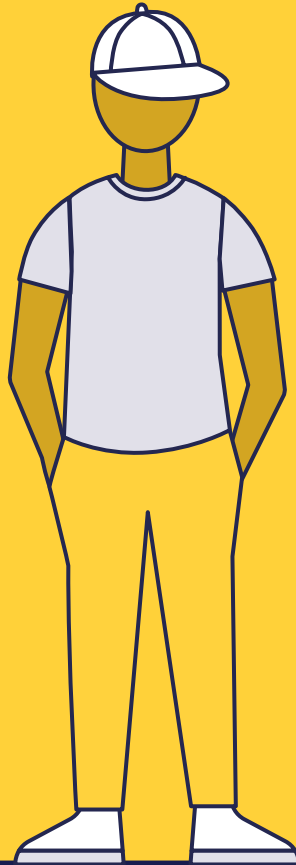


Young people | June 2023

Legal outcomes of cases at the national deprivation of liberty court



Authors

Alice Roe

Mary Ryan

Aliya Saied-Tessier

Charlotte Edney



Nuffield
Family Justice
Observatory

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 legal orders made in these cases. It provides the first national overview of the outcome of deprivation of liberty applications, including how long children are subject to restrictions and where they are living under deprivation of liberty orders.

Authors

Alice Roe

Mary Ryan

Aliya Saied-Tessier

Charlotte Edney

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Disclaimer

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100 St John Street, London EC1M 4EH T: 020 7631 0566
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Executive summary



This summary highlights the main findings from an analysis of the first two months of applications to the national deprivation of liberty (DoL) court (July and August 2022), focusing on the orders made in these cases.

The analysis aimed to answer the following research questions:

- What is the legal outcome of applications?
- How long are orders made for?
- Where are children placed while subject to DoL orders?
- What restrictions are being authorised on children's liberties?
- How is children's voice and participation in court proceedings being facilitated?
- What role do parents and carers have in proceedings, including access to legal representation?
- What is the process for reviewing orders?

About the data

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

We aimed to follow up the legal orders on the 208 cases included in our first analysis of the needs of the children (Roe and Ryan 2023).¹ Ultimately, we were only able to include 113 of the 208 cases in this analysis. Cases were excluded in circumstances where we did not have information on our data recording system of all the legal orders made in a particular case up to 31 December 2022, including cases that were returned to the local family court at or before first hearing.²

We tracked cases throughout the first six months of the court's operation (up to 31 December 2022). Information relevant to our research questions was extracted from the order(s) made in each case.

In order to check the representativeness of our key findings we also looked at a further 100 orders that were issued (in separate cases) in February 2023 (see Appendix A).

- 1 See: <https://www.nuffieldfjo.org.uk/resource/children-deprived-of-their-liberty-an-analysis-of-the-first-two-months-of-applications>
- 2 Note that cases that were returned to the local family court after the first hearing – where at least one substantive order was made at the national DoL court – were included in the analysis.

Key findings

- In the majority of the 113 cases (92.0%, 104 cases), the application for a DoL order was granted. In the other 9 cases (8.0%), the application was withdrawn at or before the first hearing. Mainly, this was because a deprivation of liberty was no longer thought necessary but, in some cases, the local authority was directed to apply to the court of protection due to the child's age, or a secure accommodation order was made to place the child in a secure children's home.³
- Most of the 104 children (68.3%, 71) subject to a DoL order were still subject to an order at 31 December 2022.
- On average, three orders were made in each case, for an average duration of around a month each – but some cases returned to court much more frequently.
- The type of restrictions on children's liberty authorised by the court were severe. Each child was subject to an average of 6 different types of restrictions, including in almost all cases constant supervision, often by multiple adults (99.0% of cases). The use of restraint was permitted in over two-thirds of cases (69.4%). Restrictions were rarely relaxed over the study period (7 cases, 9.2%).
- In over half of cases (53.8%), children were placed in at least one unregistered placement during the study period. When children were placed in unregistered placements, there were considerable delays in providers applying for, or being granted, registration.
- A significant majority of children (over 70%) for whom the deprivation of liberty was sought primarily to manage risks related to criminal exploitation, emotional difficulties, behaviours that were a risk to others, and self-harm, were placed in at least one unregistered placement. Children subject to a DoL order primarily due to a learning and/or physical disability were the least likely to be placed in an unregistered placement (12%).
- The average distance that children were placed away from home while subject to a DoL order was 56.3 miles. This included 6 children who were placed in Scotland (at an average of 254.4 miles from the child's home area).

3 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 17 cases (15.0%) a children’s guardian had not been appointed for the child at first hearing. This was usually due to applications being made at very short notice.
- Children’s opportunity to participate in DoL proceedings was limited. Just 10 (9.6%) children attended at least one hearing in their case, 5 (4.8%) spoke to the judge directly before the hearing, and 6 (5.8%) had written to the judge to share their views. Five (4.8%) children were separately represented (where the child separates from the guardian and instructs their own solicitor in proceedings).
- In just 12 cases (11.5%) parents and/or carers were legally represented for at least one hearing.

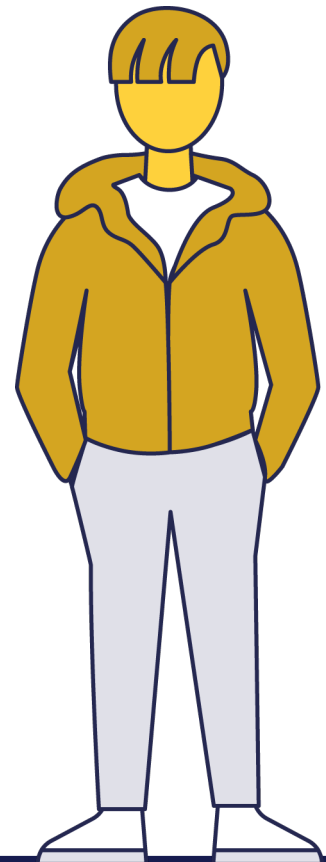
Reflections

- Our analysis confirms that children subject to DoL orders are subject to severe restrictions on their liberty and typically remain under such restrictions for significant periods of time. Over a six-month period, only a minority of children experienced a reduction in risk to necessitate an end or a relaxation to deprivations of their liberty. While we have only followed up on cases for six months in this study, this nonetheless calls into question the purpose of DoL orders to facilitate meaningful change in children’s circumstances and long-term outcomes.
- Our findings raise concern about children’s opportunities to formally participate and have their voices heard in DoL proceedings. Article 12 of the UN Convention on the Rights of the Child states that children have the right to express their views in all matters affecting them, and to have their views considered and taken seriously.⁴ Given the severity of the intervention being considered by the court, and that children subject to DoL applications tend to be teenagers, there needs to be a marked shift in the expectation that children should be given the opportunity to attend hearings or to communicate their views to the court directly. It will require more substantial preparations by the court, children’s guardians and local authorities (or other applicants) to facilitate this.
- Children subject to DoL applications are likely to be placed in unregistered placements, and to be living far from home in often unstable settings. This highlights the urgent need to develop more suitable, local placements for children with complex needs. This should include joint input from children’s social care, mental health services and schools. Given the volume of applications to the

4 See: https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_PRESS200910web.pdf

national DoL court, this will require significant commitment at local and national level, including national government.

- While information about children’s access to therapeutic care and education provision was limited in the orders, concerns about access to interventions, education and other activities were often raised by the court as well as by children’s guardians and parents or carers. There is a need for further research to explore the quality and type of care that is provided to children subject to DoL orders, in registered and unregistered placements, and including children’s own experiences of DoL orders.
- Unlike in care proceedings, parents are not automatically entitled to legal aid for legal representation in DoL cases. Our report confirms that most parents or carers do not have legal representation. Given the nature of DoL cases, and the severity of intervention in family life being considered by the court, it is hard to understand how this position is justified and there is an urgent need to review it.



