

Technology Enabled Care (TEC)

Considerations for Practice: Community
Deprivation of Liberty

A great place to live and work.

Introduction

As Technology Enabled Care (TEC) becomes integrated into the assessment process, and the functionality of TEC develops, new questions will need to be considered. This brief guide highlights what you need to consider when prescribing TEC and where to go for help when the answers to your questions are not clear.

At the end of this guide is a reflective tool which we hope will help you navigate those cases where the answers are not straightforward.

TEC – Can TEC be a deprivation of liberty (DOL)?

Yes ☐ ? No ☐ ? Maybe ☐ ?

Maybe -

A piece of prescribed TEC, even if it monitors the client, is not necessarily a Community Deprivation of Liberty (here after referred to as Comm DoLS) but it might be!

The law requires situations to be looked at individually at the points arrangements are being considered or reviewed.

When considering a person's circumstance in relation to Comm DOL it is the whole situation, including formal and informal care, that must be taken into account. It is not necessarily about a certain piece of equipment, but the persons 'concrete situation' that must be considered as a whole. When we say concrete situation, we mean what is actually happening in reality. It is the combination of collective restrictions in place that can be argued to be a Comm DOL, or not.

Therefore, it's not about the one thing you plan to prescribe – it's about the combination of everything that maybe in place. **The layers of restriction.** On its own the TEC you want to prescribe may be fine however, looking at the whole picture and exploring all the layers of possible restrictions will give you the necessary context to establish if your case is a Comm DOL or not

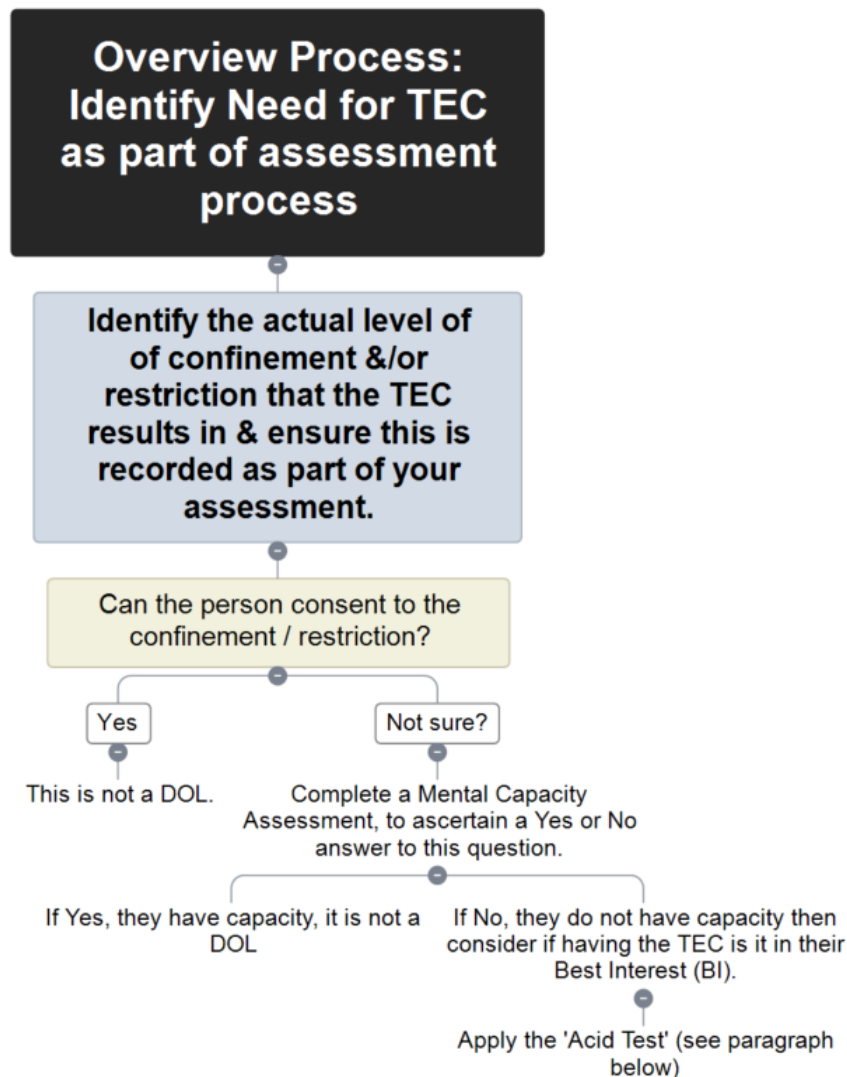
The three elements of a Comm DoLS:



All **three** elements must be present for a person to be considered deprived of their liberty

In summary, they must have restrictions that amount to a deprivation (objective element); lack the mental capacity to consent to these restrictions (subjective element); and the arrangements must be the responsibility of the state (imputability element).

