

# Unauthorised deprivation of liberty

For the purposes of the Mental Capacity Act 2005, deprivation of liberty is not authorised if:

- (a) a person is being kept in a hospital or care home in circumstances that amount to depriving them of their liberty, and
- (b) their deprivation of liberty has not been authorised by an urgent or standard authorisation or by the Court of Protection, and nor is an authorisation being sought from that court.

The Act includes procedures for dealing with a situation where a person believes that someone in a hospital or care home is being deprived of their liberty but without a proper authorisation for this.

If a person believes that someone is being deprived of their liberty without proper authority, the Act allows for them to ask the hospital or care home to request a standard authorisation. The person can do this by completing Letter 1.

Letter 1	Letter for a person to send to a managing authority concerning a possible unauthorised deprivation of liberty
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If the hospital or care home does not then request a standard authorisation 'within a reasonable period', the person may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty. The person may do this by completing Letter 2.

Letter 2	Letter for a person to send to a supervisory body concerning a possible unauthorised deprivation of liberty
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If it receives a request to decide whether or not there is an unauthorised deprivation of liberty, the supervisory body should record the request using Form 16.

Form 16	Record of supervisory body action on receipt of notification of a possible unauthorised deprivation of liberty
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The supervisory body also uses this form to record whether an assessment is required in relation to the issue of whether or not the person is subject to an unauthorised deprivation of liberty. An assessment is not required if the request is frivolous or vexatious, or if the issue has already been decided by the supervisory body and there has been no change in the person's circumstances since then.

If an assessment is required, the professional who conducts the assessment records their findings by completing and signing Form 17.

Form 17	Unauthorised deprivation of liberty assessor's report
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Having received the assessor's report, the supervisory body then records its decision. It does this using Form 18.

Form 18	Supervisory body's decision following the receipt of an unauthorised deprivation of liberty assessor's report
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If the person is subject to an unauthorised deprivation of liberty, the following steps must be taken:

1. The managing authority of the hospital or care home is deemed to have requested a standard authorisation in relation to the person.
2. The managing authority must therefore provide the supervisory body with the information that is required whenever such a request is actually made. It must now complete Form 4 and send it to the supervisory body.
3. The supervisory body will arrange for the assessments to be carried out that are required whenever a request for a standard authorisation is received.
4. The present care and/or treatment arrangements have been found to amount to deprivation of liberty. If the managing authority considers that this care and/or treatment should continue while the assessments are carried out, it must give itself an urgent authorisation, by completing Form 1.
5. If it does give itself an urgent authorisation then the necessary assessments must be completed within the period of the urgent authorisation.