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. Despite this concern, we know very little about the children involved – their characteristics, behaviours, risk factors or needs – and the nature of the deprivation of liberty authorised by the court, including the length of time children are deprived of their liberty and their living circumstances during this period.

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. Nuffield Family Justice Observatory was invited to collect and publish data from the court.

Since August 2022 we have published monthly data briefings highlighting the volume of applications issued by the court.⁵

In February 2023 we published an in-depth analysis of the needs, characteristics and circumstances of children subject to DoL applications, based on the applications made to the national DoL court in the first two months of operation (July and August 2022) (Roe and Ryan 2023). The report highlighted the multiple and complex needs experienced by children subject to DoL applications, including: high prevalence of 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%).

In this follow-up report, we highlight key findings from an analysis of the legal orders made in 113 of the 208 cases analysed in the February 2023 report during the first six months of the court's operation (up to 31 December 2022).

5 See: <https://www.nuffieldfjo.org.uk/our-work/young-people-family-justice>

In this study we aim to explore the following research questions:

- What is the legal outcome of applications?
- How long are orders made for?
- Where are children placed while subject to DoL orders?
- What restrictions are being authorised on children's liberties?
- How is children's voice and participation in court proceedings being facilitated?
- What role do parents and carers have in proceedings, including access to legal representation?
- What is the process for reviewing orders?

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 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. Article 37 of the UN 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.

A DoL order authorises the local authority (or other applicant) to impose the specific restrictions on a child’s liberty that are listed in the order. Orders specify that the restrictions should only be imposed where this is necessary.

For further information, see:

<https://www.nuffieldfjo.org.uk/resource/deprivation-of-liberty-legal-reflections-and-mechanisms-briefing>

https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_PRESS200910web.pdf

https://www.echr.coe.int/documents/convention_eng.pdf

About the data used in this study

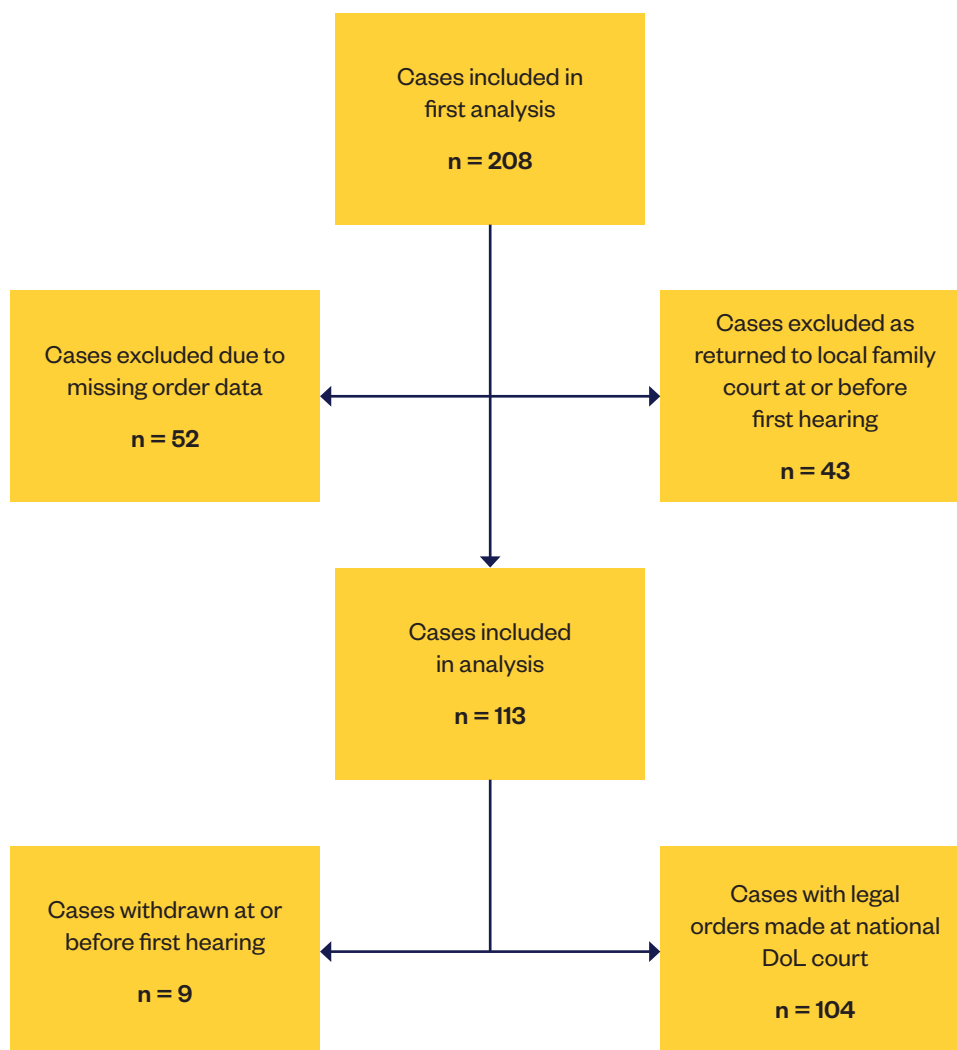
The data used in this study relates to children who were subject to applications for DoL orders issued to the national DoL court between 4 July and 31 August 2022.

We aimed to follow up the legal orders on all the 208 cases included in our first analysis of the needs of the children (Roe and Ryan 2023). Ultimately, we were only able to include 113 of the 208 cases in this analysis (see Figure 1). Cases were excluded in circumstances where we did not have information on our data recording system of all the legal orders made in a particular case up to 31 December 2022, including cases that were returned to the local family court at or before first hearing.⁶

In order to check the representativeness of our key findings we also looked at a further 100 orders that were issued (in separate cases) in February 2023. The findings from this analysis were similar to the main analysis and are summarised in Appendix A.

⁶ Note that cases that were returned to the local family court after the first hearing – where at least one substantive order was made at the national DoL court – were included in the analysis.

Figure 1: Flowchart of cases included in the analysis



Data collection and analysis

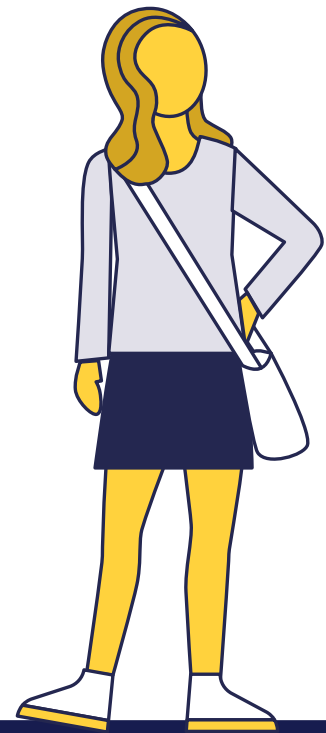
Information relevant to our research questions was extracted from the order(s) made in each case and entered into a spreadsheet by the study authors. The extracted data was then analysed both quantitatively and qualitatively to answer our research questions.

The orders made typically included: information on the parties to the proceedings; their legal representation, if any; the nature and duration of the deprivation of liberty being authorised; where the child was to be placed while subject to the deprivation of liberty; directions as to further evidence required or further action to be undertaken; and a return date.

Strengths and limitations

Our analysis is limited by the information included in the order only. We did not have access to the detail of any discussions that may have taken place during the hearing. In some cases, information about the location, type and/or registration status of the child's placement while subject to a DoL order was not included in the order.

We have tracked cases through the DoL court for approximately six months. This enables us to build an initial understanding of the short-term outcomes for children subject to DoL orders but further research is required to track cases longer-term.



