

# London Region Community Deprivation of Liberty (DoL) Quick Guide (Version 1)



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## The purpose of this quick guide:

To support continuing healthcare teams working with individuals in receipt of Continuing Healthcare funded care in own homes or tenancy-based accommodation (for example, supported living) that lack capacity to consent to their care and treatment support, where they may be deprived of their liberty.

**Developed by:** NHS London CHC/Continuing Care MCA/DoLS Task to Finish Group.

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# Glossary



Term / Abbreviation	What it stands for
DoL	Deprivation of Liberty
DoLS	Deprivation of Liberty Safeguards
MCA	Mental Capacity Act (2005)
MC(A)A	Mental Capacity (Amendment) Act (2019)
ACP	Advance Care Planning
ADASS	Association of Directors of Adult Social Services
ADCS	Association of Directors of Children's Services
ADRT	Advanced Decision to Refuse Treatment
AMCA	Approved Mental Capacity Professional
LA	Local Authority
CHC	Continuing Healthcare
CC	Continuing Care
BIA	Best Interest Assessor
ICB	Integrated Care Board
CoP	Court of Protection
CQC	Care Quality Commission
DHSC	Department of Health and Social Care
ECHR	European Convention of Human Rights
HEE	Health Education England
HRA	Human Rights Act (1998)
ICS	Integrated Care Systems
IMCA	Independent Mental Capacity Advocates
LPA (Health and Welfare)	Lasting Power of Attorney
MHA	Mental Health Act (1983, amended 2007)
NHS	National Health Service
CYP	Children and Young People
YP	Young Person refers to a 16–17-year-old
SG	Safeguarding



# Background and Context



Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. The Deprivation of Liberty Safeguards (DoLS) is a procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm. The detention must be 'imputable to the state', care and treatment is imputable to the state if it has been arranged or provided by the Local Authority / NHS.

In 2014, the Supreme Court agreed an 'acid test' for people who are lacking capacity to consent to, or who refuse their care arrangements - (P v Cheshire West and Chester Council and Q v Surrey County Council, (2014 UKSC 19). The '**acid test**' states that an individual is deprived of their liberty if they:

- Lack the capacity to consent to their care/treatment arrangements
- Are under continuous supervision and control
- Are not free to leave – (the Law Society advises that the focus should be not on whether it seems the person is wanting to leave, but on how those who support them would react if they did want to leave)

The Deprivation of Liberty Safeguards are only applicable when a person is in hospital or a care home. **If a person is living in another setting it is still possible to lawfully deprive the person of their liberty in their best interests, via an application to the Court of Protection or the high court (family court). Depriving a person of their liberty within a community setting is referred to as Community DoL – the lawful authorisation of arrangements enabling care or treatment which give rise to a deprivation of liberty for the person.**

**Who is responsible for overseeing DoLS Applications:** The organisation providing/proposing the care is responsible for making the application.

- Care Homes, Hospitals, Local Authority funded care in own home/supported living, self-funders: **Usually the Local Authority**
- Young People under the age of 18: **Usually the Local Authority.**
- Individuals in receipt of Continuing Healthcare funded care in own homes/supported living: **Integrated Care Boards**



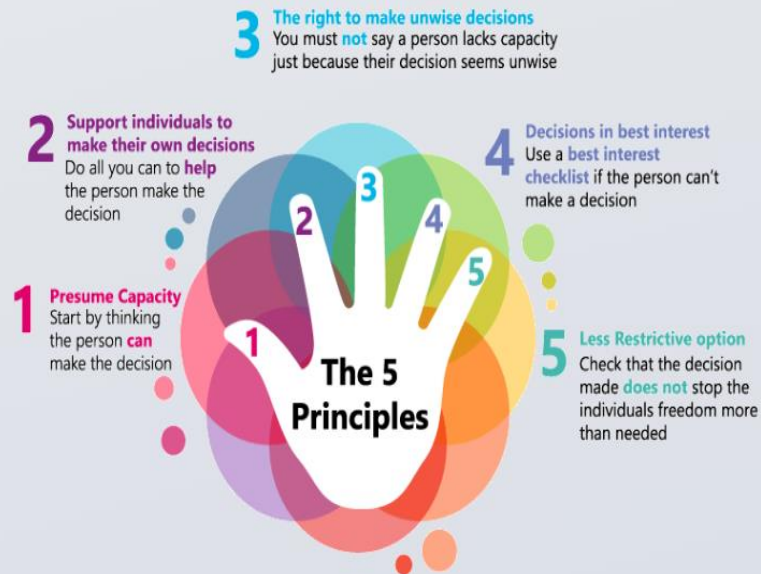
# The Mental Capacity Act (Recap)



The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:

- By empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process
- By allowing people to plan ahead for a time in the future when they might lack the capacity.

## The Five Statutory Principles



## 5 Principles

- Assume a person has capacity unless proved otherwise.
- Do not treat people as incapable of making a decision unless you have tried all practicable steps to help them.
- Do not treat someone as incapable of making a decision because their decision may seem unwise.
- Do things or take decisions for people without capacity in their best interests.
- Before doing something to someone or making a decision on their behalf, consider whether you could achieve the outcome in a less restrictive way.

## Remember

The presumption that P has capacity is fundamental to the Act. It is important to remember that P has to 'prove' nothing:

- Outside the court setting, if you are going to take action in the name of P's best interests, you will have to show why you have a reasonable belief that they lack capacity to make the decision(s) in question, and that you have taken reasonable steps to establish this.
- If you are in court, you will need to show the judge why – on the balance of probabilities – it is more likely than not that P lacks capacity to make the decision(s) in question.

[The Mental Capacity Act Toolkit: Aims to help support health and social care professionals working with individuals whose decision-making capacity is limited, fluctuating, absent or compromised.](#)



# Identifying a Community DoL: Determining level of Priority



## What is a Community Deprivation of Liberty?

- A person living within the community who has been determined to lack capacity to make decisions for themselves about their support and accommodation.
- The detention is 'imputable to the state', care and treatment is imputable to the state if it has been arranged or provided by the Local Authority / NHS.
- The individual is receiving a package of support. ICBs are responsible for making DoL applications for Individuals in receipt of Continuing Healthcare funded care in own homes/supported living.
- The below Acid Test is met.
- Where the Acid Test met a person is considered to be being deprived of their liberty?

Resources: [NHS Sussex Guide to DoL Leaflet](#)

## What constitutes a deprivation of liberty?

The Acid Test tells us that a person is being deprived of their liberty because they are confined.

For every person who has restrictions and deprivations within their support, we must always consider:

- Is this the least restrictive option?
- Is this deprivation in the person's best interests?

If we fail to apply this criteria, we are at risk of acting unlawfully.

## Identifying a Community Deprivation of Liberty?

The London Region CHC/CC MCA & DOL Task to Finish Group have developed a Continuing Healthcare Deprivation of Liberty Scoping Tool which can be utilised by Continuing Healthcare Staff to aid the identification that an individual in receipt of Continuing Healthcare funded care is being deprived of their liberty. A copy of this tool can be obtained from your Senior CHC Lead.

