

Gloucestershire Deprivation of Liberty Safeguards Policy



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1. Introduction

1.1 The Deprivation of Liberty Safeguards (DoLS) 2007 are part of the Mental Capacity Act 2005 (MCA). The legal procedure for the DoLS is set out in Schedule A1 of the MCA. They apply to people over the age of 18 years who are accommodated in hospitals or registered care homes and who may lack the mental capacity to consent to their accommodation for the purposes of their treatment or care. They provide a legal framework to protect the right to physical liberty contained in Article 5 of the European Convention on Human Rights. The DoLS legal framework sets out the processes that need to be followed before a Deprivation of Liberty can be legally authorised. The person subject to the authorisation then has the right to challenge their detention by applying to the Court of Protection.

1.2 This policy should be read in conjunction with relevant legislation and codes of practice and does not replace these documents. The DoLS Code of Practice is a supplement to the overarching MCA Code of Practice. Since the DoLS Code of Practice was published the definition of what amounts to a Deprivation of Liberty has changed. This is because the definition is subject to case law judgment, therefore recent case law should be referred to in order to identify what amounts to a deprivation of liberty.

1.3 On 19th March 2014, the Supreme Court delivered a judgment: (*P (by his litigation friend the Official Solicitor)(Appellant) v Cheshire West and Chester Council and another (Respondents)*) *P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council(Respondent)*. It made a decision about what amounts to a deprivation of liberty for someone who lacks the mental capacity to consent to their treatment or care arrangements. This led to what is commonly referred to as the 'Acid Test' for a Deprivation of Liberty:

Where a person lacks capacity regarding their living arrangements for the purposes of care or treatment, there are two key questions to ask:

- Is the person subject to continuous supervision and control?

- Is the person free to leave? (in the sense of removing themselves temporarily or permanently in order to live where and with whom they choose).

1.4 A person can also be subject to a deprivation of liberty in other community settings, including supported living placements and private dwellings. Young people aged 16 and 17 years old may also be considered as deprived of their liberty in any setting. In these circumstances it is not possible to make an authorisation under the DoLS, as the regime applies only to people aged 18 years old and above. When the State is aware that such arrangements are taking place, an application needs to be made directly to the Court of Protection to request that the deprivation is authorised. This process is beyond the scope of this policy (see Appendices 1 & 2 for information regarding this process). If it appears that these circumstances may apply to an individual in a community setting who is ordinarily resident in Gloucestershire, or where GCC has funding responsibility, a referral should be made to GCC's Adult Social Care department. If the person is funded by Gloucestershire NHS Clinical Commissioning group (CCG) then a referral should be made directly by the CCG.

1.5 The Deprivation of Liberty Safeguards do not apply to people detained in psychiatric hospital under the Mental Health Act (MHA) 1983. However when someone is subject to the MHA 1983 in a community setting, on leave under s.17, subject to a Guardianship Order or a Community Treatment Order (CTO) and it is considered that they are deprived of their liberty, a DoLS authorisation or an order from the Court of Protection should be considered.

2. Definitions:

2.1 Managing Authority

The registered person or body with management responsibility for the hospital or care home in which a person is, or may become deprived of their liberty.

2.2 Supervisory Body

A local authority that is responsible for considering a deprivation of liberty request, commissioning the assessments and, where all the assessments agree, authorising deprivation of liberty. Within Gloucestershire the Supervisory Body is GCC.

2.3 Deprivation of Liberty

Deprivation of Liberty is a term used in the European Convention on Human Rights about circumstances when a person's freedom is taken away. Case law defines its meaning in practice.

2.4 Restraint

The use or threat of force to help carry out an act, which the person resists, or the restriction of the person's liberty of movement whether or not they resist. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm.

2.5 Relevant Person

A person who lacks capacity in relation to their accommodation and is, or may become, deprived of their liberty in a hospital or care home.

2.6 Standard Authorisation

An authorisation given by the Supervisory Body after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in a particular hospital or care home.

2.7 Urgent Authorisation

An authorisation given by a Managing Authority for a maximum of seven days, plus a further seven days by a Supervisory Body in exceptional circumstances, that gives the Managing Authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken.

2.8 Mental Capacity

Mental capacity is always referred to as time and situation specific. Where the term 'lack of capacity' is used throughout this document it refers specifically to the mental capacity to consent to accommodation for the purposes of care or treatment in circumstances that amount to a deprivation of liberty at the time the decision needs to be made. A legal definition is contained in Section 2 of the Mental Capacity Act 2005.

2.9 Registered Care Home

This includes both registered residential and nursing homes. The Managing Authority is the person registered under Part 2 of the Care Standards Act 2000 in respect of the care home.

2.10 Hospital

This includes both private & publicly funded hospitals. In the case of NHS hospitals the NHS Trust or authority that manages the hospital is the Managing Authority. In the case of independent hospitals the Managing Authority is the person registered under Part 2 of the Care Standards Act 2000 in respect of the hospital.

2.11 DoLS Service

This is the service that carries out DoLS work on behalf of GCC. The service coordinates and commissions the DoLS assessment and review process.

2.12 Code of Practice (CoP)

This refers to the DoLS Code of Practice, which supplements the main Mental Capacity Act 2005 Code of Practice.

