

**GUIDANCE ON COMPLETING COPDOL11 FORMS
FOR UNCONTESTED ADULT COMMUNITY DOLS CASES**

This guidance assists practitioners to complete the COPDOL11 forms for uncontroversial community deprivation of liberty cases. This involves providing the necessary evidence and asking the court to consider the matter on the papers before granting a 12-month authorisation. The model court order being sought is [here](#). This process should only be used for adult cases where there is no dispute about the issues. All forms must have a 'wet' signature and name printed. The following provides an overview of the form. A checklist and guidance are on pages 28-31:

Checklist for completing form COPDOL11 for a Court authorised deprivation of liberty.

Every question on the forms should be completed, or stated that information is not available. Failure to provide the information required by the court could lead to unnecessary delays to proceedings.

A separate application must be made for each individual for whom an authorisation of a deprivation of liberty is sought.

Please ensure that the following forms have been completed:

- ☐ **COPDOL11** Application under sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
- ☐ **Annex A** Evidence in support of an application under sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
- ☐ **Annex B** Consultation with people with an interest in an application under sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
- ☐ **Annex C** Consultation with P in support of an application under sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty.

You must also supply:

- ☐ COP3 Evidence of capacity
- ☐ Mental Health Assessment
- ☐ a copy of any Advance Decision
- ☐ a copy of any Lasting Power of Attorney (LPA)
- ☐ any relevant Court orders
- ☐ Care or Support Plan
(please ensure the dated care or support plan is clearly labelled so it can be easily identified within the application)
- ☐ Best Interest Statement
- ☐ the application fee

In addition to the above key documents, provide a witness statement (Form COP24) from the proposed Rule 1.2 Representative. The courts have said, "The evidence should be succinct and focused. Statements and reports need not be lengthy. I see no reason why the totality of ... the application, the evidence and other supporting material, need exceed something of the order of 50 pages at most." Note Form COPDOL11 is 31 pages itself.

APPLICATION FORM

As detailed in the prioritisation tool, the highest priority cases which may require urgency include:

- Physical restraint used frequently and causing distress.
- P is actively seeking to leave and being redirected or is leaving and being returned against their will.
- Medication is used to reduce libido, control behaviour or risk to others.
- P objects to care or treatment (verbally or physically) but not to accommodation.
- P is kept isolated from others against their will for considerable periods of time.
- Disputed contact restrictions.
- Safeguarding concerns (eg removal from family home).
- Family wish to remove the person from the setting in an unplanned way.
- Change of accommodation where deprivation of liberty was previously authorised.
- Mental Health Act 1983 cases: plan to discharge from hospital or already subject to a conditional discharge, community treatment order or guardianship.
- Transforming Care Programme: person on ICB dynamic risk register.

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Court of Protection
Application to authorise a deprivation of liberty
(Sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005)

A streamlined procedure pursuant to Re X and Ors (Deprivation of Liberty) [2014] EWCOP 25 and Re X and Ors (Deprivation of Liberty) (Number 2) [2014] EWCOP 37

[Print form](#) [Reset form](#)

For office use only

Date received

Case no.

Date issued

SEAL

Payment
How is the application fee being paid?

☐ Cheque

☐ Payment by Account - please give your PBA number

Before completing this form please read the guidance at page 28 - General information for completing form. You can download forms and leaflets at hmctsformfinder.justice.gov.uk. Search for form type: 'Court of Protection'.

Please give the full name of P (the person the application is about)

1. Is this application urgent?

☐ No, go to question 2

☐ Yes, and my reasons for urgency are below

Give any factors that ought to be brought specifically to the court's attention (the applicant being under a specific duty to make full and frank disclosure to the court of all facts and matters that might have an impact upon the court's decision).

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Is P subject to

☐ Detention under the Mental Health Act 1983

☐ A Community Treatment Order

☐ Guardianship

Will the proposed deprivation of liberty conflict with any such treatment or measure? ☐ Yes ☐ No

If Yes, please give details

(b) Decisions already made

Has P made a relevant advance decision? ☐ Yes ☐ No

If Yes, please provide details and set out whether the decision made conflicts with the order sought in this application.