However, in practice, the main consideration for practitioners in terms of TEC arrangements will often be assessing the restrictions and considering whether they amount to a deprivation of liberty (objective element). The other two elements will usually be more straight forward – assessing the person's mental capacity about the arrangements and recording that it is imputable to the state/Local Authority, which will always be the case for TEC arrangement since the Local Authority have arranged them.



Some Useful Links

Guidance for carrying out mental capacity assessments:

<https://www.scie.org.uk/mca/practice/assessing-capacity/>

Mental Capacity Guidance notes:

https://www.cqc.org.uk/sites/default/files/documents/rp_poc1b2b_100563_20111223_v4_00_guidance_for_providers_mca_for_external_publication.pdf

Assessing Capacity:

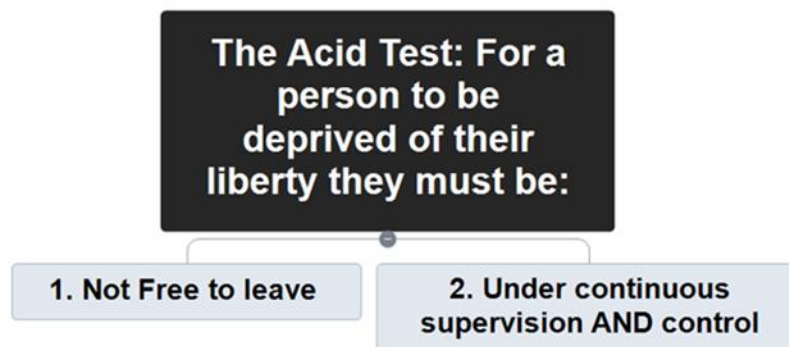
[MCA: Assessing capacity | SCIE](#)

Best Interest:

[6.1 Mental Capacity – Central Bedfordshire APPP Resource \(centralbedsappp.co.uk\)](#)

How to consider what is a deprivation of liberty- THE ACID TEST

The Supreme Court decision known as Cheshire West (2014) set out the 'The Acid Test'



As with all potential Comm DoLS arrangements, where they lack capacity, the whole circumstances need be considered to enable all the possible layers of restriction to be included in the reasoning process. Practitioners should consider assessing a deprivation of liberty as looking at the layers of restrictions upon the person; where any one restriction alone may not amount to a deprivation of liberty but when taken as a whole, they might collectively meet the above acid test.

1. Does the person have 'Freedom to leave' – this means having the ability to leave permanently, for example to live where, and with whom, they choose. In a person's own home this element might be considered more about their **ability to come and go as they please**.
2. 'Continuous supervision and control' – this means the person being **monitored or supervised on a continuous basis** but also there being an element of **continuous or constant control**. Is the person prevented from doing the things they want and not being left alone for significant periods of the day?

If a Comm DoLS is suspected, it is recommended that you discuss the case with your Supervisor / Manager to ensure local protocol is adhered to and

- Research who is professionally involved in this case
- Agree which is the most appropriate professional to assess Best Interest, if required
- Agree which is the most appropriate professional to explore the potential DoL,

On the following pages you can see an example of a reflective tool, which may help you to reason through your case and apply 'The Acid Test'. After

the example, there is a blank template for you to take forward into your practice, should you wish.

An Example

Reflecting on prescribing Technology Enabled Care

1. What equipment is being considered? Including the type and manner of the TEC (i.e. GPS tracker, monitoring solution)

(The Objective Element)

the 'actual' level of confinement &/or restriction.

Canary Care (monitors movement, temperature & light) in the home on a continuous basis.

Considerations of monitoring	Notes
Duration of use (all day, all night)	Constant monitoring. Initially for two-week period of assessment.
Which rooms will be monitored (if applicable)	Fridge, kettle, store cupboard, front door, back door, bathroom.
What is the impact on the person/ what actions or outcomes may come from the use of this TEC	Data will be collected to inform prescriber and family to plan PoC Vs Residential Home; how best to keep the person safe and well using the least restrictive route.
What does it stop them from doing?	Nothing. They are still free to come and go from the property without any prevention.
Is the equipment covert / overt?	Overt. Monitors are visible. Stuck on the wall at chest height and battery operated. Can be removed by person easily if they wish.