2.13 IMCA

Independent Mental Capacity Advocate – This is someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no one else to

support them. The IMCA service was established by the Mental Capacity Act 2005. IMCAs appointed under DoLS have a specific role and are required to have additional DoLS specific training. See DoLS CoP 7.34 – 7.41 for details on the role of the DoLS IMCA.

2.14 BIA

Best Interest Assessor – This refers to the assessor responsible for conducting a range of assessments to ascertain whether an authorisation for deprivation of liberty will be granted. The BIAs are appointed by the Supervisory Body.

2.15 MHA

The Mental Health Assessor is a separate assessor to the BIA. The MHA must conduct the mental health assessment, but may also be responsible for the eligibility assessment and mental capacity assessment where appropriate.

The MHA must be a doctor who is either approved under section 12 of the Mental Health Act 1983 or is a registered medical practitioner with at least 3 years post-registration experience in the diagnosis or treatment of mental disorder. They must undertake specific training in relation to DoLS. The MHA is appointed by the Supervisory Body.

2.16 Relevant Person's Representative.

If a person's care is authorised following a DoLS assessment, they must have a representative appointed. Often this is a family member, friend or other carer. If the person does not have a relative or friend who is able to take on this role, or it is felt that that they may not be appropriate, the local authority must appoint a paid representative. See Appendix 3 for information sheet for RPRs.

3. Purpose and scope

3.1 This document provides a framework for the implementation of the Deprivation of Liberty Safeguards within Gloucestershire and aims to set out the processes

and procedures that must be followed by those that have a duty of care towards a person who is, or may become, deprived of their liberty. This includes both Managing Authorities and the Supervisory Body.

3.2 The Supervisory Body will deliver the duties required by the DoLS. GCC is responsible for delivering the functions of the Supervisory Body in Gloucestershire. The responsibilities of the Supervisory Body are set out in the DoLS CoP and schedule A1 of the MCA. This policy does not attempt to replicate this information but to set out how the Supervisory Body should implement their responsibilities.

3.3 This policy is relevant to the following organisations and groups:

- Gloucestershire County Council
- Gloucestershire CCG
- Hospitals and Registered Care Homes
- Carers
- Service Users
- Advocacy Providers
- Care Quality Commission (CQC)
- General Practitioners
- Voluntary Sector
- Police and Ambulance Services
- Independent and Voluntary Sector Providers

This is not an exhaustive list, but represents key stakeholders.

3.4 The policy does not cover procedures for Managing Authorities to identify a deprivation of liberty or any procedures prior to the submission of a request for a standard authorisation. These procedures will need to be produced internally for each care home or hospital unit. However key responsibilities for Managing Authorities are identified.

3.5 The DoLS are part of the MCA. The MCA remains the over-arching legislation and anyone implementing this policy must also adhere to the duties set

out in the MCA. This includes the statutory principles set out in section 1 MCA:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

4. Recording Information

GCC's DoLS process is recorded using an electronic data base and in folders saved in the council's secure electronic drive.

5. Procedures/Guidelines

5.1 The Deprivation of Liberty Safeguards Service

The DoLS service consists of administrative support, Specialist Practitioners who are qualified Best Interests Assessors (BIAs) and managers. The DoLS Admin team is the first point of contact and has a key role in co-ordinating the DoLS process and the functions of the Supervisory Body.

In addition to the above, other professionals undertake roles as part of the DoLS process externally from the DoLS team:

- BIAs undertake assessments as part of the DoLS process. Some BIAs are employed by GCC in other roles within the council and undertake assessments as an addition to their main job role.
- Some BIAs are not employed by GCC and work independently. They undertake assessments for the council on a case by case

basis and are paid per individual assessment.

- Mental Health Assessors undertake assessments as part of the DoLS process. They are doctors who work independently from the council and will undertake individual assessments agreed on a case by case basis and are paid per individual assessment.

- Authorising signatories are managers within the Supervisory Body who are able to sign relevant documents to authorise a Deprivation of Liberty. In order to be able to undertake this role they should have the sufficient knowledge, training and experience of DoLS. They are required to scrutinise all the assessments and make a decision whether to accept the recommendations made by the BIA before authorising a Deprivation of Liberty. There should be a degree of separation between the day to day operation of the DoLS service and the authorising signatory in order to avoid any conflict of interest.

- IMCAs and Paid Representatives have an independent role and are employed directly by a separate agency. They provide a service at various stages throughout the process by contractual arrangement with GCC or by 'spot purchase' agreement.

5.2 The DoLS Forms

The DoLS forms are completed in order for the DoLS process to be carried out effectively. GCC uses the forms that have been produced by the Association of Directors of Adult Social Services (ADASS), which can be accessed from the ADASS website:

<https://www.adass.org.uk/mental-health-drugs-and-alcohol/public-content/new-dols-forms>

5.3 Applying for a Standard Authorisation and/or making an Urgent Authorisation

The Managing Authority has responsibility for identifying if a person who is being accommodated by them is currently deprived of their liberty or is likely to be in the future.

If the Managing Authority considers that a person who is being accommodated by them is likely to be deprived of their liberty, they must complete a request for a Standard Authorisation up to 28 days before the person is due to arrive.

The Supervisory Body must then arrange for the person to be assessed within 21 days of receiving the application.

