

Adult Social Care and Health

Deprivation of Liberty in Community Settings
OPPD

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1. Purpose of the guidance

This guidance has been developed for practitioners to help determine if the level of restriction or restraint within the provision of care and accommodation for clients amounts to a deprivation of their liberty. This guidance relates specifically to clients who are living in settings other than hospital or care homes, referred to as 'community settings'. These will include:

- supported living
- extra care housing
- shared lives
- a person's own home.

2. Context and legislation

Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. The Deprivation of Liberty Safeguards ('DOLS') were brought into force in April 2009 to ensure that professionals applied checks and balances when they had to deprive people lacking capacity of their liberty. The Safeguards are part of the framework within which practitioners should be working to ensure they respect people's human rights and dignity. This framework is set down in law and includes:

- Human Rights Act (HRA) 1998
- Mental Capacity Act (MCA) 2005
- Disability Discrimination Acts (DDA) 1995 and 2005
- Equality Act (EA) 2010

The Deprivation of Liberty Safeguards are only applicable when a person is in hospital or a care home. If a person is living in another setting it is still possible to deprive the person of their liberty in their best interests, via an application to the Court of Protection. Depriving a person of their liberty within a community setting is referred to as Community DoLs – the lawful authorisation of arrangements enabling care or treatment which give rise to a deprivation of liberty for the person.

In 2014, the Supreme Court agreed an 'acid test' for people who are lacking capacity to consent to, or who refuse their care arrangements - (*P v Cheshire West and Chester Council and Q v Surrey County Council*, (2014 UKSC 19)).

The 'acid test' states that an individual is deprived of their liberty if they:

- Lack the capacity to consent to their care/treatment arrangements
- Are under continuous supervision and control
- Are not free to leave – (the Law Society advises that the focus should be not on whether it seems the person is wanting to leave, but on how those who support them would react if they did want to leave)

Practitioners should apply the 'acid test' to determine if the person is being deprived of their liberty and then follow the community DOLs process outlined below.

3. Deciding if an authorisation may be needed

Initially, the practitioner must decide if an authorisation is required. (P will be used to denote the relevant 'person/client')

Checklist to help decide if a DOLS authorisation may be needed	
1.	Is P aged 18 years or above?
2.	Does P have impairment of the mind or brain (e.g. mental illness, acquired brain injury, dementia)?
3.	Does P lack capacity to consent to accommodation or care and support?
4.	Is P subject to any powers of the Mental Health Act that would conflict with a DOL authorisation?
5.	Are there any other valid decision making authorities in place, e.g. advance decision, Lasting Power of Attorney, Court Appointed Deputy, that would conflict with a DOL authorisation?



Application of the 'Acid Test'. Are there measures in place which restrict the person's freedom of movement? E.g.	
1.	P is under close observation or supervision, 1:1 and/or is not able to decide on daily activities
2.	P is prevented from leaving the community setting or is brought back if they try to leave
3.	Equipment is in place which restricts movement or access, e.g bed rails, locked doors, Telecare, coded keypads
4.	P is not able to decide who they have contact with
5.	P is accompanied by a member of staff when they access the community to support and meet their care needs
6.	Restricted access to finances, with money being controlled by staff or benefits appointee
7.	Access is restricted to types of communication such as internet, mobile or landline phones
8.	Physical intervention techniques are being applied
9.	P has covert medication, including sedatives
Further examples of potential deprivation of liberty scenarios can be found in <i>The Law Society report; 'Identifying a deprivation of Liberty: a practical guide (2015)' – available via online</i>	



Consideration should be given to the severity and impact of the restrictions. Are they significant?	
1.	Are the restrictions used frequently and/or for prolonged periods of time?
2.	Do the restrictions impact significantly on the person's freedom of movement?
3.	Could there be a significant psychological impact on the person, e.g. are they objecting or distressed?
4.	Are relatives or carers concerned about the restrictions placed on P?

Are the restrictions considered to be in the person's best interests?

