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# Disappointment or Lasting Safeguards?

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# Deprivation of Liberty Safeguards

- The Safeguards ensure that deprivation of liberty in a care home or hospital must be authorised via a legal procedure.
- Assessments must be carried out that establish whether the person meets the eligibility criteria and that it is in their best interests and that there is no other viable alternative.
- A person cannot lawfully be deprived of their liberty in a care home or hospital unless an authorisation is in force.
- Requires that hospitals and care homes request authorisation when one is necessary. Whenever possible, in advance.
- Person has right of appeal and a representative appointed.

# Deprivation of Liberty Safeguards

Apply to:

- A person over the age of 18.
- Who lacks capacity to give informed consent to their care or treatment and
- For whom deprivation of liberty is a proportionate and necessary step to take in their best interests to keep them from harm.
- Resident in a hospital or registered care home.

(Care Standards Act 2000)




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# What is deprivation of liberty?

- The ECtHR does not define deprivation of liberty BUT in *HL v the United Kingdom* and other cases, the ECtHR has identified the following factors relevant to identifying a possible deprivation of liberty:
- *Restraint is being used, including sedation, to admit a person who is resisting.*
- *Staff exercise complete and effective control over care and movement for a significant period.*
- *Staff exercise control over assessments, treatment, contacts and residence.*

- 
- *A decision has been taken that the person will not be released into the care of others, or permitted to live elsewhere, unless staff in the institution consider it appropriate.*
  - *A request by carers for the person to be discharged to their care would be refused.*
  - *The person is unable to maintain social contacts because of restrictions placed on them.*
  - *The person loses autonomy because they are under continuous supervision and control.*

Deprivation of Liberty Safeguards Code of Practice  
Chapter 2 (point 2.5)



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# What do the Safeguards cover?

The Deprivation of Liberty Safeguards cover:

- How an application for authorisation should be applied for.
- How an application for authorisation should be assessed.
- The requirements that must be fulfilled for an authorisation to be granted.
- How an authorisation should be reviewed.
- What support and representation must be provided for people who are subject to an authorisation.
- How people can challenge authorisations.

Deprivation of Liberty Code of Practice point 1.6



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# Summary of responsibilities Supervisory Body

- Receive application for Deprivation of Liberty.
- Ensure communication between bodies.
- Determine if request is appropriate - assess.
- Appoint to the roles - assessors and IMCA.
- Obtain written assessments to ensure relevant criteria are met.
- Grant authorisation for specific period or decline based on the assessment outcomes.
- Attach conditions where appropriate.



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# Summary of responsibilities Supervisory Body

- Communicate decision and support alternative care planning where relevant.
- Appoint representative.
- Inform in writing relevant parties of authorisation & appeals procedure.
- Review Deprivation of Liberty authorisation.
- End the authorisation.
- Governance of duty/audit.



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# Summary of responsibilities Managing Authority

- Identify Deprivation of Liberty.
- Minimise and reduce the occurrence of DOL where possible.
- Determine if application for DOL is required in advance.
- Grant urgent authorisation where required.
- Submit application for DOL.
- Ensure communication between relevant bodies.
- Support assessment - access to information, consideration of appropriate representative.



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# Summary of responsibilities Managing Authority

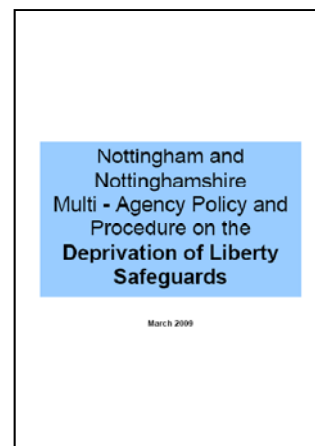
- Provide alternative care where authorisation is not granted.
- Comply with any conditions attached to authorisation.
- Monitor and review DOL authorisation including the representatives involvement.
- Inform relevant parties of authorisation & appeals procedure.
- Review Deprivation of Liberty authorisation.
- End the authorisation.
- Governance/recording.