If the Managing Authority considers that a person who is currently being accommodated by them is deprived of their liberty, they must complete an Urgent Authorisation. This also applies in relation to people who are due to arrive with the Managing Authority imminently. An Urgent Authorisation grants the legal authority to deprive a person of their liberty for up to 7 days, in order for the Supervisory Body to arrange for the necessary DoLS assessments to be carried out. To grant themselves an Urgent Authorisation the Managing Authority must be satisfied that the person is likely to meet all the qualifying requirements. The Managing Authority must also complete a request for a Standard Authorisation. It is not possible for an Urgent Authorisation to be granted unless a request for Standard Authorisation has also been completed.

The request for a Standard Authorisation and Urgent Authorisation are completed using ADASS form 1. An application must be valid in order for the Supervisory Body to accept it. This means it must include all the essential information and be signed and dated correctly. The completed form 1 should be sent to the DoLS team:

<https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/deprivation-of-liberty-safeguards-dols/making-a-dols-application/>

If someone other than the Managing Authority considers that a person is being deprived of their liberty in a hospital or registered care home and the Managing Authority has not requested a Standard Authorisation, they should firstly raise this with the Managing Authority concerned. If they feel unable to do this or they receive an unsatisfactory outcome they can raise their concerns with the Supervisory Body. Details of this process can be found in Chapter 9 of the DoLS

Code of Practice.

5.4 Identifying the correct Supervisory Body

It is important that the Managing Authority identifies the correct Supervisory Body to send the completed application to. The Supervisory Body is responsible for receiving DoLS applications for Relevant Persons (RP) who are ordinarily resident within their area:

Care Homes:

- 5.4.1 If the RP's placement is funded by GCC they will be the receiving supervisory body.
- 5.4.2 If the RP's permanent placement is funded by another local authority the application needs to be sent to the Supervisory Body within that local authority, not GCC.
- 5.4.3 If the RP is self-funding their permanent placement, the application needs to be sent to the authority where the care home is based. If the care home is in Gloucestershire, GCC will be the receiving Supervisory Body.
- 5.4.4 If the RP is residing at the care home on a temporary basis and usually lives elsewhere, the application needs to be sent to the Supervisory Body within the local authority where the RP is normally resident.
- 5.4.5 If the RP's placement is funded by the CCG, such as Continuing Health Care (CHC), the application needs to be sent to the Supervisory Body within the local authority area where the RP is ordinarily resident.

Hospitals:

- 5.4.6 Hospitals should send the application to the Supervisory Body within the local authority where the patient is normally resident. It is important to write the person's usual address on the form 1 so this can easily be identified.

5.5 Sending information securely

Confidential information such as a form 1 should be sent by email using a secure

connection. Please contact the DoLS team for advice about ensuring that you are sending the document securely. If you are sending an application by post please contact the DoLS team for advice about addressing it correctly. This is not the preferred method due to the delay between completing the application and the Supervisory Body receiving it.

Receiving a request for assessment for a Standard Authorisation

Once the Supervisory Body has received a request for a Standard Authorisation the DoLS team will check that the application is valid. If they are not satisfied that the application includes all the essential information, they will contact the Managing Authority and request that they re-submit the application. This should not delay the Supervisory Body's ability to assess, when it has clearly been identified that a person is being deprived of their liberty and they are the responsible Supervisory Body. Once the application has been accepted the details will be recorded on GCC's electronic database. The application will be scanned and stored in the Council's secure computer system.

5.6 Assessment process for a Standard Authorisation

Once the Supervisory Body has accepted an application for a Standard Authorisation, a Best Interest Assessor (BIA) and Mental Health Assessor (MHA) will be identified to complete the assessments required in order to establish whether a Standard Authorisation should be granted. The BIA will complete the age, no refusals, best interests and on most occasions the capacity assessment (ADASS form 3). The MHA will complete the mental health and eligibility assessments and on particular request the capacity assessment (ADASS form 4). It is expected that the assessments are completed within 7 days of allocation or sooner if requested by the Supervisory Body. The completed assessments should be sent to the DoLS Team by a secure email connection (see 5.5 above).

Please refer to chapter 4 of the DoLS Code of Practice for further details about the assessment process.

If it is identified by the Supervisory Body that at the time of assessment there is nobody appropriate to consult other than people providing care or treatment for the Relevant Person (RP) in a professional capacity, a s39A IMCA will be instructed by the Supervisory Body to represent the RP. The BIA will need to

consult with the IMCA before concluding their assessment.

There is a local advocacy organisation contracted to provide s39A IMCAs and a referral should in most cases be made to this organisation. If the RP does not live in Gloucestershire the Supervisory Body should check with the local IMCA service in that area that they agree to provide this service before making a referral. This service will be delivered as a 'spot purchase' arrangement. A copy of the document IMCA and RPR contract guide should be sent to the organisation.

Once assessors and, if relevant, an IMCA have been appointed this is recorded on GCC's electronic database.

5.7 Assessment Outcomes

Once the Supervisory Body has received the completed assessments it will consider these and make a decision about whether or not to grant an Authorisation to deprive the RP of their liberty. The assessments are given to one of the authorising signatories in GCC, with responsibility to grant or refuse an authorisation on behalf of the Supervisory Body.

If any of the assessments conclude that the requirements are not met then the assessment process will cease and an authorisation cannot be given. In such circumstances if there are concerns that the RP is being unlawfully deprived of their liberty a safeguarding referral may be made by the Supervisory Body to the local authority with safeguarding responsibility.

