

Young people | February 2023

Children deprived of their liberty: An analysis of the first two months of applications to the national deprivation of liberty court

Authors
Alice Roe
Mary Ryan



Report

This report highlights the main findings from an analysis of the first two months of applications to the national deprivation of liberty court, focusing on the needs of children subject to applications. It provides the first overview of the characteristics and needs of the increasing number of children subject to deprivation of liberty applications under the inherent jurisdiction of the high court.

Authors

- Alice Roe
- Mary Ryan

Acknowledgements

We would like to thank staff at the Royal Courts of Justice High Court Family Division for their assistance with accessing the data used in this study. We would also like to thank Vanessa Long for her help with data collection and all external reviewers for their insightful comments on earlier drafts of the report.

Recommended citation

Roe, A. and Ryan, M. (2023). *Children deprived of their liberty: An analysis of the first two months of applications to the national deprivation of liberty court*. Nuffield Family Justice Observatory. <https://www.nuffieldfjo.org.uk/resource/children-deprived-of-their-liberty-an-analysis-of-the-first-two-months-of-applications>

Contents

i	Executive summary
01	Introduction
06	Children’s characteristics
10	Children’s histories
18	What were the needs of children subject to deprivation of liberty applications?
40	The deprivation of liberty application
46	Reflections
49	Case list
50	References
53	Appendix A

Disclaimer

Nuffield FJO has funded this project, but the views expressed are those of the authors and not necessarily those of Nuffield FJO or the Foundation.

Copyright © Nuffield Family Justice Observatory 2023 100 St John Street, London EC1M 4EH T: 020 7631 0566

Part of Nuffield Foundation: Registered charity 206601

nuffieldfjo.org.uk | @NuffieldFJO

www.nuffieldfoundation.org | @NuffieldFound



Executive summary

In recent years, increasing concern has been raised about the relatively small but rising number of highly vulnerable children who are deprived of their liberty under the inherent jurisdiction of the high court in England and Wales. In spite of the concern, we know very little about the children – their characteristics, behaviours, risk factors or needs.

In July 2022 the President of the Family Division launched a national deprivation of liberty (DoL) court at the Royal Courts of Justice, which is running for a pilot period of 12 months. The pilot was set up partly as a way of managing the listing of the high number of applications coming into local family courts. From July 2022, all applications from England and Wales to deprive children of their liberty under the inherent jurisdiction of the high court were issued at this court.

This report highlights the key findings from an analysis of the first two months of applications issued by the national DoL court. The research aims to provide a better understanding of who the children subject to DoL applications are, in order to inform conversations at a national and local level about the type of care and provision they need.

The research aimed to respond to the following questions:

- What are the needs, characteristics and circumstances of children subject to DoL applications?
- What are the most common primary reason(s) for a DoL order being sought?
- Are there distinct cohorts of children with different needs, who may require different types of care?
- Who is making the applications, what forms of DoL are they seeking, and where are children being placed?

What is a ‘deprivation of liberty’?

The term ‘deprivation of liberty’ comes from Article 5 of the European Convention on Human Rights, which provides that everyone, of whatever age, has the right to liberty. A deprivation of liberty (DoL) occurs when restrictions are placed on a child’s liberty beyond what would normally be expected for a child of the same age. This may include them being kept in a locked environment that they are not free to leave, being kept under continuous supervision, and being subject to restraint or medical treatment without consent. The United Nations Convention on the Rights of the Child states that the restriction of a child’s liberty should be used only as a measure of last resort and for the shortest appropriate period of time.

Deprivation of liberty orders under inherent jurisdiction of the high court

The high court can authorise the deprivation of the child’s liberty under its inherent jurisdiction when none of the other legal mechanisms apply – for example, if there are no beds available in secure children’s homes. It is intended as a last resort measure.

For more information about what constitutes a DoL and the different legal routes for depriving children of their liberty see:

Parker, C. (2022). *Deprivation of liberty: Legal reflections and mechanisms*. Briefing. Nuffield Family Justice Observatory. www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing

About the data

The data used in this study relates to all children who were subject to applications for DoL orders issued to the national DoL court between 4 July and 31 August 2022.

A total of 231 applications were received in the first two months of the court (100 in July and 131 in August). In total, 23 of these applications were excluded from our analysis – either because minimal information was included in the court file about the reasons for the application or because they were repeat applications concerning the same child. This left a sample of 208 children.

Information about each case was extracted from the application submitted to the court by the local authority (or other applicant), consisting of the C66 application form (the form used by applicants to request an order under the inherent jurisdiction) and the accompanying evidence statement.

Our analysis is limited by the amount of information included in the application. While information about the events and factors immediately leading up to the application being made was generally good, applications varied in the level of information provided about children's earlier life histories.

The information included in applications also relates to the perspective of the applicant on the child's needs, and the information considered necessary to support the case for a DoL order. Applications may therefore not provide a full picture of the child's needs.

In this study we have not reported on the outcome of applications, such as whether the application was granted or where children were ultimately placed. This will be the subject of a later report.

Key findings

What are the needs and characteristics of children subject to deprivation of liberty applications?

- Children subject to DoL applications are highly vulnerable. They typically have multiple and complex needs.
- The most commonly identified risk factors among the 208 children in our study were behaviours that were considered a risk to others (e.g. physical or verbal aggression, recorded in 69.2% of all cases), concerns about mental health or emotional difficulties (59.1%), placement breakdown (55.3%), self-harm or suicidal ideation (52.4%), and absconding behaviours (46.6%).
- Most of the children had experienced significant adversity and trauma throughout childhood, including abuse and neglect, rejection and bereavement.
- Children were well known to services. Only 10 of the 208 children had recently come to the attention of the local authority and almost all (96.6%) were in care at the time of the DoL application. Just under half (44.7%) had come into care within the last 2 years, with almost a fifth of children (19.2%) coming into care in the 6 months prior to the DoL application being made.
- Children had experienced significant instability in the months and years prior to the application. Several had experienced periods in and out of care, and over half (55.3%) had experienced multiple changes in their placements.
- 19 children had experienced the breakdown of adoption (10) or special guardianship (9) because their carers were unable to manage their behaviour.
- Most children (70.7%) were aged between 14 and 16 years old at the time of the application – but nevertheless, a significant number of children (7.2%) were aged 12 or under.
- Information about children’s ethnicity was not consistently recorded but initial analysis suggests an overrepresentation of children from Mixed, Black and White Other ethnic backgrounds among children subject to DoL applications.¹

1 Ethnicity categories are based on those used by the Office for National Statistics.

What was the main reason for the DoL application?

- In most cases the DoL application was made due to concerns about the child's behaviours, and the severe and immediate risk of harm faced by the child or others as a result of this.
- We identified seven primary reasons that a DoL application might be made, reflecting the main concern in each case. The most common reason was 'risk to others' (24.0% of all cases), related to concerns about the risk posed to others by the child's behaviour, including violence towards others, and/or causing damage to property either in the placement or the community, such as setting fire to things.
- The second most common primary reason for a DoL application, in just over a fifth (22.1%) of cases, was to manage a child's needs or behaviours that were the result of a severe learning disability, a physical disability and/or autism.
- Other primary reasons included self-harm (16.8% of cases), mental health (12.5%) – identified as a primary reason where there was evidence of a diagnosis of mental health disorder, and/or treatment from specialist mental health services in the past or currently – sexual exploitation (10.6%) and criminal exploitation (8.7%).
- In a small number of cases (5.3%) the reasons given for the DoL did not fit the situations described above. This included cases where the main concern was the use of drugs (including class A drugs) and alcohol by the child, or cases where the main concern was the child going missing for periods of time.
- Although we were able to identify a primary reason for the application – the central concern that led to the DoL application being made – in almost all cases (95.2%), there was more than one risk factor present and most (65.7%) had four or more. The children had multiple and overlapping needs.
- There were notable gender differences in the reason for the DoL application, with girls much more likely to be subject to applications due to self-harm, mental health, and sexual exploitation, while boys were more likely to be subject to applications due to concerns about the risks they posed to others and criminal exploitation. This may reflect gendered differences in the understanding of children's behaviours – with girls' challenging behaviours more likely to be seen as relating to internalising difficulties and boys' with externalising or 'aggressive' behaviours – and assumptions about extrafamilial risks faced by girls and boys.

Are there distinct cohorts of children with different needs, who may require different types of care?

- We identified three broadly distinct groups of children that may require different types of care – this may help guide future service development. In all three groups, there was a high level of need and severe risk of harm that was considered difficult to manage without restrictions on the child’s liberty.
 - **Children with learning and physical disabilities needing support/supervision:** In these cases, the DoL was sought primarily due to a need to monitor and supervise the child to manage their care needs and/or to place restrictions on their liberty to manage challenging behaviours that were linked to their disability.
 - **Children who had multiple, complex needs, which were often recognised to be a response to complex and ongoing trauma:** These were cases where children were considered to be very vulnerable as a result of a range of overlapping risk factors and needs, primarily related to mental health concerns, self-harming behaviours and risk to others.
 - **Children experiencing or at risk of external or extrafamilial risk factors such as sexual or criminal exploitation:** In these cases, the primary concern was to manage the immediate risk of exploitation – although the children in this group also had multiple, complex needs, often as a response to complex and ongoing trauma.

What was being applied for, and by whom?

- In our sample, the majority (97.5%) of DoL applications were made by local authorities. Five applications (2.4%) were from hospital trusts.
- The restrictions on children’s liberty that were requested in the applications were multiple and involved severe constraints on the child, including, in almost all cases, constant daytime supervision (ranging from 1:1 to 4:1 adult to child supervision), as well as: the locking of doors and windows to prevent the child leaving the placement; restrictions on their use of the internet, social media and mobile phone; restrictions on access to belongings and money; and the use of physical restraint.
- Too few placements were available that could meet the complex needs of children. In just under half of applications, children were going to be placed in unregistered settings (45.6%) – this included the use of semi-independent

(unregulated) placements,² hospitals, residential homes that were Care Quality Commission (CQC) but not Ofsted-registered, and rented flats or holiday lets staffed with agency workers.

- We found that children with learning and physical disabilities were less likely to be placed in an unregistered setting. In contrast, where the DoL application was primarily related to concerns around self-harm, risk to others and/or criminal exploitation, children were more likely to be placed in an unregistered setting. This may indicate a particular lack of sufficient and suitable placements for children with these needs.

Reflections

- Our analysis confirms the complexity and severity of risk faced by children subject to DoL applications and highlights an urgent need for increased resource, creativity and collaboration across all systems responsible for their care if we, as a society, are going to better meet their needs.
 - Children who are subject to DoL applications are extremely vulnerable. They typically have multiple and complex needs that are evident in behaviours that can make them a risk to themselves or others. Some have severe physical or learning disabilities, some have been subject to criminal or sexual exploitation. Most have experienced significant adversities such as rejection, bereavement, abuse and neglect during their childhoods.
 - Although their needs may have recently escalated, the vast majority of children who are subject to DoL applications are well known to statutory services. For many children, their emotional and behavioural difficulties are evident from late childhood. It is clear that they need far better support at an earlier stage.
 - By the time they are subject to a DoL application, the risks children face are immediate and severe. It is obvious that they are in need of intensive care: as a minimum, they are likely to require care that is stable, with consistent professional support from carers who are able to build trusting relationships over time, along with access to specialist therapeutic support and education. Yet we know that in many cases this is not available. Applications are too often made
- 2 Although unregulated placements are allowed in law for children aged 16 and 17, they are not allowed to provide care to children. Children subject to DoL orders will require some form of care (e.g. constant supervision) – in such instances an unregulated placement becomes unregistered.

to place children in unregistered provision as a stopgap in the hope that more suitable provision will become available. But a dire national shortage of suitable homes means that in many cases, children will remain in temporary or crisis placements for much longer.

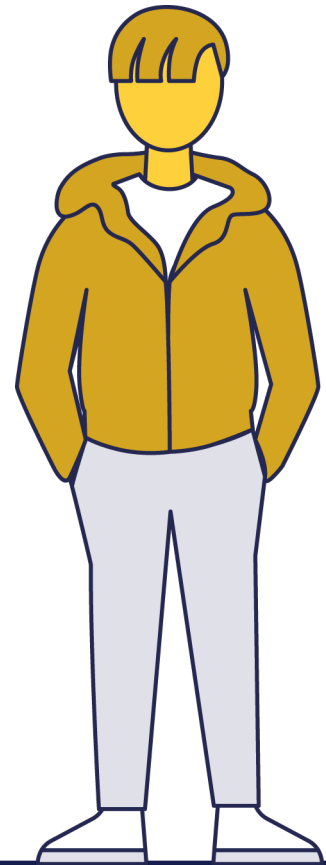
- This report underlines the urgent need to develop new provision, at a local level, with joint input from children's social care, mental health services and schools. It is not something that can be left to chance. It will require a nationwide strategy, with significant commitment at local and national level, including national government.

Priorities for further research

- What are children's experiences of being deprived of their liberty, and what opportunities do they have to participate and have their voice heard in proceedings?
- What are the short and longer-term outcomes for children subject to DoL orders?
- What is the ethnicity of children subject to DoL applications and is there any variation in their needs, the reason(s) for the application, and the arrangements made for their care by ethnicity? Information about children's ethnicity was often not included in application forms.
- What access do children have to education when subject to DoL orders?
- Are staff who are caring for children subject to DoL orders sufficiently trained to provide the level of care required, including with regard to the use of restraint?
- How are orders made under the inherent jurisdiction being reviewed and monitored, and how does this compare to the requirements for monitoring and review under the statutory schemes?
- How many parents are legally represented in DoL cases and what are the barriers to accessing representation? Given that, in our study, the majority of applications for a DoL were made outside of care proceedings, it appears that most parents would not automatically be entitled to legal aid for legal representation.
- What is the impact of parental consent on whether DoL orders are made or not?