Has P made a lasting power of attorney? ☐ Yes ☐ No

If Yes, please provide details and set out whether any relevant decision(s) made by the attorney(s) conflict(s) with the order sought in this application.

Pursuant to s.4B of the Mental Capacity Act 2005, as soon as this application has been lodged with the court, those providing care to P will have authority to deprive liberty if this is necessary to prevent a serious deterioration in P's condition. We should make it clear MCA s.4B is being relied upon pending the decision of the court. If we do, the evidence should make it clear what is likely to happen to P's health if the necessary care and support is not provided.

If an application is filed after the expiry of a previous authorisation, please explain the reason on the first page of the COPDOL11 form.

These boxes only need to be ticked if P is currently (at the time of application) subject to them. Usually P will not be subject to Mental Health Act 1983 requirements. But if they are, a court authorisation will not usually conflict if they relate to the same care setting.

These is not usually an advance decision to refuse treatment or a lasting power of attorney. If you need to check the latter, use the OPG100 form to contact the Public Guardian.

If there is a deputy, there will be a court order which you should ask the deputy to provide. You may need legal advice on whether there is a conflict. Copies of these documents (if they exist) must be sent with the application.

Has the court made an order appointing a deputy? ☐ Yes ☐ No

If Yes, please provide details of the deputy(s) and set out whether any relevant decision(s) made by the deputy(s) conflict(s) with the order sought in this application

Are you aware of any previous application to the court regarding P? ☐ Yes ☐ No

If Yes, please provide details.

I enclose a copy of the ☐ advance decision ☐ LPA ☐ relevant court order

ANNEX A

Social workers can provide evidence of incapacity which should be set out in a COP3 form; a capacity assessment contained in another form can be filed additionally, but not in substitution for COP3. ADASS Form 4 alone is not acceptable.

Please answer each question on the form succinctly but fully. The COP3 must be signed by the person who has done the assessment.

A COP3 can be submitted that covers both the question of whether the person has capacity to decide on the arrangements which confine them and also in relation to entry into a tenancy (where this is relevant).

Phrases such as “*P has not satisfied me that that they have capacity*” are concerning, because they reverse the burden of proof, and indicate that the assessor has not properly applied the MCA 2005.

A GP or psychiatrist will need to confirm the person has a mental disorder (eg learning disability, autism etc). Without a letter confirming this, the court will not authorise. We recommend you seek this medical evidence as soon as possible as there may be delay. Proforma forms to be completed by doctors are acceptable: in any such form, it is important to include a prompt to include the date that the doctor last saw the person, and their qualifications

Annex A: Evidence in support of an application to authorise a deprivation of liberty (Sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005)

Please give the full name of P

1. Assessment of capacity

- ☐ I confirm that P has been assessed as having an impairment or disturbance in the functioning of the mind or brain and lacks capacity to consent to the measures proposed and the deprivation of liberty which is identified within the application.
- ☐ I attach form COP3 or other evidence of capacity

2. Mental Health Assessment - Unsoundness of mind

- ☐ I confirm that P has been medically diagnosed as being of ‘unsound mind’ and I attach written evidence from a medical practitioner

If your assessment of capacity on form COP3 has not been completed by a registered medical practitioner, you must also attach written evidence from a registered medical practitioner containing a diagnosis that P suffers from a diagnosis of ‘unsoundness of mind’.

- ☐ I am submitting the mental health assessment and assessment of capacity as a single document
- ☐ COP3 completed by a medical practitioner

Provide details about where P lives and with whom, summary of P's needs and living arrangements, and what family/friends are involved or interested in P's life.

Sections (b)-(d) allow for an application for a community DOLS order to be made in advance of a move taking place.