If all assessments are positive the signatory must consider any conditions and the duration of the authorisation recommended by the BIA. If they are satisfied with the assessments they authorise the arrangements which amount to a deprivation of liberty.

5.8 Appointing a Representative

As part of their assessment a BIA will identify if there is someone suitable to carry out the role of the Relevant Person's Representative (RPR). In doing so they will ensure that the person they have identified can fulfil all the functions of the RPR, including facilitating an appeal to the Court of Protection if appropriate. If the BIA is unable to identify a suitable person they will notify the Supervisory Body who will

then need to appoint a Paid Representative.

If a BIA identifies someone suitable to undertake the RPR role, their details are entered into the last page of ADASS form 5 Standard Authorisation granted.

The form 5 is sent to the identified RPR along with an information sheet about the role of the RPR. If the person agrees to be the RPR they should complete and sign to confirm this on the last page of form 5 and return this to the Supervisory Body.

If the Supervisory Body is required to instruct a Paid Representative they should identify an organisation local to the RP which is able to provide this service. This would usually be the local advocacy service. For RPs residing in Gloucestershire this is provided by the local advocacy service. If the RP resides outside Gloucestershire the Supervisory Body should first make contact with the identified paid rep service for that area to establish that they are willing to provide this service.

5.9 Instructing an IMCA

Both the relevant person and their representative have a statutory right to access an IMCA to provide additional support. The Supervisory Body must instruct an IMCA to act for the RP or the RPR if requested. GCC is informed by the DoLS Code of Practice when instructing IMCAs.

GCC's Supervisory Body automatically instructs a s39D IMCA for all RPRs and any RP who has been identified by the BIA at the time of assessment to be objecting to their accommodation. The BIA should advise the RPR that this will mean assessment information needs to be shared with the IMCA and inform the Supervisory Body if the RP or RPR has concerns about this. The BIA should also assess the RP's capacity to consent to sharing their information with an IMCA. There is a local advocacy organisation contracted to provide s39D IMCAs and a referral should in most cases be made to this organisation. If the RP does not live in Gloucestershire the Supervisory Body should check with the local IMCA service in that area that they agree to provide this service before making a referral.

5.10 Recording and notifying relevant parties of the decision.

Once the decision has been made and a representative has been identified the following paperwork will be sent to notify relevant parties of the decision:

5.10.1 A copy of the decision either form 5 Standard Authorisation granted or form 6 Standard Authorisation not granted is sent to the RP, the Managing Authority, the s39A and/or s39D IMCA and any other interested party consulted by the BIA. If the DoLS authorisation is granted the form 5 is also sent to the RPR/paid representative.

5.10.2 If the DoLS authorisation is granted a copy of the assessment information forms 3 and 4 are sent to the RP, the Managing Authority, the RPR/paid representative and s39D IMCA. The RPR is also sent the RPR information sheet (Appendix 3).

The assessment outcome is recorded on ERIC, including confirmation that the paperwork has been sent out. It is also recorded whether the RP is considered to be objecting to their authorisation.

5.11 The Managing Authority's responsibilities

The DoLS code of practice sets out the Managing Authority's responsibilities in relation to the DoLS. This policy does not attempt to replicate this and the Code of Practice should be referred to for full details.

Once an authorisation has been granted the Managing Authority is responsible for seeking to ensure that the Relevant Person (RP) and the Relevant Person's Representative (RPR) understand the effect of the authorisation and the RP's rights, including their right to appeal the authorisation via the Court of Protection, to request a review or to have an IMCA instructed (DoLS Code of Practice, 5.8 & 7.4). If the Managing Authority becomes aware that a RP's rights are not being upheld they should contact the DoLS team straight away.

The Managing Authority should have a record of who the RP's representative is and how frequently they make contact. If the Managing Authority has concerns that the representative's level of contact is not sufficient to be able to carry out their role, and these concerns cannot be resolved with the representative, they should inform the DoLS team straight away.

If the Supervisory Body is made aware that a RP's rights are not being upheld or the Representative is not fulfilling their role, they will take action to address this. This will initially involve attempting to make contact with the appointed representative. On occasion the Supervisory Body may have to appoint a different Representative and/or instruct an IMCA. When this is the case all efforts will be made to inform relevant parties including family members when appropriate.

5.12 Reviews

Chapter 8 of the DoLS Code of Practice sets out the circumstances when a DoLS authorisation should be reviewed. The statutory grounds for a review are:

- 5.12.1 The relevant person no longer meets the age, no refusals, mental capacity, mental health or best interests requirements.
- 5.12.2 The relevant person no longer meets the eligibility requirement because they now object to receiving mental health treatment in hospital and they meet the criteria for an application for admission under section 2 or section 3 of the Mental Health Act 1983.
- 5.12.3 There has been a change in the relevant person's situation and, because of the change, it would be appropriate to amend an existing condition to which the authorisation is subject, delete an existing condition or add a new condition.
- 5.12.4 The reason/s the person now meets the qualifying requirement/s is/are different from the reason/s given at the time the standard authorisation was given.

The Supervisory Body must carry out a review if one of the above grounds is met. A Managing Authority must request a review if they become aware that one of the above grounds is met. An RPR or Paid Representative can also request a review. A review can be requested by completing the first page of ADASS form 10 Review form and sending it securely to the DoLS Team.