Findings

Characteristics of children

The age of children in our sample was similar to that of all children subject to DoL applications at the national DoL court – 60.2% were aged 15 and above and 8.0% were under the age of 13. The age range was 10–17. Our regular collection of data from the DoL court indicates that between July 2022 and March 2023, the majority of children (58.6%) subject to DoL applications at the national DoL court were aged 15 and above, with a small minority of applications relating to children under the age of 13 (9.4%) (Nuffield Family Justice Observatory 2023).

In relation to the gender of the children, there were slightly more girls (54.9%) than boys in our sample, whereas overall there are an equal number of boys and girls subject to DoL applications (Nuffield Family Justice Observatory 2023).

Information about children’s ethnicity was not recorded in the orders. In our earlier report, we noted that this information was not required on the application for a DoL order and was not always recorded in the evidence provided in support of the application. Information was missing for over half of cases. We noted that initial analysis suggests an over-representation of children from Mixed, Black and White Other ethnic backgrounds among children subject to DoL applications (Roe and Ryan 2023). Recent analysis of Cafcass (England) data has also shown that a higher proportion of Black and Asian children are subject to secure accommodation or DoL orders, compared to White and Mixed or multiple ethnicity children (Edney et al. 2023). Due to the volume of missing data in our sample, we have not been able to explore this further. Further research to explore differences in legal outcomes according to children’s ethnicity is therefore vital.

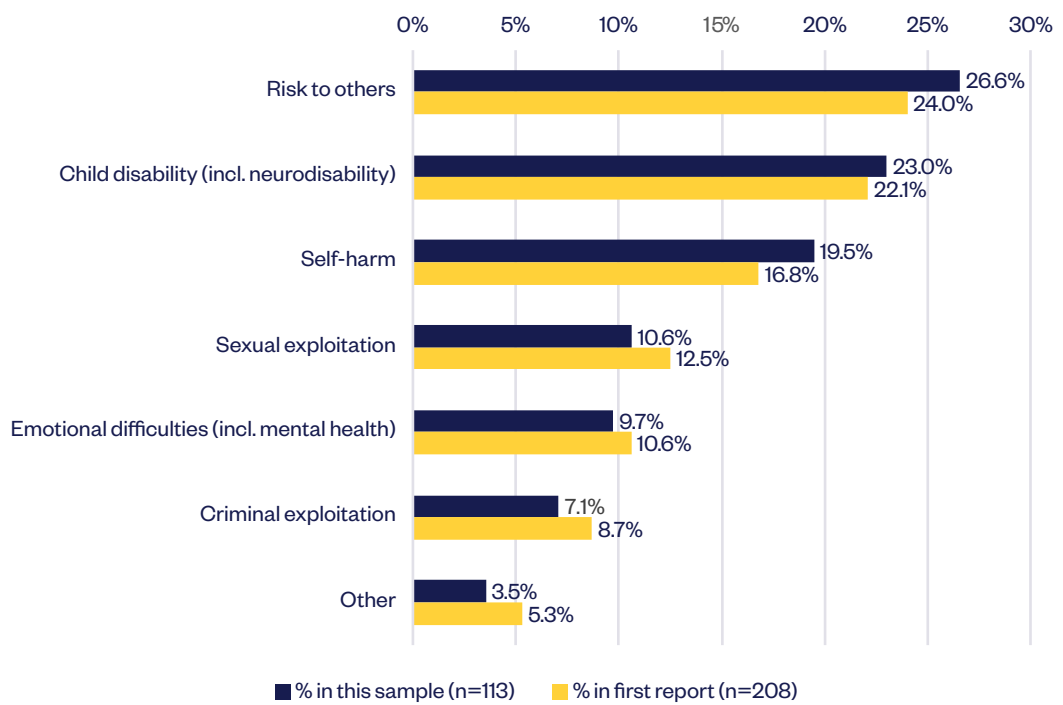
In our first report on the needs of children (Roe and Ryan 2023), we identified seven primary reasons that a DoL application might be made, reflecting the main concern in each case. The most common reason was ‘risk to others’ (24.0% of all cases), related to concerns about the risk posed to others by 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 was to manage a child’s needs or behaviours that

were the result of a severe learning disability, a physical disability and/or autism (22.1%). Other primary reasons included self-harm (16.8%), 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 deprivation of liberty 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.

The main reason for the DoL application was similar in this sample to the larger case file analysis (see Figure 2).

Overall, our sample was therefore representative of the needs and characteristics of all children subject to DoL applications.

Figure 2: Comparison of the primary reason for the deprivation of liberty application



Note: For more information about how the primary need category was derived see Roe and Ryan (2023).

Regional variations

As identified in our earlier report (Roe and Ryan 2023), and in our monthly data briefings (Nuffield Family Justice Observatory 2023), there are regional variations in the number of applications made to the DoL court, which has remained consistent month-to-month. The regional variation relevant to the 113 cases analysed for this report is set out in Table 1 below. This is in line with the data collected on all cases to date.

Table 1: Regional spread of applications from local authorities

Region	N	%
North West	27	23.9%
London	18	15.9%
South East	13	11.5%
South West	13	11.5%
East Midlands	10	8.9%
West Midlands	7	6.2%
Yorkshire and the Humber	7	6.2%
East of England	5	4.4%
Wales	5	4.4%
Other	5	4.4%
North East	3	2.7%
	113	100%

Note: 'Other' refers to applications made by a non-local authority applicant, usually a hospital or mental health trust.

What was the legal outcome of applications?

In the majority of cases (92.0%, 104 cases), the application was granted.

In 9 cases (8.0%) the case was withdrawn at or before the first hearing. Mainly, this was because the deprivation of liberty was no longer thought necessary but in some cases the local authority was directed to apply to the court of protection due to the child's age, or a secure accommodation order was made to place the child in a secure children's home.⁷

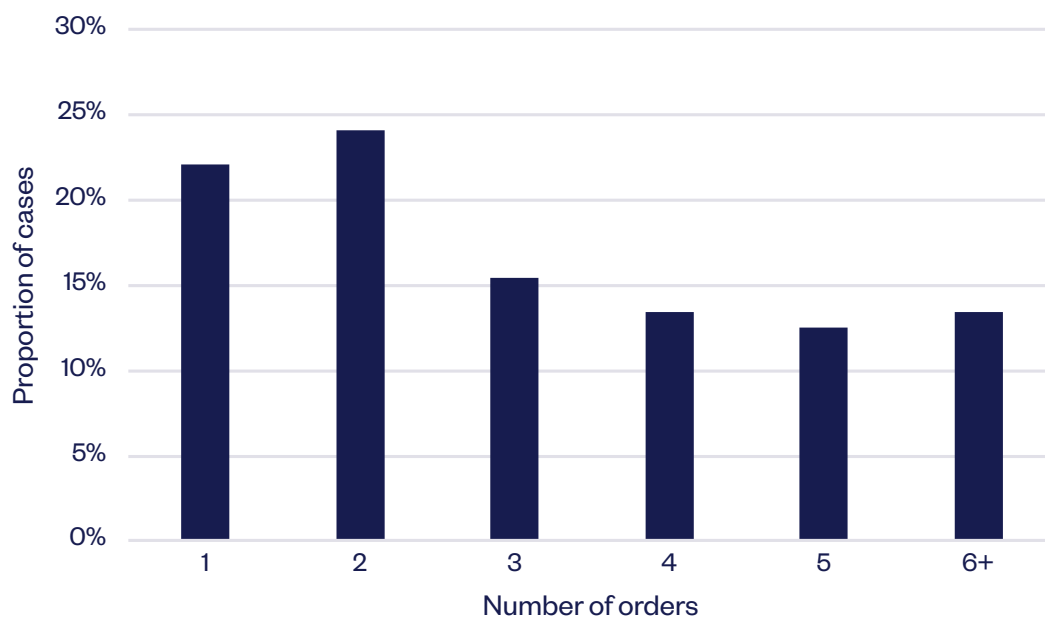
The following analysis is therefore based on the 104 cases where at least one order was made at the national DoL court.