## Points to consider re are the restriction necessary and proportionate:

- Are the restrictions used frequently and/or for prolonged periods of time?
- Do the restrictions impact significantly on the person's freedom of movement?
- Could there be a significant psychological impact on the person, e.g., are they objecting or distressed?
- Are relatives or carers concerned about the restrictions placed on the individual?
- Are the restrictions considered to be in the person's best interests?
  - Are they to protect the individual from harm?
  - Are the restrictions a proportionate response to the likelihood and severity of the potential harm?

## Determining Level of Priority?

All individuals that meet the Acid Test require an application to the Court of Protection. A prioritisation tool can be utilised to support managing demand due to limited resources, alongside additional mitigating measures to meet the demand in the longer term.

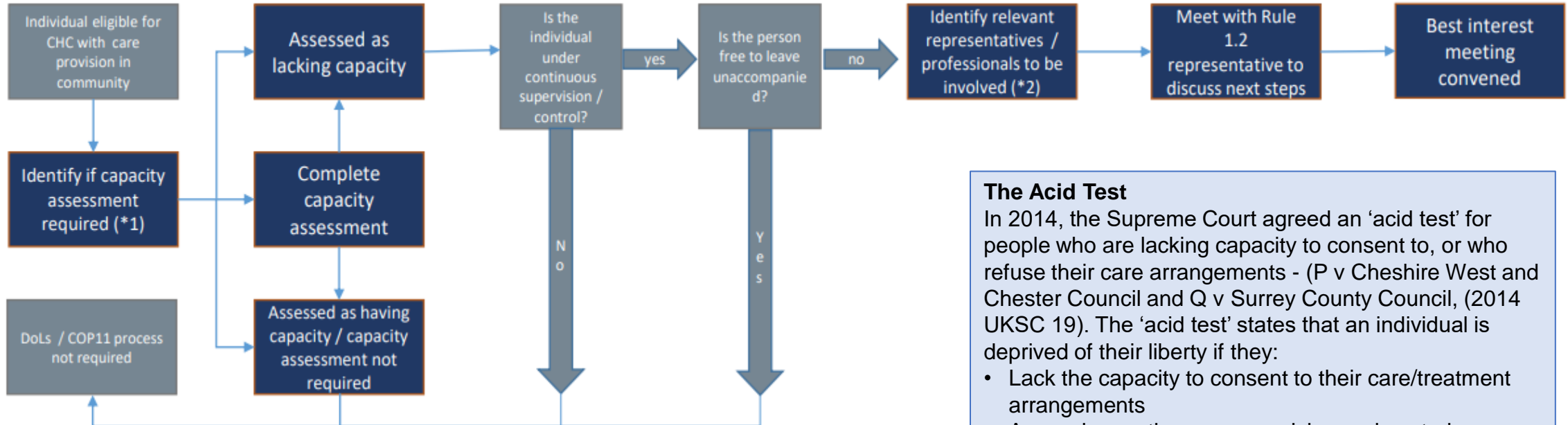
The London Region Continuing Healthcare Deprivation of Liberty Scoping Tool can be used to support determining priority.

All ICB's should have a risk stratification process in place to support determining the priority of CHC Community DoLS.



# Community DoL Process at a glance

(Developed by NHS NWL ICB)



## The Acid Test

In 2014, the Supreme Court agreed an 'acid test' for people who are lacking capacity to consent to, or who refuse their care arrangements - (P v Cheshire West and Chester Council and Q v Surrey County Council, (2014 UKSC 19). The 'acid test' states that an individual is deprived of their liberty if they:

- Lack the capacity to consent to their care/treatment arrangements
- Are under continuous supervision and control
- Are not free to leave – (the Law Society advises that the focus should be not on whether it seems the person is wanting to leave, but on how those who support them would react if they did want to leave)

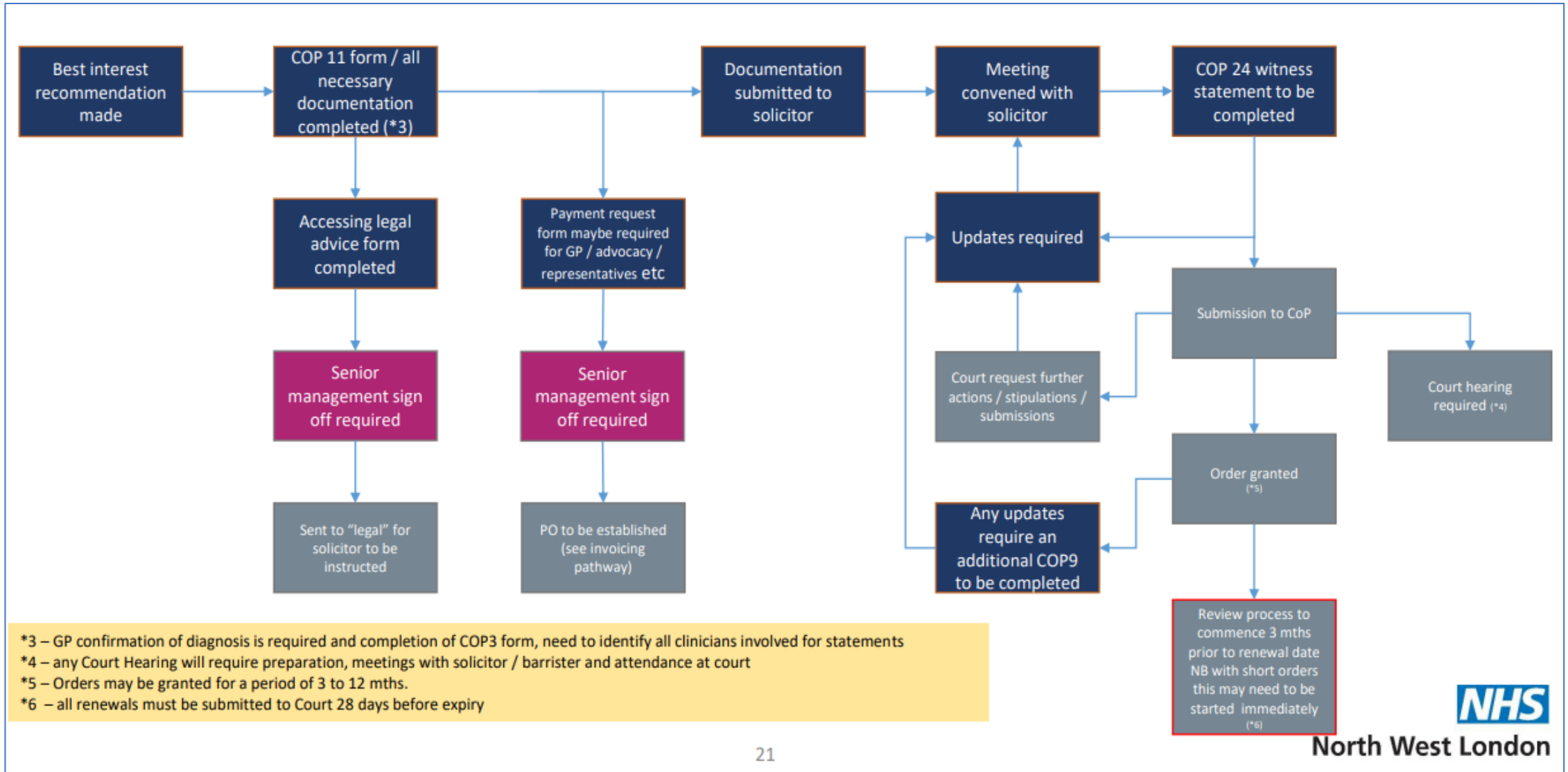
\*1 - Capacity assessments – regarding the individual's ability to consent to their care plan

