

**Extract from the Law Society guidance, 9 April 2015:**

**[Identifying a deprivation of liberty: a practical guide](#) *The care home setting***

(Chapter 6, pg. 67, C 6.8 – pg.69, 6.12)

**“A residential care home for older adults: liberty restricting measures**

As with all care settings, there is a huge variety in the way in which each establishment will seek to provide safe and appropriate care for its residents. What follows is not an attempt to stereotype this kind of provision, but recognition of the challenges that can arise in providing such care in the least restrictive environment.

These challenges include:

- How to promote choice: for example if a resident does not want to eat the meal offered on a particular day how easy is it for them to go out to eat?
- The physical environment and the impact of a structured timetable: in many care homes of this type residents may be expected to spend at least part of the day seated in a lounge, perhaps with a television or music. How can residents be given as much autonomy as possible in how they spend their time and where?
- Promoting family and private life: how can care settings promote important intimate (which may include sexual) relations between residents?

The following are examples of potentially liberty-restricting measures that apply in a residential care home for older adults:

- A keypad entry system;
- Assistive technology such as sensors or surveillance;
- Observation and monitoring;
- An expectation that all residents will spend most of their days in the same way and in the same place;
- A care plan providing that the person will only access the community with an escort;
- Restricted opportunities for access to fresh air and activities (including as a result of staff shortages);
- Set times for access to refreshment or activities;
- Limited choice of meals and where to eat them (including restrictions on residents' ability to go out for meals).
- Set times for visits;
- Use of restraint in the event of objections or resistance to personal care.
- Mechanical restraints such as lapstraps on wheelchairs;
- Restricted ability to form or express intimate relationships;

- Assessments of risk that are not based on the specific individual; for example, assumptions that all elderly residents are at a high risk of falls, leading to restrictions in their access to the community

### **Care home for older adults: a deprivation of liberty**

The measures in the following scenario are likely to amount to a deprivation of liberty:

Peter is 78. He had a stroke last year, which left him blind and with significant short-term memory impairment.

He can get disorientated needs assistance with all the activities of daily living. He needs a guide when walking.

He is married but his wife Jackie has struggled to care for Peter and with her agreement Peter has been admitted into a residential care home.

Peter has his own room at the home. He can summon staff by bell if he needs help. He tends to prefer to spend time in his room rather than with other residents in the communal areas.

He can leave his room unaccompanied at any time he wishes. Due to his visual and cognitive impairments, he does not feel safe doing this. He has access to the communal garden, the dining room, the lounge area and any other resident's room.

He is able to use the telephone when he wants. It is in a communal area of the home. He is unable to remember a number and dial it himself. He rarely asks to make phone calls.

He is visited regularly by Jackie. She has asked to be allowed to stay overnight with Peter in his room but this request has been refused.

The home has a key pad entry system, so service users would need to be able to use the key pad to open the doors to get out into the local area. Peter has been taken out by staff after prompting and does not ask to go out. He would not be allowed to go out unaccompanied.

Most of the time Peter is content but on occasions he becomes distressed saying that he wishes to leave. Members of staff reassure and distract Peter when this happens.

Key factors pointing to a deprivation of liberty:

- the extent to which Peter requires assistance with all activities of daily living and the consequent degree of supervision and control this entails.
- Peter is not free to leave either permanently or temporarily.

## Care home for older adults: potential deprivation of liberty

The measures in the following scenario may give rise to a deprivation of liberty:

Mr Ghauri is 88. His wife of 60 years died last year and he has lived alone since then. He has no children. He is generally in good physical health but is in the early stages of dementia.

After a fall he decided to move into a local residential care home.

At the time he had capacity to make the decision to move. However, his dementia has progressed, and staff consider he may be less able to make more complex decisions.

He has his own room. He enjoys the meals at the home in the dining room but otherwise spends most of his time in his room where he listens to music and reads.

He has a regular routine whereby he leaves the home for a walk after breakfast.

He normally buys a paper and returns before lunch but sometimes eats in a local café and returns in the early afternoon.

If he did not return from the café the staff would contact the police to take steps to locate and return him.

Key factors pointing towards a potential deprivation of liberty:

- the potential degree of supervision and control within the home – although more information would be required in order to assess whether this satisfied the acid test;
- Mr Ghauri is not free to leave the home. However, it is not clear from the information available whether he has or lacks the capacity to consent to these care arrangements, which would have to be examined carefully.

## Care home for older adults: not a deprivation of liberty

The following scenario is unlikely to amount to a deprivation of liberty:

Mrs Banotti is a widow and is also an alcoholic. She does not have the capacity to decide where to live.

She lives in rented social housing unit for older adults, which has a warden. She was found collapsed on the street a few weeks ago and was admitted to hospital.

She was persuaded to go into respite from hospital to give Environmental Health staff from the local District Council time to clean up and renovate her flat. She leaves the respite residential care unit every day after breakfast to see friends. In fact she sees a male friend who also has a drink problem.

Staff report to the social worker that they are worried whether her male friend is financially exploiting her and whether she is having a proper lunch or whether she is drinking.

She comes back every evening about 7pm when meals are finished for the evening and does not have a smell of drink on her.

Mrs Banotti has made clear that once her flat is fixed up, she will return to live there but that she is willing to stay in respite in the interim provided that she is allowed to continue to stay out all day every day.

Staff are unhappy about the risks to her of her drinking. However, their policies do not allow for physical restraint so the staff have not attempted to stop her leaving and have not followed her or asked her to return.

Mrs Banotti has made clear that if staff try to insist on her staying in all day, or only going out with staff, she will stop the respite and go and stay with her male friend.

The staff would not take any steps to prevent her doing so if she did do so.

Key factors pointing away from a deprivation of liberty:

- Mrs Banotti is free to leave, whatever the level of supervision and control to which she may be subjected.”