When the Supervisory Body receives a request for a review it will check that it does appear that one of the above grounds is met. If the Supervisory Body is satisfied that a review does need to take place an assessor will be allocated in the

same way as arranging a new DoLS assessment. It may not be necessary for a full assessment to take place. A BIA or a Mental Health Assessor will be requested to complete an assessment on the qualifying requirement that has been raised in the review request. If a review has been requested to change or add a condition then a BIA will be allocated to assess this. The assessor will be expected to complete their assessment within 7 days or sooner if requested.

Once the assessment is complete the rest of ADASS form 10 will be used to record the outcome, which will be sent to a Supervisory Body authorised signatory to consider the assessment, including any addition or variation to the conditions. If in agreement they will sign to confirm the outcome of the review.

If the assessment concludes that the qualifying requirements continue to be met, this will mean the RP will remain subject to the DoLS Authorisation that was originally granted. If the assessment concludes that one of the qualifying requirements is not met the DoLS Authorisation will immediately cease. If there are concerns that the RP is being unlawfully deprived of their liberty a safeguarding referral may be made by the Supervisory Body to the local authority with safeguarding responsibility.

The Supervisory Body should consider whether the RP or the RPR would benefit from the support of an IMCA during the review process. An IMCA should be instructed in the same way as mentioned in 5.9 above if it is deemed appropriate.

5.13 Making a further application when a DoLS Authorisation is about to expire

When a Relevant Person is subject to a DoLS authorisation and this authorisation is due to expire, the Managing Authority must consider whether the RP is likely to still be deprived of their liberty when that authorisation expires. If the Managing Authority is of the view that the Relevant Person will require a further DoLS assessment then they should make an application to the Supervisory Body responsible up to 28 days before the expiry date. The Managing Authority can do this by completing ADASS form 2. The Supervisory Body will receive and consider accepting the application in the same way as mentioned in 5.5 above. They should arrange an assessment within 21 days of receiving the application. An assessment for a Standard Authorisation is arranged in the same way as

mentioned in 5.5 above. It is not possible to complete an ADASS form 2 after an authorisation has expired. The Supervisory Body will not accept a form 2 in these circumstances. An application for a Standard Authorisation and completion of an Urgent Authorisation if applicable on form 1 would need to be completed, please see 5.3 above.

5.14 Equivalent Assessments

The DoLS legislation allows for equivalent assessments to be used instead of undertaking a new assessment when it is required to assess an RP under the DoLS. An equivalent assessment for any of the qualifying requirements can be used if it does not appear that any of the RP's circumstances have changed, including their accommodation, and the assessment took place within the previous year.

6. Appeals, the Court of Protection and Complaints

Managing Authority Appeals

Once an authorisation has been granted or refused by the Supervisory Body, the Managing Authority cannot appeal against the decision. However, the Managing Authority can appeal against the assessment process if it believes there was a fault in the assessment process or negligence on the part of the assessor. They should do so by contacting the DoLS team. If this cannot be resolved informally, the dispute can be investigated through the Supervisory Body's complaints procedures.

Complaints

Complaints should be dealt with through the relevant Managing Authority or Supervisory Body complaints procedure. GCC's complaints process can be accessed here:

corporatecomplaintsteam@gloucestershire.gov.uk.

The Court of Protection

The Court of Protection, established by the MCA, provides a process to allow anybody deprived of their liberty the right to speedy access to a court that can

review the lawfulness of their deprivation of liberty. It is the responsibility of the Managing Authority to ensure that the relevant person and their representative are aware of their rights to apply to the court, both before the authorisation is granted and afterwards. Also that they have the information required to make a referral to the Court. The RP and their representative should be made aware of the types of questions/issues they can take to the Court as stated in the DoLS Code of Practice. The Managing Authority and Supervisory Body are required to comply with any conditions imposed by the Court following a hearing.

7. Information Sharing

All information shared and recorded during the DoLS process should be in accordance with Chapter 16 of the MCA Code of Practice and with the principles outlined in the Gloucestershire Information Sharing Agreement, available at:

<https://www.gloucestershire.gov.uk/media/2081761/gloucestershire-information-sharing-partnership-agreement-v40-july-2018-final.pdf>

8. Related Policies, Procedures and legislation

Mental Capacity Act Code of Practice, available at:

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Gloucestershire Multi Agency MCA Policy, available at:

<https://www.gloucestershire.gov.uk/health-and-social-care/adults-and-older-people/mental-capacity-act/>

Safeguarding Adults Multi-Agency policy and procedures is available at:

<https://www.gloucestershire.gov.uk/gsab/i-am-a-professional/multi-agency-safeguarding-policy-and-procedures/>

Mental Capacity Act 2005 available at:

<http://www.legislation.gov.uk/ukpga/2005/9>

The Mental Health Act 1983 available at:

<http://www.legislation.gov.uk/ukpga/1983/20/contents>

The Mental Health Act Code of Practice available at:

<https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>

9. Useful Contacts

Gloucestershire County Council DoLS Team: Tel. 01452 426005

Email: dolsservice@gloucestershire.gov.uk

GCC Adult Helpdesk – 01452 426868

Office of the Public Guardian: Tel. 0300 456 0300

Appendix 1

DEPRIVATION OF LIBERTY IN A COMMUNITY SETTING

When the local authority (GCC) becomes aware that someone is potentially being deprived of their liberty in the community either in supported living or in their own home an application should be made to the Court of Protection for authorisation of that deprivation.