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# DOL Multi- Agency Policy & Procedure



- Recently amended.
- The purpose of this policy and procedure is to inform health and social care professionals about the local operational arrangements for working with patients/residents in care homes with impaired mental capacity.
- The Policy and Procedure needs to be used in conjunction with the Nottingham and Nottinghamshire Multi Agency Policy and Procedure on the Mental Capacity Act 2005.



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# What was expected?

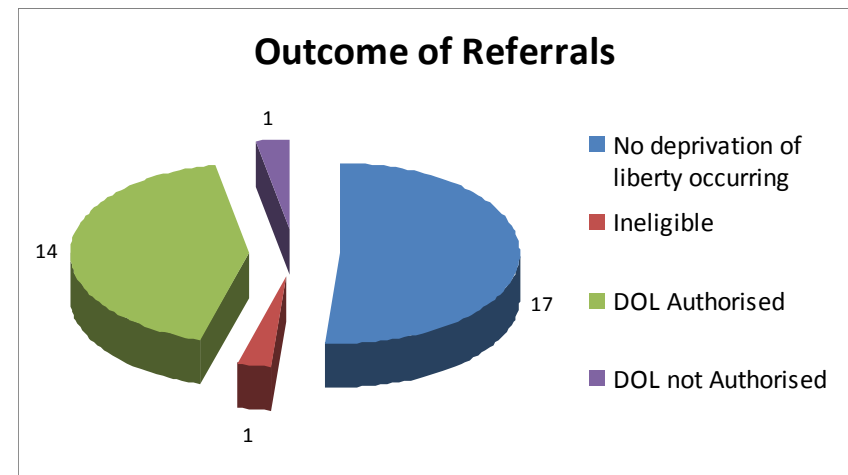
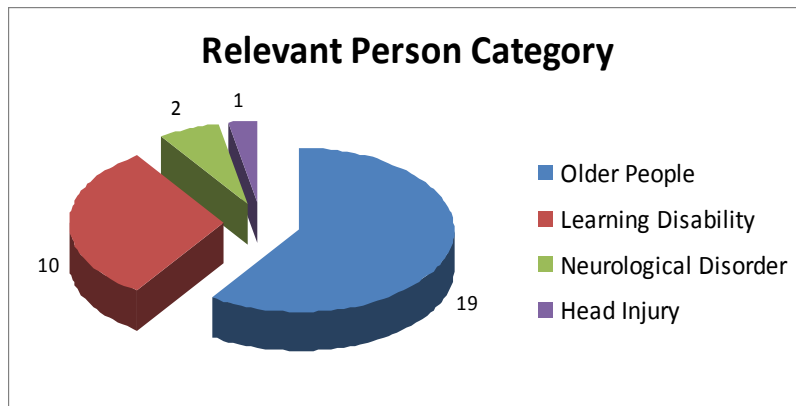
- 21,000 would have had their situation assessed and approximately 5,000 would have been authorised to be deprived of their liberty.

# What happened?

- Nationally, the number of referrals have been approximately a third of those anticipated.
- In the East Midlands, we have had proportionately higher figures but not as high as expected.