Shane's story

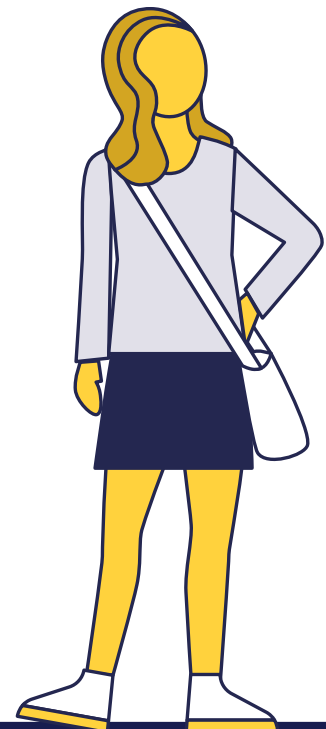
Shane is 15. He was removed from his birth parents as a baby and adopted when he was a year old. Concerns about his behaviours started to escalate when he was 8 years old, following an incident that led to him being temporarily excluded from school. His adoptive parents began to struggle with his behaviour and he came into care under s.20 when he was 11. He has had a series of placements in residential care, all of which broke down because the home could not manage his behaviour. He can be verbally and physically aggressive, has assaulted staff, and damages property. He has self-harmed, taken overdoses of medication, and has said he wants to kill himself. He smokes cannabis and drinks alcohol. He was settled for several months in one placement, with a DoL in force, until an incident when he attacked staff and set fire to furniture, at which point the placement gave notice. The local authority has struggled to find a new placement for Shane and is proposing to place him in a rental flat under a DoL order while it continues to search for a registered placement. The restrictions sought are 3:1 supervision, the removal of items that he could use to harm himself, sharp objects and medication locked away, the use of plastic plates and cutlery, monitoring throughout the night, doors and windows locked. He will not be permitted to leave the placement, and physical restraint will be used as a last resort.



The stories of children in this study are fictionalised, based on common factors that occurred in multiple cases. This is to avoid identification of children.

Claudia's story

Claudia is 16 and is currently in hospital following an overdose of painkillers. She has been in hospital for a month and, although she is medically fit for discharge, the local authority cannot find a placement. She was living in a residential placement under s.20 but the placement provider has given notice. In the last 18 months, Claudia has tried to commit suicide on numerous occasions, through cutting herself, overdosing, and walking onto train lines. She regularly goes missing from home and school, and says that she no longer wants to be alive. Her mental health problems escalated with the recent death of a family member. When in hospital she attempts to leave constantly and is abusive to staff. She is continuing to self-harm. She has been diagnosed with autism spectrum disorder and anxiety. She was assessed under the Mental Health Act but did not meet the criteria for a secure bed. The local authority is seeking a DoL order while she remains in hospital and while it continues to search for a placement. This will involve constant 2:1 supervision at all times and permits the use of restraint to prevent her from absconding or self-harming. It is expected that the DoL will continue in a residential placement.



Gary's story

Gary is 15, has recently come into care via s.20, and is living in an unregistered placement away from his home area. He has been known to children's social care on and off since he was 2, due to concerns about domestic abuse in the family home and his mother's use of drugs and alcohol. The main concerns relate to criminal exploitation and his involvement in selling drugs. When at home he would go missing on a regular basis for long periods of time. On one occasion he was found some distance from home in a 'cuckoo house'. At the moment, he is able to leave the placement and frequently returns to his home town. There are concerns that he is continuing to sell drugs there. The local authority is seeking a placement in secure accommodation for him but has so far been unsuccessful. It is seeking a DoL order so Gary can be supervised both in the placement and when he is in the community.

Introduction

In recent years increasing concern has been raised about the relatively small but rising number of highly vulnerable children who are deprived of their liberty under the inherent jurisdiction of the high court in England and Wales.

Concerns have been expressed repeatedly by family court judges through published judgments (see Roe, Ryan and Powell 2022 for a review of these, and *Re X (Secure Accommodation: Lack of Provision)* [2023] EWHC 129 (Fam)), directors of children’s services (ADCS 2022), Ofsted (Ofsted 2022a; Ofsted 2022b), children and family rights groups (e.g. Children’s Commissioner for England, Children and Young People’s Commissioner for Scotland), and increasingly, in national and local media.³ There is also considerable concern about the cost of residential placements and the arrangements made for the care of these children (ADCS 2022; MacAlister 2022; Competition and Markets Authority (CMA) 2022).⁴ In spite of these concerns, we know very little about the children – their characteristics, behaviours, risk factors – or their needs.

This report aims to provide a better understanding of who this group of children are in order to inform conversations at a national and local level about the type of care and provision they need. It highlights the findings of our study, which aimed to address the following research questions:

- What are the needs and characteristics of children subject to deprivation of liberty (DoL) applications?
- What are the most common primary reasons for a DoL order being sought?
- Are there distinct cohorts of children with different needs, who may require different types of care?
- Who is making the applications, what forms of DoL are they seeking, and where are children being placed?

3 See for example <https://www.theguardian.com/society/2022/oct/12/judge-approves-unlawful-placement-for-girl-13-at-risk-of-suicide> and <https://www.oxfordmail.co.uk/news/23148811.judge-oversaw-private-hearings-oxford-praised-vulnerable-boy/>

4 For further discussion of the key issues and number of children involved, see Roe 2022.

About this study

Our study is based on an analysis of the first two months of applications issued by the national DoL court. The data used in this study relates to all children who were subject to applications for DoL orders issued to the national DoL court between 4 July and 31 August 2022.

The national deprivation of liberty court

In July 2022 the President of the Family Division launched a national DoL court at the Royal Courts of Justice, which is running for a pilot period of 12 months. The pilot was set up partly as a way of managing the listing of the high number of applications coming into local family courts. From July 2022, all applications from England and Wales to deprive children of their liberty under the inherent jurisdiction of the high court were issued at this court.

A total of 231 applications were received in the first two months of the court (100 in July and 131 in August).⁵

Applications were excluded from analysis if only minimal information about the reasons for the application was included in the court file; 20 applications were removed from the sample for this reason. A further three applications were removed as they were 'repeat' applications, where the local authority had made a further application to the national DoL court in relation to an ongoing case. These applications were removed from the analysis to avoid the same child appearing more than once in the data. This left a sample of **208 children** for the final analysis.

5 As part of the protocol for the national DoL court, some cases will be returned to the local court to be heard if, for example, there are ongoing care proceedings, or an existing secure accommodation application. However all applications are made to the DoL court in the first instance. Hence, all applications are included in our sample, regardless of whether the case remains in the DoLs court or is returned to circuit.

What is a ‘deprivation of liberty’?

The term ‘deprivation of liberty’ comes from Article 5 of the European Convention on Human Rights (ECHR), which provides that everyone, of whatever age, has the right to liberty. The ECHR was incorporated into national law by the Human Rights Act (HRA) 1998. Article 5 of the ECHR protects everyone’s right to liberty by setting out the limited circumstances in which a deprivation of liberty (DoL) is allowed, and requires strict safeguards to be in place for those who are deprived of their liberty. Such safeguards include the requirement that any DoL must be by ‘a procedure prescribed by law’ and that those who are deprived of their liberty have the right to have the lawfulness of their detention reviewed by a court.

An important case in the European Court of Human Rights (*Storck v Germany* [2005] ECtHR) confirmed that a person’s care arrangements will give rise to a DoL if the following three conditions are met:

- they are confined in a particular place for a period of time
- they do not consent to this confinement
- the state is responsible for the DoL.

A case considering the position of children in the UK Supreme Court (*Re D (A Child)* [2019] UKSC 42), made it clear that deciding on whether a child is confined will depend on whether the restrictions imposed are within the normal parental controls for a child of this age. In relation to the issue of consent this will depend on the child’s age and also on their capacity. There may be some circumstances in which parental consent might be sufficient.

The family courts can authorise a child’s DoL via two routes:

- s.25 of the Children Act 1989 and s.119 of the Social Services and Well-being Act (Wales) 2014, which authorises the placement of a looked after child in a registered secure children’s home; or
- via the inherent jurisdiction of the high court, and the making of DoL orders. The inherent jurisdiction can be used to authorise the DoL of a child when none of the other statutory mechanisms apply (i.e. there are no places available in secure children’s homes or the criteria under s.25 or s.119 are not met).

For an order to be made under s.25 or s.119 the following criteria must be met: the child has a history of running away, and if they run away they are likely to suffer significant harm, or that the child will injure themselves or other persons if they are placed in any other form of accommodation.

Data collection

Information about each case was extracted from the application submitted to the court by the local authority (or other applicant), consisting of the C66 application form (the form used by applicants to request an order under the inherent jurisdiction) and the accompanying evidence statement, and entered into a spreadsheet. This included information about the demographic characteristics of the child, the child's history of children's social care involvement, legal status, placement at the time of the application, whether the child had been subject to a previous or ongoing DoL order, the main reasons for the DoL application, the intended care plan and proposed placement, the restrictions on the child's liberty that were being applied for, and information about children's and parent's views and involvement in the application. Three researchers collected the data from case files held at the Royal Courts of Justice, working together initially to ensure a consistent approach.

Information varied across applications, especially with regard to children's histories and longer-term risk factors and children's services involvement. However, we were able to build a good picture of the main reasons for the application in all cases included in the final analysis.

Data analysis

Data was analysed qualitatively using content and thematic analysis. A coding structure was developed iteratively by two researchers based on an in-depth reading of 40 cases, to identify the common themes, needs and behaviours referenced in each case. These codes were then grouped into thematic categories, used in the analysis. More information about the coding frame used in the analysis is included in Appendix A. The full dataset was then analysed using Atlas.ti software. A content analysis was then conducted to identify the most prevalent issues included in the applications.

Strengths and limitations

- This is the first piece of research that looks at a national sample of children subject to DoL applications. It provides the first overview of the characteristics and needs of children subject to DoL applications, and the reasons for the applications on a national level.

- Our sample size is relatively large (n=208) compared to similar case file analyses in children’s social care research and qualitative research more generally.
- The data used in this study relates to applications made in the first two months (July and August 2022) of the national DoL court. This is a relatively small timeframe so there is a risk that the issues highlighted in these applications may not be representative of all DoL applications across the year. However, ongoing analysis of the applications issued by the national DoL court suggests that the applications received in July and August were broadly representative of subsequent months (Nuffield FJO 2023).
- The analysis is limited by the amount of information included in the application. While information about the events and factors immediately leading up to the DoL application being made was generally good, applications varied in the level of information provided about children’s earlier life histories. The information included in the application also reflects the perspective of the applicant and their understanding of the child in question, and the information that they deem most necessary to support the application to the court for the DoL order. It may therefore not provide a full picture of the child’s needs.
- Information about children’s ethnicity was not included consistently in applications and was missing in just under half of cases (45.7%). We therefore cannot draw conclusions from our data about the ethnicity of children subject to DoL applications. This is a significant limitation given that we know that children from Black and other minority ethnic groups are disproportionately represented among children referred to secure children’s homes and are less likely to be found a place compared to White children (Williams et al. 2020). Further research is needed to address this issue.

Children's characteristics

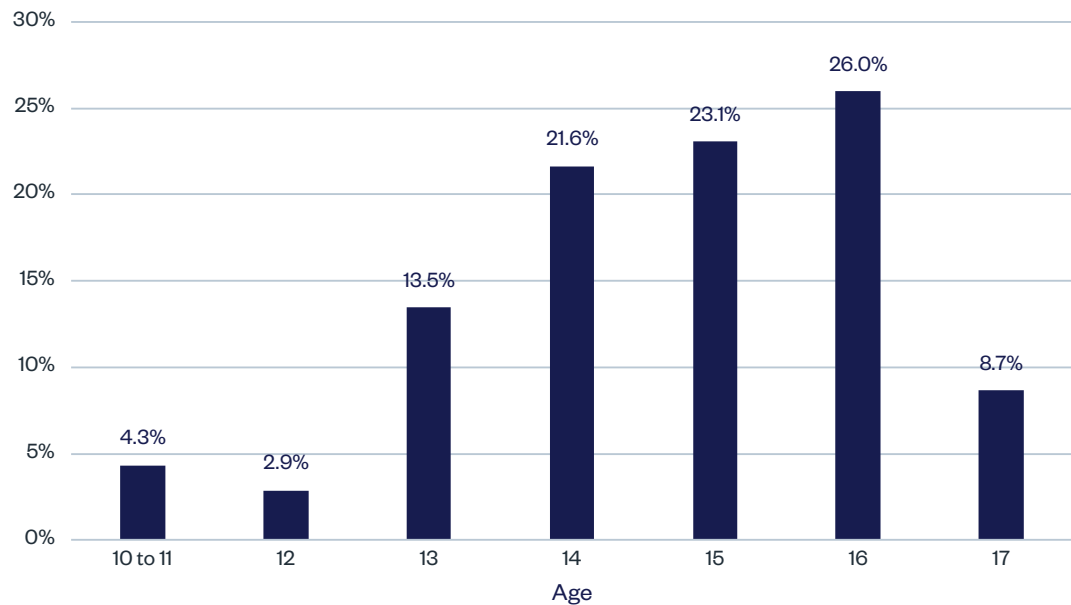
How old were the children in the study?

Children subject to deprivation of liberty (DoL) applications tended to be in their mid-teens. Most children (70.7%) were aged between 14 and 16 years old at the time of the application. The median age was 15 (standard deviation: 1.54). This is a similar age range to children living in, and referred to, secure children's homes (DfE 2022; Roe, Cusworth and Alrouh 2022; Williams et al. 2020).

There was nonetheless still a significant minority (7.2%) of children aged 12 and under subject to DoL applications. It is worth noting that if an application to place a child under 13 in secure accommodation is approved via a court order, regulations require the further approval of the Secretary of State (in England) or Welsh ministers (in Wales) before the child is placed (The Children (Secure Accommodation) Regulations 1991, regulation 4 and The Children (Secure Accommodation) (Wales) Regulations 2015, regulation 13); these additional safeguards do not exist for younger children subject to DoL applications.

Ongoing analysis of data from the national DoL court by Nuffield FJO (2023) shows that, in subsequent months, the age profile of children subject to applications was similar.⁶

6 Nuffield FJO publishes monthly data from the national DoL court. The data comes from information included in the C66 application form only (i.e. not the social work evidence statement) and relates to: number of applications each month, regional variation in applications, age and gender of children. The latest data can be accessed from: <https://www.nuffieldfjo.org.uk/>

Figure 1: Age of children subject to deprivation of liberty applications

What gender were the children?

