What is a deprivation of liberty?

Deprivation of liberty

A person is deprived of their liberty where their care arrangements mean that they are continually monitored or supervised and are not free to leave their home, placement or hospital, and they do not have the mental capacity to consent to this arrangement.

A person can be deprived of their liberty in a residential or nursing home, in a supported living placement, in hospital, or even in their own home.

You may hear a deprivation of liberty being referred to by some professionals as a “DOL”.

Authorising a deprivation of liberty

In many cases it is necessary for a person to have care arrangements in place which amount to a deprivation of liberty to meet their needs and to keep them safe from harm.

However, the law says that any deprivation of liberty must be appropriately authorised. A deprivation of liberty can be authorised if the care arrangements are in the person’s best interests and they are the least restrictive way of meeting the person’s needs.

There is a mechanism for a person who is deprived of their liberty to challenge their care arrangements.

Types of authorisation

Adults

There are two possible methods of authorising the deprivation of liberty of a person over the age of 18; the one that is used is dependent upon the type of setting the adult is residing in:

1. **Residential care home or hospital**

If a person is deprived of their liberty in a care home or hospital setting, the deprivation of their liberty can be “authorised" by the relevant local authority (“the supervisory body”). The care home or hospital should request a “standard authorisation” from the local authority. This type of authorisation can remain in place for up to 12 months. The care home or hospital can also grant an “urgent authorisation” themselves for a limited period of time (initially for up to 7 days, although this can be extended by a further 7 days).

This process is often referred to as the “DoLS” scheme, which stands for “Deprivation of Liberty Safeguards”.

An advocate called a “Relevant Persons Representative” or “RPR” will usually be appointed to monitor the person’s care arrangements. The RPR will usually be a family member or an independent professional advocate. The RPR has a duty to help the person to ask the Court of Protection to review their care arrangements where they are unhappy with their care or placement. Where the RPR is a family member, they may be supported in their role by a professional advocate, known as an Independent Mental Capacity Advocate (“IMCA”).

Please see our factsheet “What is a section 21A application?” for details of how this type of authorisation can be challenged.

2. **Community placements**

Where an adult is deprived of their liberty in any other type of setting, including a supported living placement, extra care housing, or the person's own home, the deprivation of their liberty must be authorised by the Court of Protection.

When an application is made to the court to authorise a person's deprivation of liberty in the community, the court will decide whether there needs to be an attended hearing. The court has developed a special "streamlined process" to enable it to deal with certain applications to authorise a person's deprivation of liberty without there being an attended hearing. It is the court's decision whether a hearing is needed. Factors such as the level of restrictions, the age of the person, whether there are any objections by the person or their family will be taken into account by the court when making the decision about whether a hearing is required

An advocate called a "Rule 1.2 Representative" (which refers to rule 1.2 of The Court of Protection Rules 2017) will usually be appointed to monitor the person's care arrangements. The Rule 1.2 Representative may be a family member or a professional, such as an advocate.

16 and 17 year olds

Where a 16 or 17 year old is subject to care arrangements which amount to a deprivation of their liberty, this must also be authorised by the court, regardless of the setting in which the 16 or 17 year old lives. It is not possible for a parent or guardian to authorise the deprivation of liberty of a person aged 16 or over.

It is less likely that the court will allow a deprivation of liberty authorisation application relating to a 16 or 17 year old to be considered under the "streamlined process" and often in these cases the court will decide to list a court hearing.