

Deprivation of Liberty Safeguards (DoLS)

Case Law Summary 2015-17

July 2017 edition

Issue	Case	Summary
What is a deprivation of liberty?	<i>Supreme Court:</i> P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19	<i>'If the acid test is whether a person is under the complete supervision and control of those caring for her and is not free to leave the place where she lives, then the truth is that both MIG and MEG are being deprived of their liberty.'</i>
Medication: covert and to manage behaviour	AG v BMBC & SNH [2016] EWCOP 37	Use of covert medication to manage behaviour for a woman with dementia in a care home. The BIA should record this as a restriction and consider the need for conditions, reviews and shorter duration. Note: BHCC v KD [2016] EWCOP B2 confirms this approach. Several DoLS cases refer to medication to manage behaviour as a restriction. Example: P & Q v Surrey CC [2011] EWCA Civ 190 (risperidone)
Importance of Guzzardi	NRA & Ors [2015] EWCOP 59	<i>'It is well established that the approach to the existence of a deprivation of liberty is governed by the Guzzardi principle.' = restrictions assessed - type, duration, effect, manner, degree/intensity</i>
Unescorted leave	Stankov v Bulgaria [2015] ECHR No. 25820/07	Unescorted leave (permission required, time limited and action taken if a person does not return) can still lead to a deprivation of liberty.
Article 8: private & family life	Steven Neary v Hillingdon Council [2011] EWHC 1377	DoLS cannot be used to remove a person from their family or prevent a person returning to their family (ie. for safeguarding reasons). DoLS authorises a breach of Article 5 (deprivation of liberty) but not Article 8. Such action needs Court of Protection authority.
Authorising signatory	P v Surrey County Council & Anor [2015] EWCOP 54 Steven Neary v Hillingdon Council [2011] EWHC 1377	<i>'The alternatives had to be considered by the supervisory body as part of its determination independent of the best interests assessor's recommendation of the period for which the authorisation of deprivation of liberty would be granted.'</i> <i>'The responsibilities of a supervisory body, ..., require it to scrutinise the assessment it receives with independence and a degree of care that is appropriate to the seriousness of the decision</i>
Available options	<i>Supreme Court:</i> N v ACCG and others [2017] UKSC 22	The Court of Protection: <i>'It has no greater power to oblige others to do what is best than P would have himself. This must mean that, just like P, the court can only choose between the "available options".'</i>
Harm to others rather than self	P v A local authority [2015] COP No: 12715633	Court discharges DoLS because the main risk factor for the person was risk of harm to others.
When and why to appeal under DoLS	RD, JW, EP, JB & JP v local authorities (x4) [2016] EWCOP 49	Detailed guidance on when and why to appeal under DoLS (Section 21A applications) by Representatives and IMCAs. See also: [2016] EWCOP 48A – appeals can be about any element of the DoLS assessment (eg. just care/treatment).
Restrictions for a short duration	Kasparov v Russia [2016] ECHR 849	<i>'Article 5 § 1 of the Convention may apply even to deprivations of liberty of a very short length..'</i> See also: [2013] EWCA Civ 69
Role of Best Interests Assessor (BIA)	P v Surrey County Council & Anor [2015] EWCOP 54.	<i>'..given it was recognised that BR, the relevant person's representative and his mother, was acting appropriately and in her son's interests, as is clear from the assessment, it was incumbent on the best interests assessor to investigate her proposal to see whether in fact it offered a less restrictive, more suitable environment.'</i>
Mental capacity assessment	Derbyshire CC v AC, EC & LC [2014] EWCOP 38	What needs to be understood to be resident for care/treatment. See also: [2016] EWCOP 4 [2013] EWHC 272 (Fam).
Choice of Representative	AJ v A Local Authority [2015] EWCOP 5	<i>'... it is likely to be difficult for a close relative or friend who believes that it is in P's best interests to move into residential care, and has</i>

