

Case Summary

P v Surrey County Council and Surrey Downs CCG [\[2015\] EWCOP 54](#)

Issue

Deprivation of liberty authorisation – role of supervisory body

Facts

P was 26 years old with severe learning disability and autistic spectrum disorder. His placement broke down and he was urgently moved into a care home on 5 September 2014. On 24 November 2014 an urgent authorisation was issued by the care home and on 23 December 2014, a standard authorisation was granted by Surrey County Council, expiring on 18 October 2015. His mother, acting as relevant person’s representative and litigation friend, successfully challenged the authorisation and the court declared that it was in P’s best interests to move to a new placement after a period of transition.

Decision

The court held that P had been unlawfully deprived of liberty prior to the urgent authorisation and between its expiry and the commencement of the standard authorisation. Although not formally holding that P was unlawfully deprived of his liberty once the standard authorisation had been granted, HHJ Cushing was very critical of the supervisory body for making an authorisation that ran for too long (80% of the maximum term) in circumstances where it was clear that the care home where he was deprived of his liberty was only suitable in the short term.

Practice implications

This decision makes clear the proactive nature of the supervisory body’s role in the DoLS process. The legislation says that if all qualifying requirements are met an authorisation must be given. But determining whether those requirements are, in fact, met can never be a “tick-box” exercise where a vulnerable person’s liberty is at stake. In the instant case, the authoriser had discussed the case with the best interests’ assessor but there was no contemporaneous record of this discussion. Note, therefore, that it would be prudent for authorisers to take such a note of that critical conversation if they do not do already. But even such a conversation would not have satisfied the judge, who went further by saying “*an alternative approach which would have been less restrictive of P’s liberty would have been to call for further information before granting the standard authorisation at all or for the duration in question.*” This suggests that the “supervisory” body may in fact need to be more of an “investigatory” body.

The second noteworthy feature of this case is its confirmation that deprivation of liberty is not a binary question – i.e. is it, or is it not, in P’s best interests? Rather, it involves questions of degree: P may need to be deprived of liberty but not subject to restrictions of the intensity proposed.

Thirdly, the court reminded us that the deprivation of liberty authority relates to the circumstances in which P is deprived of his liberty, not to his condition, i.e. it is situation specific, not personal specific; a move to a different location would require a fresh authorisation.

The full version of this case report can be found [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).