



Deprivation of Liberty (DoLS) Practice Guidance

Introduction

This practice guidance has been written to enable Social Workers, Team Managers, IROs and Principal Officers to understand the law and processes around the Deprivation of Liberty for our children and young people.

It sets out how and why consideration should be given to the use of Deprivation of Liberty Safeguards (DoLS) to improve outcomes and consistency across the Trust. It is designed to help those to identify and take action when a young person maybe deprived of their liberty. The intention is to assist in good decision making.

This practice guidance should be read and used in conjunction with the [Deprivation of Liberty Flowchart](#), the [Deprivation of Liberty Confinement Checklist](#) and the updated [Deprivation of Liberty Legal Briefing](#).

What is a Deprivation of Liberty and Why is it Important?

A Deprivation of Liberty can occur in any setting. This may include a residential setting, either a residential unit, foster carers home, supported accommodation provision or a hospital. This may also happen in a young person's own home.

The term comes from the European Convention on Human Rights and under this everyone has the right to liberty and can only be deprived of that liberty in limited circumstances and subject to legal procedures.

For some young people, the provision of social care services may deprive them of their liberty,

What do I Need to Consider?

(i) The Age of the Young Person

As the law currently stands, these procedures relate to children aged over the age of 11 years. This is subject to change by caselaw, so please check the most up to date legal briefing.

(ii) Confinement

Following the case law of the commonly called Cheshire West Case, the young person must be subject to a confinement for a not negligible length of time i.e. minutes or hours do not satisfy this.

To determine whether a person has been confined, please use the confinement questionnaire which you can access here: [Deprivation of Liberty Checklist](#).

The Deprivation of Liberty flowchart will assist you in determining your next steps, however some further explanation is detailed below:

(ii) Consent

There are a number of circumstances whereby the young person themselves or a parent can consent to the confinement.

If children and young People have sufficient mental capacity to consent then they may be able to consent in their own right. This is a complicated area and you should seek legal advice about this.

(iv) Children 12 to 16 Years

For a child between the ages of 12 and 16 years – the parent can consent to the confinement. Consideration should be given as to whether the parent can give valid consent i.e. are their capacity issues for their parent? Are their very serious concerns about their ability to exercise Parental Responsibility appropriately? If in doubt, legal advice will need to be sought regarding the validity of that consent.

(v) Young People Over the Age of 16 Years

For young people aged over 16 years, it is the key principle of the Mental Capacity Act 2005 that they must be given all practicable support to make a decision.

If the young person cannot understand, retain, use and weigh the information about their confinement and communicate that decision, then they cannot consent.

Parents cannot consent on their behalf.

(vi) Children Subject to a Care Order

For children of any age subject to a Care Order, no-one can give valid consent and an application must be made to the court. Legal advice should be sought.

Further information around consent can be found here: [Consents Practice Guidance](#)

(vii) The Confinement is a Result of the Trust's Intervention

This relates to children at home or in a placement outside of the home.

Has the Trust either directly provided the care arrangements or are involved and should know? in simple terms, this means that if we have sourced a placement or are supplying a social care service (either a worker, short break or payment) then the confinement maybe as a result of our intervention.

Role of the Social Worker

Be curious.

For children in care, when considering placement changes particularly around the level of supervision or control of children, consider whether the arrangements amount to a deprivation of liberty or is a reasonable restriction of liberty. This is really important at the making of a new placement or when changing staffing. Particular regard should be given to the use of restraint, locked doors or the use of harnesses etc.

When children come into our care and you are completing the delegated authority document you should be mindful to consider any issues or decisions around containment or supervision and whether these may amount to a restriction of liberty or are a reasonable restriction of liberty.

For children at home, it is important to understand the child's lived experience and look out for the use of safe spaces and consider the language that families use. Do they use harnesses when out and about, are doors locked, do they use safe tents? Are they lockable etc? Consider whether these things would amount to confinement.

Examples can be found here:

- <https://www.safespaces.co.uk/>
- <http://www.creativecareltd.com/products/>

Supervision is an excellent time to discuss these with your manager and explore whether the circumstances of the child or young person could potentially give rise to DoLS.

Upload your completed Confinement Questionnaire to the child's file and complete a case note entitled "DoLS questionnaire outcome"

Role of the Team Manager

Be curious.

Discuss in supervision the child's lived experience either in the home or in care, explore what the language means for that child.

Consider when signing off funding for additional care packages, whether the changes may give rise to a DoLS situation.

Role of the IRO or Principal Officer

In either Child Protection Case Conferences or Child in Care Reviews it is important to listen out for cues around language, which may give rise to concerns around unrecognised Deprivation of Liberty considerations. Particularly around staffing ratios, control measures or the need for increased supervision,

It is your role in these meetings to ask questions and to encourage those in the meeting to consider DoLS.

Role of the Trust Legal Team

To give impartial legal advice and advise on the next steps that are appropriate and proportionate.

To make applications to the Family Court or Court of Protection on behalf of the Trust and to represent the Trust in court cases.

The Team has an intranet page which tells you among other things how to obtain legal advice and provides contact numbers and email addresses. This can be found via this [link](#).

In Summary

- Think about the age of the child.
- Consider whether the child is confined.
- Consider who can consent to a Deprivation of Liberty.
- Consider whether the Trust is responsible or should know about that confinement.
- Seek appropriate legal advice and guidance.
- Record your review and decision on the child's file.

Further Advice and Guidance

Further advice and guidance can be found in via the following links:

- [The Law Society](#)
- [Research in Practice](#)

Appendix

- [SS4 DoLS Social Worker Statement Template SWET](#)