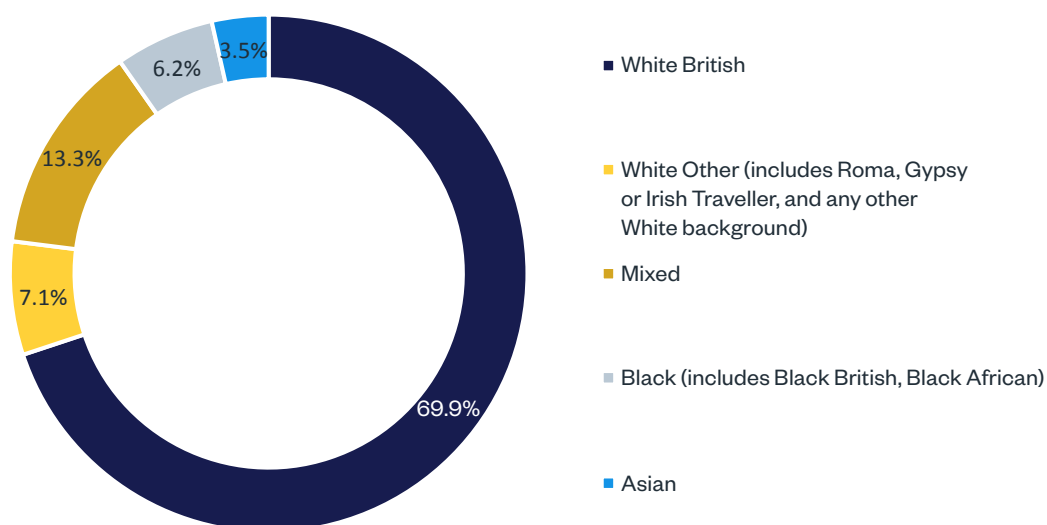
There was a broadly even split of girls (53.4%) and boys (46.6%).⁷ Seven children identified as either transgender or non-binary. Again, this reflects more recent data on the gender of children subject to DoL applications from the national DoL court (Nuffield FJO 2023).

What about their ethnicity?

Information about children's ethnicity was not required on the application forms, so we were reliant on the supporting statement from the local authority for these details – but they were not always included. As a result, data is missing for almost half of cases (45.7%; 95 cases) and caution should be exercised in the interpretation of this data.

⁷ The child's gender identity was recorded, where this differed to their biological sex. Non-binary children are excluded from this analysis (<5).

Figure 2: Ethnicity of children subject to DoL applications



Note: Percentages are reported as a proportion of the available data. Data was missing for 45.7% of the sample. Due to high proportion of missing data, findings should be treated as preliminary.

The initial data suggests children from Mixed and Black ethnic groups were overrepresented compared to the proportion in the general population (5% each).⁸ There was also an overrepresentation of children from Mixed ethnic backgrounds compared to the general children in care population (10% of all children in care are from Mixed ethnic groups) (DfE 2021). This is a similar pattern to that seen for children referred to secure children's homes (see Roe 2022).

Our data also suggests an overrepresentation of children in the 'White Other' category (7.1%; includes children from Roma, Gypsy or Irish Traveller, and any other White background) compared to all children in care (~5%, DfE 2021). However, more complete data is needed to confirm these findings. It is possible that, within our sample, children from certain ethnic groups were more or less likely to have their ethnicity recorded in the application and therefore we cannot guarantee that our data is representative.

Due to the high proportion of missing data we have not been able to do any further analysis looking at ethnicity. Further research is needed to explore whether certain ethnic groups are overrepresented among children subject to DoL applications, and differences in the reason for the application, children's needs, risk factors, and outcomes.

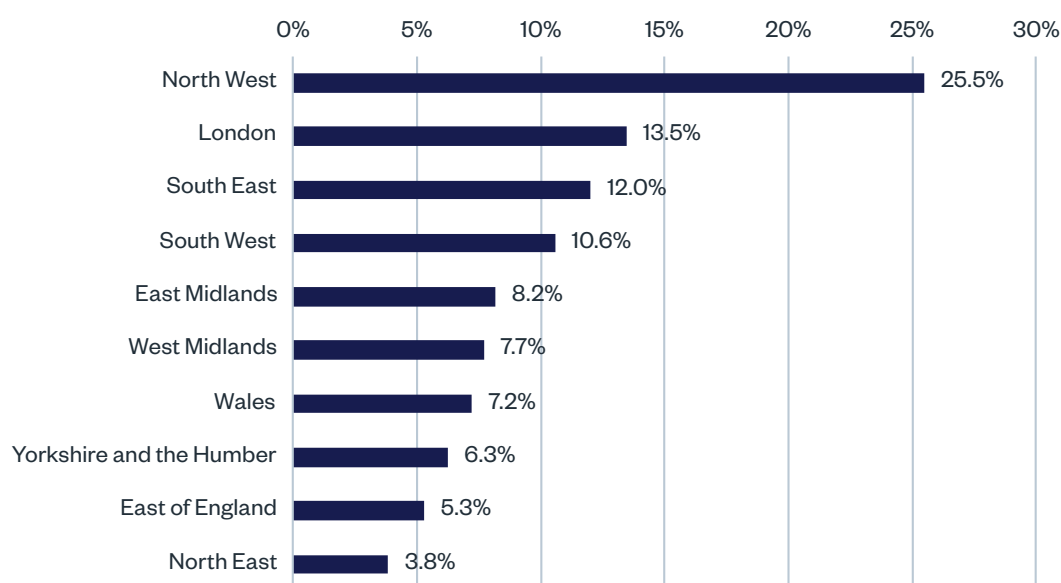
⁸ According to 2011 census data, 79% of the under 18 population were White, 5% of Mixed ethnicity, 5% Black or Black British, 10% Asian or Asian British, and 1% from other ethnic groups (DfE 2021).

Where in the country did applications come from?

The majority (97.5%) of applications for a DoL order were made by local authorities. Five applications (2.4%) in our sample were from hospital trusts, who were making applications to authorise the deprivation of a child's liberty in hospital. Applications were made by hospital trusts mostly in cases where the child was not in the care of the local authority; in two of these cases an application for an interim care order was pending at the time of the DoL application.

The proportion of applications from each region in England and from Wales is shown in Figure 3. The highest number of applications were from the North West, making up a quarter (25.5%) of all applications in our sample. This was followed by London (13.5%) and the South East (12.0%). Local authorities (and hospital trusts) in the North East made the fewest number of applications (3.8%).

Figure 3: Regional variation in applications for deprivation of liberty orders, England and Wales



Our sample includes applications made in the first two months of the national DoL court only and due to the small timeframe, conclusions cannot be drawn about regional variation in the use of DoL applications from our data. There may be a number of factors that explain varying use of DoL applications across the country, including variation in the size of child and child-in-care populations, variation in the needs of children and families, and variation in access to and the availability of residential provision, including secure children's homes, and mental health services. More recent data published by Nuffield FJO (2023) shows that this pattern of regional variation has broadly been sustained in the first six months of the DoL court, and provides some further discussion of the factors that might underlie this difference.

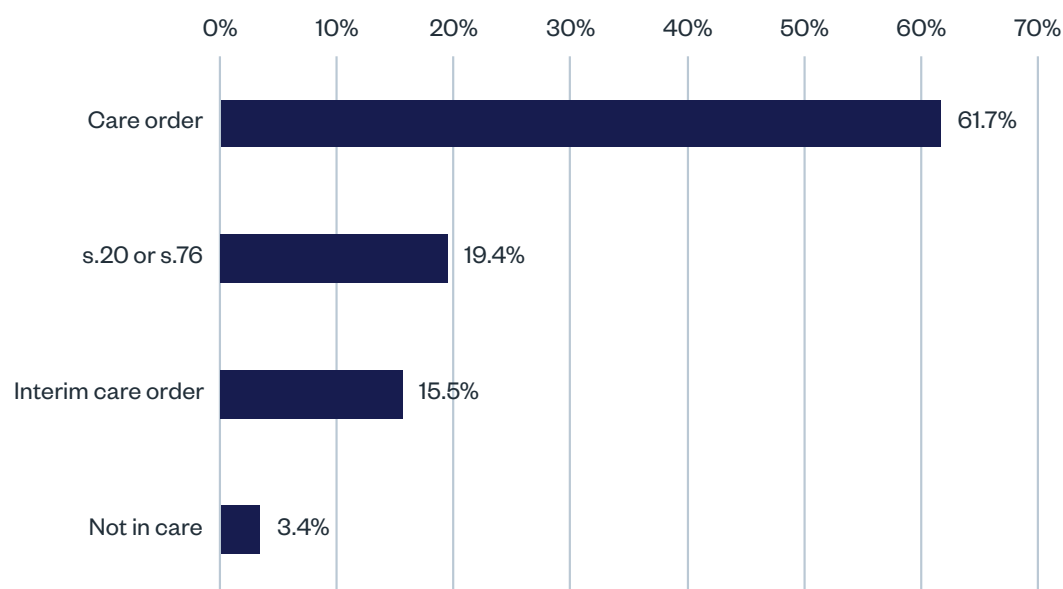
Children's histories

What was their legal status at the time of the application?

The majority of children were in care under a care order (61.7%) or interim care order (15.5%) at the time of the deprivation of liberty (DoL) application (see Figure 4). A fifth of children (19.4%) were also in care under voluntary arrangements (s.20 Children Act 1989 or s.76 Social Services and Well-Being (Wales) Act 2014).

A small number of children (3.4%) were not in care at the time of the DoL application. These children were living at home with their parents. Some had been known to children's social care for several years but others appeared to come to the attention of children's social care shortly before the DoL application was made. The reason for the DoL application varied in these cases.

Figure 4: Legal status of children at the time of the application



Note: care order includes a small number of children (<5) who were remanded to local authority care. Information on legal status was missing for <5 children.

Thirty-five children (16.8%) were subject to ongoing care proceedings at the time of the DoL application. In some of these cases, the DoL application was issued at the same time as care proceedings and sometimes before the court had had time to determine whether or not to make an interim care order.

Where care proceedings are ongoing both the children and their parents are entitled to legal aid for legal representation and a Cafcass guardian will be appointed for the child. In all other DoL cases the child will need to be made a party to the DoL application and a Cafcass guardian appointed. Parents will only be entitled to legal aid for legal representation if they meet the means and merits test for this. Our data suggests that the majority of DoL cases are outwith care proceedings, which raises concerns about parents' access to legal aid and legal representation in these cases (for further discussion, see *Re E (A Child)* [2022] EWHC 2650 (Fam)).

Where were children living at the time of the application?

Most children were living in out-of-home care at the time of the DoL application (Table 1). Just under half of all children (46.6%) were living in a registered children's home or a residential school. Significant numbers of children were living in unregistered (16.8%) and unregulated (8.7%) settings, or were in hospital immediately prior to the application (10.1%; see section on Multiplicity and complexity of needs for more detail on these cases). In total just over a third of children (35.6%) were living in unregistered and unregulated settings, or were in hospital,⁹ indicative of the difficulty local authorities were facing in finding suitable placements for this group of children.

9 In most cases, children were admitted to Accident & Emergency departments following a self-harm incident and were awaiting discharge.

Unregistered and unregulated provision

In England, Ofsted is responsible for registering and inspecting children's homes. In Wales this is the responsibility of the Care Inspectorate Wales. All children's homes providers and managers must be registered with the relevant inspectorate. The Care Standards Act 2000 says that 'an establishment is a children's home... if it provides care and accommodation wholly or mainly for children'.

If a child is living in a setting that is not registered with Ofsted or the Care Inspectorate Wales – and is being provided with care – it is an **unregistered placement**. This is illegal.

Unregulated provision is allowed in law for children aged 16 and 17. It provides accommodation (e.g. semi-independent or independent placements), usually to support older children to transition to living independently. Ofsted does not currently regulate this type of provision.¹⁰

In 2021, the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 made the placement of children aged under 16 in unregulated settings illegal.

An unregulated placement therefore becomes unregistered (and illegal) if the child placed there is under 16 years old or if they are under 18 and being provided with care. If the child is under constant supervision or is not free to leave the placement that will be regarded as care (see Ofsted 2023). If a child is subject to restrictions on their liberty in an unregulated placement, the placement will therefore be unregistered, even if the child is aged 16 or over.

¹⁰ Note that under current proposals, from April 2023 Ofsted will begin registering providers of unregulated placements (but not individual settings) and inspecting them against a set of national standards for unregulated provision.

A small number of children were living at home with their parents, or within the extended family immediately prior to the application being made (6.3%), or had been living at home prior to being admitted to hospital.

Twelve children (5.8%) were living in secure accommodation at the time of the DoL application. In most of these cases, the DoL was sought because the child no longer met criteria (under s.25 of the Children Act 1989) for secure accommodation and/or to support with a planned transition back into the community, with a DoL requested for a 'stepdown' placement. In some cases, however, the secure children's home had given notice due to the child's behaviours. In total, 23 children (11.1%) had spent time in a secure accommodation at some point prior to the DoL application.

Table 1: Child's placement at the time of the DoL application

Type of setting	Placement	Number of children	% of children
Residential	Children's home (incl. residential school)	97	46.6%
	Unregistered setting	35	16.8%
	Semi-independent accommodation (unregulated)	18	8.7%
	Secure accommodation ¹¹	12	5.8%
Family	Family home	13	6.3%
	Foster care	12	5.8%
Hospital	Hospital - general ward	14	6.7%
	Hospital - mental health	7	3.4%

Note: A child's placement at the time of the DoL application is not necessarily where the child would be placed with a DoL order.

- 11 Includes welfare and custodial settings. Most children were placed in secure accommodation for welfare grounds, with a small number there as a result of a custodial sentence. Exact figures for each are not published due to small numbers and risk of identification.

There was evidence of significant instability in children's living arrangements. Most of the children in our sample (55.5%) had experienced multiple changes in where they were living in the months and years prior to the DoL application, with some children experiencing 10 or more moves. This included moving between different foster care and residential placements, as well as moves between family members and moves in and out of care. In most cases, changes to children's living arrangements were the result of placement breakdown and the placement provider (or foster carers) giving notice, often at short notice, rather than planned placement moves. This often resulted in children being moved multiple times, often into unregulated 'crisis' placements. Some children (24; 11.5%) had returned home to live with their parents on a temporary basis at some point, after a period in out-of-home care, primarily due to difficulties the local authority experienced finding a suitable residential placement for the child. In some cases, children had been relatively settled in a previous placement and a sudden incident or escalation in the child's behaviours led to the placement giving notice, which led to a period of instability.

