MASTERING THE COMMUNITY DOLS PROCESS

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WHAT WE WILL COVER

1. Is P’s liberty of movement being restricted or deprived?
2. Guidance for evidence
3. Safeguards and renewals

RESTRICTED OR DEPRIVED?

Restricted: MCA 2005 ss.5-6

Deprived: Community DOLS/COPDOL11

A KEY LEGAL DISTINCTION

“RESTRICTS P’s MOVEMENT”

Mental Capacity Act 2005

6 Section 5 acts: limitations

(1) If D does an act that is intended to restrain P, it is not an act to which section 5 applies unless two further conditions are satisfied.

(2) The first condition is that D reasonably believes that it is necessary to do the act in order to prevent harm to P.

(3) The second is that the act is a proportionate response to—

(a) the likelihood of P's suffering harm, and

(b) the seriousness of that harm.

(4) For the purposes of this section D restrains P if he—

(a) uses, or threatens to use, force to secure the doing of an act which P resists, or

(b) restricts P's liberty of movement, whether or not P resists.

PART 1

PERSONS WHO LACK CAPACITY

Preliminary

4A Restriction on deprivation of liberty

(1) This Act does not authorise any person ("D") to deprive any other person ("P") of his liberty.

(2) But that is subject to—

(a) the following provisions of this section, and

(b) section 4B.

Community DOLS

(3) D may deprive P of his liberty if, by doing so, D is giving effect to a relevant decision of the court.

(4) A relevant decision of the court is a decision made by an order under section 16(2)(a) in relation to a matter concerning P's personal welfare.

DOLS

(5) D may deprive P of liberty if the deprivation is authorised by Schedule A1 (hospital and care home residents: deprivation of liberty).

MHA 1983

Psychiatric detention in hospital only (unless s.17(3) leave in custody). So:

- *PJ* (2018): cannot use MHA to confine on CTO
- *MM* (2018): cannot use MHA to confine on conditional discharge

ARTICLE 5 ECHR

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: …

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

MCA 2005

1. DoLS: (18+ year olds in hospitals and care homes only)
2. Court of Protection: (16+ year olds anywhere unless MHA required)

MCA 2005 s4B: interim authority to deprive from application date to do vital act

'Unsound mind' = 'mental disorder' as per s1 MHA 1983: Stockport MBC v KB [2023] EWCOP 58)

“DEPRIVATION OF LIBERTY”

1 CONFINEMENT?

OBJECTIVE ELEMENT

A. Subject to continuous (or complete) supervision and control, AND

B. Not free to leave (to live wherever and with whomever they want)

Have you clearly set out the ways in which the care arrangements are affecting P’s liberty?

2 LACK OF VALID CONSENT?

SUBJECTIVE ELEMENT

Lack of capacity regarding the arrangements?

Attorney General for Northern Ireland’s Reference 2025: can P ‘tacitly agree’? (*Cheshire West* [31],[55])

If a person lacks the relevant capacity they cannot validly consent
(or could they?!)

3 STATE RESPONSIBLE?

DIRECT OR INDIRECT

Assessed/commissioned?
Know/ought to know?

Direct and/or indirect?

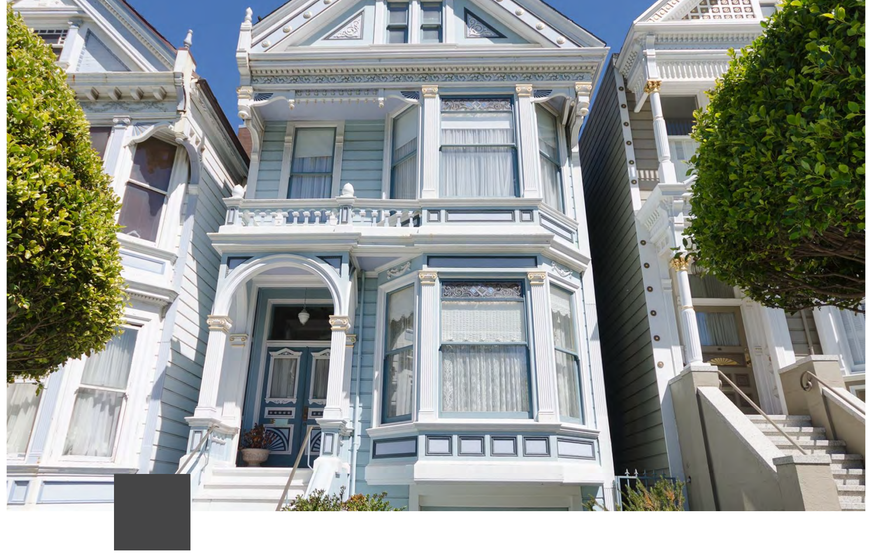
See: www.lawsociety.org.uk/topics/private-client/deprivation-of-liberty-safeguards-a-practical-guide