\*2 - whilst identifying reps it is important to consider any previous court orders relating to reps / PoA should have been correctly identified during the CHC assessment but if not, confirmation required / if individual is unbefriended IMCA will be required who may act as Rule 1.2 rep. but may not therefore several reps / advocates may need to be sourced / identified





# Community DoL Process at a glance



\*3 – GP confirmation of diagnosis is required and completion of COP3 form, need to identify all clinicians involved for statements  
 \*4 – any Court Hearing will require preparation, meetings with solicitor / barrister and attendance at court  
 \*5 – Orders may be granted for a period of 3 to 12 mths.  
 \*6 – all renewals must be submitted to Court 28 days before expiry

Review process to commence 3 mths prior to renewal date NB with short orders this may need to be started immediately (\*6)

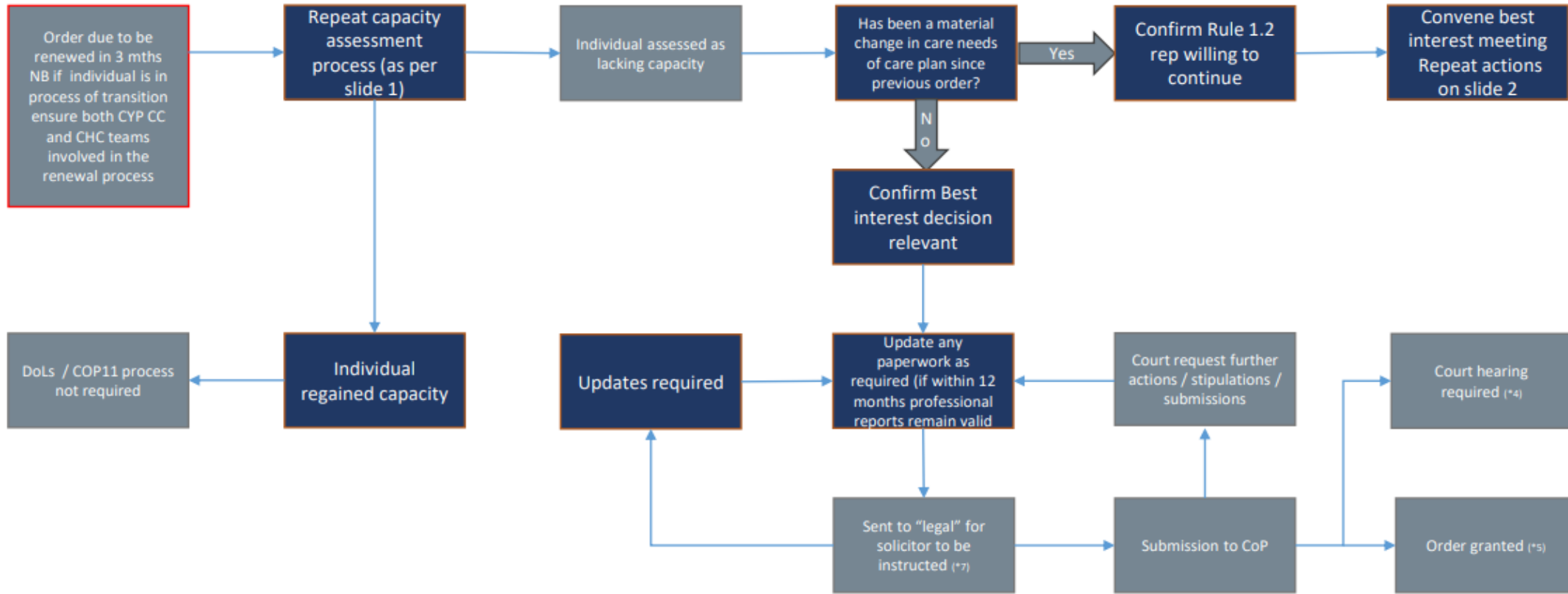


North West London





# Community DoL Process at a glance



\*7 – legal request forms should incorporate renewal however, if this is not applicable then follow process on slide 2 for accessing legal support



North West London



# Putting the person at the centre



Involving people in decisions about their care is intrinsic to the principles of the MCA and should be evident in every care and support plan. Meaningful Involvement is based on a sharing of power between the person (their family), provider and commissioner.

## Person-centred, MCA-compliant care planning (SCIE 2017)

- Care and support plans are developed with the person as far as possible. The conversation is led by the person who knows best about their needs and preferences.
- Care planning follows a social model of disability.
- There is a focus on goals and aspirations, attempts to take into account what the person would like to achieve with their care and support.
- Care planning explores potential for change, opportunities to develop capacity and ability
- Attempts to take account of the person's wishes and views as far as possible.
- The professional provides information about what the service can offer.
- They agree what will be in the care and support plan. A copy of the plan is made available to the person and/or their representative.
- The emphasis is on safe care that respects a person's right to take risks that they understand.
- The care planning conversation takes place at a time when the person is most or more likely to have capacity.

### MCA /Dols

- [A Carer's guide to the Mental Capacity Act](#)
- [Age UK Deprivation of Liberty Safeguards Factsheet](#)
- [Next of Kin: Understanding decision making authorities](#)
- [Voice Ability: Info on Rule 1.2 Representative](#)

### Court of Protection

- [A basic guide to the Court of Protection](#)



## Involvement in the cycle of care and support planning

### What to look for

- ✓ The person or their family/friends are able to tell you how they were involved in developing the care and support plan and that they felt (and feel) listened to.
- ✓ The person and their chosen representative are aware of the care and support plan and have seen a copy.
- ✓ The care and support plan clearly explains how care and support will be delivered

## Person-centred planning ( To consider)

- ✓ What the person would like to achieve with their care and support, their goals and aspirations for the future.
- ✓ Find out what is important to the person about how they live their lives now. For example, what they enjoy doing, their interests, likes and dislikes, who is important to them, who they like to see, where they like to go, their preferred routines (such as when they like to get up and go to bed, whether they like a bath or a shower). This information can be gathered by somebody that engages well with the individual.
- ✓ Details of key life events and dates to assist with chronological orientation.
- ✓ How best to support and involve the person in decision-making.
- ✓ Essential information for continuity of care and for use in emergencies.
- ✓ Roles and responsibilities so that the person receives coordinated care support to meet their needs.
- ✓ Where a person lacks capacity to express their choices, how their families and others who are interested in their welfare have been consulted.
- ✓ The associated benefits and risks of each option



