

Bradford Adult Social Care Factsheet

Community Deprivation of Liberty (DoL)



What is a Deprivation of Liberty (DoL)?

A deprivation of liberty (DoL) can occur in any place such as hospitals and care homes, as well as in community settings too, such as supported living and people's own homes.

It is likely a person will be deprived of their liberty if they meet the following criteria of what's known as the 'acid test':

- They lack capacity (are unable to make decisions) about their care arrangements; and
- They are subject to continuous supervision and control; and
- They are not free to leave.

If the acid test is met, a DoL will be occurring regardless of whether the person is happy with their arrangements or not or how their care is paid for. Someone being deprived of their liberty does not mean something wrong is happening - the reason for depriving someone of their liberty should be to keep them safe and to promote their wellbeing.

What is the procedure for a deprivation of liberty in the community?

The law says that if someone is deprived of their liberty a legal process needs to be followed to make sure their Human Rights are protected and the arrangements are in their best interests before they can be authorised.

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For people deprived of their liberty in a care home or hospital, who are aged over 18, there is something called the Deprivation of Liberty Safeguards (DoLS), which describes the legal process when someone in these settings. For people aged 16 or over who are deprived of their liberty in community settings such as supported living, extra care housing or in a privately owned/rented property (or for 16/17 year olds in care homes or hospitals) an alternative legal framework to DoLS applies.

In these scenarios, what is known as a 'judicial authorisation of a deprivation of liberty' (or, more commonly known as a 'community DoL') is required. This refers to a process where an application is made to a specialist court (the Court of Protection or 'COP') where a judge will then consider whether to authorise the deprivation of liberty.

Who is responsible for seeking authorisation of the deprivation of liberty?

The responsibility for applying to the COP for a community DoL to be authorised will usually rest with Bradford Council except for when someone is fully health funded (usually under NHS Continuing Healthcare) where the responsibility to seek authorisation for the deprivation of liberty lies with the NHS. Where 16/17 year-olds are deprived of their liberty in hospitals, then the hospital Trust would usually be responsible.

What is the process for seeking authorisation of a Community DoL?

A social care professional (a social worker or an occupational therapist) from the council should identify whether the acid test is/will be met for someone in the community and will then commence preparing an application for the COP. There are two routes for a DoL to be authorised in community settings:

1. The 'streamlined' process, where a COPDOL11 form is completed by the Bradford Council social care professional before being submitted to the COP. A judge will then look at the paper documentation alone (without having a court hearing), before authorising the deprivation of liberty. This is the most common way that a community DoL is authorised;

or

2. An oral welfare hearing in court, where the judge will identify that they can't authorise the deprivation of liberty without a court hearing in person. This is much less common.

Under the streamlined COPDOL11 process - when completing the COPDOL11 application form - the social care professional will need to fulfil certain tasks, including:

- Gathering medical evidence (normally from the GP) which confirms the person has a mental disorder;
- Completing a mental capacity assessment that identifies the person lacks capacity to consent to the care arrangements;
- Ensuring a detailed care and support plan is in place that clarifies the arrangements the person is subject to and why they constitute a deprivation of liberty;

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- Providing a statement that details why the arrangements the person is subject to are in their best interests.

A very important part of the streamlined process is that the views of the person and other people interested in their welfare are gathered and included in the COPDOL11 application form.

Once the required documentation and evidence is put before the COP, and the court are satisfied that the deprivation of liberty can be authorised, they will then grant an order.

What happens once the Court of Protection have granted the order?

Usually, the COP will grant an order authorising the arrangements that amount to a DoL for a maximum of 12 months. The court order can be reviewed if there are any changes to the person's situation and will need to be renewed by Bradford Council before the 12-month period ends.

Importantly, the COP will also appoint a representative (a Rule 1.2 representative or litigation friend) for the person that may be a friend or a family member but can also be a paid advocate or other professional. They will maintain contact with the person, will help advocate for them and uphold their Human Rights whilst the court order is in place.

Contact

You can direct queries to the following email addresses:

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