This information must be completed regardless of how long P has been living at the accommodation. If P has a tenancy, find out who signed it. If P lacked capacity to do so, you can if necessary ask the court for an order authorising an identified person to sign it on P's behalf (eg to get housing benefit). If P is moving from placement A to placement B, authority to terminate the tenancy at placement A and enter into the tenancy at placement may both be included within the application.

It is not likely that authority will be granted to terminate a tenancy of a placement where P is presently living and there are no immediate, fully explained plans to move. Authority to terminate/enter into tenancy agreements is not a repeating exercise. If such authority was granted in the authorisation granted the previous year but not used, we will need to explain why. The streamlined procedure is not an appropriate vehicle for housing advice: the applicant must tell the court what authority they are seeking, not expect the court to make a determination between tenancy agreements, licence agreements etc. The timescale for tenancy authorisation is the timescale of the application as a whole. If greater urgency is required, a COP1 application will be needed.

This is the care provider's care plan you are asking the court to approve in P's best interests. It needs to be up to date and dated. Please write this date on the front of the care plan and sign the front page. It is preferably in a single document which explicitly identifies all measures amounting to deprivation of liberty for which authorisation is sought. If there are multiple plans, then please identify them all by name and date in a covering letter stating.

The main function of the care and support plan drawn up by the local authority is to set out how the person's assessed needs will be met, and it will often not include the necessary level of detail.

Where there is limited space on a care plan document, additional information (such as the PRN protocol/record) may be attached.

3. P's circumstances

(a) Please give a brief description of P's circumstances and identify the people who are involved in P's life and/or important to P.

(b) Is P living at the care placement for which the authority for deprivation of liberty is sought? ☐ Yes ☐ No

If No, when is P expected to move?

A copy of the transition plan will be required.

If Yes, on what date did P move to the care placement?

(c) If P is already living at the care placement, where and with whom was P previously living?

(d) If P is already living at the care placement, why did the move take place and how has P responded to the change of accommodation?

(e) Does P or will P occupy the accommodation under a tenancy agreement? ☐ Yes ☐ No

(f) Who has the authority to sign a tenancy agreement on P's behalf? ☐ No one

(g) Do you need authority from the court to sign the tenancy agreement? ☐ Yes ☐ No

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4. The Care or Support Plan

(a) Please provide a copy of the following

(i) The care or support plan

(ii) The best interests assessment

(iii) The transition plan (if required)

(b) Please set out the arrangements for review of the care or support plan.

If the proposed placement is planned and has not yet taken place, an explanation of whether or not a transition plan has been produced, a copy of the transition plan and an explanation as to how the placement will be reviewed, particularly in the context of responding to P's reaction to the new placement.

If P is already living at the placement, information about the date P moved there, where P lived before, why the move took place, and how the move is working.

The best interests assessment is the record of the decision.

Arrangements for review include:

- When P will next be subject to a care review which may lead to changes in the care plan
- The arrangements in place in the interim should an earlier review be required
- How the care plan is monitored.

Exhibit these documents and explain how the care arrangements will be reviewed during the 12-month authorisation. Preferably in a single document which explicitly identifies all measures amounting to deprivation of liberty for which authorisation is sought.

Provide a summary for each of (i)-(v).

Given that a more restrictive care regime will need to be sanctioned by the court, we may want to consider incorporating contingency arrangements into the care plan so as to minimise the need for judicial micro-management.

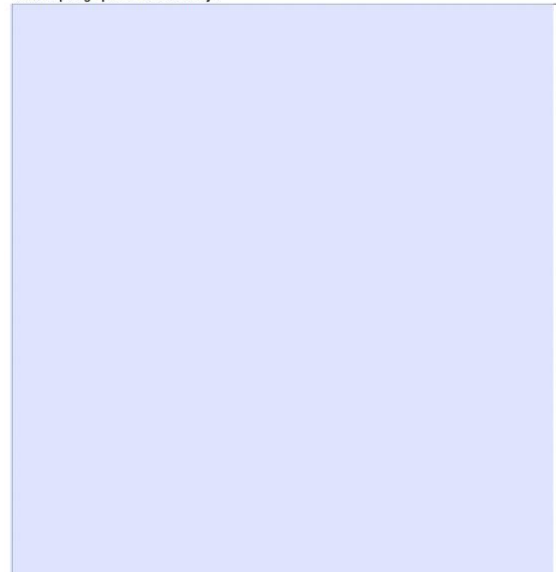
If P is living in the family home, the care plan should include not just the public authority-commissioned care package but also an explanation of arrangements at home outside the hours of the care package.