RESTRICTED OR DEPRIVED?

Adult with Down's syndrome, cerebral palsy, and learning disability lives in a spacious bungalow with two other residents, with two members of staff on duty during the day and one 'waking' member of staff overnight.

Requires prompting and help with all the activities of daily living, getting about, eating, personal hygiene and continence.

On occasion requires further intervention including restraint to stop him harming himself. Unable to go anywhere or do anything without one to one support; 98 extra hours a week of personal support to enable him to leave the home frequently for activities and socialising.



18 year old with a moderate to severe learning disability requires assistance crossing the road because she is unaware of danger, living with a shared lives carer whom she regards as 'mummy.'

Carer provides intensive support in most aspects of daily living. Never attempts to leave the home by herself and shows no wish to do so, but if she did, her carer would prevent her.

She attends further education unit daily during term time and is taken on trips and holidays by her carer.

John, aged 42, was badly assaulted during a night out and sustained an acquired brain injury. The frontal lobe damage makes processing information difficult and he has some left sided weakness and mobility issues.

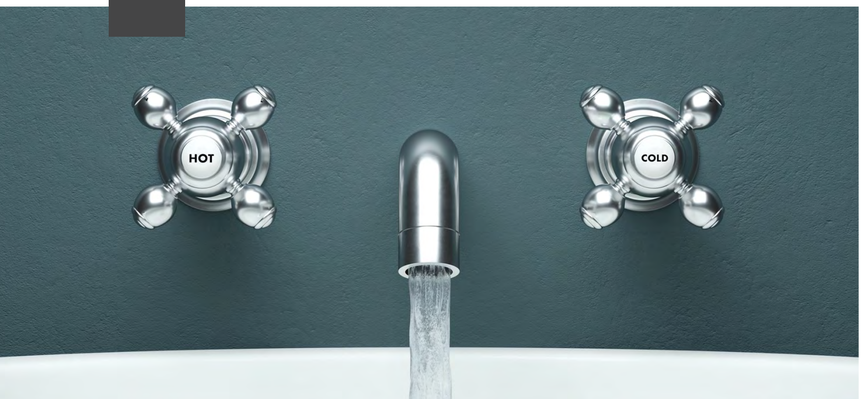
He lives in a flat and, twice a day, receives two-hour visits from support workers. He can dress and wash himself. But they prompt him with medication, take him shopping, and support him to pay his bills.

He chooses how to spend the remainder of the day. Often he attends day services without the need for support. Sometimes he meets with friends in the local pub.

RESTRICTED OR DEPRIVED?

Matthew is 33 with autism, a moderate learning disability, and little communication skills. He has lived with Mr and Mrs Morgan for 4 years with their daughter. He requires frequent daily support and someone with or near him all day (eg carers run bath, get him dressed, clean him and brush his teeth and hair).

He is able to walk independently but gets anxious with loud noises so one of the family will accompany him outside, when he wears head phones to muffle the noise. The family do the weekly shop and he will only eat a limited range of food. He is able to make a simple sandwich with verbal prompts.



Ahmed is 16 years old with autism and learning disability; resides in children's home and attends specialist school. Daily screams, kicks, bites, and hits out at staff and peers. Receives 2:1 support throughout the day. Once or twice per week he goes into a soft play area, or 'safe space', to calm down (door closed, not locked, and teaching assistant watches him through the door window).