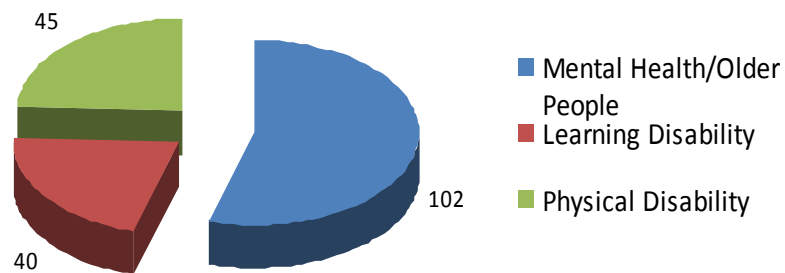
# Statistics - City

## April - December 09

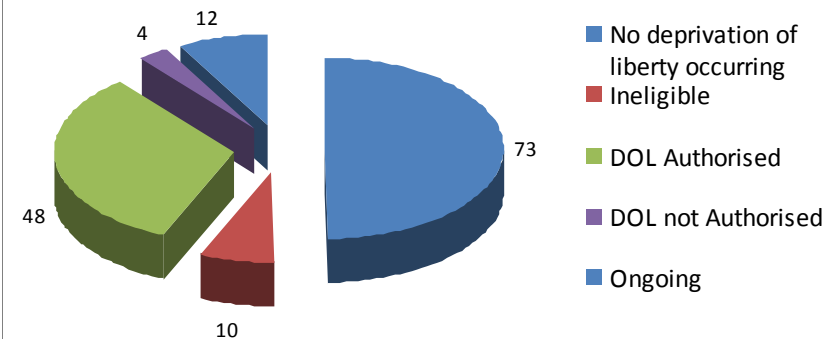


# Statistics - County April - December 09

Relevant Person Category



Outcome of Referrals



# Why might this happening?

- Training of managing authorities means that DOL is identified and prevented from happening.
  - Over 480 people trained at the MH/LD Trust.
  - Over 250 registered care home managers.
  - Approximately 80 staff from acute general hospitals.
- DOL leads in key areas.
- Does this mean that there are fewer people in a situation like HL?



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# BUT

- Number of people completing training has been incomplete in some areas and ongoing work is in hand.
  - 100 care homes who did not come along to free training will be followed up.
  - Key staff in general hospitals to continue to be trained.
  - DOLs Mental Health Assessor refresher confusion.
- Aware of it and choosing to ignore it?
- Sanctions?
- Use of Mental Health Act?
- Complex concept to understand and identify?
- Processes and administration but with the right intentions.



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# Case Studies

- Angelina
- Brad

Is there a deprivation of liberty occurring?  
What factors support your decision?

# Angelina

- Reducing restraints and restrictions - some could be reduced but some not; so there was a consideration of whether the BIA would go for a “DOL not authorised” or “DOL authorised”.
- Culture of care - the use of restraint and restriction increased over time. The MCA was not being appropriately applied which meant going through each restriction and restraint to consider their appropriate use e.g. length of time in splints and leg restraints, bed rails, etc.

# Angelina

- 6 weeks authorisation granted with significant conditions initially. Plan to consider least restrictive options, monitoring and one-to-one.
- Needed to be clear that there was evidence that there was a need for some actions. e.g. this monitoring provided evidence that bed sides were needed.
- OT felt that lack of staff had lead to the use of the splints because in the day centre she had time out of them.
- 2nd authorisation granted with conditions around the amount of time in splints and exploring different options in terms of behavioural issues. Paid representative in place due to mother being away.
- In short, it was felt that the DOL safeguards had been beneficial to Angelina.

# Brad

- Best Interests Assessor considered that there was DOL occurring.
- Ward exercising complete and effective control - regular medication, request to discharge would be denied.
- Authorised for a period of 3 months. Daughter appointed as relevant persons representative. Conditions imposed were: consideration within the next 4 weeks to enable Brad to have accompanied visit outside the ward area, review of medication regime on a weekly basis.
- Brad was discharged to a care home who would have had responsibility for applying for new DOL authorisation if this was deemed necessary.

# Brad

- Prior to the Safeguards, Brad would have looked after using common law (necessity and best interests); with no means of challenging his detention or have a right to representation.
- Protection
- Representation
- Challenge
- Review of care

# Disappointment or Lasting Safeguards?

- Bureaucracy.
- Complexity.
- Does the Mental Health Act provide better legal oversight?
- Vague concepts with little case law to clarify (so far).
- Protection where none existed before such as:
  - Review of care arrangements.
  - Right of challenge.
  - Right of representation.
  - Timescales and review.

# Questions?



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