It would also be possible for the arrangements at home outside the hours of the care package may be explained in an additional document, again clearly identified in the covering letter.

(c) Please provide a summary of the key provisions of the care or support plan which includes details of:

- (i) level of supervision (1:1, 2:1, etc.)
- (ii) periods of the day when supervision is provided
- (iii) use or possible use of restraint and/or sedation
- (iv) use of assistive technology
- (v) what would happen if P tried to leave

*All answers to the questions in section 5 and 6 below should be answered with reference to the relevant paragraphs of this summary.



Cross refer to the information given on page 9 section (c) and (v). This does not relate to the ability of the person to express a desire to leave but to what those with control over the care arrangements would do if P attempted to leave. Directly answer the questions.

Use the [Law Society guidance](#) to assist.

Cross refer to the information given on page 9 section (c), (i), (ii) and (iv). Provide details of the number of hours of supervision and the circumstances. Detail the type of control used by staff/carers other than physical restraint.

Cross refer to information given on page 9 section (c) and (iii). If physical restraint is/may be used, provide details in answer to the three questions. The detail goes beyond merely P's best interests. The court has emphasised the importance of the care plan accurately recording the use of physical restraint and the way those commissioning monitor its use.

If sedation is/may be used, address the four questions. Where any sedation or restraint is/may be used, give the details (eg drug name, dose, method of administration, especially if covert), together with details of who will be using it, whether they are trained in such techniques, how often they have been used in the last 12 months, and how often they are reviewed.

If there are supervised contact arrangements, attach the evidence of incapacity for the contact decision and best interests decision. Authorisations cannot be used to control/restrict contact between P and others. The purpose of this question is to ascertain if such restrictions are taking place.

Any restrictions on community access must be set out. Is P always supervised? Is P's community time limited/restricted to fit staff availability?

5. Deprivation of liberty of P

Describe the factual circumstances relating to the deprivation of liberty with particular reference to whether P is free to leave their residence and what type of supervision arrangements are in place.

(a) Is P free to leave? ☐ Yes ☐ No
If No, please give details

(b) Is P under constant supervision and control? ☐ Yes ☐ No
If Yes, please give details

(c) Is P under physical restraint? ☐ Yes ☐ No
If Yes, explain in what circumstances physical restraint is or may be used, how frequently and why such restraint is the least restrictive measure to deal with the relevant issues.

(d) Is sedation used? ☐ Yes ☐ No
If Yes, explain in what circumstances sedation is or may be used, how frequently, to what extent it is used to control P's behaviour and why such sedation is the least restrictive measure to deal with the relevant issues.

(e) Is P prevented from having contact with anyone? ☐ Yes ☐ No
If Yes, please give details

(f) What restrictions if any are imposed or measures used which affect P's access to the community?
Please give details

Include anything you feel is relevant but has not been addressed above.

(g) Are there any other relevant factors that relate to the deprivation of liberty?

☐ Yes ☐ No

If Yes, please give details

Are the arrangements commissioned or arranged by or known to the local authority? If so, they are imputable to the State.

(h) Please explain why the proposed deprivation of liberty is thought to be imputable to the state

This is a question you have already answered.

In the light of the responses to the questions under this heading, do you consider that the arrangements represent a deprivation of liberty?

