



President of the
Family Division

Revised National Listing Protocol
for Applications that seek Deprivation of Liberty Orders
Relating to Children under the Inherent Jurisdiction

NATIONAL DoL LIST ('NDL') October 2023
(Replacing the National DoL Court)

INTRODUCTION

1. Following the conclusion of the initial pilot scheme in July 2023 and the extensive consultation with judges and other stakeholders which followed, the organisation and listing of DoL orders relating to children under the inherent jurisdiction is being revised. The National DoL Court will no longer operate under that title. In future, all initial applications will be dealt with as part of the National DoL List ("NDL") which will continue to be overseen as part of the work of the Family Division. As from 2 October 2023, all C66 applications seeking orders to deprive any child of their liberty ('DoL orders') shall continue to be issued centrally in the Royal Courts of Justice via the following email address: (rcj.nationaldolslist@justice.gov.uk). The C66 application must state (with brief reasons in support) whether the application needs to be heard in A - 4 hours; B - 24 hours; C - 3 days; or D – 5 days.
2. Experience over the last 12 months has shown that Fridays are particularly difficult days for the Listing Team at the RCJ. Every effort must be made to avoid issuing urgent applications on a Friday. Unless the matter is one of exceptional urgency, first applications for a DoL order **must** be made between Monday and Thursday. Renewals or extensions of existing orders can, and must, be made in a timely manner. This should not present local authorities with any difficulty, as it will be known well in advance when the renewal or extension will be required.
3. A fee of £183 is payable on submission of the application. Payment should be made by fee account (PBA). If this is not possible and payment is to be made by another method, the applicant must contact the RCJ Fees Office, RCJfeespayers@justice.gov.uk for a card payment.
4. Applications listed in the NDL will be dealt with by a NDL judge who will be either a Judge of the Family Division or a s.9 Deputy Judge of the High Court. The current system for inviting s.9 judges to sit at the RCJ for 5 or 10 day slots to deal with applications in the NDL will continue as before. It is important work, and I am grateful to all our volunteers for the time and effort which goes into these sittings.

ALLOCATION

5. *Basic model*

5.1 All first applications will be listed in the RCJ in the NDL before a NDL judge. This will be the default position unless the local authority is requesting an immediate transfer out to the local Family Court for the first hearing, *and* it has confirmed to the NDL administrative team in the RCJ that a s.9 judge is available and willing to deal with the matter within 24 hours or such shorter period as may be required for the first hearing.

5.2 The NDL judge will make the first order and fix the review date.

5.3 The expectation will be that, where there are, or will be, parallel public law proceedings concerning the same child/young person and/or where there has been prior judicial involvement at a local level, the case will be sent back to the local court for further reviews. This should ensure a much greater level of judicial continuity than is achieved presently where specific permission is required to release a case back to the local court of origin. In effect, the presumption will be that local Family Courts are better placed to deal with the continuation and/or regulation of the terms of a DoL order which affects a child or young person who is the subject of ongoing care or related proceedings.

5.4 When fixing the first review date, the NDL judge sitting in the RCJ must bear in mind that the public law proceedings which are, or will be, ongoing in the local court may not be listed before a s.9 judge for the ICO/FHDRA hearing. It is essential that there is prior liaison between the local authority seeking the DoL order and the local court listings officer. Experience has shown that, without such communication, local courts can find themselves in difficulty if they are required to list a scheduled review before the DFJ or another s.9 judge in circumstances where the parallel public law proceedings are listed before a DJ or non-ticketed CJ. **The local authority will be expected to inform the NDL judge for the purposes of the first hearing that there will be a s.9 judge available to review the DoL order when the case returns to the local court.**

What the LA needs to do when issuing the application and in any event prior to the first hearing in the RCJ/NDL

5.5 All efforts must be made to make the application in a timely manner.

5.6 It is critical that the local authority is ready for the case to be heard within the time frame stipulated in the initial C66 application. This includes the availability of both counsel (or another legal representative with appropriate rights of audience) and an electronic bundle.