A number of children were living, or had been living, in a placement outside their home local authority – either because of difficulties finding a suitable placement nearer to home or an intentional decision by the local authority to place the child further from home (e.g. to reduce absconding or risk of exploitation).

The high prevalence of placement breakdown is unsurprising in this cohort given that DoL applications are often used as a last resort when no placement can be found for a child. Nonetheless, the significant instability that this group of children experience – with frequent changes to their living arrangements, often at very short notice, and/or the experience of being moved far away from home – will be highly unsettling for them and will likely exacerbate mental health difficulties or challenging behaviours, as a response to this instability.

Children subject to previous deprivation of liberty orders

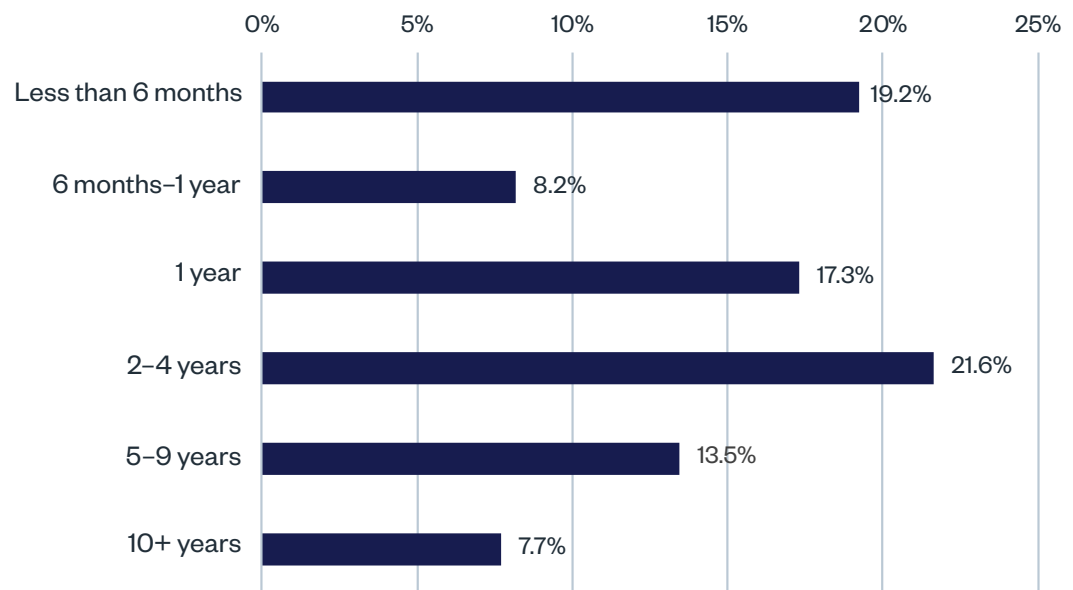
Just over a third of children (37.3%; 75 children) had been subject to previous DoL orders. A quarter of children (25.4%; 53) were subject to ongoing DoL orders, with the local authority submitting an application to the court to extend or vary (due to change in placement or to alter restrictions) the existing order. These children had been subject to orders for an average of 14 months, ranging from 1 month to 4 years.

Length of time in care at the time of the application

In order to calculate the length of time children had been in care, we measured the length of time between the date they had been accommodated or the care order was made (for the most recent care episode¹²) and the date of the DoL application.¹³

Just under half of the children (44.7%) had come into care within the last 2 years, with almost a fifth of these children (19.2%) coming into care in the 6 months prior to the DoL application being made. This suggests that many of these children come into care relatively late or have experience of going in and out of care, and once in care, there is a relatively quick escalation in need, or difficulty finding suitable placements, which leads to a DoL application being made (this is similar to children accommodated in secure children's homes; see Roe 2022; Williams et al. 2020; Secure Welfare Coordination Unit (SWCU) 2021).

Figure 5: Length of time in care at the time of the DoL application



Note: This excludes children who were not in care at the time of the application or where length of time in care was unknown.

¹² The most recent care episode was relevant for some of the children in the sample who had been in care as babies or very young children and who had subsequently been adopted, become subject to a special guardianship order or had moved to live with another parent under a residence or child arrangement order before coming back into the care system.

¹³ Data was missing for 20 children. Missing data is excluded from the analysis.

Some children had been in care as babies or very young children and had subsequently been adopted or made the subject of a special guardianship order but these arrangements had broken down and the child had come back into the care system. Within our sample, 10 children had come back into care following the breakdown of adoption arrangements, and 9 children following the breakdown of a special guardianship order – this was primarily due to difficulty of carers managing the child's behaviours (mostly self-harm or severe mental health problems and aggressive behaviours). It was not always clear from the application what support had been provided to families, but in some cases there was evidence of the local authority providing ongoing support, including providing support workers in the home, to prevent placement breakdown.

Involvement with children's social care and exposure to early life adversity

We aimed to explore the duration, and type, of involvement with children's social care across children's lives, although we were limited by the information included in the statement supporting the application. Some applications included detailed histories of children's lives and previous social care interventions while others focused predominantly on the issues present in the year or two leading up to the application. Hence, the findings we report here should not be taken as representative but provide an indication of the duration of children's social care involvement and exposure to adversity in the early lives of children subject to DoL applications.

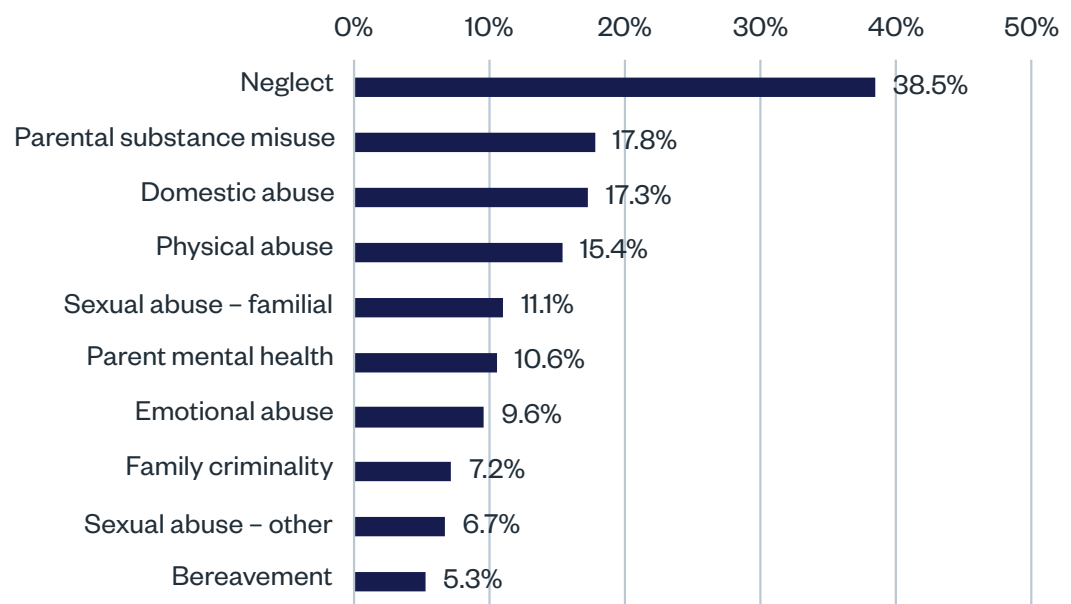
It was striking how many children had been subject to long-term involvement with children's social care – even for children who had only recently come into care. Only 10 children were recorded as having recently come to the attention of children's services; these cases were generally primarily related to concerns about the child's mental health.

For children who had been known to children's social care for a long time – often throughout childhood – there was evidence of repeated periods of involvement, including being the subject of repeat referrals, being placed on child protection plans, or being subject to repeat care proceedings. In these cases concerns – usually related to both the quality of care children received from parents and the child's behaviour – persisted despite lengthy social care involvement.

Exposure to intrafamilial issues¹⁴

Although the main reasons for a DoL application primarily related to management of the child's behaviour (see What were the needs of children subject to deprivation of liberty applications?), in the majority of cases (62.3%) there was some indication of ongoing exposure to intrafamilial issues and adversities throughout the child's life (see Figure 6). In the other third of cases it was not clear if there were no concerns related to the quality of parental care, or if this was just not mentioned in the application. Previous research looking at the reasons why older children (10+) are subject to care proceedings has found that all children had experienced some degree of intrafamilial issues or emotional harm in the family home (Parker and Tunnard 2021). Our data is therefore likely an underestimate of the true extent of these experiences in our sample, based only on the information included in the DoL application.

Figure 6: The prevalence of intrafamilial issues recorded in DoL applications



Note: Bereavement refers to the death of a close family member or friend; family criminality refers to any mention of family members (parents, siblings, step-siblings) being involved in criminal activity or in prison.

¹⁴ Intrafamilial refers to problems and risks arising for the child within their own family network.

What were the needs of children subject to deprivation of liberty applications?

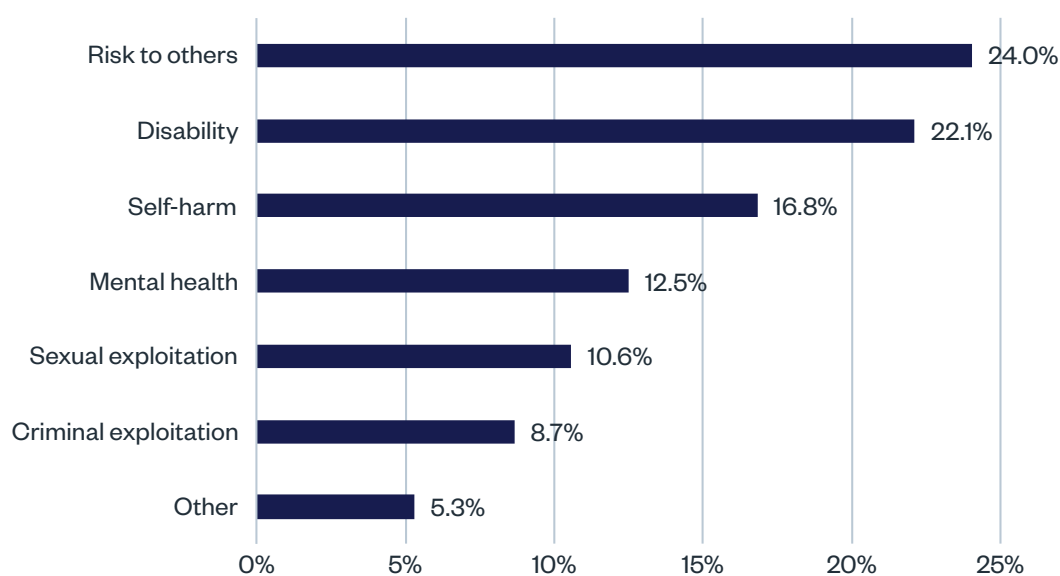
In this section, we report on the most common ‘primary’ reason for a deprivation of liberty (DoL) application being made. From the evidence provided we identified the main concern about the child’s behaviour or circumstances that led the local authority (or hospital trust) to seek a DoL order. We then look at the prevalence of all presenting needs and risk factors across the sample and within each case, to provide an indication of the multiplicity and complexity of issues experienced by children subject to DoL applications. Finally, we aim to identify the most common co-occurring needs in each case in order to identify distinct cohorts or groupings of children subject to DoL applications according to their needs.

The information on the needs and behaviours of children was collected from the C66 application form and from the statement provided by the local authority or hospital trust alongside the application. In addition to identifying a ‘primary’ reason for the application (one per child), we also coded any mention of other needs or risk factors that were included in the application (see Appendix A for the full coding structure used in the analysis). We recognise that the information included in the application may not provide a full picture of the child’s needs as it is focused on providing information to the court that will support the application. In our analysis, we were limited by the amount of information available in the file, which as we have noted earlier, varied from lengthy statements covering the history and current circumstances in detail, while others had much less information, and were focused only on the most recent circumstances. Nonetheless, in all cases included in the final analysis there was enough detail to identify the main reasons for the DoL application.

Primary reason for the application

We identified seven main reasons that a DoL application might be made (see Figure 7), related primarily to concerns about the risk the child posed to themselves or others as a result of their behaviours, or risk to the child from external factors (e.g. exploitation). We identified one primary reason for the application for each child. In this section of the report we provide a brief overview of the main presenting needs in each type of case and later in the report we look at how these needs overlap and the range of needs per child.

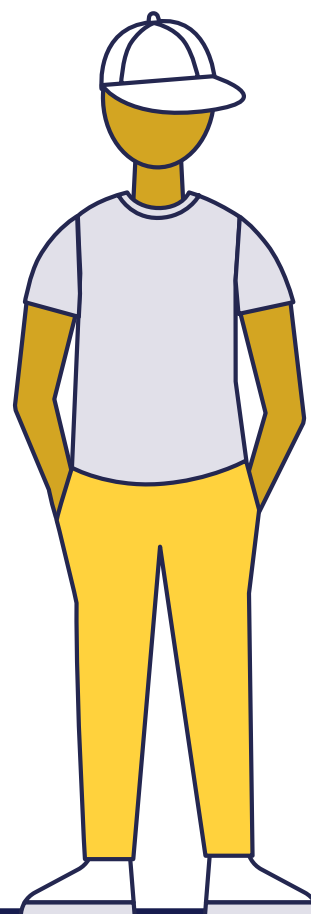
Figure 7: Primary reason for the DoL application



The most common primary reason for a DoL application being made was 'risk to others' (24.0% of all cases). The primary concern here was risk to others from the child's behaviour, examples of which included violence towards staff, family members, other children in the placement, or to people in the community, and/or causing damage to property either in the placement or the community, including setting fire to things. This category also included cases where the primary concern related to inappropriate or abusive sexual behaviour.