☐ Yes ☐ No

This best interests statement needs to reflect and repeat the information contained in the separate best interests document. We recommend completing this section at the same time as that other document for consistency. The following factors are relevant to P's best interests and your evidence should demonstrate you have considered them:

- Best interests cannot be based simply on P's age, appearance, condition or behaviour;
- All relevant circumstances should be considered;
- Every effort should be made to encourage and enable P to take part in making the decision;
- If there is a chance that P will regain capacity, it may be possible to delay the decision until later if not urgent;
- P's past and present wishes and feelings, beliefs and values should be taken into account;
- The views of other people close to P should be considered, as well as the views of an attorney or deputy.

6. Statement of best interests

(a) State why the arrangements for which the authorisation as a deprivation of liberty is sought are necessary in the best interests of P.

(b) State what harm may occur or what the risks would be if P were not deprived of their liberty. Provide detail of what the harm would be, how serious it would be and how likely it is to arise.

The harm question asks that you consider the risks involved should P not be deprived of liberty. Be specific in your answers and ensure you focus on the information sought. Why are the restrictions necessary? What harm would P come to without them? How likely is that to happen? How serious would the harm be? Evidence your opinion with examples where available.

What less restrictive options have been tried or considered? Demonstrate why these arrangements are the least restrictive possible. Take into account the person's wishes and feelings about the arrangements when considering proportionality.

(c) State why the deprivation of liberty is proportionate
Explain why it is considered that the risk of harm and the seriousness of harm justifies the restrictions amounting to a deprivation of liberty.

In addition to what might be the professionals' 'preferred option', the court needs to know what possible options have been identified but discounted and the reasons for doing so. So include details of any investigation into less restrictive options. Include, for example, the option of doing nothing where P faces a serious risk to their welfare and options proposed by family members or other relevant persons.

(d) What less restrictive options have been tried or considered?
Explain why the option you propose is the least restrictive option and is in the best interests of P.

The main benefit is to authorise the care arrangements. An order avoids any potential need for P or P's family/representatives to attend a hearing. It also ensures applications are dealt with more quickly.

Note there is a duty to make full and frank disclosure: identify here factors (a) needing particular judicial scrutiny (eg whether findings of fact are likely to be required, (b) suggesting that the arrangements may not in fact be in P's best interests or be the least restrictive option, or (c) otherwise indicating that the order sought should not be made).

7. Other information

(a) State why it is considered in P's best interests for this application to be dealt with under the streamlined Deprivation of Liberty procedure using this form.

When completing this section you should give consideration to the triggers which may indicate that the application is not suitable to be made under the streamlined process at the foot of page 31.

ANNEX B

Pay close attention to the persons the court has asked to be consulted. The method of consultation can be a meeting or simply by telephone/email.

Consult about:

- The local authority is making this application;
- It is to consider whether P lacks capacity to make the decision and whether P should be deprived of liberty under the care plan;
- What the court order entails (ie explain that P will be deprived of liberty for up to 12 months as per the care plan).

Annex B: Consultation with people with an interest in an application to authorise a deprivation of liberty

(Sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005)

Please give the full name of P

Section 4(7) of the Mental Capacity Act 2005 places a duty on a decision maker to take into account the views of other people who have an interest in P's personal welfare.

You should consult with:

- (a) any donee of a lasting power of attorney granted by P;
- (b) any deputy appointed for P by the court;

and, if possible, with at least three people from the following categories:

- (c) anyone named by P as someone to be consulted on the matters raised by the application; and
- (d) anyone engaged in caring for P or interested in their welfare

You must inform the people consulted with of the information contained in paragraph 40 of the Practice Direction 11A and provide details, including attaching statements.

Ensure you have consulted with at least 3 individuals. It is more important that the views of unpaid carers (ie family/friends) are sought than paid carers. However, if family/friends cannot be consulted, the views of paid carers should be sought. Also consult the financial deputy if there is one.

The requirement to consult is a safeguarding measure. If people with a proper interest in P are consulted, the prospects of a better outcome for P are improved. If we consider it likely that person X will not agree to the application, it is more important to consult them, not less. If we know that the application is contentious, then it is not appropriate to use the streamlined procedure.

If you are unable to consult at least 3, provide a brief explanation as to the reasons.