# Forms and letters to be completed to make a Community DoL Application



## What documents will be required?

1. A fully completed and signed [COPDOL11 form](#) (plus Annex A, B and C) ([how to guide](#))
2. A full copy of P's current care plan with a signature from the case manager / care co-ordinator on the front page, and clear note of the date the care plan became effective on the front page (i.e. has gone through any completion and approval process). The care plan should be 3<sup>rd</sup> person unless P has communicated the comment/action etc. Make sure that the date of the care plan is within the last 3 months
3. A letter from a GP or other registered medical practitioner confirming P is of 'unsound mind' (i.e. what is the irrelevant medical diagnosis), which must be hand signed and dated within the last 12 months. Where an individual has not had a change in their condition that impacts their capacity the requirement for evidence of 'unsound mind' may also be satisfied by producing an appropriate extract from P's medical records, such as a report or document signed by a medical practitioner making reference to P's incapacity, and which is dated within the last 12 months.
4. Evidence of incapacity (either in form [COP3](#) or another suitable format), which must be recently completed, hand signed and clearly dated on the front page.
5. A signed statement from the identified litigation friend / rule 1.2 rep.
6. A copy of the best interests assessment where the decision was made that the care arrangements set out in P's care plan is in their best interests.

## What documents may be required?

- A copy of any [advanced decision](#) made.
- A copy of any [Lasting Power of Attorney](#) in place
- A copy of any Court Order appointing a [Deputy](#).
- A copy of P's transition plan (if P is moving accommodation)

### Top Tips

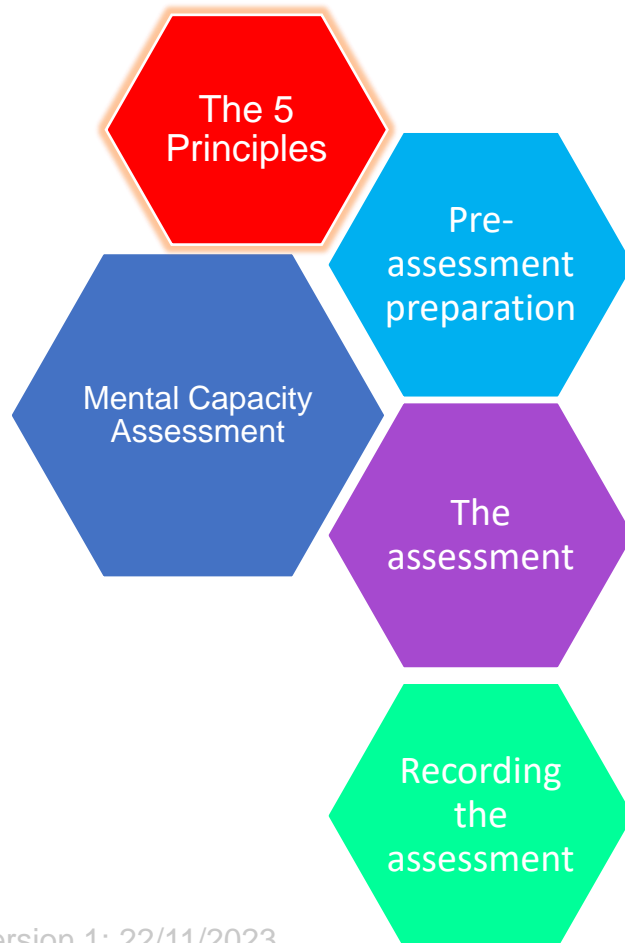
1. Obtain a letter from a GP as soon as possible confirming P's medical diagnosis. The letter can be very brief, however if the diagnosis is 'learning disability' it should state the severity of that disability. Ensure that this letter is dated within 12 months.
2. A 'litigation friend' or '[Rule 1.2 rep](#)' is required to be identified for every application. Identifying who is suitable and willing to fulfil this role should be a priority.
3. Ensure that all parts of the COPDOL11 form are completed. Use 'none' or 'not applicable' where relevant.
4. Consultation with other persons (Annex B) does not have to take place at a meeting. You can consult via telephone, email, or any other suitable means.
5. If you do not have space on the form, just continue on a separate blank sheet; clearly referring to where you are continuing from in the COPDOL11 form itself.



# Undertaking a COPDOL capacity assessment (top tips)



An application to the court of protection requires a submission of evidence of incapacity (either in form [COP3](#) or another suitable format), The below tips can assist with undertaking and recording a capacity assessment.



## Keep at the forefront the 5 Principles

1. Assume a person has capacity unless proved otherwise.
2. Do not **treat** people as incapable of making a decision unless you have tried all practicable steps to help them.
3. Do not treat someone as incapable of making a decision because their decision may seem unwise.
4. Do things or take decisions for people without capacity in their best interests.
5. Before doing something to someone or making a decision on their behalf, consider whether you could achieve the outcome in a less restrictive way.

### Useful Resources for Staff

- HRCH Capacity Coach videos. [Introduction](#), [Decision-making](#) & [When capacity is complicated](#)
- [Lancashire SAB MCA Assessment Practice Guidance Toolkit](#)
- [Lancashire SAB MCA Ebook](#)



# Undertaking a COPDOL capacity assessment (top tips)



## Pre- assessment preparation

### The assessor should be clear about:

- Are you the best person to undertake the assessment?
- The decision to be made.
- The individuals communication needs.
- Check if you have reasonable belief that the person lacks capacity to make a decision at this time.
- Record concerns about the person's decision-making ability.
- If the decision can wait until the person has regained mental capacity.
- Is there a valid and applicable advance decision?
- Have the relevant information ready (reasonably foreseeable consequences for the person for whatever decision they make or fail to make.)
- Engage, motivate, and enable the person to make the decision themselves. Even if this fails, continue to include the person in your assessment conversation.



# Undertaking a COPDOL capacity assessment (top tips)



## Conducting the assessment

Question	Supporting Prompts
Does the individual understand the information relevant in basic terms to make the decision?	<ul style="list-style-type: none"> <li>• Explain why you carrying out the assessment and what the decision is to be made</li> <li>• Ask P about their what they understand from the information that has provided to help make the decision.</li> <li>• Does it appear that P has been provided with all the relevant information (in an appropriate format) they require to make the decision.</li> <li>• Identify the key details that need to be understood by P.</li> </ul>
Can the individual use or weigh up the information as part of the process of making the decision?	<ul style="list-style-type: none"> <li>• Ensure that P has have the clear details of the choices available and the consequences of each choice (the risks and benefits).</li> <li>• Is the individual being influenced by other people’s views, perspective on the decision.</li> <li>• If the individual cannot reach a decision this could evidence, they are not able to weigh up the information.</li> <li>• If the individual can set out the risks and benefits of each choice but is unable to apply it to their circumstances this could be deemed, they are not able to weigh up the information.</li> </ul>
Can the individual retain that information for long enough to make a decision?	<ul style="list-style-type: none"> <li>• MCA (2005) Section 3(3) states that people who can only retain information for a short while must not automatically be assumed to lack the capacity to decide – it depends on what is necessary for the decision in question.</li> <li>• Items such as notebooks, photographs, posters, videos, and voice recorders can help people record and retain information.</li> </ul>
Can the individual communicate their decision?	<ul style="list-style-type: none"> <li>• Ensure you are aware of the individuals communication needs.</li> <li>• Decisions can be communicated by any means possible (e.g. verbal or sign language, gesture, drawing, writing, etc.)</li> </ul>
<p><b>The ‘diagnostic test’</b></p> <p>Does the person have an impairment of, or disturbance in the functioning of, mind or brain?</p>	<ul style="list-style-type: none"> <li>• Gather assessments or evidence that the person has an impairment of, or disturbance in the functioning of, mind or brain that may impacting on the person’s decision-making</li> <li>• Is the impairment of, or disturbance in the functioning of, mind or brain temporary or permanent.</li> <li>• Does the individual present with any emotional/mental illness aspects that might affect responses (e.g. anxiety, depression, psychosis, delusional beliefs).</li> </ul>