Determining what is a deprivation of liberty: the 'acid test' provides as to what may constitute a deprivation. This is:

- the person lacks capacity regarding their accommodation and living arrangements
- Is the person is subject to continuous supervision and control?
- Is the person free to leave?

This can include issues such as: the person being restrained using both physical devices, such as cot sides, and medically, using medication to control someone's behaviour and/or not being allowed to leave the premises alone.

If a person is being placed in a community setting, any deprivation of liberty should be identified at the earliest stage in the assessment/support planning process.

The GCC DoLS Service cannot authorise deprivations of liberty in the community. Applications must be made to the Court of Protection to authorise such cases.

Once GCC is made aware that someone may be being deprived of their liberty they must carry out a best interest assessment of the person being deprived to see initially whether there is any less restrictive way of caring for them. If it is not possible to care for someone in a less restrictive way then they must apply to the Court of Protection for authorisation to continue depriving the person of their liberty. As part of this process they must consult with the people who are important to the person being deprived including family, friends, and the people who are caring for them.

If the person has a Lasting Power of Attorney or Deputy for health and welfare decisions, then they can only be deprived of their liberty under Dols with the agreement of this person. If a person has made an advance decision refusing a particular treatment, then the Dols cannot be used to deprive them of their liberty to deliver that treatment.

If the person does not have any family or friends to consult, an Independent Mental Capacity Advocate (IMCA) could be provided to advocate on their behalf.

If the person's care is wholly funded by health, the CCG is responsible for making

the application to the Court of Protection to authorise the deprivation.

Practitioners should seek legal advice regarding taking cases to the Court of Protection.

The Court of Protection has clarified the response that local authorities are required to undertake when a person meets the “acid test” in a community setting:

1. The streamlined “Re X” procedure should be used,
2. Family members are generally trusted by the Court as capable of advocating for P’s best interests;
3. In cases where there are no suitable family members to consult, the Court can appoint a Special Visitor to represent the person. If no suitable person can be identified before the application is made this should be brought to the attention of the court.

Appendix 2

The Court of Protection Process (Re X Procedure)

Authorising a Deprivation of Liberty taking place within a domestic setting

Taken from: The Court of Protection - Application to Authorise a Deprivation of Liberty

Re: X Procedure; **Streamlined Procedure**

APPLICATIONS UNDER SECTION 16(2)(a) FOR AN ORDER AUTHORISING DEPRIVATION OF LIBERTY UNDER SECTION 4A(3) AND (4) PURSUANT TO A STREAMLINED PROCEDURE

1. This Part sets out the procedure to be followed in applications to the court under section 16(2) (a) to authorise deprivation of liberty under section 4A (3) of the Act pursuant to a streamlined procedure and applies only to such applications. Reference should be made generally to the decision of the
2. Supreme Court in *P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council and another; P and Q (by their litigation friend the Official Solicitor) v Surrey County Council* [2014] UKSC 19, and in relation to the procedure in these cases, to the judgments of the President of the Court of Protection in *Re X and others (Deprivation of Liberty)* [2014] EWCOP 25 and in *Re X and others (Deprivation of Liberty) (Number 2)* [2014] EWCOP 37.

Making the application

3. To bring proceedings, the applicant must file an application using form COPDOL 11, verified by a statement of truth and accompanied by all attachments and evidence required by that form and its annexes.
4. The application form and accompanying annexes and attachments are specifically designed to ensure that the applicant provides the court with essential information and evidence as to the proposed measures, on the basis of which the court may adjudicate as to the appropriateness of authorising a deprivation of liberty, and in particular to identify whether a case is suitable for consideration without an oral hearing. The use of the form and

its annexes is mandatory and they must be provided fully completed and verified by the required statements of truth.

5. The applicant must ensure that the evidence in the application form, accompanying annexes and attachments is succinct and focussed.
6. A separate application must be made for every individual for whom the applicant requests an authorisation of deprivation of liberty. However, where there are matters in relation to which the facts are identical for a number of individuals, such as common care arrangements, the applicant may, in addition to addressing the specific issues relating to each individual, attach a generic statement dealing with the common care arrangements or other matters common to those individuals.

Deponent

7. The applicant must consider carefully who should complete the form and each annex with regard to the nature of the evidence required by each. There is no requirement that the same individual should complete and verify by statement of truth the form and each annex and indeed it might be inappropriate for this to be the case, where different people are best placed to provide evidence on different matters.

Applicant's duty of full and frank disclosure

8. The applicant has a duty of full and frank disclosure to the court of all facts and matters that may have an impact on the Court's decision whether to authorise the deprivation of liberty. The applicant should therefore scrutinise the circumstances of the case and clearly identify in the evidence in support (in Annex A to form COPDOL 11) factors—
 - (a) Needing particular judicial scrutiny;
 - (b) Suggesting that the arrangements in relation to which authorisation is sought may not in fact be in the best interests of the person the application is about, or the least restrictive option; or
 - (c) Otherwise tending to indicate that the order should not be made.

9. Pursuant to this duty, the applicant should also identify those persons, not consulted by the applicant, who are in the same category under paragraph 15 as persons with whom the applicant has consulted. Those persons must be listed in Annex B on form COPDOL 11 together with an explanation in that Annex of why they have not been consulted.