“If a person sensibly within the categories of person who ought to be consulted holds a view which is contrary to the Applicant’s, the Applicant must make that clear in the application, irrespective of its own view of the merits of that other view. In the context of a procedure designed for non-contentious applications, such factors clearly include indications that the proposal is in fact disputed, irrespective of the applicant’s view of the merits of that dispute.” Senior Judge Hilder in *Re JDO (authorisation of deprivation of liberty)* [2019] EWCOP 47

Usually we will have identified someone to act as a Rule 1.2 Representative (eg family member, friend, IMCA) who is willing and able to act in this role. They should not be a paid carer. It should be not assumed that the person needs to be someone who supports the deprivation of liberty. Indeed, sometimes the most vocal are the best advocates for P.

Their role is to read the application and supporting evidence and provide a witness statement (Form COP24) to confirm:

- Their relationship to P
- Whether they are happy to be the representative for P
- They have seen a copy of the application and supporting documents.
- Whether they are happy with the care that P receives and approve of the care plan (or detail any issues/concerns which need to be addressed).
- Whether they believe an oral hearing is/is not required.

1. People who have been consulted and who fall within the categories (a) - (d) above

Name	Address	Date consulted	Connection to P

2. People who have not been consulted within the categories (a) - (d) above

Name	Address	Reason why they were not consulted	Connection to P

4. Litigation friend/Rule 1.2 Representative

- (a) Please list the names of any person who is willing to act as:
- (i) Litigation friend
- (ii) Rule 1.2 Representative

Name	Address	Capacity/willing to act

- (b) Why do you consider that the proposed Litigation friend/Rule 1.2 Representative is suitable to act - think about their previous involvement in decisions about P's case?

- (c) Is the proposed person able and likely to keep the care or support plan and delivery of care under review for the duration of the Court authorisation sought? ☐ Yes ☐ No

- (d) Does the proposed person have any interests in conflict with P's interests? ☐ Yes ☐ No

If Yes, please give details

ANNEX C

Note P must be consulted to get their wishes and views about their arrangements. This consultation should be done by someone known to P who is best placed to express P's wishes/views (e.g. relative, friend, IMCA).

It is not sufficient to state that "we haven't consulted P as they would not understand". An attempt to communicate the essential purpose of the application, in terms appropriate to P's circumstances, must be made.

If consulting P will cause undue distress, then a COP9 application to dispense with the consultation requirement will be required, with a supporting statement. The application is likely to be taken out of the streamlined procedure as distress may indicate objection.

Those consulting P should use quotations where possible. Information should include steps taken to improve P's ability to participate in the best interests decision-making process. P's views and wishes are important and should be noted. They need not be verbal - a smile or nod may convey a response.

Where known, it would assist the court to know whether P receives welfare benefits or whether P has additional savings and, if so, the extent thereof approximately. This will be helpful if there is a trigger requiring an oral hearing and P to be legally represented as non-means tested funding may not be available.

The Court of Protection has set up an e-filing service for these applications, more details of which can be found [here](#). To make this work effectively, the naming convention set out [here](#) should be used for files and attachments.

Annex C: Consultation with P in support of an application to authorise a deprivation of liberty
(Sections 4A(3) and 16(2)(a) of the Mental Capacity Act 2005)

Please give the full name of P

Notes:

P must be consulted about the application and the person undertaking this consultation must take all reasonable steps to assist P to make a decision. If P does not have capacity to consent to being deprived of their liberty, they must be given the opportunity to be involved in the proceedings, and to express their wishes and views, to help the court reach a decision about whether the proposed deprivation of liberty would be in their best interests.

Chapter 3 of the Mental Capacity Act 2005 Code of Practice contains practical guidance about consulting and encouraging participation.

The person undertaking the consultation should be someone who knows P, and who is best placed to express their wishes and views. It could be a relative or close friend, or someone who P has previously chosen to act on their behalf (for example an attorney). If no suitable person is available, then an IMCA (Independent Mental Capacity Advocate) or another similar or independent advocate should be appointed to perform the role.]