Number and duration of orders made

Over the course of the study period (4 July to 31 December), a total of 335 orders authorising a deprivation of liberty were made in the 104 cases analysed. The number of orders made varied substantially between cases (see Figure 3). Typically, cases returned to court to seek an extension or variation (i.e., if the child moved placement) to the deprivation of liberty, and hence, multiple short orders were made in each case. The median number of orders made in each case was three. In the majority of cases, fewer than three orders were made within the six-month period, however, there were some cases where the application repeatedly returned to court and many orders were made. This usually occurred in cases where orders were made for very short periods of time, often due to ongoing concerns about the child's placement.

7 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.

Figure 3: Number of orders made at the national deprivation of liberty court up to 31 December 2022, per case



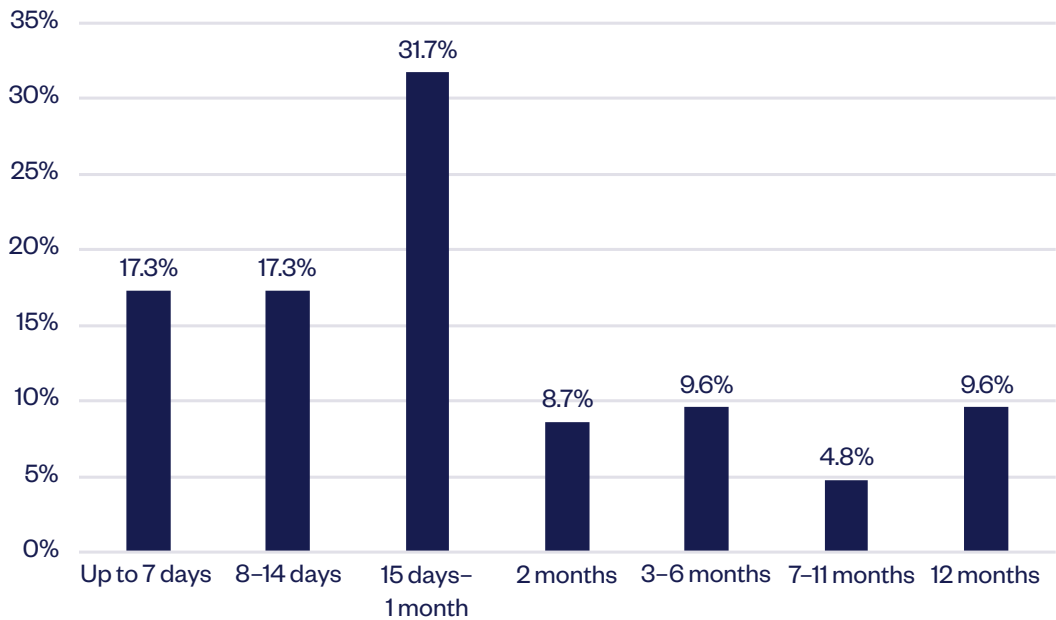
There was significant variation in the length of time that individual orders were made for, ranging from 1 day to 12 months.

At the first hearing in the national DoL court, orders were made for a median of 26 days (range: 1–365) (see Figure 4). The majority (66.3%, 69) of first orders were made for one month or less. Just under 10% of orders (9.6%, 10) were made for 12 months at the first hearing. These were usually cases where the deprivation of liberty was sought due to the child’s learning and/or physical disability, and the application was to extend an existing order (authorised prior to the set-up of the national DoL court). Where orders were made for very short periods of time, this was usually because applications had been made in an emergency, children had not been joined as parties and guardians had not been appointed, or there were serious concerns about the child’s placement.⁸

At subsequent hearings, orders were made for a median of 32 days.

8 The child is not automatically joined as a party to proceedings in DoLs cases, as is the case with applications made under the Children Act 1989. The child must be joined as a party for a children’s guardian to be appointed by Cafcass or Cafcass Cymru. The guardian represents the child in court proceedings.

Figure 4: Duration of orders made at first hearing at the national deprivation of liberty court



How long were children subject to restrictions on their liberty?

The majority of the 104 children (68.3%, 71) were still subject to a DoL order at 31 December 2022. A quarter of the children (25.0%, 26), were no longer subject to restrictions on their liberty. In most cases this was due to changes in the child’s behaviour such that the DoL order was no longer deemed necessary. In some cases, the child remained deprived of their liberty via different legal authorisation, either detained in hospital (under the Mental Health Act 1983), in custody, or in a secure children’s home (via a secure accommodation order).

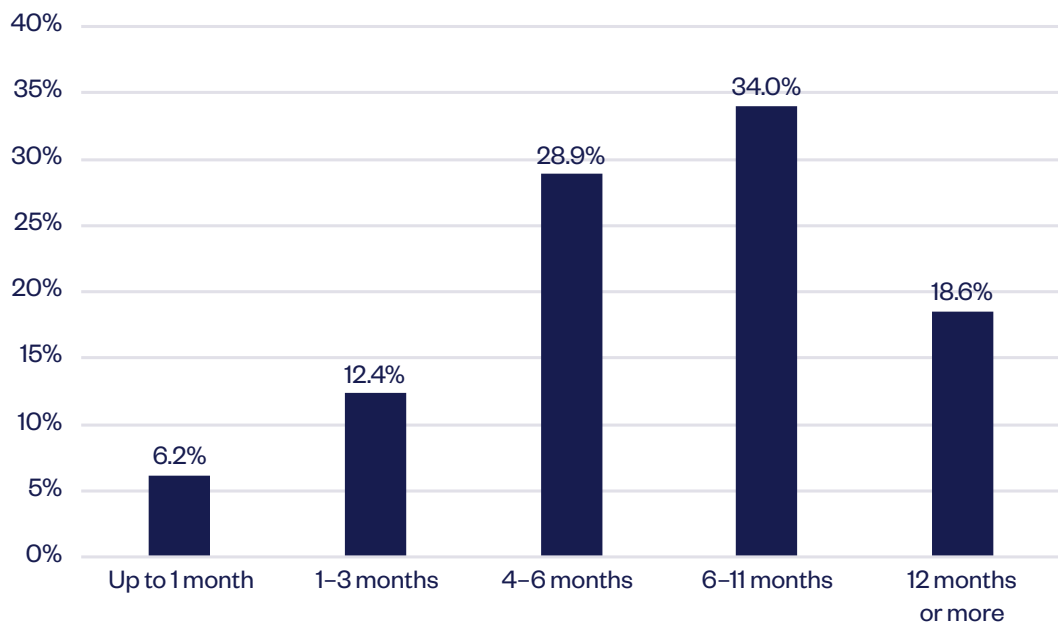
Just under 7% of cases (6.7%, 7) were transferred out of the DoL court (either to local family courts or the court of protection) after the first hearing but at some point before the end of the study period. We have not been able to track these cases up to 31 December.

The total mean duration that restrictions on children’s liberty were authorised for (in orders made between 4 July and 31 December) was 199 days (median 184). There was significant variation within this – ranging from 3 to 507 days (see Figure 5). It is

important to note that we only tracked cases up until 31 December, approximately 6 months after applications were made – in many cases it is likely that the case would return to court for an extension to the DoL order beyond this timeframe. Further research, tracking cases for a longer period of time, is necessary to explore this further.

We also explored differences in the duration of DoL order authorised according to the main reason for the application (Roe and Ryan 2023). Children for whom the deprivation of liberty was sought to manage a disability were the most likely to have restrictions authorised for 12 months or longer within the study period. In around half of cases relating to ‘risk to others’ and emotional difficulties, the deprivation of liberty had been authorised for over six months.

Figure 5: Total duration of deprivation of liberty, orders made up until 31 December 2022 (n=97)



What deprivations on children’s liberty were authorised by the court?