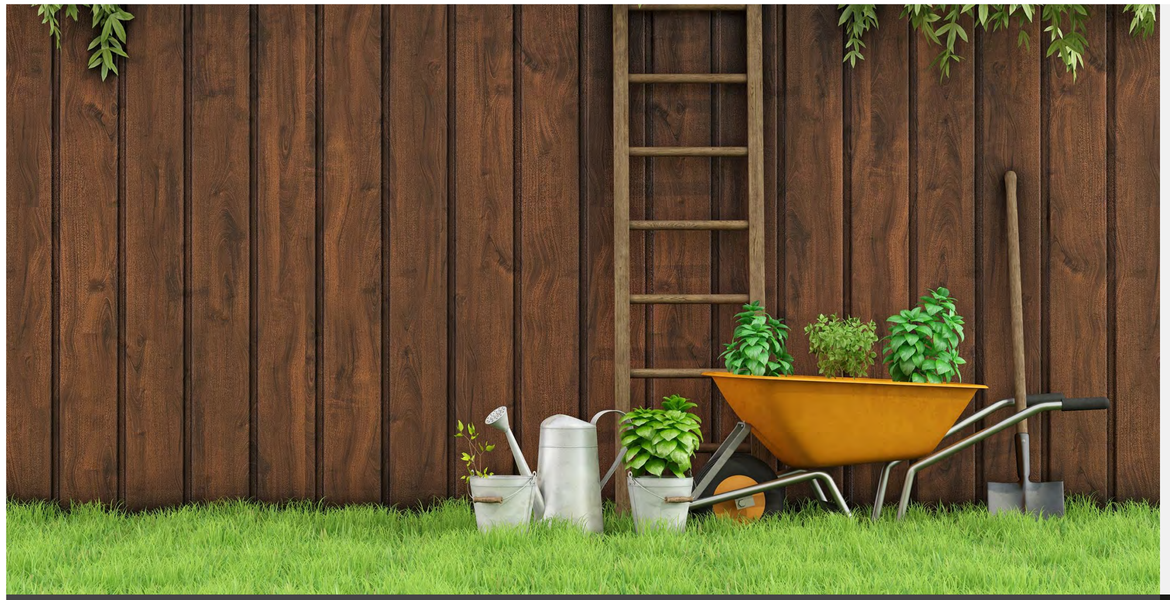
At many other times he is physically restrained using Team-Teach methods to prevent him assaulting others. He receives visits from his grandparents and mother; his father decides not to visit but could do so if he wished.

Note Bolton v KL [2022] EWCOP 24

Cyril is 70 years old with Alzheimer's and severe mobility difficulties. Moved to a one-bed apartment in a specialist dementia scheme of extra care housing purchased by his financial deputy.

From 9am-8pm he has a carer with him to assist him into and out of bed and attend to his everyday needs. At night pressure sensors around bed to alert staff to a fall. Occasionally aggressive to staff which requires them to withdraw. Staff have unrestricted access with a safe key. Cyril is able to leave the property but only with the carer.