1. Are they to protect the person from harm?
2. Are the restrictions a proportionate response to the likelihood and severity of the potential harm?

Has consideration been given to reducing or eliminating the restrictions so they are the least-restrictive option?

Reduction possible

If it is possible to minimise the restrictions, any necessary actions needed to do this must be carried out immediately. Any remaining restrictions must be monitored closely and kept under review

Reduction not possible

If it is not possible to reduce restrictions to a degree that no longer constitutes a DoL, according to the 'Acid Test' and they **ARE** in a person's best interest, an application is required. If they are not in the person's best interests, a Safeguarding Alert would need to be considered.

4. Community DOLs Process Guidance

1. On identification of a potential deprivation of liberty client, complete the KCC Deprivation of Liberty Screening Tool. (Document can be found on KNET in Templates). Please note that each case must be judged on its own merits with an awareness of the legal criteria for the Deprivation of Liberty Safeguards.
2. If the outcome of the screening assessment is that P is identified as 'High Priority', the application will proceed to a Court of Protection application. Follow points 3 to 12 below. If the outcome of the screening assessment identifies P as low or medium priority, follow points 13 to 16 below.
3. For all cases identified as 'High priority', it is recommended that early contact is made with Invicta Law who will provide guidance and ensure that the practitioner completes the relevant forms correctly.
4. Practitioner completes Court of Protection Assessment of Capacity COP3 form. This constitutes a mental capacity assessment for P.
5. A supporting letter from the GP confirming the client's diagnosis and that P has an impairment of the brain or mind is also required with the application. A request to the GP should be sent as early as possible to reduce any potential for delay.
6. Practitioner identifies a rule 1.2 representative and arranges for them to complete and return the Court of Protection Witness Statement form (COP24). The identification of the rule 1.2 representative should include them being informed of their role and responsibility.

7. If P does not have a close relative or friend to act as a rule 1.2 representative, the Practitioner may need to commission an independent advocate/paid representative. SEAP advocacy is the provider for KCC clients.
8. Practitioner completes/updates the Care and Support Plan for P. This Care and Support Plan must be agreed and signed off by all relevant parties. The Care and Support Plan should state the address where P is deprived of their liberty. It should also detail the restrictions that cumulatively amount to a DoLs and the Best Interests process followed to agree the restriction.
9. On completion of steps 1 to 7 above, the Practitioner will then complete the Court of Protection Application to authorise a deprivation of liberty (COP11) form. **Please ensure that before completing the application, a check is made of the triggers identified on page 31 of the form. If any of these triggers apply, this may mean that a community DOL application is not appropriate under the streamlined process and that an oral hearing may be required in the first instance.**
10. If you are unsure after looking at the triggers, liaise with your Team Manager to determine if early advice is required from Kent Invicta Law.
11. Completed forms should be discussed with the Senior Practitioner or Team Manager for quality assurance purposes and for agreement to send to Kent Invicta Law.
12. Once agreement has been given, a Legal Input request should be completed and sent to Kent Invicta Law requesting 'Legal input for a Community Deprivation of Liberty Application under the streamlined Re X process.

Low to medium priority screening outcomes

13. Completed screening assessment outcome is categorised as low or medium priority. This should be signed off by a Service Manager to confirm this is the appropriate outcome.
14. A copy is placed on Client E-file and will be reviewed in line with statutory requirements. If the decision is challenged, the case will be allocated to a member of the Social Work team for review and further discussion with local management regarding progression. Consideration should be given to determine the need for further discussion at Risk Panel prior to progression. (E-files will be replaced by Mosaic in the longer term).
15. If the assessment shows that services are required, these are provided as appropriate and the Client will be transferred to the appropriate OPPD service.
16. If the assessment shows that no further input is required, the case will be closed.

Court of Protection Forms should always be completed using the online version in order to ensure that the correct form is being used. The forms can be found here:

[COP Forms Online version](#)

Community DoLs Process Flowchart