Ryan's story¹⁵

Ryan is 13. He has had a long engagement with children's social care and has been the subject of child protection plans twice during his childhood because of witnessing domestic abuse at home and because of the physical abuse he and his siblings experienced. He has been in care for over three years and has experienced a number of placement breakdowns because of his behaviour. He is currently in a residential placement out of his home area. A deprivation of liberty (DoL) order was first made just under a year ago and the local authority is applying to have it extended. The main reason for the DoL order is because of Ryan's challenging behaviour. He has physically attacked other children, his teachers and care staff, is often verbally abusive, exhibits sexually inappropriate behaviour, damages property and often runs away. He has been subject to restraint on several occasions. The DoL requested is for locks on the doors and windows, 24-hour supervision in and outside the placement, restricted access to internet and other devices, and physical restraint when necessary.



¹⁵ The stories of children in this study are fictionalised, based on common factors that occurred in multiple cases. This is to avoid identification of children.

Cases where the DoL was sought primarily due to the child's learning and/or physical disability was the next most common primary reason, representing just over a fifth (22.1%) of all cases. The main reason for the application in these cases was the child's severe learning disabilities, physical health problems (e.g. epilepsy, incontinence, mobility difficulties) and/or severe autism.

Self-harm was identified as the primary reason for the application in 16.8% of cases. In these cases, self-harm was frequent and often severe, including frequent attempts at suicide. These behaviours were very difficult to manage in residential settings, with real concern that children were at risk of death if left unsupervised. Children were also described as suffering complex trauma, and professionals were concerned about undiagnosed mental health problems.

Mental health was the primary reason for the application in 12.5% of cases. This was identified as a primary reason where there was evidence of a diagnosis of mental health disorder, and/or treatment from specialist mental health services in the past or currently. Diagnoses included: post-traumatic stress disorder (PTSD), complex PTSD, reactive attachment disorder, autism, attention deficit hyperactivity disorder (ADHD), foetal alcohol syndrome, anxiety, anorexia, obsessive compulsive disorder (OCD), and depression.



Jasmine's story

Jasmine is 15 and has been living in a residential children's home for just over 6 months. She came into care four years ago because of neglect and domestic abuse. There had been concerns throughout her childhood of parental substance misuse and domestic abuse. She was originally placed with foster carers, but the carers could not manage her behaviour, so she was moved to residential care. She has a diagnosis of complex PTSD, and suffers from anxiety, panic attacks and suicidal thoughts and has self-harmed. In recent months she has started to go missing on a regular basis. She has been found more than once by police on bridges over busy roads and she has tried to jump out of windows. She smokes cannabis and drinks alcohol and there are concerns around sexual and criminal exploitation. Her current placement is no longer considered suitable, and the local authority wish to move her to another regulated placement out of area with a DoL order. The restrictions proposed are 2:1 supervision at all times, she is not allowed to leave the placement without permission and will be supervised in the community, no social media or access to a mobile phone, no access to money, windows at the placement to be locked at all times, and staff checks every 30 minutes when she is alone in her bedroom. Physical restraint is to be used as a last resort to prevent her self-harming or leaving the placement.

Sexual exploitation was identified as the primary reason for the application in 10.6% of cases, and criminal exploitation in 8.7% of cases. The main concern here was about children being exploited to take part in criminal activity, for example being involved in selling drugs as part of county lines, or being sexually exploited, and the DoL was sought to manage these risks (e.g. to reduce contact with potential exploiters).

For cases identified as 'other', the reasons given for the DoL did not fit the situations described above. This included cases where the main concern was the use of drugs (including class A drugs) and alcohol by the child, or cases where the main concern was the child going missing for periods of time – in a number of cases this was in order to return to family members.

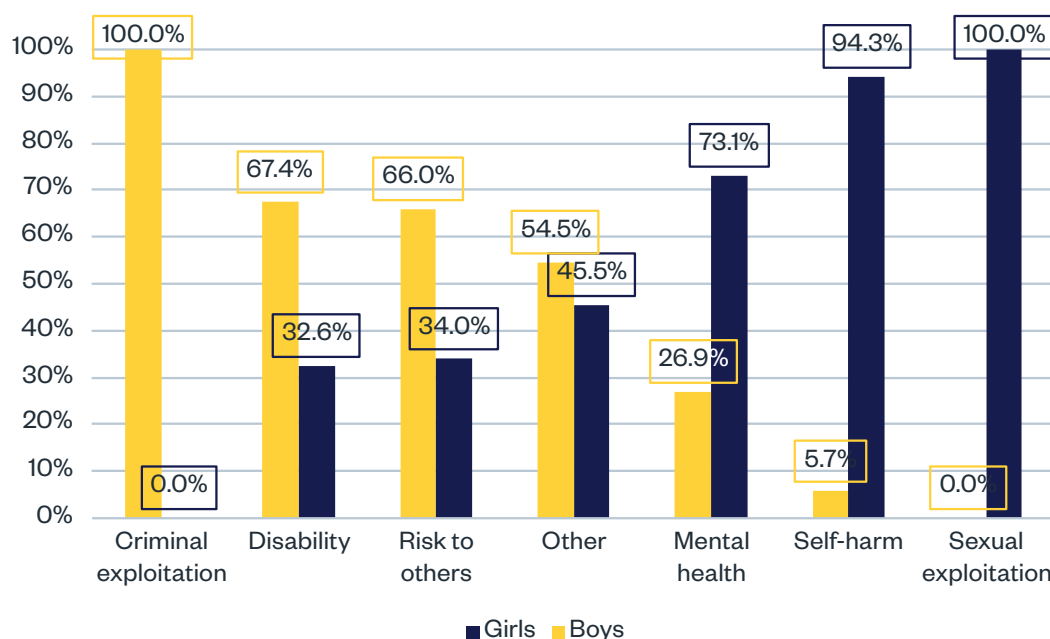
Gender and age differences in primary reason for application

We explored differences in the primary reason for the application by age and gender.

There were some clear differences in the primary reason for the application by gender (see Figure 8). Girls were significantly more likely to be the subject to DoL applications due to primary concerns about self-harm and mental health issues. On the other hand, boys were more likely to be subject to DoL applications due to primary concerns about the risks they posed to others (although a third of these cases related to girls). This may reflect gendered differences in understanding children's behaviours – with girls' challenging behaviours more likely to be seen as relating to internalising difficulties and boys' with externalising or 'aggressive' behaviours (for further discussion see Association of Young People's Health (AYPH) 2021). Although as we explore below, these issues frequently co-occurred in many cases.

There were also stark gender differences between cases where criminal exploitation was the primary reason for the application (all boys) and sexual exploitation (all girls), again, potentially reflecting gendered assumptions about extrafamilial risks (Young Women's Justice Project 2021; Josenhans et al. 2020).

Figure 8: Primary reason for DoL application by gender



Age differences in the primary reason for application were less pronounced. Cases involving younger children (aged 10–12) were more likely to be due to ‘risk to others’, and less likely to be due to mental health concerns. Cases involving children aged 16 and older were disproportionately likely to be related to self-harm.

Trajectories of children’s needs and behaviours

At the point at which a DoL application was issued, risks faced by children from their own behaviours or external risks were often so severe that the local authority (or hospital trust) felt restricting the child’s liberty was the only way to manage these risks. In our analysis, we have tried to explore the trajectories of children’s behaviours, although this information was not always included in the application.

In a handful of cases (5) it appeared that the issues had only recently (i.e. in the last 6 months) developed or escalated to the point of coming to the attention of services.

In others, concerns about the child’s behaviours had been present for much longer. In some of these cases (28) there had been a rapid escalation in need in recent months, that led to the DoL application being made – for example, an increase in the severity of self-harm incidents, or incidences of serious assault that led to immediate placement breakdown. This was sometimes linked to external factors in the child’s life, such as the death of a family member or friend, frequent placement moves and

associated instability, or difficulties with family relationships (e.g. changes to contact arrangements) and relationship breakdown.

In 31 cases it was recorded that the issues leading to the DoL application had been present for a number of years. This was mostly related to ongoing mental health concerns and self-harm, as well as some cases of ongoing criminal exploitation. Some children displaying very challenging externalising behaviours for a number of years had spent time in secure care (sometimes over a year) or been subject to previous DoL orders, with little change or improvement in behaviour. Behavioural and mental health issues were mostly identified around late childhood and early adolescence (age 10–12), however there were some cases where there were ongoing concerns about the child's behaviours and emotional well-being from a very young age.

Multiplicity and complexity of needs

Although we were able to identify a primary reason for the application – the central concern that led to the DoL application being made – in almost all cases (95.2%), there was more than one risk factor present. In the next section, we report on the range of needs and risk factors that were present across the cohort, and the number of risk factors present in each case. This provides an indication of the multiplicity and complexity of needs faced by children subject to DoL applications.

In our analysis, we identified 11 main categories that reflected the range of needs and risk factors present in all the applications.¹⁶ This includes the categories that were identified as primary reasons for application (see above), as well as other issues (e.g. absconding, being out of education) that were frequently mentioned but were rarely 'primary' issues in a case. The categories were: risk to others, going missing, self-harm, mental health concerns,¹⁷ neurodevelopmental disorders, disability, sexual exploitation, criminal exploitation,¹⁸ substance misuse, placement breakdown and being out of education (see Appendix A for more information about the coding structure used in the analysis).

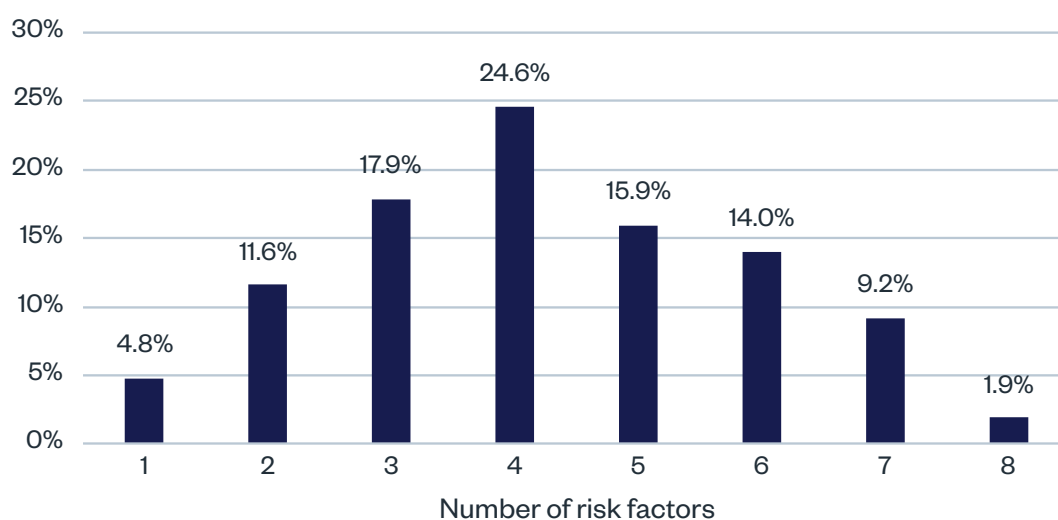
There was an average of 4.2 risk factors present in each case, ranging from 1 to 8 (see Figure 9). An overwhelming majority of cases (95.2%) had more than one risk factor recorded in the application and most (65.7%) had four or more.

¹⁶ Each category was made up of lower-level codes, which are reported in Figure 10 and Appendix A.

¹⁷ Self-harm was coded separately to mental health concerns as it was often mentioned separately in applications, i.e. not all children who were reported to be self-harming or at risk of self-harm were explicitly reported to also have mental health concerns. Due to the high prevalence of self-harm within the cohort, it was also judged to be helpful to separate this into a separate category for the analysis.

¹⁸ Criminal and sexual exploitation were coded separately in the analysis but have been combined in Figure 10.

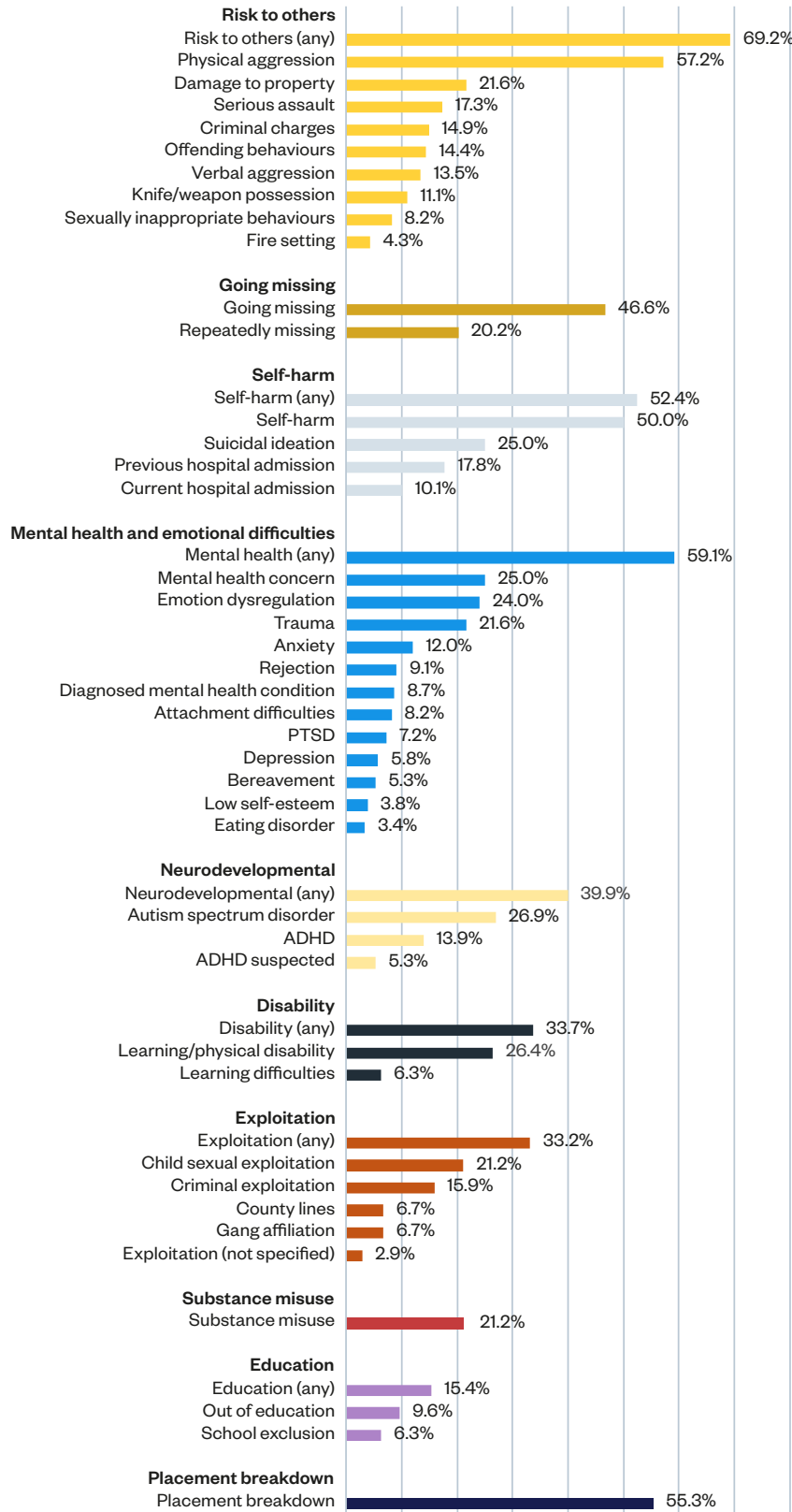
Figure 9: Aggregate number of risk factors present in all cases



In Figure 10 we report on the prevalence of behaviours and risk factors within each category, across the whole sample. The most common needs, across the whole sample, were risk to others (recorded in 69.2% of all cases), concerns about mental health or emotional difficulties, including experiences of trauma (59.1%), placement breakdown (55.3%), self-harm or suicidal ideation (52.4%) and absconding behaviours (46.6%).

