

Quick Guide to Deprivation of Liberty (DoL)

Background

The legal framework through which steps are taken to ensure people are not arbitrarily detained is that of 'deprivation of liberty.' The term comes from the European Convention on Human Rights (ECHR), which has been incorporated into English law under the Human Rights Act 1998. Article 5 of the ECHR states that everyone (of whatever age) has the right to liberty and can only be deprived of their liberty in limited circumstances and subject to strict legal procedures which allow processes of appeal.

In some circumstances the provision of health and social care may mean a person is deprived of their liberty. A deprivation of liberty can arise in any setting. As set out in further detail, below, if this happens action must be taken to either revise the care arrangements (so that there is no longer a deprivation of liberty) or, if this is not possible, ensure that the legal authority for the deprivation of liberty is obtained.

Capacity

If it is established that the young person is confined, then it is necessary to ask whether they have capacity to consent to the confinement. If they can then, even if they are confined, so long as the young person continues to give their consent, there will be no deprivation of liberty.

If the young person cannot understand, retain, use and weigh the information about their confinement or communicate their decision to agree to it, then they cannot give consent to it, and will therefore be deprived of their liberty for which it will be necessary to seek an authorisation. This will be so even if the young person appears to be compliant, acquiescent, or even actively to be content with the arrangements. Compliance, therefore, does not constitute consent.

Cheshire west

As a result of The Supreme Court's [judgement in the linked cases of P v Cheshire West and Chester Council and P&Q v Surrey County Council](#) in effect lowered the threshold for what constitutes a deprivation of liberty in care. This extended the threshold to thousands more people who were not actively opposing their placement. The case identified the 'acid test'

any intervention in the life of a YP that is considered necessary by reason of their mental disorder should be the least restrictive option and the least likely to stigmatise them. It should also result in the least possible separation from family/friends/their community

Identifying a DoLS- There are three limbs to the test:

1. The person lacks capacity to make a decision about where to be accommodated to receive their care and/or treatment; and
2. They are under continuous supervision and control; and
3. They are not free to leave, then they are being deprived of their liberty,

There is more likely to be a deprivation of liberty the more restrictions that are in place, such as locked doors or keypads, use of covert medications, constant supervision if outside of the building, being restrained, using bedrails, wheelchair straps etc.

Best interest

If there is any concern that the arrangements for a young person amount to a deprivation of liberty then the following actions should be taken: > Consider whether the arrangements for the young person's care can be revised so that the young person is not being deprived of their liberty.

> Consider whether the young person might have capacity and therefore be willing and able to consent to the arrangements, consider if they can be supported in making such a decision.

The arrangements that amount to a deprivation of liberty must be in the young person's best interests and there has to be consideration of least restrictive options to comply with the Mental Capacity Act (MCA, 2005),

Under current law children and young people's deprivation of liberty can be authorised either by an order of the court or (in relation to psychiatric admissions) the Mental Health Act 1983. Another legal mechanism (the Liberty Protection Safeguards), which will apply to individuals aged 16 and over, is due to be in full force as of April 22.

Further info and Links

<https://www.proceduresonline.com/resources/dols/index.html#>

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>