		<i>been actively involved in arranging such a move, into a placement that involves a deprivation of liberty, to fulfil the functions of RPR,..'</i>
Conditions	Re W [2016] EWCOP 58	'..there is a duty on the supervisory body, .. to monitor compliance with conditions.' How often depends on the individual condition/case. Also case above: AG v BMC & SNH [2016] EWCOP 37 – a condition should be included in a DoLS if covert medication is prescribed.
DoLS for the objecting patient in a care home + Clozapine	BHCC v KD [2016] EWCOP B2	80 year old woman with schizophrenia and history of detentions under MHA 1983. Now in a care home + she is objecting + question of whether DoLS can be used to detain her + MCA used to give Clozapine + potential use of covert medication. Yes, to all.
Intensive Care Units (ICU) and DoLS	Re: Ferreira v HM Senior Coroner for Inner South London [2017] EWCA Civ 31	Three weeks in ICU for woman with a learning disability was not a deprivation of liberty but rather a restriction of movement: <i>'In my judgment, any deprivation of liberty resulting from the administration of life-saving treatment to a person falls within this category.'</i>
Children and deprivation of liberty	A local authority v D & Ors [2015] EWHC 3125 (Fam) [2016] EWHC 34773 (Fam)	14 year old boy with learning disability in a children's home. See also: Re: Daniel X [2016] CM15C05383 (a 10 year old boy). Consent from a 'Gillick' competent child (age 15 in this case) to restrictions in a residential unit means it is not a deprivation of liberty.
Community deprivation of liberty	CC & CCG v MAG [2016] EWCOP 5 Re: X [2014] EWCOP 25	A man with learning disability in a single tenancy flat with 24 hour 1:1 support. Court authorised community DoL since November 2011. Procedure for Court of Protection authorised deprivation of liberty + NRA & Ors [2015] EWCOP 59 + JM and others [2016] EWCOP 15
Imputable to the State	Staffordshire CC v SRK, RK and Ors [2016] EWCOP 27	Note: this case also refers to 'assistive technology' as a restriction (monitoring). See also: LB Haringey v R, P, F & A [2016] EWCOP 33
Mental Health Act or DoLS	AM v SLAM & Sec State for Health [2013] UKUT 0365	The procedure for admitting a person to a mental health ward and the decision about whether to use MHA 1983 or DoLS.
Leave of absence (MHA) and DoLS	A Hospital NHS Trust v CD & a Mental Health Foundation Trust [2015] EWCOP 74	Woman with paranoid schizophrenia under Section 3 of MHA and in need of total hysterectomy due to very large ovarian growth. Judge finds she can be put on s17 leave to general hospital and then DoLS used to detain her for the physical treatment.
Guardianship and DoLS	GW v Gloucestershire CC [2016] UKUT 499 (AAC)	Guardianship does not mean a person is deprived of their liberty but the associated care plan could be a deprivation of liberty and this would need DoLS or Court order. DoLS & Guardianship can run together. See also: [2016] EWCOP 47 + [2015] UKUT 0125 (AAC).
Community Treatment Orders and DoLS	Re: MM and PJ (Deprivation of Liberty) [2017] EWCA Civ 194	A CTO can authorise a deprivation of liberty in the community without the need for a DoLS authorisation (or DoL Court Order). CTO is: <i>'..a power to provide for a lesser restriction of movement than detention in hospital which may nevertheless be an objective deprivation of liberty provided it is used for the specific purposes set out in the CTO scheme.'</i>
Conditional Discharge and DoLS	Sec of State for Justice v KC and C Partnership NHS Foundation Trust [2015] UKUT 0376 (AAC) Re: MM and PJ (Deprivation of Liberty) [2017] EWCA Civ 194	Conditions (care plan) for a person on conditional discharge can lead to a deprivation of liberty. A conditional discharge itself does not provide authority to deprive a person of their liberty. Conditional discharge and DoLS (or DoL court order) can run together. If the restrictions of a proposed conditional discharge create a deprivation of liberty the person CANNOT consent to them in order to avoid the deprivation of liberty (freely given consent not possible in this context). A Mental Health Tribunal does not have the power to order a conditional discharge where the conditions mean the person will be deprived of their liberty.