Figure 10: Prevalence of needs and risk factors

Children deprived of their liberty: An analysis of the first two months to applications to the national deprivation of liberty court



Note: Any mention of each risk factor was coded, regardless of severity. Mental health (any), risk to others (any), self-harm (any), neurodevelopmental (any), disability (any), exploitation (any), education (any) refers to the proportion of cases in which there was any mention of the individual factors that make up these categories; the individual factors which make up these categories are also reported in the figure. A full description of the codes used in the analysis is available in Appendix A.

Diagnosed mental health condition was coded when there was explicit evidence in the application that the child had received a diagnosis from mental health professionals. Other codes (e.g. depression, anxiety, PTSD) refer both to cases in which there was an official diagnosis or where the condition was not mentioned in the application, but it was not clear if the child had received a diagnosis.

Risk to others

The most common primary reason for a DoL application being made was 'risk to others' (24.0% of all cases) and in over two-thirds of all cases (69.2%; not just those where this was the primary reason for the application) there was concern about the risk to others and to the child as a result of the child's challenging behaviours. The behaviour included physical and verbal aggression, causing damage to property, offending behaviours such as stealing cars, and possession of weapons. Incidences of physical aggression toward others – including toward family members, carers, staff in residential homes, teachers, other young people or members of the public – were most common, recorded in 57.5% of cases. In some cases (17.3%) there was evidence that the child had been involved in a serious assault – including stabbing, threatening to kill, or causing hospitalisation of family members, teachers, staff, other young people, and police officers – and were facing criminal charges. Physical aggression was often a cause of family breakdown, as a result of serious incidences of violence against family members or causing significant damage to the home. These behaviours were often described as impulsive and volatile, and were hard to manage in residential settings. There was also concern about verbal abuse towards others, including racist and sexist abuse.

There were also a small number of cases (8.2%; 17) where children were displaying sexually inappropriate or abusive behaviour towards others, including making sexualised comments towards other children or staff in residential placements or towards members of the public, accessing pornography, or inappropriate touching of self and others in public. In a handful of cases, children were subject to criminal charges due to sexual assault and considered to be a serious risk to the public due to inappropriate sexual behaviour. In almost all of these cases, there was a record of the child being sexually abused in early childhood.

There was a significant overlap between challenging externalising behaviours causing risk to others and concerns related to mental health and emotional difficulties, co-occurring in approximately 75% of cases. Challenging behaviours were often associated with experiences of early childhood and ongoing trauma, relationship breakdown and emotional dysregulation.

Aron's story

Aron is 14 and currently lives in a children's home for children with emotional and behavioural difficulties. There are only a small number of other children there. He has been diagnosed with autism. He has disclosed that he was sexually abused aged 5 by an older relative. There are ongoing concerns about his inappropriate sexual behaviour and the risks of allowing him unsupervised contact with other children. The local authority is seeking a DoL order to ensure he is constantly supervised in the home and in the community, there is a door alarm on his bedroom door, he has supervised use of the bathroom, no access to internet or social media and physical restraint is used where necessary.



Emotional and mental health concerns

Mental health was the primary reason for the application in 12.5% of cases, in cases where there was evidence of a diagnosis of mental health disorder, and/or treatment from specialist mental health services in the past or currently.

Across the sample as a whole, some concern around emotional and mental health was mentioned in over half of cases (59.1%; see Figure 10). This included concerns around undiagnosed mental health problems, emotional difficulties arising as a result of ongoing trauma, rejection and bereavement, low self-esteem, panic attacks and low mood. Difficulties with emotional regulation were also mentioned in a quarter of cases (24.0%), and were likely to underly self-harming or externalising behaviours in many more cases; emotion dysregulation is linked to trauma and post-traumatic stress (Dvir et al. 2014), ADHD (Bunford, Evans and Wymbs 2015), and autism (Samson et al. 2014). In our analysis and the data reported in Figure 10, we have relied on these issues being directly mentioned in the application. However, from our own reading of the case files it was apparent that complex trauma and associated emotional difficulties were a feature in most cases – although the exact presentation of these issues, and therefore the focus of the application, may have varied, for example via self-harm and internalising difficulties or aggressive behaviours and externalising difficulties.

Assessment under the Mental Health Act (1983)

Across the sample there was evidence of severe and complex emotional difficulties and self-harming behaviours. Despite this, very few children met criteria for inpatient mental health treatment.

In all, 39 children were recorded as being assessed for treatment under the Mental Health Act (1983), which provides for the detention of people with a mental disorder to be treated in hospital. Of these children, a quarter (10 children) had, at some point, met criteria for detention under the act, but the overwhelming majority did not. In these cases, presenting behaviours were judged to be the result of ongoing trauma, attachment difficulties and/or other behavioural issues, and not attributable to a diagnosable or acute mental health disorder. This has been raised in judgments in DoL cases (see Roe, Ryan and Powell 2022).

Self-harm

Self-harm was identified as the primary reason for the application in 16.8% of cases. It was also a feature in half of cases across the sample as a whole (52.4%). There was some variation in the severity of self-harming behaviours, ranging from concern that the child might, or had made, threats to self-harm, to frequent self-harming behaviour (e.g. cutting) without suicidal intent, to extreme, repeated self-harm with substantial risk of death. Behaviours included cutting or burning skin with a range of objects, attempted ligatures, overdoses of medication and drugs, jumping from windows or bridges, running on to roads or railways, and swallowing or ingesting objects such as glass or batteries.

Self-harm was often linked to challenging externalising behaviours, including physical and verbal aggression and incidences of serious assault towards staff members and carers. This was often in response to children being restrained to prevent them from self-harming, and likely to be a response to the significant distress experienced by the child.

A significant number of children (37; 17.8%) had been admitted to hospital as a result of self-harming behaviours, including 21 children (10.1%) who were in hospital at the time of the application. Several children had experienced multiple prior hospital admissions in the months leading up to the DoL application. In the majority of these cases, children were admitted to A&E following a self-harm incident (e.g. overdose) and had been assessed as medically fit for discharge but there was nowhere for the child to go. Some children had spent significant periods of time (four weeks or more) on hospital wards, where they were not receiving specialist mental health care or treatment. In some cases the DoL application was for the child to remain on the hospital ward (see Placements and care plans section below), where they would be subject to restraint and constant supervision by agency staff, in order to manage behaviours that were disruptive to the rest of the ward (e.g. absconding, self-harm, aggressive behaviours towards staff and other patients) while a residential placement was being sought. In fewer than five cases, the child had been receiving treatment in an in-patient psychiatric unit and was now ready for discharge.

Disability and neurodevelopmental disorders

Child disability was the second most common primary reason for a DoL application, representing just over a fifth (22.1%) of all cases.

In addition, across the whole sample, a significant proportion of children had neurodevelopmental difficulties, including autism spectrum disorder (ASD; 26.9%) and suspected or diagnosed ADHD (19.2%), a learning disability (26.6%) or learning difficulties (6.3%). There were also 13 children who had learning difficulties that

affected their overall functioning and their ability to communicate and learn. In some of these cases, the local authority was seeking assessment for learning disabilities and/or autism and ADHD. The primary reasons for a DoL application in these cases were mental health and self-harm.

In those cases where disability was the primary reason for the application, the need for the DoL arose for two main reasons: the need to monitor and supervise the child to manage care needs (41.8% of all disability primary reason cases), and/or to place restrictions on the child's liberty to manage challenging behaviours that were linked to the diagnosis (58.2%). In cases where the DoL was primarily to supervise the child to manage care needs, this arose from the need to monitor the child, support with self-care, eating and drinking, manage their medication, strap them to chairs, beds, or car seats in order to keep them safe.

Where the DoL application was also linked to difficulties managing the child's behaviour, the behaviour included incidents of aggression (e.g. throwing objects, hitting out at others, damaging property), self-harm (e.g. hitting self) attempting to run away from carers, and concerns about potential risks to members of the public. In some of these cases, children had earlier experiences of neglect and trauma and professionals hypothesised that this was contributing to their behaviour problems. These behaviours often became harder to manage as the child got older (and stronger) and sometimes were linked to menstruation (i.e. monthly fluctuations in the child's behaviours and mood) or other issues relating to puberty. The DoL in these cases was sought to authorise restraint, alongside monitoring and supervision.

Exploitation

Sexual exploitation was identified as the primary reason for the application in 10.6% of cases, and criminal exploitation in 8.7% of cases.

Across the whole sample, there was some concern around the child's risk of sexual exploitation in just over a fifth (21.2%) of cases, and in 15.9% of cases some concern around criminal exploitation.

Risks around exploitation ranged from concern that the child was at risk of (or could be vulnerable to) exploitation due to frequent missing episodes, substance misuse problems or relationship difficulties (e.g. trusting/approaching strangers, difficult peer relationships), to documented instances of ongoing sexual and criminal exploitation, including children who have been victims of rape and sexual assault, or who had been found by police in 'cuckoo houses' connected to county lines operations. Five boys were considered to be at serious risk of severe violence due to

criminal exploitation and affiliations with gangs, including examples where children had been stabbed or the DoL was being sought, in part, due to threats on the child's life from known gang members. It was also notable that, in some cases, criminal exploitation was associated with significant levels of anxiety and distress (primarily in boys), which was sometimes identified as a cause of other challenging behaviours. In some cases, exploitation had been ongoing, and known to the local authority, for several years.

Criminal exploitation was often linked to other offending behaviours (e.g. theft, knife possession), substance use problems, self-harm and aggressive behaviours (e.g. causing damage to property, threats or actual violence towards others).



David's story

David is 16 and currently serving a sentence in a young offender institution. He is due to be released soon. He has had intermittent contact with children's social care since he was 5. Initially the concerns were about physical abuse at home, then about his difficult and challenging behaviour, which led to him being excluded from school and then excluded from alternative provision. He was made the subject of a child protection plan because he was going missing regularly and had been stabbed. There is evidence that he had been involved in gangs and county lines. In the past he has committed offences of assault and been arrested for dealing drugs and carrying a knife. He has not had a mental health assessment although he has said that at times he feels suicidal. The local authority has been looking for a placement in secure accommodation for David, but none can be found. Instead, it is looking for a residential placement supported with a deprivation of liberty (DoL) order. The DoL would involve 1:1 supervision, no phone or internet, and a curfew between 7pm and 7am. He is in regular contact with his parents who want to have him at home.

Sexual exploitation was frequently linked to going missing, difficult peer relationships (e.g. children influencing or being influenced by peers in residential placements that may lead to the placement breaking down), substance use problems and offending behaviours.



Sharon's story

Sharon is 14 and became the subject of care proceedings 7 years ago because of concerns about her parents' drug use and their neglect of her and her siblings. She moved to live with a family member under a special guardianship order, but this arrangement broke down and Sharon then moved between foster carers and family members for five years and more recently has had a lot of changes of placement, which have included living in unregulated placements. She has had several periods of running away and going missing for several nights. She says that she is having sex with men for money. She was recently found sleeping rough and has attempted suicide. She has been receiving support from child and adolescent mental health services (CAMHS), but they say that they cannot start meaningful work with her until she is more settled. The main reason for the application is concern about sexual exploitation and the local authority wants authorisation for 2:1 supervision of her at all times in her placement, and in the community, and locks on doors and windows.

Other issues

Although absconding was rarely the primary reason for the application, it was a feature in almost half (46.6%) of applications. A fifth (20.2%) of children were repeatedly missing – meaning that they went missing for extended periods of time (e.g. multiple days) and/or very frequently (i.e. most days). While concern about children’s exposure to risk and vulnerability while missing was mostly related to self-harm, exploitation and substance misuse, it was also notable that several children were going missing from their placement mainly to return to family members.

In addition, although rarely the reason for the application, a significant number of children also had identified substance misuse problems (21.2%). This was most commonly related to cannabis and alcohol use, but there were also several instances of ketamine, cocaine and heroin use. Substance misuse was often related to/co-occurred with risks around sexual and criminal exploitation, aggressive behaviours and going missing.

Although education was rarely mentioned in applications, there was some reference (in 6.3% of cases) to children being permanently excluded from school, primarily due to aggressive behaviours towards others, and children being out of education for significant periods of time (9.6% of cases). In some cases there were references to children attending school from their placement or to problems that had occurred in the school setting, indicating that children were attending school.

Furthermore, there was also some evidence of adverse life experiences – including experiences of abuse, neglect, loss, rejection and instability – in the majority of cases in our sample. Most cases had some mention of intrafamilial issues (62.3%) (see section Exposure to intrafamilial issues) although, as we noted earlier, whether or not there was information about this depended on the detail of the supporting statement, and it is likely that the actual number of children with such experiences was much higher.