5.7 The electronic bundle **must** be sent to the RCJ **by 12 noon** the day before the hearing unless the case falls into the exceptional category of cases which require a hearing within 4 hours. The bundle should include the originating application, a draft order, (where possible) position statements, and any local authority evidence relied on.

5.8 The local authority's statement must cover -

- a. the child's background;
- b. whether there are related care proceedings – ongoing, to be issued or completed;
- c. details of the proposed placement including background to both provider and property, staffing, training and whether regulated or unregulated;
- d. education plan;
- e. CAMHS or other NHS involvement and services;
- f. proposed contact arrangements.

5.9 Particularly complex cases should be referred by the NDJ judge to the relevant Family President for allocation locally.

6. CASE MANAGEMENT

Role of the s.9 NDJ judge at the first hearing in the RCJ

6.1 The judge must:

- a. consider whether the order sought amounts to a deprivation of liberty within the meaning of Article 5 ECHR;
- b. consider the extent to which the restrictions sought are necessary and proportionate in relation to the perceived risks to the child or others;
- c. consider the nature of the placement and its suitability to meet the needs of the child concerned. The provision of ongoing education is crucial. It will only be in exceptional circumstances that a child will be subject to a DoLs order without education.

6.2 Where the application is being made on an urgent basis on short notice in circumstances where the local authority has not yet identified a suitable longer term placement for the child, the judge must give careful consideration to the conditions under which the child's liberty will be restricted in the short term pending an urgent review hearing.

6.3 If the short-term placement is unregulated, the revised guidance issued by the PFD in September 2023 must be followed:



PFD Revised DoLs
Guidance September

6.4 Any initial directions given at the first hearing in the RCJ may include the following matters:

- (i) directions for the listing of any urgent hearing on transfer back to the local court including the provision of notice to other persons or parties to ongoing care proceedings;
- (ii) the filing of further evidence;
- (iii) joinder of the child as a party to the proceedings allocated to a Children's Guardian in the local area where the child lives;
- (iv) whether there are any particular reasons why the proceedings should remain in the RCJ for the next review hearing (for example the unavailability of a s.9 judge in the local court if the next review is urgent).

Interrelationship with the Court of Protection

7. If the child or young person is 16 or 17 years old and there is reason to believe they may lack capacity and would be likely to be transferred to the Court of Protection at the age of 18 years, then the court should transfer the case to the Court of Protection in accordance with the guidelines.



Practice Guidance on
cases transitioning frc

The draft order made at the first hearing in the RCJ (“the first order”)

8. The draft order should cover –
- a. the scope of the DoL restrictions;
 - b. the name/identity of the placement;
 - c. any specific requirements or pre-conditions (e.g. one female member of staff to be on site at all times);
 - d. notification to Ofsted if placement is unregulated;
 - e. contact;
 - f. education;
 - g. appointment of Guardian;
 - h. review / next hearing and before whom? (i.e. where possible the s.9 judge to whom the case has been/will be allocated in the local court should be identified in the first directions order).

Transfer of proceedings

9. The NDJ administrative team in the RCJ will, on receipt of the approved first order, deal with the arrangements for transferring the DoL file to the designated local court together with a copy of the sealed first order.

Liaison between the RCJ and the local court

10. Once an application has been issued in Form C66, and following transfer back to the local court, there is a designated route for urgent communication between the local court and the NDL administrative team in the RCJ:-

Email: rcj.nationaldolslist@justice.gov.uk

Telephone: 0207 947 6335

11. Where the s.9 judge dealing with the initial hearing at the RCJ considers that there are particular issues or difficulties with the case which may warrant departure from this Listing Protocol, the judge shall consult with *either* Mrs Justice Roberts, the Family Division Lead DoL judge, or the relevant Family Presider or the Urgent Applications Judge.



Sir Andrew McFarlane

President of the Family Division & Head of Family Justice

September 2023