



Quick Guide to Deprivation of Liberty Orders (known also as Community DoLS or Judicial Authorisations)

What does “deprivation of liberty” mean?

This guide is about situations involving care and health provision that may amount to a deprivation of liberty and what must be done to make this lawful.

Sometimes people who lack capacity to decide for themselves, need to receive care or treatment in a hospital, care home or in a setting such as Supported Living and the only way they can get the care or treatment they need and be safe is for there to be restrictions in place.

The Human Rights Act (HRA) tells us that no one can be “deprived of their liberty” except in certain situations and only when very specific procedures are in place which must be used. This is to protect people from being deprived of their liberty without anyone looking at the circumstances and approving the actions. Assessing whether a ‘Deprivation of Liberty’ has taken place is therefore an essential right as **no one should ever be restricted to an extent greater than is necessary and proportionate to the risks involved.**

The Supreme Court looked at the question of deprivation of liberty in 2014. They summed it up in what they called an ‘acid test’ for those lacking capacity to consent to, or refuse their care arrangements:

- Is the person free to leave?
- Is the person subject to complete or continuous supervision **and** control?

They said it didn’t matter *why* these things were happening and *whether* they were really positive for the person, the facts were simply the facts and it should mean the same thing for all people whether they have a disability or not.

If this acid test was met and the person could not consent to it because they lacked mental capacity, it would need an independent person to review and approve it in order to allow it to continue.

EXAMPLE

A person with a learning disability may be living quite happily in a small group home. They may enjoy all aspects of their life and get on really well with the people they live with. They may go out regularly, supported by staff to keep them safe and they may go to college or have hobbies or interests which staff support them to do.

Quite possibly this person would not be allowed to leave on their own as they may not be safe and they may have staff support at all times and be supervised to make sure they are safe and well - this might mean the acid test is met.

What does this mean in practice?

Just because the term “deprivation of liberty” is used it doesn’t mean that someone is doing something wrong. It means that the situation needs someone independent to look at it to ensure the person’s rights are being protected and to confirm that things should continue as they are. If the person is in a care home or hospital, it is possible for this to be done through a process called “DoLS” (explained in the guide called “Deprivation of Liberty Safeguards”). If they are anywhere else, it is (at the moment) necessary for a judge of the Court of Protection to look at the position.

Having someone independent to look over the care arrangements means a fresh eye can see whether there are less restrictive ways of providing the care. In some cases the actions taking place may not be in the person’s best interests and the independent oversight will identify this.

EXAMPLE

A young person is living in a small bungalow with two other residents. She has a full social life and also goes to a local college two days a week with support. The other two residents have some challenging behaviour and can at times become aggressive.

All the residents have 1:1 support when they go out but sometimes 2:1 support is needed at home because of the other residents’ behaviour – this level of staff support and supervision might mean the acid test is met.

The law says if the acid test is met someone needs to check out all the arrangements to make sure that everything that is happening is in the person’s best interests and can’t be done in a less restrictive way.

The independent assessor visited and felt that the level of staff supervision could be less if the person shared with different residents and agreed the arrangements for a short time to let the social workers explore whether this was possible.

How does it affect my family member or my friend?

If the Court of Protection authorises a person’s deprivation of liberty, it is very likely that your friend or relative is living in a setting that is not classed as a care home or hospital. If the person is living in a care home or hospital you will see paperwork called a “Deprivation of Liberty authorisation”, and need to read the “Deprivation of Liberty Safeguards” guide.

Usually the care manager (social worker or Continuing Healthcare Nurse for example) will work out whether they think the acid test is met when they are assessing for services or carrying out a review or reassessment.

Sometimes the school, college or setting where the person is will tell the Council that they think a DoL Order is needed.

If the person’s care is entirely privately funded (such as personal injury compensation) the rules still apply. In this case it will most likely be the person’s Finance Deputy who informs the Council about the care arrangements.

It is important to remember that this is a positive protection for the person and does not mean that anything is wrong with the care or that the arrangements in place will come to an end.

The process of applying to the Court of Protection is quite complicated and involves a number of steps. The social worker and/or the Council solicitor will prepare most of the details. They will visit the person to make sure the arrangements are in the person’s best interests and to check out that the acid test is met.

They will explain to the person what is happening and they will try to find out the person's views about where they live and the care they receive. This will be by listening to them but also asking people who know them well.

Family and carers will be asked questions about the kind of restrictions that may be in place in the care setting or even in your own home, things that have to be in place to make sure that the person is kept safe and their needs are met.

If the Council or Clinical Commissioning Group (CCG) are advised that the acid test is met they will need to make sure that an application is made to Court to approve this.

The social worker or nurse will then have to fill out a form for the Court and provide as much detail as possible about the care plan and about the person's views on the care plan.

Because a judge is going to be asked to agree the care plan they will need a lot of detail before they can do that. They will need to know as far as they possibly can, what the person themselves thinks about the arrangements and they will need to find someone who will be in the person's corner, so to speak to make sure their voice is fully heard by the Court and who will be willing and able to keep in touch with the person during the length of the time that the order lasts for. If you are a family member you might be asked to do this (See an explanatory note for families in relation to this here <http://www.bailii.org/ew/cases/EWCOP/2016/16.html>)

Once all the consultation has taken place and all the paperwork is gathered together it will go to a Judge. In the majority of cases there will be no need to go to Court - it should all be decided by the paperwork the Judge receives. In some cases such as where there may be a disagreement then a hearing will be needed.

Once the order is made it will usually be for one year and then will be renewed again if still required at the end of this period.

The idea of the Court of Protection being involved in these decisions may seem daunting but it is important to remember that this is an essential process to make sure the person at the heart of this is protected.

This guide was prepared by Lorraine Currie with thanks to

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Further information can be found here

<https://www.local.gov.uk/topics/social-care-health-and-integration/adult-social-care/mental-capacity-act-including-dols>

<http://www.39essex.com/content/wp-content/uploads/2016/11/Judicial-Deprivation-of-Liberty-authorisations-Nov-2016.pdf>

<http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>

<http://www.39essex.com/content/wp-content/uploads/2016/11/Judicial-Deprivation-of-Liberty-authorisations-Nov-2016.pdf>