Co-occurring needs and grouping of needs

Finally, we explored how different risk factors and needs were more likely to co-occur in each case and whether, as a result, we could identify different cohorts of children with distinct needs. This was done both qualitatively, looking at the co-occurrence of risk factors in each case, and quantitatively, using correlation analysis.

We identified three relatively distinct cohorts of children, where the main reasons for the DoL application arose due to different clusters or groups of needs. In all three groups there was a significant level of concern about the risks faced by children and the difficulty managing these without restrictions on their liberty.

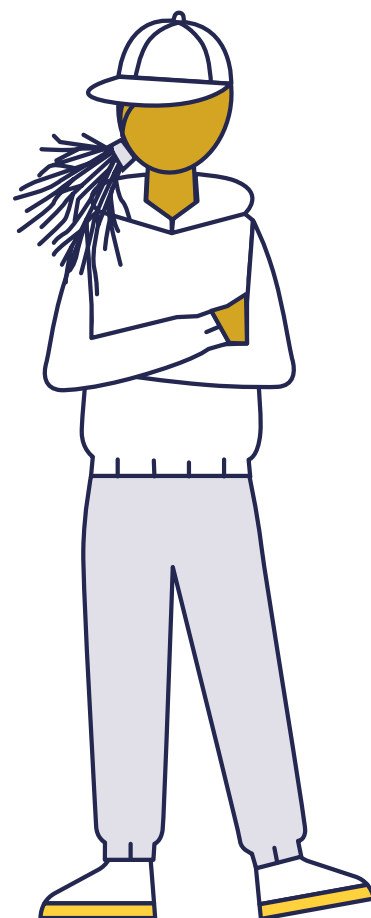
Children who were subject to a DoL application due to a learning and/or physical disability had relatively distinct needs compared to the rest of the cohort. This group was made up of the 22.1% of children for whom disability was identified as the primary reason for the DoL application. In these cases, the DoL was sought to manage the child's needs or behaviours (including self-harming behaviours or behaviours that were a risk to others) that arose as a result of their disability. In general, the children in this cohort were more likely to be in stable placements (45.7%), although this was not the case for all children in this group. Most children were living in registered children's homes, residential schools or in the home of family members or foster carers. Children with disabilities had often been subject to restrictions for a significant period of time, either on an ongoing DoL order, or due to the age of the child, the local authority was now seeking a DoL order as the restrictions were beyond what would be expected for a child of a similar age without a disability.

The nature of children's needs meant that they were likely to be subject to restrictions on their liberty (for example, ongoing supervision) for the rest of their childhood and into adulthood, with cases likely transferring to the court of protection.¹⁹

19 The court of protection deals with applications to deprive adults, and some children aged 16 and 17, of their liberty under the Mental Capacity Act 2005. In this group there were 14 children aged 16 or 17. These applications could have been made to the court of protection rather than under the inherent jurisdiction; it is possible this issue was raised once the case came before the judge.

Charmaine's story

Charmaine is 15 and lives in a residential children's home that provides care for a small number of children with learning difficulties. She has been living in the same home for the last two years and has been under a DoL order for all of that time. She has severe physical disabilities, ADHD and a severe learning disability that means she requires constant supervision to keep her safe and support with getting dressed, self-care and eating. Sometimes she can become emotionally dysregulated, hitting out at her carers or hitting herself. In the past, she has been subject to restraint to manage these behaviours, although the number of incidents has decreased in the last two years as she has settled into her placement. She came into care two years ago because her parents could not keep her safe at home. She appears happy in the placement but continues to need intensive supervision. The DoL requested is for 1:1 or occasionally 2:1 supervision and support at all times, with: additional supervision during car journeys; windows and doors to be locked in the placement; staff to administer medication; restrictions on her use of the internet; and the use of an alarm on the front door. It is expected that Charmaine will stay in this placement until she turns 18.



The largest group of children (53.3%) were those who had multiple, complex needs. These were cases where children were considered to be very vulnerable as a result of a range of overlapping risk factors and needs, with significant overlap across mental health concerns, self-harming behaviours and risk to others. At the centre of many of these cases was some recognition that the child's behaviours, whether these were predominantly internalising (e.g. self-harm) or externalising (e.g. aggression towards others), were a response to complex and ongoing trauma, as a result of experiences of rejection, bereavement, significant instability, and abuse and neglect. Some of these children had diagnosed mental health conditions but many did not. Most children in this group had experienced significant instability in their living arrangements, with placement providers often ending placements at short notice due to an escalation in the child's behaviours (e.g. a particularly severe self-harm incident or altercation between the child and placement staff), and local authorities experienced significant difficulties finding suitable placements that could keep children safe and provide the therapeutic support that they needed.



Chloe's story

Chloe is 16 and currently in secure accommodation some distance from her home. Chloe has been involved with children's social care since her birth because of concerns about neglect. She came into care aged 2 and then experienced multiple moves between family members, foster carers and more recently residential placements. Chloe frequently self-harms and has attempted suicide on a number of occasions. She has been subject to restraint to prevent her from self-harming. She can be violent towards her carers and has caused damage to her room. She is vulnerable to sexual exploitation and misuses drugs and alcohol. She has been more settled in secure accommodation and the plan is for her to leave secure accommodation and move to an independent placement with a DoL order. The restrictions proposed are: limited access to her mobile phone or the internet; limits on the use of her free time; supervision by 2:1; and the use of physical restraint if she tries to injure herself or harm others or property.

The final cohort of children we identified were those for whom the DoL application was sought primarily due to external, or extrafamilial, risk factors such as sexual or criminal exploitation (24.6%). In these cases, there was significant concern about the immediate risks faced by children due to exploitation and the DoL was an attempt to manage these risks. While there were often other issues present in these cases – including concerns about self-harm, (undiagnosed) mental health problems and/or challenging behaviours, and experiences of long-term trauma – the DoL was primarily sought to manage external risks, for example, by removing the child from the environment in which they were being exploited, and restricting their access to mobile phones, social media and money.

The deprivation of liberty application

Placements and care plans

Most applications (86%; 179) were to deprive children of their liberty in residential settings, including registered children's home, residential schools and unregistered settings. In 10 cases (4.8%), the child was to be deprived of their liberty in hospital and in 12 cases (5.8%), in the home of family or foster carers. There were seven cases where a placement for the child had not been found at the time the application was submitted.

Where possible, we identified whether children were to be placed in a registered or unregistered setting although it is important to note that we do not know if this is the actual placement a child will have ended up in, and for how long (for further information about unregistered provision see *Where were children living at the time of the application?*). In just under half of applications, children were going to be placed in unregistered settings (45.6%; 54.4% for registered children's homes) – this included the use of semi-independent (unregulated) placements²⁰, hospitals, residential homes that were CQC but not Ofsted registered, and rented flats or holiday lets staffed with agency workers. This is a higher proportion than those living in unregistered settings at the time of the application (35.6%, including those that were in hospital at the time of the application; see Table 1). Under current regulations, these placements are illegal.

We also explored differences in whether children were more or less likely to be placed in an unregistered setting according to the primary reason identified for their application (Table 2).

²⁰ Although unregulated placements are allowed in law for children aged 16 and 17 they are not allowed to provide care to children. Children subject to DoL orders will require some form of care (e.g. constant supervision) – in such instances an unregulated placement becomes unregistered.

Table 2: Ofsted registration status of proposed placements by primary reason for application (%)

Primary reason for application	Registered	Unregistered	Placement not found at application	Foster care/ family placement
Risk to others	43.2%	54.5%	0.0%	2.3%
Child disability	73.2%	4.9%	0.0%	22.0%
Self-harm	34.4%	62.5%	0.0%	3.1%
Mental health	48.0%	36.0%	12.0%	4.0%
Sexual exploitation	63.2%	36.8%	0.0%	0.0%
Criminal exploitation	35.3%	47.1%	17.6%	0.0%
Other	20.0%	70.0%	10.0%	0.0%

Children for whom the DoL application was primarily due to a disability were the least likely to have a proposed placement in an unregistered setting (4.9%). By contrast, over half of children for whom the primary reason for the application was self-harm (62.5%) and risk to others (54.5%), as well as the small group of children with other reasons for the application (70.0%), were likely to be placed in an unregistered placement. A significant proportion of children for whom the DoL was sought to manage risks around criminal exploitation were also going to be placed in an unregistered setting (47.1%) or a placement for them had not been found at the time of the application (17.6%). This may indicate a particular lack of sufficient and suitable placements for children with these needs.

Within the applications, there was generally a lack of information about the type of care being provided to children, including access to education or therapeutic interventions. In a handful of cases there was some mention of the child accessing mental health support through CAMHS, having access to support workers, counsellors and psychologists, access to specialist interventions, for example for sexual exploitation or sexualised behaviours, and being able to leave the placement to attend extra-curricular activities. The type of care children receive while subject to DoL orders, especially in unregistered settings, remains a key question to be explored in further research.

The use of deprivation of liberty orders as an alternative to secure accommodation

Secure accommodation was mentioned relatively infrequently in applications. In 20 cases (9.6%) it was explicitly mentioned that a placement in a secure children's home would have been appropriate for the child, and preferable to a DoL, but no placement was available at the time of the application – in these cases the DoL order was seen as a temporary arrangement while waiting for a place in a secure children's home to become available. In a handful of other cases secure accommodation was deemed inappropriate for the child, for example because: secure accommodation was considered a more severe restriction of a child's liberty and it was felt a DoL order could be used to 'keep the child in the community' with lesser restrictions; because the child would not meet the criteria for secure accommodation set out in s.25 of the Children Act 1989; or a DoL order was being sought as part of a planned transition from secure accommodation into non-secure community settings.

Analysis of further data from the national DoL court found that, between July and September 2022, applications under the inherent jurisdiction (348 applications) far outnumbered those for secure accommodation orders (46), suggesting that the inherent jurisdiction is now by far the most common legislative route to depriving children of their liberty in the family courts (Nuffield FJO 2023).

What restrictions on children's liberty were being sought?

As this report is focused on analysis of the information contained in the documents filed at the start of proceedings, we are not able to provide information on the restrictions on the child's liberty that were included in any orders made, but details of the restrictions requested by the applicant were included in all but 18 of the 208 cases.

We set out below the types of restrictions included in the 190 applications where information was included:

- Constant daytime supervision of the child. This varied from 1:1 supervision to 4:1 in some cases. In most cases this level of supervision was both within the placement and out in the community.
- Locks on windows and doors to prevent children leaving the placement or running away.
- Children to be followed by staff if they did leave their placement without permission, to ensure their safety.

- Searches of children's rooms and belongings on a regular basis and removal of items that children could use to hurt themselves.
- Supervised use of the internet, mobile phones and land lines. Many young people were not allowed to have their mobile phones or any electronic devices.
- The use of 'secure transport' when children were being moved to a different placement, meaning that children were locked in the car and restraint could be used to prevent children escaping.
- Some children were not allowed into kitchens or were only allowed in under supervision.
- In some cases there were checks on children throughout the night and for some children this meant leaving bedroom doors open.
- In some cases children were not allowed to have money, or access to money was strictly controlled.
- Children's contact with family and friends was supervised, both in person and contact by phone or electronically.
- Staff supervision of the taking of medication by children and in some cases staff administered the medication the child needed.
- The use of physical restraint where absolutely necessary was mentioned in 91 cases. In some cases there was additional information about the specific type of restraint to be used and/or about the training staff had received in using restraint methods but this was not something that was routinely included.

Any order made as a result of a DoL application will authorise the restrictions on liberty that are listed within it. This means that the restrictions can be used, but may not be if that is unnecessary.

Children's views on the application

In around half of the applications (103) there was no information given in the supporting papers on the child's views about the DoL application. It is likely that as the case progressed to a hearing and/or further hearings more details about the child's view would emerge. Where there was information about the child's views this indicated that in 31 cases the child was opposed to the restrictions being sought and to the order being made. In 26 cases children were reported as being in agreement with the restrictions, although in some cases they were not in agreement with all the restrictions or they wanted them to be in place for only a limited period of time. There were a number of cases (4) where children were missing at the time of the application and so the local authority had not been able to seek their views, and in some other cases (4) the local authority said they had not notified the child of the application because they were concerned that the child would run away or harm themselves or others if they knew the application was being made.

In some cases (24), where the child suffered from physical or mental disabilities the local authority reported that the child lacked capacity to understand the application and/or were unable to communicate so their views were not included, but in a number of these cases they reported that the child appeared happy and settled in the placement.

There were also some cases where the child's views on the application and the proposed restrictions on liberty were not included but the children were reported as being happy in the placement or that they had requested this particular placement.

Some children were wanting to move to a different placement, and some children were wanting to return to parents or wider family (with whom they were living before this episode of care), although the evidence suggested that these family members were either not able to provide a home for the child, or were in some cases opposed to the child returning, and in a handful of cases the home environment was regarded as unsafe for the child to return to.

Information on the representation of children in the proceedings and/or their involvement in any hearings was very limited in the initial application documents and will be something we will look at in more detail when we report on the orders made in DoLs proceedings. In four cases reference was made to the child having separate representation, meaning that the child was instructing their own solicitor rather than having their views represented by the Cafcass guardian. These were cases where previous DoL orders had been made.

Parent and carer views about the applications

Parents (including adoptive parents) and special guardians of 119 children were reported by the local authority to be in agreement with the care plan and the proposed restrictions on the child's liberty, while the parent or parents of 8 children were reported to be opposed to the application. There was no record of parents' views or of attempts to obtain these in 61 cases, while in other cases the local authority reported that they had been unable to contact the parents or that the parents had not responded to information about the proceedings or that the child did not wish their parents to be contacted. There were also a small number of cases where the local authority stated that they had not informed the parents about the application because they were worried that the parents would tell the child about it.

It was not clear from the information available at the point of the application whether consideration had been given to the impact of the parents' consent to the DoL in relation to children under 16, and, in particular, whether this negated the need to apply for an order authorising the DoL (for example see Parker 2022, p.11).