ARRANGEMENTS AT HOME

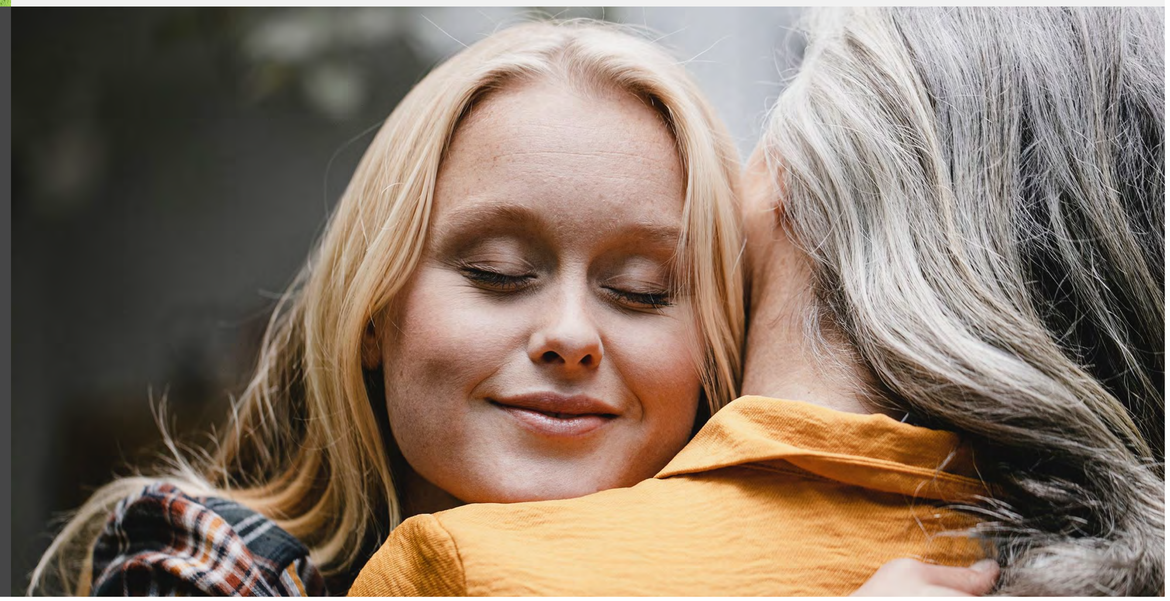


W City Council v Mrs L [2015] EWCOP 20:
93-year-old with Alzheimer's, been living in flat for 39 years. Family enclosed garden for safety, installed night-time door sensors, and she received 3 visits a day from dementia carers. Not deprived of her liberty: restrictions are not continuous or complete.

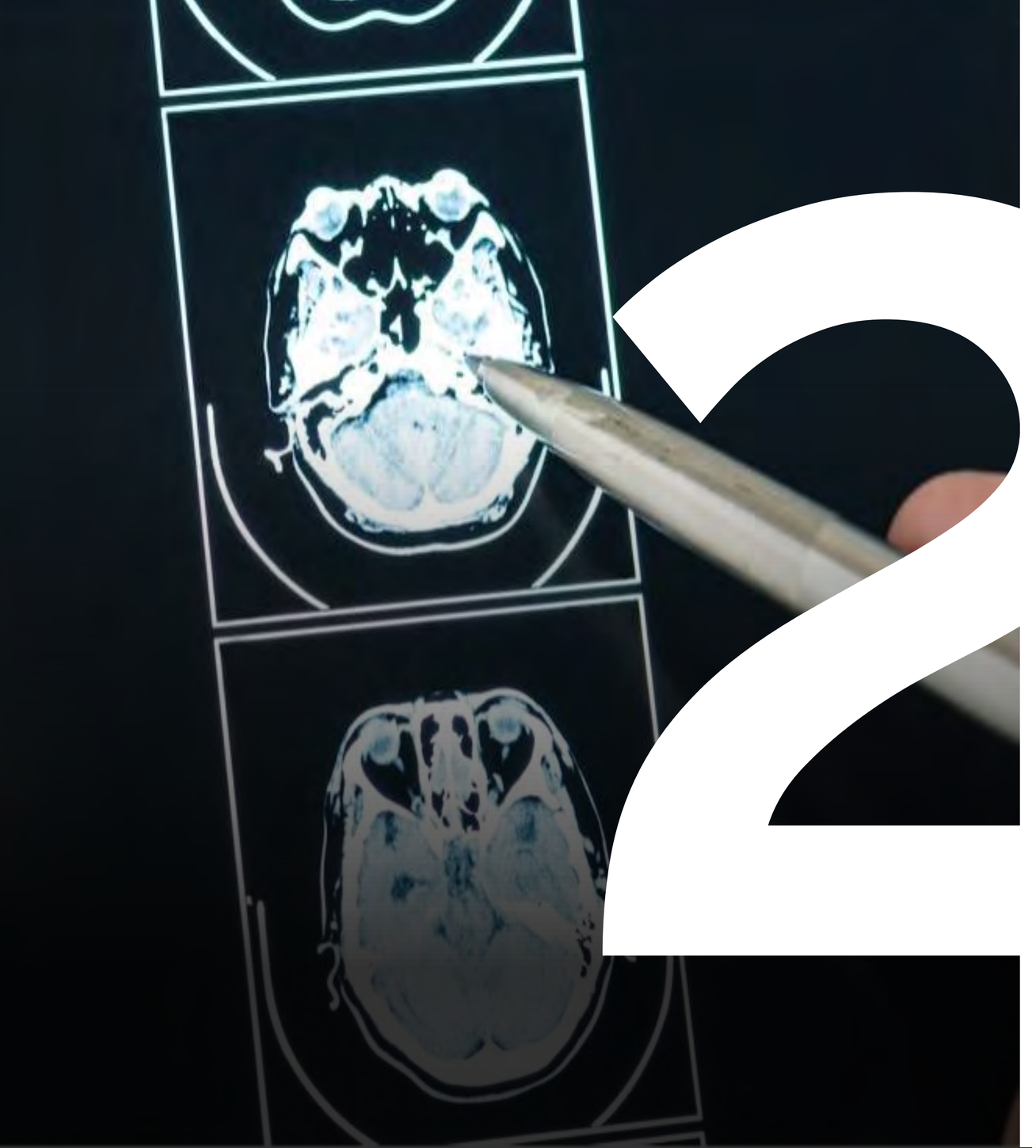
- Not a 'placement' but her own home
- Capable of expressing wishes and feelings
- Ample time to spend as she wishes

