



Practice guidance on managing Deprivation of Liberty Orders (DOLs)

Update March 2023

What is a Deprivation of Liberty Order (DOLs)?

Article 5 of the European Convention on Human Rights (ECHR) guarantees the right to personal liberty and provides that no one should be deprived of their liberty in an arbitrary fashion.

Article 5(1) provides that deprivation of liberty can only take place in certain limited cases.

A lawful deprivation of liberty requires a procedure prescribed by law. Article 5 also requires certain safeguards to be provided to persons deprived of liberty, including the right of access to speedy judicial proceedings to challenge the lawfulness of the restrictions.

What to consider when exploring if a child's liberty is being deprived?

In 2014, an important judgement was handed down in a case decided in the UK Supreme Court. *P v Cheshire West & Chester Council; P & Q v Surrey County Council* [2014] UKSC 19. The case described and gave the clearest indication of what amounts to a deprivation of liberty.

The judgement described what it termed an acid test which should be applied when determining a deprivation of liberty:

The acid test states that a person is deprived of their liberty if:

1. They are subject to continuous supervision and control and
2. Are not free to leave

When answering both questions staff should consider if they exercise complete and effective control over a person's care and movements and decisions about their care. Both must be present in order for an objective deprivation of liberty to occur.

Who can deprive a child of their liberty?

A parent can consent to what would otherwise be a deprivation of liberty of a non-Gillick competent child.

A parent cannot consent to what would otherwise be a deprivation of liberty of a young persons aged 16 or 17 lacking capacity to consent.

If parental responsibility is held by a local authority via a Care order, the authority cannot consent to a deprivation of liberty on behalf of the children. This is because a local authority is not sufficiently independent of the state therefore would need to be authorised by the court.

Case Status:

Within Gateshead a DOLs Order can be applied to a child on any case status, this includes CIN, CP and CIOC. Once a child is made subject to Deprivation of Liberty Order the restrictions within the DOLs Order should be implemented within the child's care plan.

How is it decided that DOLs is required

If a child is open to Disabled Childrens Team, the allocated social should complete a formal Mental Capacity Assessment (MCA) when the child is 15 years 9 months this should include residence and/or tenancy, care, finances and contact (if applicable).

Social worker and Team manager should meet and have a formal discussion in relation to the current worries. It is important that this discussion is recorded on Mosaic as either case supervision or case management. The Practice Lead and Team Manager would agree for the child/ren case to progress to Legal Gateway Panel.

A request should be made to attend the next Legal Gateway Panel. This meeting is to be minute and recorded onto Mosaic.

Who can make a DOLs

An application needs to be made by Local Authority to High Court for DOLS.

An application to the court should be made where the circumstances in which the child or young person is or will be living, constitutes, at least arguably, a deprivation of liberty. The

importance of making a speedy application to the court in case where deprivation of liberty is imminent if already occurring.

When making applications, it is important to remember that the care plan will normally be the central document that the court will closely scrutinise. The care plan and statement will need to describe carefully the nature of the restrictions to be put in place for the child or young person.

- Why restrictions are necessary and appropriate
- What are the risks if the child or young person is not detained
- The child or young persons views on the proposed plan, and the views of anyone with PR
- Views of professionals, IRO and care team
- What other options have been explored and outcome of any tried
- History, last 2 years
- Proposed duration of the order

Review of DOLs Orders:

Upon the receipt of the DOLs all elements of the restrictions should be clearly updated within the young person's care plan. Detailing who is responsible for sharing the details of the restrictions with the young person.

Every child that is open to Children's Services regardless of their status will have their care plan reviewed either by way of their independent Reviewing Office (IRO) or Independent team manager. The reviews are initially 3 months then 6 months therefore after.

For Child in Our Care reviews are 28 days, then 3 months then 6 months therefore after. Should there be any concerns a request for an earlier review can be made to consider the concerns. Within any review and care team each restriction should be discussed and whether there needs to be an increase or reduction, so that restrictions are lifted at the earliest possible opportunity. Every member of the care team should be asked their views upon each restriction, specifically the young person and parent/carer.

Within Gateshead Legal Gateway Panel reviews all DOLs in place. There is no procedure that tells us about a timescale around how long DOLs should go on for (unless court direct review within DOLS order) however best practice guidance indicates there should be clear management oversight on any case that goes over 26 weeks.

Before any DOLs review in court the child's case should be presented at Legal Gateway Panel before any statement is presented to the court. This is to allow overview and scrutiny of the DOLs order as each measure will be evaluated against the evidence from care team members including the views of the young person and carers. Evidence submitted to Legal Gateway Panel should be:

- Chronology (6 months on Mosaic)
- DOLs Order (if already in place)
- Genogram
- Last Assessment (if written within the last 6 months)

You should NOT wait to attend Legal Gateway Panel till the end of the DOLs Order if there are growing safeguarding concerns in respect of the care provided to the children.

Where it is not necessary to extend the DOLs Order then it will cease upon its end date.

For children who are open to Children's Services have a Learning Disability diagnosis: At 15 years 9 months:

– Formal Mental Capacity Assessment (MCA) should be undertaken to include residence and/or tenancy, care, finances and contact (if applicable).

– If a child is in foster care/residential care/own tenancy/accessing respite

- A Court of Protection (COP) application should be submitted if they are deemed to lack capacity and meet the acid test (*Is the person subject to continuous supervision and control? And is the person free to leave?*). The care plan should clearly outline the arrangements at each placement. Social worker and Team manager should meet and have a formal discussion in relation to the current worries. It is important that this discussion is recorded on Mosaic as

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-Initial Court of Protection Application (COP)

-Initial COP application requires the following to be completed: -

- **MCA 1** – contact and finances should be done in separate MCAs from residence/tenancy/respite/contact and care.
- **MCA 2** - contact and finances should be done in separate MCAs from residence/tenancy/respite/contact and care.
- **Confirmation of Diagnosis** – Available via Legal Services (GP must provide information).
- **COP 3** – Available via www.gov.uk/government/collections/court-of-protection-forms
- **COPDOL10** – Available via www.gov.uk/government/collections/court-of-protection-forms
- **Care Plan** – dated within 3 months.
- **COP24** – This should be completed by the young person's Rule 1.2 representative (only if someone is acting in this role i.e. parent/family member). Available via www.gov.uk/government/collections/court-of-protection-forms
- A copy of the most recent capacity note can be found [here](#)
- Please note: Individual workers should liaise/consult with legal services regarding the COP documentation required.

- **Court of Protection Order (COP) Review**

- A COP review will need to be submitted to legal services **2 months prior to the expiry date** of the existing court order.
- The following will be required: -
- **Review of Decision (COP 3)** – Available via Legal Services.
- **Review of Decision (Confirmation of Diagnosis)** – Available via Legal Services.
- **Review of Decision (MCA 2)** – Available via Legal Services.
- **COPDOL11** - Available via www.gov.uk/government/collections/court-of-protection-forms
- **Care Plan** – dated within 3 months.
- Please note: Individual workers should liaise/consult with legal services regarding the COP documentation required.

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