In just under half of all cases there was information about children's contact with their parents, guardians, siblings and wider family. Among this group was a small number of children who were not having contact with family members through their own choice, or where contact arrangements were temporarily on hold, or where the local authority had applied to the court to refuse contact with parents. Where contact was taking place, the arrangements described included regular and frequent contact with a wide range of family members, including visits home and overnight stays at home to more limited face-to-face arrangements with one or two family members. Some contact was indirect by phone or internet, some was supervised. Some contact was with previous foster carers.

At the point of the application there was limited information about whether or not parents were represented and whether or not they were playing an active part in proceedings. As noted earlier, if the application for a DoL order was being made outside of any care proceedings or in relation to children in care under s.20 or s.76 – which is the case in a majority of DoL applications (see Figure 4) – then parents would not be automatically entitled to legal aid for legal representation.

Reflections

- This study aimed to provide a better understanding of the characteristics, needs and risk factors faced by children subject to deprivation of liberty (DoL) applications, using a nationally representative sample of the first two months of cases at the national DoL court. Our analysis confirms the complexity and severity of risk faced by children subject to DoL applications and highlights an urgent need for increased resource, creativity and collaboration across all systems responsible for the care of these children if we, as a society, are going to better meet their needs.
- Children who are subject to DoL applications are extremely vulnerable. They typically have multiple and complex needs that are evident in behaviours that can make them a risk to themselves or others. Some have severe physical or learning disabilities, some have been subject to criminal or sexual exploitation. The majority have experienced significant adversities such as rejection, bereavement, abuse and neglect during their childhood.
- Although their needs may have recently escalated, the vast majority are well known to statutory services. For many children, their emotional and behavioural difficulties are evident from late childhood. It is clear that they need far better support at an earlier stage.
- By the time they are subject to a DoL application, the risks children face are immediate and severe. It is obvious that they are in need of intensive care: as a minimum, they are likely to require care that is stable, with consistent teams who are able to build trusting relationships over time, along with access to specialist therapeutic support and education. Yet we know that in many cases this is not available. Applications are too often made to place children in unregistered or unregulated provision as a stopgap in the hope that more suitable provision will become available. But a dire national shortage of suitable homes means that in many cases, children will remain in temporary or crisis placements for much longer.

- Designed to be a 'last resort' measure, a DoL order is now being routinely requested by local authorities for children who have experienced years of trauma and instability in their lives. Unable to provide them with the care they need, their safety is being sought through restrictions to their liberty.
- This report underlines the urgent need to develop new provision, at a local level, with joint input from children's social care, mental health services and schools. It is not something that can be left to chance. It will require a nationwide strategy, with significant commitment at local and national level, including national government.

Priorities for further research

- Information about children's views on the DoL application, and their involvement in the case, was limited. Further research to better understand how children's voice is included in DoL applications is needed – including their representation, ability to attend hearings and speak to the judge, and contribute to care planning – alongside research to explore how children themselves experience DoL orders.
- In this report we have focused on information included in the application for a DoL order only. Further research is necessary to explore both short and longer-term outcomes for this group of children, including where children are placed under DoL orders and for how long, the type of care that is provided (in registered and unregistered placements) and changes to their behaviours. A forthcoming report from the Nuffield FJO, using data from the national DoL court, will explore this.
- Information about children's ethnicity was also often not included in application forms, which meant that we were unable to look at the ethnicity of children subject to DoL applications in our analysis. Our initial findings suggest that children from Black, Mixed and White Other backgrounds may be more likely to be subject to DoL applications than children from other ethnic backgrounds and there is an urgent need for more research in this area, including to investigate any variation in the reasons for a DoL application, the child's needs, and arrangements made for their care by ethnicity.

- Information about children's access to education was limited in the applications and further research could usefully investigate how children's right to education and educational needs are being met.
- Given the number of cases in which the potential use of restraint to protect the child or to protect others from the child was mentioned there is a need to know more about methods of restraint used and training provided to the staff caring for the child.
- The statutory schemes under which children can be deprived of their liberty (e.g. s.25 of the Children Act 1989) include requirements about the length of the orders and the systems for review. There is a need for greater understanding about the ways in which orders under the inherent jurisdiction are monitored and reviewed.
- It appeared that in just over half the cases in our sample, parents had expressed their consent to the DoL. It would seem helpful if there could be discussion and potentially some clearer guidance on the circumstances in which parental consent might mean that an order is unnecessary.

Case list

Re D (A Child) [2019] UKSC 42. <https://www.supremecourt.uk/cases/uksc-2018-0064.html>

Re E (A Child) [2022] EWHC 2650 (Fam). <https://www.bailii.org/ew/cases/EWHC/Fam/2022/2650.html>

Re X (Secure Accommodation: Lack of Provision) [2023] EWHC 129 (Fam). <https://www.judiciary.uk/judgments/55407-2/>

References

Association of Directors of Children's Services (ADCS). (2022). *Safeguarding pressures research phase 8*. <https://adcs.org.uk/safeguarding/article/safeguarding-pressures-phase-8>

Association of Young People's Health (AYPH). (2021). *Young people and their mental health – Is there a crisis? And is it the one we think it is?* <https://ayph.org.uk/young-people-and-their-mental-health-is-there-a-crisis-and-is-it-the-one-we-think-it-is/>

Bunford, N., Evans, S. W. and Wymbs, F. (2015). ADHD and emotion dysregulation among children and adolescents. *Clinical Child and Family Psychology Review*, 18(3), pp. 185– 217. <https://doi.org/10.1007/s10567-015-0187-5>

Competition and Markets Authority (CMA). (2022). *Children's social care market study: Final report*. <https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report/final-report>

Department for Education (DfE). (2021). *Ethnicity facts and figures: Adopted and looked-after children*. GOV.UK. <https://www.ethnicity-facts-figures.service.gov.uk/health/social-care/adopted-and-looked-after-children/latest#by-ethnicity-looked-after-and-adopted-children>

DfE. (2022). *Statistics: secure children's homes*. National statistics. Retrieved 22 December 2022 from <https://www.gov.uk/government/collections/statistics-secure-children-s-homes>

Dvir, Y., Ford, J. D., Hill, M. and Frazier, J. A. (2014). Childhood maltreatment, emotional dysregulation, and psychiatric comorbidities. *Harvard Review of Psychiatry*, 22(3), 149. <https://doi.org/10.1097%2FHRP.0000000000000014>

Josenhans, V., Kavenagh, M., Smith, S. and Wekerle, C. (2020). Gender, rights and responsibilities: The need for a global analysis of the sexual exploitation of boys. *Child Abuse & Neglect*, 110, p. 104291. <https://doi.org/10.1016/j.chiabu.2019.104291>

MacAlister, J. (2022). *The independent review of children's social care: Final report*. <https://childrensocialcare.independent-review.uk/>

Nuffield Family Justice Observatory (Nuffield FJO). (2023). *National deprivation of liberty court: Data trends: What have we learnt in the first six months of the national DoL court?* Nuffield Family Justice Observatory. <https://www.nuffieldfjo.org.uk/resource/what-have-we-learnt-in-the-first-six-months-of-the-national-dol-court>

Ofsted. (2022a). *Ofsted annual report 2021/22: Education, children's services and skills.* GOV.UK. <https://www.gov.uk/government/publications/ofsted-annual-report-202122-education-childrens-services-and-skills>

Ofsted. (2022b). *How local authorities plan for sufficiency: Children in care and care leavers.* GOV.UK. <https://www.gov.uk/government/publications/how-local-authorities-plan-for-sufficiency-children-in-care-and-care-leavers>

Ofsted. (2023). *Introduction to children's homes.* GOV.UK. <https://www.gov.uk/government/publications/how-to-open-a-childrens-home/introduction-to-childrens-homes>

Parker, C. and Tunnard, J. (2021). *Why are older children in care proceedings? A themed audit in four local authorities.* Nuffield Family Justice Observatory. <https://www.nuffieldfjo.org.uk/resource/older-children-in-care-proceedings-themed-audit>

Parker, C. (2022). *Deprivation of liberty: Legal reflections and mechanisms.* Briefing. Nuffield Family Justice Observatory. www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing

Roe, A. (2022). *What do we know about children and young people deprived of their liberty in England and Wales? An evidence review.* Nuffield Family Justice Observatory. www.nuffieldfjo.org.uk/resource/children-and-young-people-deprived-of-their-liberty-england-and-wales

Roe, A., Cusworth, L. and Alrouh, B. (2022). *Children subject to secure accommodation orders: A data review.* Nuffield Family Justice Observatory. www.nuffieldfjo.org.uk/resource/children-subject-to-secure-accommodation-orders-a-data-review

Roe, A., Ryan, M. and Powell, A. (2022). *Deprivation of liberty: A review of published judgments.* Nuffield Family Justice Observatory. <https://www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-a-review-of-published-judgments>

Samson, A. C., Phillips, J. M., Parker, K. J., Shah, S., Gross, J. J. and Hardan, A.Y. (2014). Emotion dysregulation and the core features of autism spectrum disorder. *Journal of Autism and Developmental Disorders*, 44(7), pp. 1766–1772.

Secure Welfare Coordination Unit (SWCU) (2021). *SWCU annual report England: January 2021–December 2021.* Hampshire County Council. <http://securechildrenshomes.org.uk/assets/swcu-annual-report-england-2021-pdf.pdf>

Williams, A., Wood, S., Warner, N., Cummings, A., Hodges, H., El-Banna, A. and Daher, S. (2020). *Unlocking the facts: Young people referred to secure children's homes.* What Works for Children's Social Care. https://whatworks-csc.org.uk/wp-content/uploads/WWCSC_Unlocking_the_Facts_SCH_technical_report_Dec2020-1.pdf

Young Women's Justice Project. (2021). *Young Women's Justice Project literature review.* Alliance for Youth Justice. <https://www.ayj.org.uk/news-content/young-womens-justice-project-literature-review>

Appendix A

Table A.1: Description of codes used in the analysis of children's needs

Category	Code	Description
Risk to others	Physical aggression	Physically aggressive behaviours, directed at carers, parents, staff in residential setting, teachers, other young people
	Serious assault	Incident of serious aggression toward another person, including threatening to kill them, causing significant harm (i.e. victim has to go to hospital)
	Verbal aggression	Verbally abusive behaviours to carers/ other young people, including use of sexist and racist language
	Knife/weapon possession	Possession of knives or weapons, for the purpose of/with intent to harm others
	Damage to property	Child has carried out significant damage to property, e.g. in residential setting, home of family members, or other public property
	Fire setting	Any mention that the child had set fire to property or possessions
	Offending behaviours	Including drug offences (drug dealing), robbery, possession of weapons that have involved police
	Criminal charges	Child has been charged with a crime and/ or investigations ongoing
	Sexually inappropriate behaviours	Inappropriate touching, making sexual gestures to others, use of overly-sexualised language towards others
	Sexual assault	Child charged/suspected of having sexually assaulted someone
Going missing	Absconding	Child has been absconding or going missing from placement
	Repeatedly missing	Serious concerns about child going missing, frequently and for significant periods of times (e.g. overnight)

Category	Code	Description
Self-harm	Self-harm	Any evidence of self-harming behaviours (including cutting, use of ligatures, overdoses, ingestion of harmful objects, running into traffic etc.)
	Suicidal ideation	Child has self-harmed with intent to cause death and/or has expressed suicidal intent
	Previous hospital admission	Child has previously been admitted to hospital/attended A&E due to self-harm
	Current hospital admission	Child is currently in hospital following a self-harm incident
Mental health and emotional difficulties	Mental health – diagnosed	Child has been diagnosed with any mental health condition
	Mental health concern	Any suspected mental health condition from social workers, mental health professionals, or other professionals
	Depression	Concerns around or diagnosis of depression or low mood
	Anxiety	Concerns around or diagnosis of anxiety (including panic attacks)
	PTSD	Diagnosis of post-traumatic stress disorder (PTSD) or complex PTSD
	Low self-esteem	Child identified as having low self-esteem
	Eating disorder	Suspected eating disorder/concerns around child's eating (e.g. low weight, bulimia)
	Emotion dysregulation	Social work statement mentions emotion dysregulation problems as underlying child's behaviours
	Trauma-related	Any acknowledgement by professionals that child's behaviours and presentation is the result of early childhood and ongoing trauma
	Attachment difficulties	Diagnosis of reactive attachment disorder or any mention that the child's behaviours/presentation is related to attachment difficulties
	Rejection	Experience of familial rejection and/or difficult relationships with family members seen to be a factor/trigger in child's behaviours
	Bereavement	Experience of the death of a close relative or friend that has significantly affected the child's mental health

Category	Code	Description
Neurodevelopmental disorders	ASD	Child has diagnosis of autism spectrum disorder (ASD)
	ADHD	Child has diagnosis of attention deficit hyperactivity disorder (ADHD)
	ADHD suspected	Suspected ADHD and/or child currently undergoing assessment for ADHD
Disability	Learning/physical disability	Child has a severe learning disability and/or physical disability and the resulting behaviours/care needs are the primary reason for the DoL application
	Learning difficulties	Evidence of learning, communication or developmental difficulties and/or suspicion that the child may have an undiagnosed learning disability, or is undergoing assessment at time of application
Exploitation	Child sexual exploitation	Concerns/evidence that child is being sexually exploited and/or any mention that child has inappropriate relationships with older men, including making contact with them on the internet/in public
	Criminal exploitation	Concerns/evidence that child is being criminally exploited
	Exploitation	Concerns that the child is being exploited and further details about type of exploitation not mentioned
	Gang affiliation	Suspected/confirmed involvement with gangs
	County lines	Child suspected/confirmed involvement in county lines, including any mention of child being found at 'cuckoo' houses
Substance misuse	Substance misuse	Concern around child's use of alcohol or drugs
Education	Out of education	Concerns around child missing significant periods of education/not attending school
	School exclusion	Child has been temporarily or permanently excluded from school at any point
Placement breakdown	Placement breakdown	Child has experienced more than one placement breakdown, primarily due to child's behaviour

Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.



Copyright © Nuffield Family Justice Observatory 2023
100 St John St, London EC1M 4EH T: 020 7631 0566
Part of Nuffield Foundation: Registered charity 206601

nuffieldfjo.org.uk | [@NuffieldFJO](https://twitter.com/NuffieldFJO)
www.nuffieldfoundation.org | [@NuffieldFound](https://twitter.com/NuffieldFound)