

## **Deprivation of Liberty Safeguards: Briefing for people in Supported Living, Adult Placement or similar settings**

The test of deprivation of liberty has now been revised into a so-called “acid test” by the Supreme Court as follows:

**The person is under continuous supervision and control AND is not free to leave and they lack capacity to consent to these arrangements then they are being deprived of their liberty**

Every element of this must be satisfied i.e.

- Continuous
- Supervision
- Control
- Not free to leave

It is no longer relevant whether the person is compliant or whether there is a lack of objection. The focus is not on the person’s ability to express a desire to leave, but on what those with control over their care arrangements would do if they sought to leave. The purpose of the placement is not relevant and the person should no longer be compared only with another person who has the same level of disability. The concept of “relative normality” as expressed by the Court of Appeal in the Cheshire West case was determined by the Supreme Court as not relevant when deciding whether an individual is being deprived of their liberty

The test is an objective one and the Supreme Court stated that “a gilded cage is still a cage”.

One of the cases heard by the Court involved someone living in a foster placement and one in a small group home. This decision has widened the approach to deprivation of liberty in these settings and a cautious approach is urged erring towards deprivation. If the care arrangements giving rise to the deprivation of liberty are being made by the state (whether LA or NHS) then the actual location (care home, hospital, supported living or in the adult’s own home) are irrelevant.

Therefore it is essential to work through all those residents where this may now apply even if this has been considered and ruled out previously.

The following is a guide to identify those potentially deprived of their liberty. Once residents are identified the first response should be to review the care/treatment plan to determine whether the care/treatment can be provided in a less restrictive way. If this is not possible you will need to contact Legal Services for advice on making an application to the Court of Protection to authorise the deprivation of liberty.

**DOLS CHECKLIST FOR PEOPLE LIVING IN SUPPORTED LIVING, SHARED LIVES OR OTHER NON RESIDENTIAL SETTING.**

Firstly it must be established that the person lacks capacity to decide where they live.

**There must be a formal written decision to this effect to rebut the presumption of capacity.**

If they have capacity for this decision then they do not meet the test for deprivation of liberty so there is no need to continue.

**QUESTION ONE:** In your opinion is the person free to leave YES/NO

*Remember this does not mean that they must be trying to leave or even expressing a view about leaving; the test is what staff would do if the person tried to leave*

**If the answer is YES they do not meet the test for deprivation of liberty**

**QUESTION TWO:** Is the person subject to both supervision and control YES/NO

*Remember it is no longer relevant that the purpose of this is to enable them to go out or to take part in activities or if the high level of supervision and control is to meet a high level of care needs*

**QUESTION THREE:** Is the level of supervision and control continuous YES/NO

In any case where the answers are **NO, YES, YES** then it is a possibility that the person is being deprived of their liberty.

The next step is to review the person's care plan to determine whether care can be provided in a less restrictive way.

If this is not possible you will need to contact Legal Services to discuss the next steps.

If an application needs to be made to The Court of Protection - you need to use the standard application forms for a personal welfare application, namely:

COP1 Application Form

COP1B Supporting information for personal welfare applications

COP2 Permission

COP3 Evidence of Capacity

Plus any other supporting evidence in particular care plans, reports, etc. that support the view that it is in the person's best interests to be deprived of their liberty.

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