2 Why and How is it being used for the individual?

Guidance NOTE:

The starting point in assessing whether there is confinement in this sense should always be “the concrete situation” of the person. This will require consideration of a how and why it is being used, such as:

- the duration of the measures,
- the effects of the measures, including any hardships the person experiences as a result, and

- the type of measure and manner of its implementation, including the specific context and circumstances.

Why is it being used?

Canary Care - Person does not want care. Family advise care is needed for person to be safe & that if no Care is accepted a residential home will be needed. This TEC aims to evidence the level of care needed. Canary Care to be used for a two week assessment period. The information collected is then to be discussed with the person, family member and allocated professionals at pre-agreed meeting to explore all future options.

Person is diabetic & alleged by family to forget to eat and drink. Monitors will be used on the kettle, fridge and food store cupboard & alerts sent to named family member if person does not use kitchen areas, which may suggest they are not eating / drinking.

This will help me gauge the necessary Package of Care needed.

3.Can the person consent to your prescription?

(can they understand, retain, use and weigh the relevant information as well as communicate their wish to have the TEC prescription, or not?) Not sure? Complete the Mental Capacity Assessment: [Safeguarding, MCA & DoLS \(LPS\) – Central Bedfordshire APPP Resource \(centralbedsapp.co.uk\)](http://centralbedsapp.co.uk)

(The Subjective Element)

The person cannot give consent

Yes

☐

No

☐

*If **Yes**, the TEC is not a DOL. However, this may need to be **reviewed** to coincide with any changes to the person's ability to consent to the arrangements or when there is a change to the TEC and how it is used.*

4. What else is already in place / planned to be put in place?

(The Immutability Element) the LA is responsible.

How does the TEC add to the Layers of restriction?)

Nothing. Person has unstable diabetes but does not want Carer support. Family is shopping and buying food but state most of it goes off and ends up in the bin – suggesting the person is not eating. Person argues that family fuss and that they are fine. Family suggests a residential care placement maybe be best, the person does not want this.

No family members live with the person.

5. What is the impact on the person's freedoms under the following elements:

Please answer the following questions.

The Acid Test

5a: does the TEC (when added to / with current arrangements) impact the person's ability to freely leave the premises when and with whom they like?

Yes

☐

No

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If yes, please give a brief description:

No, they can continue to come and go from their home. But a monitor on the door will monitor this movement. Alerts can be set up to inform family.

NB: If any of the alerts are then used to change or control the person this may constitute control and consideration of whether this added to a deprivation of liberty is needed. If there is no control element, then acid test is not met.

5b: does the TEC (when added to / with current arrangements) result in a level of supervision and is this continuous?

Yes

☒

No

☐

If yes, please give a brief description:

Yes, I can monitor the movement on using the 6 sensors and can set it up so the family members I feel appropriate can monitor the movements. . The person, family and OT can discuss where the sensors should be placed to collect data. Alerts can be set

5c: does the TEC (when added to / with current arrangements) result in a level of control and is this continuous?

Yes

☐

No

☒

If yes, please give a brief description:

No, this TEC will not cause control, continuous or otherwise. I can monitor the alerts in place and see if the family altered the ones I have set. I have not witnessed / have any evidence to suggest the family want to control this person. However, the use of this TEC will be reviewed as the situation moves forward to ensure that TEC doesn't form a layer of what could constitute monitoring and control.

Having applied the Acid Test do you think the TEC you are seeking to prescribe results in a deprivation of their liberty?



Yes

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No

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Is the prescription of this TEC in the persons Best Interest?

Outline your reasoning:

Canary Care will constantly monitor movement in the kitchen and at the front and rear door. This data is recorded and visible to me and the family members I deemed appropriate. There is no continuous control. The person is free to leave their home.

There is also no other care that I am aware of that is being provided (paid or otherwise) that would likely meet this acid test.

If yes or unsure, what to do next?

- Discuss case with my Supervisor / Line Manager for guidance
- Discuss case with the Senior Practitioner for TEC

Reflecting on prescribing Technology Enabled Care

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- the effects of the measures, including any hardships the person experiences as a result, and
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Yes

☐

No

☐

If yes, please give a brief description:

5b: does the TEC (when added to / with current arrangements) result in a level of supervision and is this continuous?

Yes

☐

No

☐

If yes, please give a brief description:

5c: does the TEC (when added to / with current arrangements) result in a level of control and is this continuous?

Yes

No

If yes, please give a brief description:

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