London Borough of Havering v AEL [2021] EWCOP 9
31 year old woman lives with her parents receives 24-hour care and supervision, never left to her own devices, accompanied at all times. Has opportunities to make choices but all activities are risk assessed by parents/carers who could decide at any time not to allow her to do something which they consider would compromise her safety.

Deprived of liberty



VERY FACT-SPECIFIC



GUIDANCE FOR EVIDENCE

- Incapacity
- Best interests

STREAMLINED PROCEDURE

Checklist and guidance

on pages 28-31

Re Bolton v KL [2022] EWCOP 24: 16/17-year-olds deprived of liberty will require a hearing rather than streamlined procedure

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

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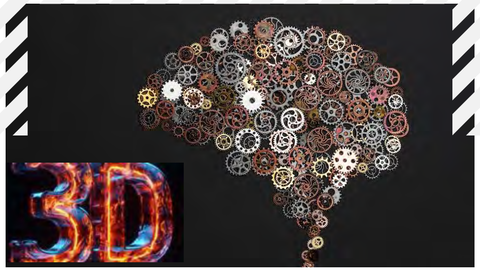
FORM COPDOL11

TRIGGER ORAL HEARING

Does P or anyone object to arrangements?



INCAPACITY

Use COP3

Accommodation for the purpose of receiving the relevant care/treatment (with restrictions)

Be criteria-focussed, evidence-based, person-centred and non-judgmental: *CT v LB of Lambeth* [2025] EWCOP 6

Longitudinal approach? *Cheshire West v PWK* [2019] EWCOP 57; *Calderdale MBC v LS* [2025] EWCOP 10

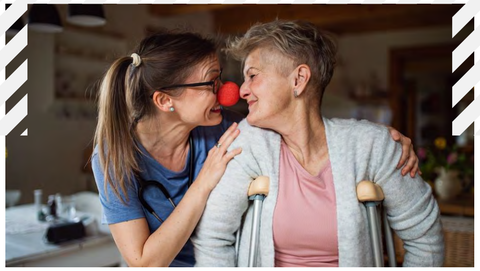
Tenancy issues?

MEDICAL

GP or psychiatrist to confirm (a) mental disorder, and (b) eligible for authorisation

Stockport MBC v KB [2023] EWCOP 58: 'Unsound mind' = 'mental disorder' as per s1 MHA 1983; GPs can charge

MHA CANNOT DEPRIVE LIBERTY OUTSIDE HOSPITAL SO USUALLY ELIGIBLE



CARE PLAN

Date on front page

Identify the liberty-restricting measures clearly

Bear in mind a more restrictive version will require (prior) judicial approval (so incorporate contingency arrangements?)

