

Safeguarding adults



North East Lincolnshire



Deprivation of Liberty in Community Settings

What you need
to know...

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Background

The term 'Deprivation of Liberty' (DoL) comes from Article 5 of the European Convention on Human Rights and is about protecting people from situations where their freedom may be taken away. Article 5 states that it is unlawful for someone to be deprived of their liberty without their consent unless it has been authorised by a fair and proper legal process.

The term 'Deprivation of Liberty' is used when referring to health and social care because in some circumstances the care needs of a person are of such significance that delivering the right support to them means their freedom is/could be compromised. Supporting someone with their care needs could mean that they are under 'constant supervision and control' and 'not free to leave' the care setting that they are in. If a person is not able to consent to being accommodated for the purpose of receiving care and/ or treatment that they need due to an impairment, illness, or injury that affects the functioning of their mind or brain, it is necessary for someone else to make this decision for them in their 'best interest', through an authorised legal process.

If someone aged 18 or over is in a hospital or a care home, care and treatment arrangements that amount to a deprivation of liberty can be authorised by the local authority using a process called the Deprivation of Liberty Safeguards (DoLS). The DoLS were developed in 2007 as an addition to the Mental Capacity Act 2005. In these circumstances two specialist professionals, (a Mental Health Assessor (MHA), and a Best Interest Assessor (BIA)) are appointed to do a number of specific assessments. After the assessments are completed, the BIA makes a judgement about whether or not the care provided is necessary and proportionate taking into account the presenting risks and balancing these with the wishes and views of the person, their family and friends, and those involved in their care.

If the BIA agrees that the care and treatment is being delivered in the least restrictive way possible in the person's best interest they will recommend that the local authority authorise the deprivation. The local authority is able to lawfully authorise a deprivation for up to 12 months.

During the period of authorisation, there are safeguards in place that enable the authorisation to be formally reviewed, or where there may be objections or disagreements that cannot be resolved, the case can be referred to the Court of Protection for a decision.

The DoLS process cannot be used for people who receive their care and treatment in the community, outside of a hospital or care home.

Deprivation of Liberty in the Community

It has been recognised that some people that live in community settings such as supported living may be deprived of their liberty. At the moment if the person cannot consent to the care and treatment themselves, the DoLS process does not allow local authorities to authorise this on their behalf. So these cases have to be referred to the Court of Protection. The Court of Protection has been specifically set up to deal with certain financial and welfare matters relating to people who lack the capacity to make these decisions for themselves.

Where a deprivation of liberty (DoL) may be taking place in the community, the court is able to look at the circumstances and check that the care provided is necessary and proportionate, is the least restrictive, and is in the person's best interest. The court is also able to settle any disputes or disagreements about how the care is provided. The court can authorise the deprivation for up to 12 months; and when the authorisation period is due to expire, the case needs to be presented to the court again if the deprivation will need to continue. The court authorisation process for DoL in the community applies to people over the age of 16.

To prepare a case for the court, in a similar way to the DoLS process, a Doctor needs to be involved to make a statement about the person's mental health condition. This is often the person's GP or in some circumstances another doctor/ consultant involved in the person's care. In addition, a social worker, case manager or care co-ordinator will then provide all of the other information that the court needs to consider the person's circumstances. This will include the views all of those involved with the person, plus what the person may have thought before they

lost capacity to make care and treatment decisions for themselves. Once the judge is satisfied that the care arrangements are necessary and proportionate, the deprivation can be authorised. The judge will not normally make any changes to the care arrangements unless they identify anything that they think could be done better.

Due to the demands on local authorities and the courts by the unanticipated high number of cases being referred for authorisation, the DoL process is subject to delays. At the moment, all local authorities are prioritising cases using nationally recognised risk assessment tools and good practice principles. Unfortunately this does mean that some cases are waiting for prolonged periods before being dealt with, especially where the person has been in receipt of their care for a number of years, and where they are settled and no concerns have been raised by anyone involved. Whilst the risk to people in this situation is minimal, the local authority are working hard to make sure that cases are reviewed, and dealt with as quickly as possible.

Both the DoLS and the DoL processes are designed to protect the human rights of people who are unable to protect themselves. In the future, these processes may change, but the Government has not yet made a decision about this. The proposed changes may simplify the DoLS/ DoL processes, and in the majority of cases this will enable the authorisations to be agreed as part of the assessment process when the care arrangements are being set up and reviewed. This will vastly reduce the number of cases that need to be presented to the courts. In the meantime, the current authorisation process will continue.

In North East Lincolnshire, if you have any concerns about the care arrangements that have been made for any person, please contact their case manager directly or raise your concerns via the Single Point of Access on **01472 256256**. For any general queries about deprivation of liberty please contact the MCA/ DoLS team on **01472 232244** and choose **option 2**.