# Undertaking a COPDOL capacity assessment (top tips)



## Recording a Capacity Assessment

### Recording The Assessment

A good record of a capacity assessment that reaches the conclusion that a person lacks the capacity to make a specific decision will show that you have:

- Been clear about the capacity decision being assessed;
- Ensured that the individual (and you) have the clear details of the choices available (e.g. regarding treatment options; between living in a care home and living at home with a realistic package of care);
- Identified the key details the individuals needs to understand.
- Balanced the protection imperative with the free choice imperative
- Demonstrated the efforts taken to promote the individuals' ability to decide and, if unsuccessful, explained why;
- Recognised that assessment is not necessarily a one-off matter, and that you have taken the time to undertake to gather as much evidence as is required to reach your conclusion – including, for instance, returning to have a further conversation with the individual or obtaining supportive evidence;

#### **Evidenced each element of your assessment:**

- Why could the individual not understand, or retain, or use/weigh, or communicate in spite of support provided?
- What is the impairment/disturbance? Is it temporary or permanent?
- How is the inability to decide caused by the impairment/disturbance (as opposed to something else)?

**Answered the question:** why this is an incapacitated decision as opposed to an unwise one?



# Developing a court compliant care and support plan.



When making an application to the court of protection is a full copy of P's current care plan with signature from the case manager / care co-ordinator on the front page, and clear note of the date the care plan became effective on the front page (i.e., has gone through any completion and approval process) is required.

## When developing your care plan keep in mind:

**Munby J (as then was) in R(J) v Caerphilly County Borough Council [2005] 2 FLR 860:**

“46.... A care plan is – or ought to be – a detailed operational plan. Just how detailed will depend upon the circumstances of the particular case. Sometimes a very high level of detail will be essential. But whatever the level of detail which the individual case may call for, any care plan worth its name ought to set out the operational objectives with sufficient detail – including detail of the 'how, who, what and when' – to enable the care plan itself to be used as a means of checking whether or not those objectives are being met.”

## What to include in the care and support plan ([39 Essex Preparing Care Plans, Transition Plans And Best Interests Assessments For Court Of Protection Proceedings](#))

- The care plan should be 3rd person unless P has communicated the comment/action etc
- The assignment of specific responsibilities are clear.
- That you have captured the key information about P including diagnosis, prognosis, presentation, history.
- Attempts to take account of the person's wishes and views as far as possible.
- Views of family.
- Details of every option considered. Including pros and cons.
- Reasons for identifying a particular option as being in P's best interests and for rejecting the other options. Include risks/contingency plan.
- How a person's liberty is being promoted.
- Evidence that a person-centred planning approach has been taken.
- How the relevant person and their representative are being assisted to be involved in their care and support.
- Where the care plan involves any degree of restraint, identify the precise nature/method of the restraint, the rationale for it, monitoring/recording and plans to minimise the need for restraint.
- If chemical restraint being used, – include opinion of use of the medication. When/who reviews medication. If PRN – frequency of use and why necessary.
- That conditions attached to the authorisation are being complied with.
- That there are arrangements for regular review of the care and support in order to give the person more liberty and choice and see is still needed.





# Quality Q&A for Applications



Prior to making application to the Court of Protection the ICB should undertake its own quality review of the application. Ideally this should be undertaken by a senior member of staff that has MCA/DoL expertise. The following checklist can be assistance:

1. Check all documents are included as listed as part of the application. List can be found in this pack [here](#).
2. Has all sections of the COP DOL 11 form been completed. Any areas not filled in state 'none' or 'not applicable' where relevant.
3. Check for spelling, grammar errors.
4. Check that the name of the individual for the application is consistent throughout.
5. Review quality of the care plan using the checklist in this pack [here](#). Make sure that the date of the care plan is within the last 3 months
6. Ensure letter from GP or other registered medical practitioner detailing the individuals' diagnosis is dated in the last 12months.
7. Review quality of the completed COP3 form using the tips guide in this pack [here](#).
8. Ensure page 31 of the COPDOL11 form has been completed.
9. Make sure A 'litigation friend' or 'Rule 1.2 rep' has been identified and added.

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

Your application must answer the following matters, either in the body of the application form or in attached documents.

Failure to provide the information required may result in the case not being suitable for the application to be dealt with under the streamlined process for an authorisation to deprive a person of their liberty under existing or continuing care arrangements.

**Information required:**

1. If necessary have you given reasons for the particular <b>urgency</b> in determining the application?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Have you confirmed that 'P' (the person the application is about) is 16 years old or more and is not ineligible to be deprived of liberty under the 2005 Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Have you attached the relevant medical evidence stating the basis upon which it is said that 'P' suffers from unsoundness of mind?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Have you attached the relevant medical evidence stating the basis upon which it is said that 'P' lacks the capacity to consent to the care arrangements?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Have you attached a dated copy of 'P's' care or support plan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Does the care or support plan state the nature of 'P's' care arrangements and why it is said that they do or may amount to a deprivation of liberty?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Have you stated the basis upon which it is said that the arrangements are or may be imputable to the state?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Have you attached a statement of best interests?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Have steps been taken to consult 'P' and all other relevant people in 'P's' life (who should be identified) of the application and to canvass their wishes, feelings and views?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Have you recorded in Annex B any relevant wishes and feelings expressed by 'P' and any views expressed by any relevant person?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Have you provided details of any relevant advance decision by 'P' and any relevant decisions under a lasting power of attorney or by 'P's' deputy (who should be identified)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Have you identified anyone who might act as a Litigation friend or Rule 1.2 Representative for 'P'?	<input type="checkbox"/> Yes <input type="checkbox"/> No
13. Have you listed 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 impact upon the court's decision), being factors: a) needing particular judicial scrutiny; or 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?	<input type="checkbox"/> Yes <input type="checkbox"/> No
14. Have you enclosed the fee?	<input type="checkbox"/> Yes <input type="checkbox"/> No

**The following triggers may indicate that your application is not suitable to be made under the streamlined process and that an oral hearing may be required in the first instance:**

1. Any contest by P or by anyone else to any of the matters listed at 2 – 8 above
2. Any failure to comply with any of the requirements referred in 9 above.
3. Any concerns arising out of information supplied in accordance with 10, 12 and 13 above.
4. Any objection by P.
5. Any potential conflict with any decision of the kind referred to in 11 above.
6. If for any other reason the court thinks that an oral hearing is necessary or appropriate



# DoLS and Children and Young People (CYP)



The term “child” is used to refer to someone under the age of 16 years whilst “young person” refers to a 16–17-year-old.

