care home manager to talk about what is happening with Mrs Baker.

But 2 days pass and she does not hear anything.



She goes back to see Mrs Baker. Again, she is told that she can only see her for an hour.



She asks Mrs Baker if she's ok with this. **Not really. I don't know what they think I'm going to do.**



Mrs Baker is clearly unhappy.



Miss Chan decides to write to the local council.



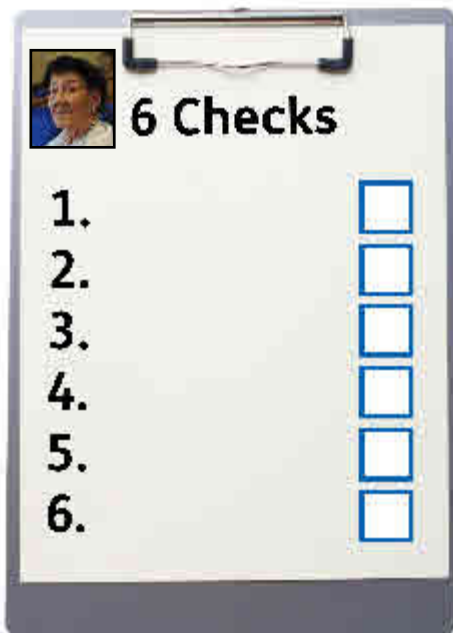
When the council gets Miss Chan's letter, they ask Miss Sim to check whether Mrs Baker is being deprived of her liberty.



The council writes to Miss Chan, Mrs Baker and the manager of the care home to say that this is happening.



If Miss Sim finds that Mrs Baker has been deprived of her liberty, the care home must stop at once as they do not have permission.



They will need to ask for authorisation and all 6 checks will have to be done.

What if authorisation has been given but Miss Chan does not agree with it?



Miss Chan can ask an IMCA to help Mrs Baker go to the Court of Protection.



The Court of Protection can stop the authorisation.

Thank you

We would like to thank the following people for so kindly giving us their time and support:

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- All our family and friends



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