In general, the court authorised all the restrictions requested by the local authority (or other applicant).⁹ In a minority of cases the court refused to authorise some of the restrictions – this was usually related to use of restraint or restrictions on the child’s access to the community.

In several cases the court directed the local authority to provide a more detailed care plan, including information about arrangements for the child’s education, contact with family members, behaviour support plans, therapeutic services to be provided, qualifications of staff looking after the child, and information about the child’s progress. In some cases, the court ordered the local authority to file an ‘exit plan’, with clear information about how and when the restrictions will be reduced, to share with the child.

The nature of the restrictions authorised in DoL orders is summarised in Table 2. Each child was subject to an average of 6 different types of restriction (range 1–12). Overall, the level of restrictions on children’s liberty were stark, including high staff to child supervision and the authorisation of restraint.



9 It should be noted that DoLs orders are permissive and specify that restrictions should only be imposed where this is necessary.

Table 2: Nature of restrictions listed on deprivation of liberty orders

Nature of restriction	N	%
Constant supervision (total)	97	99.0%
1:1 supervision	14	14.3%
2:1 supervision	52	53.1%
3:1 supervision	17	17.4%
4:1 supervision	12	12.2%
5:1 supervision	2	2.0%
Doors and windows to be locked/alarmed to prevent child leaving placement	76	77.6%
Use of physical restraint permitted	68	69.4%
Restrictions of mobile phone use	61	62.2%
Restrictions of internet use	54	55.1%
Child not free to leave placement unsupervised	49	50.0%
Removal of items that may cause harm	39	39.8%
Searches of child's room and/or self	24	24.5%
Night-time checks	24	24.5%
Child subject to checks when in bedroom/bathroom	23	23.5%
Use of secure transport	23	23.5%
Restricted access to money	18	18.4%
Supervision/provision of medication	16	16.3%
Involvement of police	13	13.8%
Restrictions about who child can contact	7	7.1%

Almost all children (99.0%) were subject to constant supervision by carers. This ranged from 1:1 to 5:1 supervision.

Restraint was permitted in over two-thirds of cases (69.4%). This was usually to manage the child's risk to self and others and/or to prevent them from leaving the placement. It was often specified on orders that restraint should only be used 'as a last resort' and, in some cases, it was explicitly stated that restraint should only be carried out by trained staff, or that only particular methods should be used.

Restrictions around children's mobile phone and internet use were common. This included preventing any access to a mobile phone and/or the internet; children being allowed only basic non-internet enabled mobile phones; restrictions on who they could contact (particularly restricting contact with peers or non-local authority 'approved' contacts); the monitoring of mobile phone and/or internet (including social media) use via staff checks, supervision, or the use of monitoring software installed on the device; supervision of phone calls; restrictions on when and for how long children could use their devices; and to allow tracking software to be installed on mobile phones to locate children should they leave their placement.

In January 2023, Mr Justice Macdonald published a judgment stating that the restriction of a child's mobile phone use does not constitute a deprivation of liberty but is an exercise of parental responsibility, and therefore does not need to be authorised through a DoL order (*Manchester City Council v P (Refusal of Restrictions on Mobile Phone) (Rev1)* [2023] EWHC 133 (Fam)). The orders included in this analysis pre-dated this judgment. Nonetheless, restrictions related to mobile phone and/or internet use were never the only deprivation of liberty authorised in a case.

The removal of items that could cause harm to the child and/or others (39.8% of cases) included removal of sharp/bladed items, electrical cables, medication, curtains, glass, and replacing cutlery/utensils with plastic items. In a quarter of cases (24.5%) carers were permitted to carry out room searches and/or to search the child (including strip searches) to locate items that could be harmful.

In 13 cases (13.3%) it was explicitly stated that the placement and/or carers should call the police if the child went missing or their behaviour became particularly difficult to manage. While not necessarily constituting a deprivation of liberty, it is of note that the involvement of the police is being used consistently to manage DoL cases.

In cases where more than one order was made at the national DoL court, the restrictions authorised tended to remain the same (78.9% of cases). In 9 cases (11.8%) the restrictions were increased (e.g. increasing levels of adult supervision or adding additional restrictions). In 7 cases (9.2%), restrictions were relaxed over the study period.

What was the process for reviewing orders?

Individual orders were often made for relatively short periods of time, usually around one month (see above), and were therefore subject to relatively frequent ongoing judicial oversight when cases returned to court. Such oversight would not necessarily be by the same judge.

Information about formal processes for reviewing restrictions between court hearings was often limited in orders. Where this was included, it was usually mentioned that the case should be brought back to court if there were any changes to the child's circumstances and living arrangements, including change of placement, any increase in restrictions and/or change in the child's presentation.

In a handful of cases (9) the local authority was specifically instructed by the court to carry out formal review meetings. The frequency with which review meetings were to be held varied, ranging from fortnightly, monthly, or after every looked-after child review meeting (usually held every six months).

For children placed in Scotland, cases were required to return to court every three months for formal judicial consideration as per the Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022.

Some orders did not include any reference to a review process, including orders that were made for over three months.



Where were children placed?

Number of placements

Children were placed in an average of 2 placements during the study period (up to 31 December 2022) (range 1-6).

A significant minority of children (15.3%, 16) experienced 3 or more changes in placement.

Placement registration

In over half of cases (53.8%, 56), children were placed in at least one unregistered placement during the study period. In over a third of cases (32.7%, 34) children were in registered placements throughout, and information about registration status was not included in orders in 14 cases (13.4%). Given widespread concern about the placement of children under DoL orders in unregistered settings, and the requirements of the President of the Family Division's practice guidance (McFarlane 2019, see box), it is of concern that the issue of registration was not explicitly referred to in these orders.

Unregistered settings ranged from semi-independent accommodation, Care Quality Commission (CQC)-registered accommodation, hospital wards, and temporary rented accommodation, including hotels or caravans.

We also looked at whether children were more or less likely to be placed in an unregistered placement depending on the primary reason for the deprivation of liberty. Children who were subject to a DoL order primarily due to a disability were the least likely to be placed in unregistered accommodation (12% over the study period).

Children at risk of sexual exploitation were also slightly more likely to be placed in registered placement compared to unregistered (54.5%) – although the number of children in this group was small.

For all other primary need groups – criminal exploitation, emotional difficulties, risk to others, self-harm – over 70% of children were placed in at least one unregistered placement during the study period. This indicates a particular lack of suitable regulated provision for children experiencing such risks.

Contrary to the practice guidance related to the placement of children in unregistered settings under DoL orders (see box), it was apparent that in some cases involving unregistered placements, there was no intention to apply to Ofsted or the Care Inspectorate Wales for registration as the placement was intended to be temporary or registration was not possible because, for example, it was semi-independent accommodation.

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

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.

On 12 November 2019 the President of the Family Division issued Practice Guidance: Placements in Unregistered Children's Homes in England or Unregistered Care Home Services in Wales (McFarlane 2019). The guidance required courts considering applications for DoL orders to be satisfied that if a child was to be placed in an unregistered setting, in circumstances where that would be illegal, then the court should be satisfied that the provider of the accommodation was going to seek registration. An application to the relevant provider should be made within seven working days of the date of the order.

In 2020 the President issued an addendum to the 2019 guidance, which stipulated that the court must include in any order approving the placement of a child in an unregistered placement, a **requirement** that the local authority should immediately notify Ofsted (England) or the Care Inspectorate Wales (Wales) and provide them with a copy of that order and the judgment of the court (McFarlane 2020).

Updated practice guidance is expected to be issued in summer 2023.

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.

Where placements indicated that they were willing to apply for registration or an application had been made, there were often significant delays in the application being submitted or in the registration process. This meant that children often remained in unregistered placements for several months without clarity on whether the placement was suitable for registration. For example, in some cases, a provider had made an application to Ofsted when the child was initially placed there, but the outcome of the application was still not clear by the end of December, several months on. In other cases, providers had not made an application for registration more than two months on from the child being placed there.