A **Deprivation of Liberty** does not apply to a child under age of 16 years of age. Deprivation of Liberty Safeguards 2007 relates only to people aged 18 or over. If the issue of depriving a person of liberty arises, other safeguards must be considered, such as the existing powers of the court, particularly those under section 25 of the Children Act 1989, or the Mental Health Act 1983.

To decide whether a person’s care arrangements have caused them to be deprived of their liberty, it will be necessary to determine whether all of the Storck components are met. This requires consideration of the following questions:

#### *The confinement question: Is the person confined?*

If no, there will be no deprivation of liberty. If yes, the second question must be considered.

#### *The lack of consent question: Has valid consent been given for that confinement?*

If valid consent has been given for the confinement there is no deprivation of liberty. To give valid consent the person needs to:

1. have sufficient information to make the decision, such as the purpose and nature of the arrangements being put in place and any alternatives to it,
2. give their consent voluntarily (without any unfair or undue pressure),
3. have the ability to make the decision (for people aged 16 and over, this is referred to as ‘capacity’, for under 16s this is referred to as ‘competence’).

If there is no consent, the person is deprived of their liberty, so the third question must be considered.

#### *The State responsibility question: Is the State responsible for the person’s confinement?*

If the state is responsible for the deprivation of liberty, it will be necessary to obtain legal authority for the deprivation of liberty.

A Deprivation of Liberty will be lawful if warranted under statute, for example, under:

- [section 25 of the Children Act 1989](#), which provides for the placement of looked-after children in secure accommodation;
- [the Mental Health Act 1983](#);
- [the youth remand provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#); or
- the custodial sentencing provisions of the [Power of Criminal Courts \(Sentencing\) Act 2000](#).

#### Resources

- [RiP Practice Guidance: Deprivation of Liberty and 16-17 year olds and "Shedinar"](#)
- [Deprivations of Liberty of Children and Young People in the COP and Family Courts | 39 Essex Chambers](#)
- [Bma-children-and-young-people-ethics-toolkit-oct-2021.pdf](#)

There are examples of when children and young people with disabilities need to receive care or treatment in a hospital, or in a setting such as a foster home, residential special school, boarding school or further education college with residential accommodation. The only way they can get the care or treatment they need and be safe is for there to be restrictions in place. This may be delivered under a **Best Interests decision**.

Local authorities are under a duty to consider whether any children in need, or looked-after children, especially those in foster care or in a residential placement, are subject to restrictions amounting to a deprivation of liberty. The local authority must first consider whether [section 25 of the Children Act \(secure accommodation\)](#) is applicable or appropriate in the circumstances of the individual case. Section 25 allows for the placement of a looked-after child in accommodation provided for the purpose of restricting liberty.



# Case Studies To Support Practice



## Case example: provision of care in own home

Mary is an 85-year-old bed bound patient with severe cognitive impairment (late-stage Vascular dementia). Mary lives at home with her husband and is fully funded by a 24-hour Continuing healthcare package of care due to the extent of her Primary health care needs. Mary does not object to bedrails being used on her hospital bed and often appears visually content, however she can present with unpredictable behaviours that challenge when she is unwell with Urinary Tract Infections (UTIs).

Factors indicating that Mary is likely to be deprived of her liberty:

- Despite not verbally objecting to being bed bound, she is under continuous control and supervision.
- Mary is physically not free to leave her bed due to her falls risk/ immobility
- Mary has carers monitoring and governing her daily schedule 24 hours daily

## Case example: provision of care in a supported living service likely to amount to a deprivation of liberty.

Tom is a 23-year-old gentleman with Bi-polar disorder, moderate Learning disability and a history of anti-social behaviour. Tom is residing in extra-sheltered accommodation with 3 other residents who have similar care and support needs. Tom is fully mobile but requires supervision of one staff member during mealtimes and all outdoor excursions due to his history of violence and aggression.

Factors indicating that Tom is likely to be deprived of his liberty:

- Despite being physically mobile, Tom is subject to control and supervision throughout his daily routine both within and external to his accommodation for his own safety and the safety of others.



# Case Studies To Support Practice



## **Case example: provision of care likely to amount to a deprivation of liberty in extra care housing.**

Cynthia has learning disabilities and severe mobility problems. Although lacking capacity to consent to the arrangements, she is living in a one-bed apartment as part of a scheme of extra care housing. For twelve hours a day she has a carer to help her get out of bed, dress and see to her daily needs. She has pressure sensors around the bed to alert staff should she fall at night. Cynthia can only leave the accommodation with a carer.

Factors indicating that Cynthia is likely to have been deprived of her liberty:

- That she is subject to twelve hours of continuous supervision and control each day
- That she is not free to leave on her own

## **Case example: provision of care in a supported living service likely to amount to a deprivation of liberty.**

Martin is 20 years old and has autism and cerebral palsy. He lives in a one-bedroomed flat with one-to-one staffing at all times. The front door is locked for his safety and he cannot unlock it himself. He cannot stand unaided requiring a wheelchair when outside. Due to his restlessness, physical agitation and impulsive movements, he is strapped to his wheelchair when in the community.

Factors indicating that Martin is likely to have been deprived of his liberty include the following:

- He is under continuous supervision and control
- He is unable to leave the flat by himself – He is subject to restraint.

Taken from the <https://www.bma.org.uk/media/3087/bma-deprivation-of-liberty-safeguards-guidance-september-2020.pdf>



# Seeking Legal Advice



## **Applications under the RE X Streamlined procedure (using the COP DOL11 form)**

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. Therefore, the applicant should scrutinise the circumstances of the case and the evidence obtained (within 12 months of the application) as part of Annex A to the COPDOL 11 form.

### **Factors which the applicant would need to seek legal advice are (list is not exhaustive):**

1. Needing particular judicial scrutiny.
2. The arrangements sought in the application may not be in the best interest of the individual, or the least restrictive option.
3. The application drafted tends to indicate that the order should not be made.
4. There are persons identified who have not been consulted by the applicant. These persons must be listed in Annex B of the COP DOL 11 form with an explanation why they have not been consulted.
5. The evidence collated and the information recorded in the form meets the courts requirement

ICBs can use NHS Framework Agreements which are available for efficiency which may permit the direct award of call off contracts, priced in accordance with the published rates for legal support. However, this must be made in accordance with the call-off procedure for the relevant framework which are the terms of the framework including price) to be suitable, without any need for amendment. The rationale for making a direct award is to be fully documented.