FORM COPDOL11

Serious and onerous duty of full and frank disclosure so highlight evidence:

- Needing particular judicial scrutiny
- Suggesting arrangements may not be in best interests or less restrictive
- Anything else the court needs to know

Re JDO (authorisation of deprivation of liberty) [2019] EWCOP 47

SUPPORTING EVIDENCE

P's circumstances, review arrangements, DOL, best interests, necessity, proportionality – 50 pages max

ANNEX A

THOSE WITH AN INTEREST

At least 3 consultees: support the plan? Litigation friend/rule 1.2 rep? Able to keep under review?

ANNEX B

CONSULTING P

Done by someone known to P who is best placed to express P's wishes/views (e.g. relative, friend, IMCA)

ANNEX C

TIPS

GUIDANCE

Essex CHAMBERS

JUDICIAL AUTHORISATIONS

When? How? What will happen?

See detailed guidance on COPDOL11 completion

Physical restraint, sedation, preventing contact, restricting community access

MINUTES

24 MAY 2022

- ‘Wet’ signature
- COP3 – can be social worker
- Care and support plan identifies all measures requiring authorisation
- Medical diagnosis; explicit use of ‘unsound mind’ not required
- Restraint/sedation
- Tenancy?
- At least 3 consultees: use full names; financial deputy?
- P’s wishes/feelings very important
- Get review in early
- Main carer not usually rule 1.2 representative

BE CONCISE

RE X & ORS [2014] EWCOP 25

“The evidence should be succinct and focused. Statements and reports need not be lengthy. I see no reason why the totality of the material in a ‘streamlined’ application, that is, the application, the evidence and other supporting material, need exceed something of the order of 50 pages at most.”

3

SAFEGUARDS AND RENEWALS

SAFEGUARDS

1. The authorisation to deprive liberty must be sought in advance, thereby avoiding arbitrary detention
2. Objective medical expertise determines whether the person has a mental disorder
3. Period of authorisation is 12 months maximum at a time
4. Independent review by a Judge
5. Representative close to P to fight P's corner and monitor the care plan
6. Consultation views of at least 3 people about the arrangements
7. Triggers for oral hearing and reviving dormant proceedings if change in circumstance

P's Participation

Legal aid is means-tested for community DoLS (unlike DoLS!)

Re KT [2018] EWCOP 1

1. Rule 1.2 representative? They "will give the Court reassurance that someone is fighting P's corner throughout the review period and prior to the planned judicial scrutiny of the deprivation of P's liberty at the end of the review period". They "should be someone independent of the detaining authority… The representative might be funded by the detaining authority and/or work for a provider under contract with the detaining authority but their role must be to act independently and in the best interests of P." *Re PQ* [2024] EWCOP 41 (T3). Options:
   - Lay person (usually a member of P's family or a friend) or
   - Professional (e.g. IMCA (spot purchase?) or accredited legal representative)
2. COP visitor: MCA s49 report (very rare)
3. Last resort, litigation friend: *Re PQ* [2024] EWCOP 41 (T3)

Rule 1.2 representative is required to file a COP24 witness statement (in their own words) confirming:

- Relationship to P; happy to be the representative; seen a copy of the application and supporting documents; happy with the care that P receives and approve of the care plan (or detail any issues/concerns which need to be addressed); oral hearing is not required.

If this document is filed with the application, the court will not need to make an interim directions order which will speed up the application process.

12-month Review Period

"The proceedings are dormant for the [12-month] review period but they remain ongoing … The dormant proceedings may be revived during the review period if there is a need to bring to the Court's attention a significant change in circumstances." *Re PQ* [2024] EWCOP 41 (T3) – eg more restrictive measures, regaining capacity, objections etc.

Rule 1.2 representative shall:

i. monitor the implementation of the Care Plan
ii. provide to the court updating information on the implementation of the Care Plan ahead of the review hearing no later than 14 days before the date of any review and
iii. make an earlier application for review if they consider the Care Plan no longer serves the best interests of P.

WE COVERED

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