In some cases where the court made a DoL order and the child was going to live in an unregistered placement, the order noted that arrangements were to be made for an independent visitor to visit the child at the placement, or the Director of Children's Services was instructed to attend court at the next hearing, or the local authority was required to submit detailed information at the next hearing about their search for an alternative placement.

This study confirms that the use of unregistered placements for children subject to DoL orders is high, justifying ongoing concerns about the lack of suitable provision for children with complex needs. Children were placed in unregistered placements because there was nowhere else for them to go, often in spite of exhaustive efforts over several months by the local authority to find a suitable placement.

Concerns about the placement of very vulnerable children in unregistered placements has been raised by the Office of the Children's Commissioner for England (2020), by the Commission on Young Lives (2022), and by children's rights organisations, among others. A recent survey of Forensic Child and Adolescent Mental Health Services (FCAMHS) staff in England highlighted concerns about the quality of care being provided to children in unregistered settings and the ability of staff in these settings to meet children's needs (Hindley 2023). This survey found that 4.7% of children on FCAMHS caseloads were in unregistered provision. Concerns were expressed in relation to unqualified or underqualified staff, with little experience of working with children with this level of complex needs. This could lead to an over-reliance on physical restraint or on the use of a high number of adults supervising one child.

Location of placements

The Children Act 1989 and accompanying guidance requires children to be placed as near their home as possible, unless this would be contrary to their welfare (s.22C).

Information about the location of a child's placement(s) was available in 80 cases. We used this to calculate the distance of the placement from the child's home (defined

as the local authority area). Where children were placed in multiple placements, the average distance of all placements was used (see Figure 6).

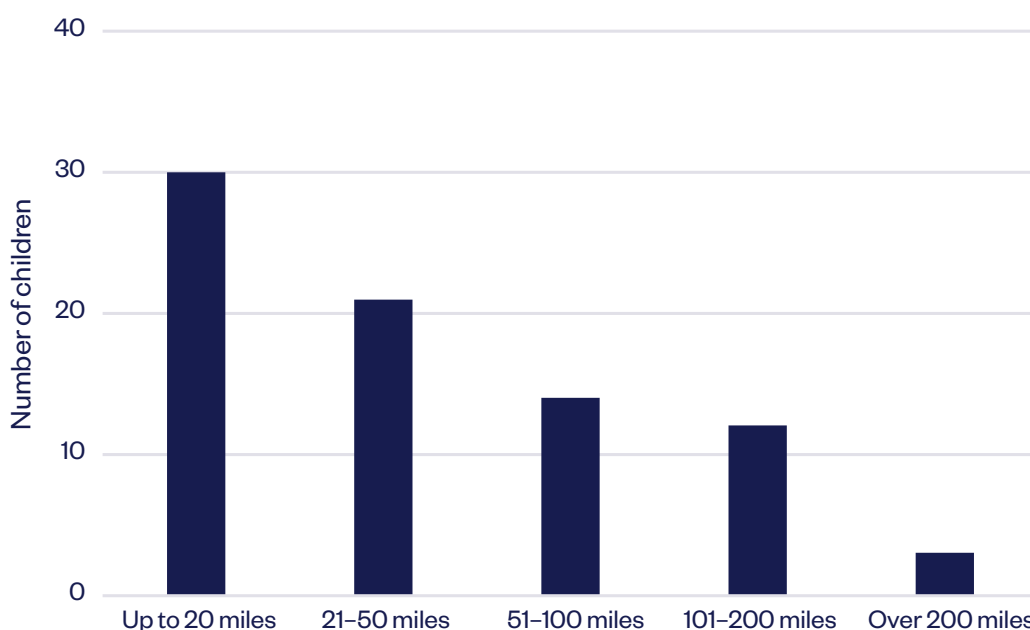
The mean distance that children were placed away from home was 56.3 miles (median 27.6 miles). The maximum distance was over 390 miles, and the minimum distance was less than 1 mile.

This is a significantly larger distance than children in care not subject to DoL orders – who are, on average, placed 18 miles from home (Become 2023) – but not as far as children placed in secure accommodation, an average of 82–141 miles (Williams et al. 2020; NYAS 2020). There are just 12 registered secure children’s homes in England and Wales that provide welfare placements, meaning that children are highly likely to be placed far from home (Roe 2022).

Looking at differences according to the primary reason for the application, children who were subject to a deprivation of liberty due to concerns about self-harm behaviours (29.4%) or sexual exploitation (50.0%) were slightly more likely to be placed further from home (100+ miles), compared to other children (<20%).

Registered placements also tended to be further away: 27.1% of registered placements were more than 100 miles from the child’s home area, compared to 9.0% of unregistered placements. Local authorities report increasing difficulties in finding suitable local registered placements for children in care (ADCS 2022; Bach-Mortensen 2022) and children are increasingly being placed further from home (Become 2023). Unregistered placements may be being used to fill this gap and in an attempt to keep children closer to home.

Figure 6: Distance children were placed from their home area under a deprivation of liberty order



Six children were placed in Scotland. These placements were an average of 254.4 miles from the child's home area. All of these children were in registered placements.

The Children and Young People's Commissioner in Scotland has raised significant concern about the rights of English and Welsh children placed in Scotland under DoL orders, stating that the practice establishes a 'second class' of looked-after children in care in Scotland, who are not subject to the full oversight, support, and human rights protections of the Scottish legal system and policy (Children and Young People's Commissioner Scotland 2022). Our analysis confirms that a small but significant number of children subject to DoL orders are being placed in Scotland.

Access to education and therapeutic services in placements

There was limited information in the orders about education or therapeutic provision for children while they were subject to a deprivation of liberty. It was sometimes mentioned that the child was attending school outside of the placement or that arrangements had been, or were being made, for online and/or face-to-face, 1:1 tutoring at the placement. In some cases, concern about the lack of education provision was raised by the court and/or the children's guardian.

There was also limited information about children's access to therapeutic support and other activities while subject to a deprivation of liberty. In some cases it was mentioned that the child had started to access therapy, was working with a key worker, or continued to access extra-curricular activities in the community. In other cases there were clear issues about children's access to therapeutic services, including issues relating to waiting lists, children frequently moving placement which caused disruption to services, and delays in appointing psychologists to carry out assessments.

Children's representation and voice

Role of children's guardians

In 17 cases (15.0%) a children's guardian had not been appointed for the child at first hearing.¹¹ In two cases a guardian had still not been appointed at the second hearing. This was usually due to applications being made at very short notice. Children are not automatically parties to DoL applications, and sometimes an order joining the child to proceedings was not made until the first hearing, at the same time as an order authorising the deprivation of liberty. In some cases, attempts were made for

¹¹ In our analysis of orders sealed in February 2023, a guardian had not been appointed in 13% of hearings, suggesting that this issue has persisted.

the same guardian from previous proceedings (either care proceedings or previous DoL applications) to be appointed, which sometimes caused delays.

When a guardian had not yet been appointed at first hearing, DoL orders were usually made for a short period (i.e. less than one month, range 4–28 days) to allow a guardian to be appointed and preliminary enquiries to be made, before the case returned to court.

It was often not mentioned on the order whether the guardian had spoken to or visited the child at their placement. In just 15 cases it was explicitly mentioned that the guardian had met with the child at any point during DoL proceedings (up to 31 December).

In the majority of cases (where mentioned in the order), the guardian was in support of the application. It was sometimes recorded that the guardian opposed the use of an unregistered placement – and was of the opinion that such a placement was not in the child’s best interests – although they often recognised that this was the only placement available.