Many legal firms within the NHS Framework Agreements offer a number of services and prices for this bespoke application:

- Fee to review the application and setting some advice if any triggers have been identified which would be outside of the streamline procedure or extra evidence that still needs to be collated/
- Fees for providing further information required
- Fees for full assistance with the application, supporting evidence and drafting the form.



# Setting up a HMCTS Payment by Account (PBA)



If a practitioner has completed the relevant COPDoL forms outlined in this document to a sufficient standard, and there is no obvious complexity to the application, an ICB may decide it is beneficial to make a direct application to the Court of Protection without using a legal firm as an intermediary.

To enable direct COPDoL applications, the ICB will first need to register with the Court through their [Payment by Account](#) service.

The suggested steps towards doing this are as follows;

- Court application fees for a COPDoL (currently £371) are collected by the PBA service through a direct debit with the applying organisation. It is therefore essential that you initially approach your ICB finance team to check that they are able to facilitate direct debit payments from an ICB bank account.
- If finance are agreeable, then the ICB can register for a PBA number. To do this, you and/ or finance team will need to complete the 'Fee Account – Customer Application Form' on the [Payment by Account](#) webpage.
- Your finance director is likely to be the person needed to sign off the form, provide billing details and complete direct debit information. They should also send the form to the PBA service. It is likely that your ICB would apply for one PBA number, this covering a range of CHC teams in your ICB. However, this may vary according to the ICB finance arrangements.
- When the application form has been completed, then return as per instructions on the application form.
- Once registered, the PBA service will provide a PBA Number
- The PBA Number is then added to each application that is made (it is inserted on Page 1 of the COPDoL11)
- The relevant CHC practitioner will then need to email the completed application to the following address [COPDOLS\\_or\\_S16@justice.gov.uk](mailto:COPDOLS_or_S16@justice.gov.uk) . This is a secure email if the application is being sent from an nhs.net or nhs.uk email.
- When an application is made, the relevant CHC practitioner may need to inform their finance team, as the finance team may need to code the payment to a CHC budget. Please ask your finance team for local procedures.
- When the application is received by the Court, the PBA service will then debit the ICB bank account.



# Additional Resources



## Mental Capacity Act Specific Guidance and Tools

- [The Mental Capacity Act Toolkit.](#)
- [British Medical Association, Best interest's decision-making for adults who lack capacity :A toolkit for doctors working in England and Wales](#)
- [39 Essex St: A brief guide to carrying out capacity assessments](#)
- [Bournemouth University :MCA Brief Guides](#)
- [Capacity Guide: Guidance for clinicians and social care professionals on the assessment of capacity](#)
- [British Psychological Society: Supporting people who lack mental capacity - a guide to best interests decision making](#)
- [British Psychological Society :What makes a good assessment of capacity?](#)
- [NICE: Decision-making and mental capacity: Implementation resource to help you put the NICE guideline into practice](#)
- [Edge Training MCA Resources](#)

## Deprivation of Liberty Safeguards

- [SCIE Deprivation of Liberty Safeguards \(DoLS\) at a glance](#)
- [The Law Society, Deprivation of liberty safeguards: a practical guide](#)
- [LGA: Mental Capacity Act including DoLS and LPS Guide](#)
- [RiP Practice Guidance: Deprivation of Liberty and 16-17 year olds and "Shedinar" \(33 mins\)](#)
- [A basic guide to the Court of Protection](#)
- [The Law Society: Quick reference guide to identifying a deprivation of liberty in the supported living setting](#)
- [The Law Society: Quick reference guide to identifying a deprivation of liberty in the home setting](#)
- [BMA Deprivation of Liberty Safeguards Guidance](#)
- [Edge Training DoLS Resources](#)

## Mental Capacity Act Specific Videos

- [SCIE: Using the MCA](#)
- [HRCH: Using the Mental Capacity Act in the community](#)
- [Worcestershire Safeguarding Adults Board Executive Function](#)
- [HRCH Capacity Coach videos. Introduction, Decision-making & When capacity is complicated](#)
- [MCA Project Videos](#)



# Appendix 1 :Guidance on Completing a COPDOL11 Form



**COPDOL11** 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](http://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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## PAGE 1, COPDOL11

- Applications on the COPDOL11 form are only suitable for uncontroversial cases. However the applications may be more urgent than usual if any of the following apply:-
- Sedation/medication frequently used to control behaviour.
- Physical restraint used regularly – equipment or persons.
- Restrictions on family/friend contact
- Objections from P (verbal or physical).
- Objections from family /friends or family / friends not consulted about the application.
- Attempts to leave.
- Confinement to a particular part of the establishment for considerable period of time
- New or unstable placement.
- Possible challenge to Court of Protection, or Complaint.
- Continuous 1:1 care during the day and / or night.
- Current or past safeguarding issues.
- Arrangements may not be in P's best interests or the least restrictive option.
- P is already subject to a deprivation of liberty order which is about to expire.
- This list is not exhaustive.**

Adapted from the [DAC Beachcroft](#) COPDOL 11 Training





# Guidance on Completing a COPDOL11 Form



**2. Order sought**  
Please specify the nature of the order you seek and attach a draft.

Duration of the Order sought

If granted the deprivation of liberty will be reviewed by the court at least annually. Do you consider that the authorisation will require a shorter review period?

If Yes, please provide details

**3. Your details (the applicant)**

Mr.  Mrs.  Miss  Ms.  Other

Full name

Post held/Job title

Name of organisation

Address

DX number

Telephone

Email

## PAGE 2, COPDOL11

- You must state the order you are seeking – i.e. 'declaration that P lacks capacity to make decisions relating to their care and residence and an order that it is in P's best interests to be deprived of their liberty in accordance with their care plan dated X'. The form requires a separate draft Order, however in practice is not usually sought by the Court of Protection.
- The order's duration will generally be for a maximum of 12 months. However it may be less if there are certain factors that ought to be brought to the Court's attention.
- If you requested a shorter review period, you will need to explain why you think a shorter order is required here.



# Guidance on Completing a COPDOL11 Form



## 2. Order sought

Please specify the nature of the order you seek and attach a draft.

Duration of the Order sought

If granted the deprivation of liberty will be reviewed by the court at least annually. Do you consider that the authorisation will require a shorter review period?

Yes  No

If Yes, please provide details

## 3. Your details (the applicant)

Mr.  Mrs.  Miss  Ms.  Other

Full name

Post held/Job title

Name of organisation

Address

DX number

Telephone

Email

## PAGE 2, COPDOL11 cont'd

- The application must be made by an identified employee on behalf of the ICB. (Where ICBs have an arrangement with their LA to make applications on their behalf the contact person can be from the LA but the address should still be the ICB) Applications being made directly by the ICB should include the ICB employees name and work contact details.