Draft order

10. The application must be accompanied by a draft of the order which the applicant seeks, including the duration of the authorisation sought, appropriate directions for review, and liberty to apply for its reconsideration.

Consultation with the person the application is about

11. Consultation with the person the application is about must take place before the application form is lodged with the court. The applicant must arrange for that person to be informed of the following matters—
 - (a) That the applicant is making an application to court;
 - (b) That the application is to consider whether the person lacks capacity to make decisions in relation to his or her residence and care, and whether to authorise a deprivation of their liberty in connection with the arrangements set out in the care plan;
 - (c) What the proposed arrangements under the order sought are;
 - (d) That the person is entitled to express his or her views, wishes and feelings in relation to the proposed arrangements and the application, and that the person undertaking the consultation will ensure that these are communicated to the court;
 - (e) That the person is entitled to seek to take part in the proceedings by being joined as a party or otherwise, what that means, and that the person undertaking the consultation will ensure that any such request is communicated to the court;
 - (f) That the person undertaking the consultation can help him or her to obtain advice and assistance if he or she does not agree with the proposed arrangements in the application.

12. The person undertaking the consultation must complete Annex C to form COPDOL 11.

13. The applicant must confirm that the person the application is about has been supported and assisted to express his or her views, wishes and feelings in relation to the application and the arrangements proposed in it, and encouraged to take part in the proceedings to the extent that he or she wishes, in accordance with section 4(4) of the Act.

Consultation with other persons regarding the making of the application

14. The consultation required by paragraph 15 below must take place before the application is lodged with the court.

15. The applicant must ensure that the following people are consulted about the intention to make the application—

- (a) Any donee of a lasting power of attorney granted by the person;
- (b) Any deputy appointed for the person by the court; together with, if possible, at least three people in the following categories—
- (c) Anyone named by the person the application is about as someone to be consulted on the matters raised by the application; and
- (d) Anyone engaged in caring for the person or interested in his or her welfare.

16. When consulting such people, the applicant must inform them of the following matters—

- (a) That the applicant is making an application to court;
- (b) That the application is to consider whether the person the application is about lacks capacity to make decisions in relation to his or her residence and care and whether he or she should be deprived of liberty in connection with the arrangements set out in the care plan;
- (c) What the proposed arrangements under the order are; and
- (d) That the applicant is under an obligation to inform the person the application is about of the matters listed in paragraph 11 above, unless in the circumstances it is inappropriate for the applicant to give that person such information.

Dispensing with notification or service of the application form

17. Provided that the court is satisfied as to the adequacy of consultation with the person the application is about in accordance with paragraphs 11 to 13, and with other persons with whom consultation should take place in accordance with paragraphs 14 to 16, the court may dispense with notification of the issue of the application under rules 42, 69 and 70.

Court fees

18. An application fee is payable for all applications, and if the court decides to hold a hearing before making a decision, a hearing fee will be payable.

19. If an application is received without a fee it will be treated as incomplete and returned.

Applications suitable for the streamlined procedure

20. As soon as practicable after receipt the court officers will consider the suitability of the application to be the subject of paper determination, or to be considered at an oral hearing.

21. All applications considered suitable for the streamlined procedure will be referred to a judge for consideration without an oral hearing, as soon as practicable after receipt.

Applications not suitable for the streamlined procedure

22. If the judge considers that the application is not suitable for the streamlined process, case management directions shall be given.

Applicant to supply a copy of the order to each person consulted

23. The applicant must provide all persons consulted, including the person the application is about, with a copy of the order made pursuant to the streamlined procedure granting or refusing the authorisation of the deprivation of liberty.

Review of the authorisation

24. An application for a review of the authorisation of the deprivation of liberty must be made in accordance with the terms of the order.

Checklist for information required:

Every question on all of 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:

1. **COPDOL11** Application under section 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
2. **Annex A** Evidence in support of an application under section 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
3. **Annex B** Consultation with people with an interest in an application under section 4A(3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty
4. **Annex C** Consultation with the person the application is about for an application under section 4A (3) and 16(2)(a) of the Mental Capacity Act 2005 to authorise a deprivation of liberty.

You must also supply:

5. COP3 Evidence of Capacity
6. Mental Health Assessment
7. A copy of any Advance Decision
8. A copy of any Lasting Power of Attorney (LPA)
9. Any relevant Court orders
10. Care Plan
11. Best Interest Assessment
12. COP24: Witness Statement

13. The application fee

Link to the COPDOL11 form: Application to the Court

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689223/copdol11-eng.pdf

Link to the COP3 form: Assessment of Capacity

<https://formfinder.hmctsformfinder.justice.gov.uk/cop003-eng.pdf>

Link to the COP24 form: Witness Statement

<https://formfinder.hmctsformfinder.justice.gov.uk/cop024-eng.pdf>

Appendix 3

Information Sheet for RPRs

Relevant Person's Representative:

A guide to your rights and responsibilities

- The Mental Capacity Act (the MCA) sets out the law and details what to do when acting and making decisions on behalf of adults who lack the capacity to make those decisions themselves.
- The Deprivation of Liberty Safeguards (DoLS) are part of the MCA (at Schedule A1 of the MCA); they relate to people over 18 who are in a care home or hospital and who lack capacity to make the decision about being there. If the Relevant Person (RP) is not able to leave the placement (even if they don't want to leave or would be unable to do so or would be stopped if they tried to do so) AND staff supervise them all the time and control what happens (staff are aware of where they are and what they're doing, even if not closely supervising and there is a routine or care interventions to which the person can't consent) AND the state (Gloucestershire County Council) is aware of the person's situation – then person is assessed as being deprived of their liberty.
- Any deprivation of liberty must be authorised and where a person is deprived of his/her liberty in a care home or hospital, the DoLS process involves a careful assessment of their situation to make sure that what is happening is necessary and a proportionate response to the risks they face. It assesses whether the current arrangements are in the person's best interests.
- If so, a Standard Authorisation is issued by the relevant local authority (known as the Supervisory Body). This is for a set period of time; it can be for up to one year. Conditions can be placed on the hospital or care home (known as the Managing Authority) about the deprivation of liberty.
- Whenever a Standard Authorisation is issued a Relevant Person's Representative (RPR) is appointed, as part of the safeguards offered to the

person.

- A RPR must be:
 - Over 18
 - Able to keep in regular contact with the relevant person
 - Not employed by or be financially involved with the Managing Authority
 - Not employed by the Supervisory Body
 - Willing to be appointed
 - A RPR doesn't have to be a relative and doesn't have to be the same person as the 'nearest relative' under the Mental Health Act
 - A RPR doesn't have to be someone who agrees with the arrangements which deprive the person of their liberty

- A RPR is chosen by:
 - The relevant person, if they have capacity to do so OR if they don't have capacity;
 - An Attorney appointed under a Lasting Power of Attorney for health and welfare or a Deputy for health and welfare decisions OR, if there is no LPA or Deputy;
 - The Best Interest Assessor who carried out the best interests assessment for the DoLS process.

- Only one RPR can be appointed – the role cannot be shared.

- The appointment of a RPR is made for the same length of time as the Standard Authorisation. A RPR can resign at any time. If there are concerns about their work a RPR can be replaced by the Supervisory Body.

- A RPR has the right to their own advocacy to support them in their role. An Independent Mental Capacity Advocate (IMCA) can be appointed to help the relevant person or the RPR or both. The role of an IMCA appointed in this way is limited to support about the deprivation of liberty. An IMCA can be appointed at the beginning of the Standard Authorisation, or can be requested by the RPR later.

- A RPR is required to:
 - Maintain regular contact with the relevant person
 - Support the person with all matters concerning their deprivation of liberty
 - Represent the person in all matters concerning their deprivation of liberty.

This could mean talking to the Managing Authority, making a complaint, requesting the Supervisory Body to carry out a review of the Authorisation or making an application to the Court of Protection.

- Reviews - A review can be requested of the Supervisory Body if it is felt that the RP no-longer meets any of the requirements of a DoLs e.g. if it is felt that the RP has regained capacity or is no longer experiencing a mental disorder or if it is felt it is no-longer in their best interests to be where they are. A review can be requested by the RP, by their RPR, by the Managing Authority or the Supervisory Body. The particular requirement identified will be re-assessed. A request for a review is sent to the Supervisory Body.

- Application to the Court of Protection - The RP has the right to apply to Court for a decision regarding their deprivation of liberty. Even if everyone else involved feels it is in the person's best interests to be where they are, the person has the right to make an application to Court. The RPR may notice this, or the Managing Authority may inform the RPR that the person is objecting, either directly or indirectly, to their placement – e.g. asking to leave, asking to go home, trying to leave, asking for help to go or by their general behaviour indicating an objection. If the RP is consistently objecting to being where they are their RPR must start the process of issuing court proceedings. This is a requirement even if you, as the RPR, feel the placement is in the person's best interests, you must still make an application to Court. An IMCA can support the RPR to do this – and can be requested at this point. An application can also be made if the person feels they have capacity, or if they feel the Standard Authorisation was not properly issued.

A RPR also has a separate duty to assess for him/herself whether to make an application to the Court on the Relevant Person's behalf, irrespective of whether the RP is asking him/her to do this. When doing so, the RPR must apply the best

interests principle (set out at Section 4 of the MCA).

- Court process: The RP and the RPR are entitled to non means-tested Legal Aid to enable them to apply to Court. The RPR generally needs to go to a solicitor to start the application. When the case comes to Court, the Official Solicitor (a Government officer whose role is to represent children and vulnerable adults in legal proceedings) can be asked to take over the role of acting for the RP.

- Rights - The RPR has the right to:

- Be informed of the Standard Authorisation and receive a copy of assessments

- Be informed about the complaints processes

- The Managing Authority must support contact (at reasonable times)

- Request an IMCA

- Request a review

- Be consulted as part of any further assessments

- Make an application to the Court of Protection

- Where to get help:

- Speak to staff in the care home or hospital where RP is residing or to any social worker, mental health worker or other professional involved

- Contact Gloucestershire County Council (the Supervisory Body) Deprivation of Liberty Safeguards service T: 01452 4236005 or E: dolsservice@gloucestershire.gov.uk

- Further Information is available at the following websites:

MIND: www.mind.org.uk;

Age UK: www.ageuk.org.uk ;

SCIE: <http://www.scie.org.uk/publications/atag glance/atag glance43.asp> ;

GCC: <https://www.gloucestershire.gov.uk/gsab/i-am-a-friend-relative-or-carer/deprivation-of-liberty-safeguards-dols/>