In some cases the guardian challenged elements of the local authority’s plan, including the duration of the order sought, and the nature of the proposed restrictions. Challenges included: opposition to the use of physical restraint when the guardian viewed this as unnecessary; recommending a reduction in the number of staff supervising the child; and recommending the use of software to monitor the child’s internet and phone use rather than physical restriction/removal of the child’s devices.

There were also a number of instances where it was recorded that the guardian made interventions or recommendations to the local authority with regard to wider care planning and communication with the child. These included:

- querying plans for the child’s education
- encouraging the local authority to provide more activities for the child, including in the community
- recommending psychological assessments and/or referrals to Child and Adolescent Mental Health Services (CAMHS) and other services
- focusing on transition planning when children changed placement, including ensuring that this was clearly and timely communicated to the child and took place at the child’s own pace

- recommending that the local authority create an exit plan/statement of expectations in collaboration with the child to set out when and how restrictions would be reduced or removed
- requesting that the placement be made more suitable for the child, including changes to decor and improving the child's access to personal items
- contact arrangements with family
- raising concerns about the suitability and qualifications of staff in placements, particularly regarding use of restraint
- highlighting concerns about the child's lack of progress.

Children's participation in hearings

Alongside having their views represented by a guardian, children can participate in court proceedings in other ways, for example by attending a hearing or speaking to the judge. A child's right to participate and have their voice heard in court proceedings is acknowledged in legislation and guidance – both as a way of informing welfare-based decisions and upholding their rights.

Just under 10% of children (9.6%, 10) attended at least one hearing in their case. Five children spoke to the judge directly before the hearing, and six children had written to the judge to share their views.

Children also have the option, if they have capacity, to choose to have their own legal representation separate from the guardian if they do not agree with the position the guardian is taking on their behalf. In this sample, just 5 children (4.4%) were separately represented.¹²

In general, there was limited reference to children's views in the orders.

In 15 cases (14.4%) it was stated that the child opposed restrictions or other aspects of their care plan. In 16 cases (15.4%) it was stated that the child did not oppose the restrictions.

¹² In our additional analysis of orders sealed in February 2022, a very small number of children (7, 7.7%) were separately represented also.

Reasons for children opposing the application included:

- they did not want to move to a different placement
- they wanted to be closer to home or to return to live with family members
- they were unhappy in their placement – this included feeling isolated and issues with staff/carers
- they felt that they had demonstrated a willingness to cooperate with the local authority/social worker without the need for restrictions – this was particularly the case when restrictions had been in place for a while and children indicated that they wanted to be given opportunity to ‘prove themselves’ or thought that they should be rewarded for their cooperation and progress to date
- opposition to specific restrictions or requests for certain restrictions to be relaxed – this was often related to access to their mobile phone and money, requesting more independent time in the community, and the length of the order
- in some cases children made specific requests regarding contact with family members, including for direct and indirect contact
- they disagreed with the local authority about the level of risk and therefore the need for restrictions.

Role of parents and carers

Access to legal representation

In court proceedings concerning applications for a DoL order, parents will automatically be made parties to the proceedings but they do not have the same rights to legal aid that they have in care proceedings. A means and merits test will be applied if they seek legal aid for legal representation. If, however, an application for a DoL order is made during the course of ongoing care proceedings, then the parents’ legal representative can apply for a variation to the legal aid certificate to cover representing the parents in the DoL proceedings (for further information see Family Rights Group 2023).

A recent judgment has raised concern about parents' difficulty accessing legal aid in DoL cases. The judge noted that the parents, who opposed the order and represented themselves, were not entitled to legal aid for legal representation because they were £36 over the means test limit. In relation to this issue the judge said:

'There is no logical reason for them (and the Guardian) to be treated differently from respondents in care proceedings. Instead, there is a compelling case for them to be treated the same – on grounds of fairness, equality of arms and the simple economic consideration that overall, it should prove cheaper for them to be represented than not.' (Re E (A Child) [2022] EWHC 2650 para 52).

Our study has confirmed that a minority of parents and/or carers were represented in DoL cases. In just 11.5% (12) of cases parents or carers were legally represented for at least one hearing.¹³

According to data released by the Ministry of Justice (UK Parliament 2023, 8 March), this is a lower proportion than in secure accommodation cases, where 19% of parents/carers were represented (cases issued January 2018 to September 2022).

Parents/carers' views on applications

Information about parents' and/or carers' views on the DoL application was not included in just under half of the cases (47.1%, 49). When mentioned, parents or carers were generally supportive of the application (92.7%, 51).

In a handful of cases (4) it was stated that parents opposed or raised concerns about aspects of the local authority care plan. This included cases where the parents wanted their child to be returned to their care or the care of other family members, or were opposed to the location of placement (being far from home). Parents also raised concern about children's access to education, arrangements for contact, including funding parents' travel when placements were far away, and requested more frequent communication from the social worker and/or placement about the child and any incidents that occurred and about the use of restraint.

In a handful of cases, issues were raised about parents' access to interpreters and the translation of court documents.

¹³ In our additional analysis of orders sealed in February 2023, a similar proportion of parents were represented in DoL hearings (17.6%).

Reflections



Legal outcomes of cases at the national deprivation of liberty court

- Our analysis confirms that children subject to DoL orders are subject to severe restrictions on their liberty and typically remain under such restrictions for significant periods of time. Over a six-month period, only a minority of children experienced a reduction in risk to necessitate an end or a relaxation to deprivations of their liberty. While we have only followed up on cases for six months in this study, this nonetheless calls into question the purpose of DoL orders to facilitate meaningful change in children's circumstances and the long-term outcomes of children subject to them.
- Our findings raise concern about children's opportunities to formally participate and have their voices heard in DoL proceedings. Article 12 of the UN Convention on the Rights of the Child states that children have the right to express their views in all matters affecting them, and to have their views considered and taken seriously. Given the severity of the intervention being considered by the

court, and that children subject to DoL applications tend to be teenagers, there needs to be a marked shift in the expectation that children should be given the opportunity to attend hearings or to communicate their views to the court directly. It will require more substantial preparations by the court, children's guardians and local authorities (or other applicants) to facilitate this.

- Children subject to DoL applications are likely to be placed in unregistered placements, and to be living far from home in often unstable settings. This highlights the urgent need to develop more suitable, local placements for children with complex needs. This should include joint input from children's social care, mental health services and schools. Given the volume of applications to the national DoL court, this will require significant commitment at local and national level, including national government.
- While information about children's access to therapeutic care and education provision was limited in the orders, concerns about access to interventions, education and other activities were often raised by the court as well as by children's guardians and parents or carers. There is a need for further research to explore the quality and type of care that is provided to children subject to DoL orders, in registered and unregistered placements, and including children's own experiences of DoL orders.
- The number of orders authorising the potential use of restraint, and those involving high adult to child ratios for supervision, are of concern. Concern about an over-reliance on the use of restraint to manage children's behaviours and risk in unregistered placements has also been raised by FCAMHS clinicians in a recent survey (Hindley 2023). Further research is necessary to better understand the qualifications and training of staff being used to care for children under DoL orders.
- In the majority of cases, children remained subject to the same level of restrictions for significant periods of time. In some cases, the court or children's guardian recommended that the local authority draw up an 'exit plan' in collaboration with the child to clearly state when, and under what circumstances, restrictions would be relaxed. We recommend that this becomes a requirement in DoL proceedings.

