

Deprivation of Liberty in Community Settings

Factsheet

Defining a Deprivation of Liberty (DoL) in the Community

A deprivation of someone's liberty occurs when:

- a person is under continuous supervision and control,
- is not free to leave the place they call home, and
- they do not have the mental capacity to consent to these arrangements.

A deprivation of liberty in the community applies to someone living in:

- Their own home.
- Supported living.
- Other settings that are not care homes or hospitals.

If a person lacks the mental capacity to consent to their care and support arrangements, a deprivation of liberty must be authorised by the Court of Protection to ensure the person's right to freedom is protected. It is important to remember that an application made to the Court of Protection does not mean that anything is wrong with the care and support the person is receiving. The application is a positive protection for the person's freedom.

This is different to the Deprivation of Liberty Safeguards (DoLS), which are only applicable when a person is in hospital or being cared for and supported in a care home.

What does the law say?

The Mental Capacity Act and Human Rights Act tells us that no one over the age of 16 can be deprived of their liberty, except in certain situations and only when very specific procedures are in place (DoL authorisation). This is to protect people who do not have the ability (mental capacity) to make decisions regarding their care, treatment, or residence.



Examples of a Deprivation of Liberty

- Restraint: this can refer to something as simple as a lap belt on a wheelchair, a seatbelt in a car or bedrails, for example.
- Control over the care and movement of a person over a significant period.
- Continuous supervision throughout a 24-hour period and the use of audio and/or visual monitoring devices.
- The individual is not free to leave unless supported. For example, the doors might be locked to prevent them from leaving without adequate support.
- The use of sedative medication.

The Deprivation of Liberty (DoL) in the Community process

It is very important that all cases of deprivation of liberty in the community are subject to a legal authorisation and that steps are being taken to achieve this.

- A practitioner (a person who works in a skilled job such as social work, nursing or medicine) will have a conversation with the person and assess whether they understand why they need care and what might happen if the care was not there.
- If the person lacks capacity to give their consent, the practitioner ask everyone involved in the person's care about their best interests (any action taken or decision made for or on behalf of that person must be done in a way that will have the most benefit to them).
- The practitioners will collect the care plans and all the other necessary paperwork together to make the application to the Court of Protection (An English court that makes decisions on financial or welfare matters for people who can't make specific decisions at the time they need to be made because they lack mental capacity). The Court of Protection must be asked to authorise the care arrangements.
- The practitioner will keep everyone informed during the process and will be available to respond to any questions you may have.

- The Court of Protection will consider whether it is satisfied that the restrictions are necessary, proportionate to prevent harm and in the individual's best interests. The Court must be satisfied that their care is being delivered in the least restrictive way possible before it is able to grant authorisation.
- Once the authorisation order is made it will usually be for one year (which is the maximum period) however, in some cases it can be shorter depending on the circumstances and will be renewed if still required at the end of this period.

If the person has the mental capacity and consents to their care arrangements, they do not need a Community DoL.

Key Rights for an Individual with a DoL Order

- The arrangements are in the persons best interests.
- The person is entitled to express their views and feelings in relation to the proposed arrangement and to have someone appointed to support and represent them.
- The individual is given a legal right of appeal over the arrangements.
- The arrangements are reviewed and continue for no longer than necessary.

Being assessed as to whether a Deprivation of Liberty has taken place is an essential right. No one should ever be restricted to an extent greater than is necessary and proportionate to the risks involved and any deprivation must be in the individual's best interests.

Appointing a Rule 1.2 Representative

The purpose of a Rule 1.2 Representative is to ensure that the individual central to the DoL application is supported in having their views and wishes heard. The Rule 1.2 Representative gives a "voice" to the individual by providing to the Court information regarding their best interests from the individual's perspective.

There are no formal restrictions on who can be a Rule 1.2 Representative, only that they must be "suitable and willing" to act within that role.

A Rule 1.2 Representative could be:

- A family member or friend.
- Someone who visits the individual regularly.
- Someone who knows the individual and their care needs well.

The Rule 1.2 Representative is considered on a case-by-case basis, however, when someone is involved in delivering the individual's care or managing their finances, the Court might decide that they are not sufficiently independent to act as the Rule 1.2 Representative, due to them delivering the very care that is central to the Deprivation of Liberty.

Therefore, where possible, it is preferable for the Rule 1.2 Representative to be someone who does not play a part in the individual's care delivery.

to be the least restrictive of the available options and in their best interests.

Further Resources

Case Law – Defining a Deprivation of Liberty (P v Cheshire West)

<https://www.39essex.com/information-hub/case/1-p-v-cheshire-west-chester-council-another-2-p-q-v-surrey-county-council>

Rule 1.2 Representative

<https://www.voiceability.org/about-advocacy/types-of-advocacy/rule-1-2a-representative-1>

Court of Protection

<https://www.gov.uk/courts-tribunals/court-of-protection>

A Guide to Community DoLs

[community-dol-a-quick-guide-to-community-dols.pdf](#)

Feedback

We value your feedback and welcome both compliments and areas for development. You can send us feedback through our [website](#). If you have any concerns about any action or decision taken by Adult Social Services and Housing, you should initially

talk to the person you normally deal with. You can also contact our complaints manager at:

Complaints Manager,

Adult Social Services and Housing,

Town Hall,

Walliscote Grove Road,

Weston super Mare,

BS23 1UJ

Telephone: 01275 882171

Email: complaints.manager@n-somerset.gov.uk

Complaints Manager, North Somerset Council, Town Hall, Weston-super-Mare,
BS23 1UJ

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