- In some cases it was evident that there were considerable delays in the processing of applications to register placements. Where possible, the fast-tracking of applications to register placements that children are already living in should be considered by Ofsted and the Care Inspectorate Wales.
- We identified a number of cases where the President of the Family Division's practice guidance (McFarlane 2019) about the placement of children in unregistered settings was clearly not being followed, with providers refusing or significantly delaying making applications to register. This indicates the limits of the court's power to ensure high quality placements for these vulnerable children and the need for cross-government action to tackle the issue.
- There were sometimes delays in making children party to proceedings, meaning that in a small but significant number of cases a children's guardian had not been appointed at the first hearing. Consideration should be given by the national DoL court, Cafcass and Cafcass Cymru with regard to streamlining this process.
- Parents are not automatically entitled to legal aid for legal representation in DoL cases as they are in care proceedings. Our report confirms that most parents or carers do not have legal representation. Given the nature of DoL cases and the severity of intervention in family life being considered by the court, it is hard to understand how this position is justified, and there is an urgent need to review it.
- The lack of consistent data on the ethnicity of children subject to DoL applications is of concern. A requirement for information about the child's ethnicity to be included in the application form would assist future data collection on this issue.
- We were not able to follow the outcome of cases once they had been transferred from the national DoL court to local family courts. If the national DoL court is to continue beyond its 12-month pilot phase, consideration should be given to how data is recorded to facilitate the tracking of cases once they have left the national DoL court.
- While we have been able to shed light on some crucial factors relating to DoL cases by looking at legal orders – including whether and how long for orders are made, where children are placed under DoL orders, the nature of the restrictions authorised, and children's and parent/carers' participation in proceedings – there remain vital questions about how DoL orders are being implemented in practice, including children's experiences of these orders. Further research and access to data is necessary to explore this.

References

Judgments

Manchester City Council v P (Refusal of Restrictions on Mobile Phone) (Rev1) [2023] EWHC 133 (Fam) <https://www.bailii.org/ew/cases/EWHC/Fam/2023/133.html>

Re E (A Child) [2022] EWHC 2650 (Fam) <https://www.casemine.com/judgement/uk/6352eb1b5358106ecd0d0ba9>

Publications

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

Bach-Mortensen, A. M., et al. (2022). *Are local authorities achieving effective market stewardship for children's social care services?* What Works for Children's Social Care. <https://whatworks-csc.org.uk/research-report/are-local-authorities-achieving-effective-market-stewardship-for-childrens-social-care-services/>

Become (2023). *Gone too far*. <https://becomecharity.org.uk/become-the-movement/our-campaigns/gone-too-far/#assets>

Children and Young People's Commissioner Scotland (2022). *Scottish Government's Policy Position Paper on Cross-border Placements of Children and Young People: Response of the Children and Young People's Commissioner Scotland*. Children and Young People's Commissioner Scotland. <https://www.cypcs.org.uk/resources/cross-border-placements/>

Commission on Young Lives. (2022). *Hidden in plain sight: A national plan of action to support vulnerable teenagers to succeed and to protect them from adversity, exploitation and harm*. Commission on Young Lives. <https://thecommissiononyounglives.co.uk/commission-on-young-lives-publishes-its-final-report/>

Edney, C., Alrouh, B., and Abouelenin, M. (2023). *Ethnicity of children in care and supervision proceedings in England. Briefing paper.* Nuffield Family Justice Observatory. https://www.nuffieldfjo.org.uk/wp-content/uploads/2023/05/nfjo_briefing_paper_ethnicity_20230518_FINAL.pdf

Family Rights Group. (2023). *Legal aid in deprivation of liberty cases: The current legal aid position and proposals for reforms.* Briefing. Family Rights Group. <https://frg.org.uk/wp-content/uploads/2023/05/16052023-Legal-aid-in-deprivation-of-liberty-cases.pdf>

Hindley, N. (2023). *The use of ‘unregistered’ placements to provide care for children and young people with the most complex emotional and behavioural needs: A national survey of regional forensic child and adolescent mental health teams (FCAMHS).* <https://www.rcpsych.ac.uk/members/special-interest-groups/adolescent-forensic-psychiatry/resources>

McFarlane, A. (2019). *Practice guidance: Placements in unregistered children’s homes in England or unregistered care home services in Wales.* Courts and Tribunals Judiciary. <https://www.judiciary.uk/guidance-and-resources/practice-guidance-placements-in-unregistered-childrens-homes-in-england-or-unregistered-care-home-services-in-wales-2/>

McFarlane, A. (2020). *Addendum to Practice Guidance: Placements in unregistered children’s homes in England or unregistered care home services in Wales.* Courts and Tribunals Judiciary. <https://www.judiciary.uk/guidance-and-resources/addendum-to-practice-guidance-placements-in-unregistered-childrens-homes-in-england-or-unregistered-care-home-services-in-wales/>

National Youth Advocacy Service (NYAS). (2020). *Secure children’s homes for welfare. 141 miles from home.* <https://www.nyas.net/141-miles-from-home-challenges-for-children-in-secure-homes/>

Nuffield Family Justice Observatory. (2023). *National deprivation of liberty court: Latest data trends – April 2023.* <https://www.nuffieldfjo.org.uk/resource/national-deprivation-of-liberty-court-latest-data-trends-april-2023>

Office of the Children’s Commissioner. (2020). *Unregulated.* Children’s Commissioner. <https://www.childrenscommissioner.gov.uk/resource/unregulated/>

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>

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. <https://www.nuffieldfjo.org.uk/resource/children-and-young-people-deprived-of-their-liberty-england-and-wales>

Roe, A. and Ryan, M. (2023). *Children deprived of their liberty: An analysis of the first two months of applications at 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>

UK Parliament. (2023, 8 March). Children: *Civil liberties*. Question for Ministry of Justice. <https://questions-statements.parliament.uk/written-questions/detail/2023-02-20/hl5707#>

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

Appendix A

Summary of findings from an analysis of 100 orders sealed in February 2023 at the national deprivation of liberty court

Outcome of applications

In 91 cases (91%), the application to deprive a child of their liberty was granted. In the other cases, five were withdrawn, or existing orders discharged, as the deprivation of liberty was no longer required and the others were adjourned due to difficulties finding a placement for the child, to allow a guardian to be appointed, and due to the child being taken into custody. This is similar to the findings from the main analysis, where 92% of applications were granted.

Orders were made for a median length of 35.5 days (range 2–365 days). This is a similar length to orders made in the main analysis (26 days at first hearing and 32 days thereafter).

Children's placements

In 35 of the 91 cases (38.5%) the child was placed in an unregistered placement while subject to the DoL. In 44 cases (48.4%) the child was placed in a registered placement, and in 15 cases (16.5%), information about registration status was not included in the order.

More children in our main analysis were placed in an unregistered placement (53.8%), although it should be noted that this covered a longer period of time (i.e. placement in an unregistered setting at any point between 4 July and 31 December 2022).

Children's participation

In 86% of cases, a guardian for the child had been appointed at the time of the hearing. In 13 cases (14%), no guardian had been appointed – this was mostly due to the short notice of applications and an order not being made to make the child party to proceedings, or Cafcass not yet appointing a guardian to the case. In one case, the hearing was adjourned to allow a guardian to be appointed, in others, short orders of one month or less were made to allow a guardian to be appointed. However, in three cases orders were made for more than three months. This is a similar proportion to the main analysis (15.0% of cases with no guardian appointed at first hearing).

A small number of children (7, 7.7%) had chosen to separate from their guardian and have their own legal representation. This is a slightly higher proportion than in the main analysis (4.4% of children with their own legal representation, separate from the guardian).

In the analysis of February 2023 data: 6 children (6.6%) were present at the hearing; 16 children opposed the order being made; and 12 did not oppose the order. Again, this is broadly similar to the main analysis.

Parent and carer involvement

In 16 cases (17.6%), the parent(s) or carer was legally represented at the hearing – a slightly higher proportion than in the main analysis (11.5%).

In 50 cases it was reported that the parent(s) agreed with the proposed restrictions. In three cases, the parent(s) opposed the restrictions and the local authority care plan. This is in line with the findings from the main analysis.

Nuffield Family Justice Observatory

Nuffield Family Justice Observatory 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 Family Justice Observatory provides accessible analysis and research for professionals working in the family courts.

Nuffield Family Justice Observatory 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-founder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.



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