# Guidance on Completing a COPDOL11 Form



**4. About P**  
**(a) Personal details**

Mr.  Mrs.  Miss  Ms.  Other

First name

Middle name(s)

Last name

Maiden name (if applicable)

Date of birth

Is the person:

Married or in a civil partnership

In a relationship with a person who is not a spouse or civil partner

Separated

Divorced (give date)

Widowed (give date of death of spouse or civil partner)

Single

Full address including postcode

What type of accommodation is this?  
eg. supported living arrangement, shared lives, own home, other

Name of local authority or NHS body responsible for the care placement

## PAGE 3, COPDOL11

- This will always be the ICB. Even where P resides in their own home/supported living (perhaps for example where they may reside with their family), and it is not a 'placement' in the sense usually understood.



# Guidance on Completing a COPDOL11 Form



## PAGE 4, COPDOL11

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.

- It will generally be the case that P will not be subject to detention, community treatment order or guardianship.
- You will need to make reasonable enquiries to satisfy yourself that none of these boxes should be ticked. If any of these apply you may wish to seek advice as such cases are unlikely to be straightforward.
- These boxes only need to be ticked if P is currently (at the time of the application) subject to detention, community treatment order or guardianship
- This is an advance decision to refuse treatment. This is a question to be asked in the process, usually of P, or of their family. An advance decision may exist in relation to a P who may at some point have had capacity. It is much less likely to exist where, for example, P has a severe learning disability (i.e. a condition likely to have caused them to be incapacitated since birth.) You will need to see any advance decision, if it exists.
- You will need to ask the person who holds an LPA (the Attorney) to provide you with a copy. If you suspect an LPA exists but cannot identify the Attorney, you can apply to the Office of the Public Guardian for a search of the register.
- Having obtained the LPA and / or advance decision (if it exists) you will need to review it to ensure there is no conflict with the Order being sought.



# Guidance on Completing a COPDOL11 Form



## PAGE 5, COPDOL11

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

### 5. Statement of truth

I believe the facts stated in this application form are true.

Signed

\*Applicant (s solicitor)

Name

Date

Name of organisation

Position or office held

\* Please delete the options in brackets that do not apply.

- If the court has appointed a deputy there will be a court order and you should request the deputy to provide you with a copy. Again you may need to seek advice as to whether any of the deputy's decisions conflict with the order sought.

- Copies of all of these documents (if they exist) must be sent with the application.

- Please sign and date the application



# Guidance on Completing a COPDOL11 Form



**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

## PAGE 6, COPDOL11

### Recap:

- P lacks capacity in relation to a matter if at the material time they are unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- P is unable to make a decision for themselves if they are unable:
  - To understand the information relevant to the decision
  - To retain that information
  - To use of weight that information as part of the process of making the decision, or
  - To communicate his decision in some way

### Sections 2 and 3 Mental Capacity Act 2005

- Does P have an impairment or disturbance in the functioning of the mind or brain? Does P lack capacity to consent to the measures proposed?
- If so, tick both boxes at section 1



# Guidance on Completing a COPDOL11 Form



## 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

- There are two practical options as to how the evidence in relation to mental capacity can be presented in this application:-
- **Option 1:** A mental capacity assessment (either on form COP3 or in another acceptable format) completed by a social care or health professional, together with a separate letter or other evidence from P's GP or other registered medical practitioner which confirms P's diagnosis, and that they are of 'unsound mind'. This letter or other evidence must be dated within the last 12 months. (tick first box in section 2)
- **Option 2:** A mental capacity assessment (either on form COP3 or in another acceptable format) completed in its entirety by a registered medical practitioner. (tick second or third box in section 2)
- Absent medical evidence in relation to P being of 'unsound mind' applications to the Court of Protection will not succeed
- **We recommend that you seek such medical evidence as soon as possible, as delays in obtaining this evidence are frequently encountered**
- **Both boxes in section 1 should be ticked**
- **Only one of the boxes in section 2 should be ticked.**



# Guidance on Completing a COPDOL11 Form



## PAGE 7, COPDOL11

### 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?

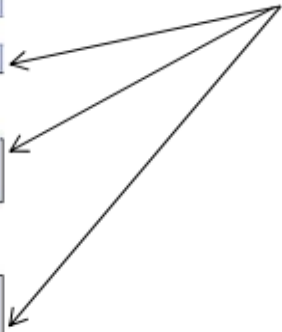
(d) If P is already living at the care placement, why did the move take place and how has P responded to the change of accommodation?

(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

- This information should simply contain details about where P lives, who they live with, what family or friends are involved or interested in P's life. There is no requirement to repeat information you have already provided elsewhere in the form.
- Sections (b) to (d) allow for an application for a community DOLS order to be made in advance of a move taking place.
- This information needs to be completed regardless of how long P has been living at his or her current accommodation.
- If P is living in their own home, and has lived there for a considerable period of time, this information ought to be included in this section
- If P occupies a property which is subject to a tenancy agreement you will need to seek out information as to who is the signatory to that agreement. If P does not have capacity to sign such an agreement you can, if necessary, ask the court for an order authorising an identified person to sign that agreement on P's behalf.







# Guidance on Completing a COPDOL11 Form



## PAGE 8, COPDOL11

### 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.

- This is the care plan that you are asking the court to approve as in P's best interests, notwithstanding that it deprives P of their liberty. It needs to be a current complete care plan which clearly shows the date it became 'effective' i.e. when it was completed and approved. Please write this date on the front of the care plan, and sign on the front.
- The best interests assessment is the record of the decision that it is in P's best interests to be subject to the care arrangements set out within the care plan. The best interests assessment ought to be set out in a recognised format for recording the decision.
- Arrangements for review include:-
- when the P will next be subject to a care review assessment, which may lead to changes in their care plan?
- What arrangements are in place in the intervening period should an earlier review be required?
- How is the care plan monitored?



# Guidance on Completing a COPDOL11 Form



## PAGE 9, COPDOL11

(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.**

- Please provide a separate summary for each of (i) to (v)

**Ensure you answer all questions**



# Guidance on Completing a COPDOL11 Form



## PAGE 10, COPDOL11

(d) Please set out what options have been considered and explain why the care package set out in the care or support plan has been chosen as the appropriate one.

- Include details of any less restrictive options tried or considered.
- Please also demonstrate that the current arrangements are the least restrictive option possible?



(e) If there have been any recent changes to the care or support plan or there is a future planned change, what are the reasons for the change?



# Guidance on Completing a COPDOL11 Form



## PAGE 11, COPDOL11

### 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

- Please cross refer with the information you have given in page 9 section (c) (v).
- This does not relate to the ability of the person to express a desire to leave but on what those with control over their care arrangements would do if they attempted to leave. It is important that this question is directly addressed in the answer provided.

- Please cross refer with the information you have given in page 9 section (c) (i) (ii) & (iv).
- Provide details of the number of hours of supervision and under what situations. Provide details of the type of control exercised by staff/carers other than physical restraint.



# Guidance on Completing a COPDOL11 Form



## PAGE 12, COPDOL11

(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

- Please cross refer with the information provided on Page 9 Section (c) (iii)
- If physical restraint is being used or may be used please ensure that you provide full details in answer to the three key pieces of information sought. Your explanation will need to be detailed and go beyond merely referring it to be in P's best interests
- If sedation is being used or may be used please ensure that you provide full details in answer to the four key pieces of information sought.
- Authorisations for deprivation of liberty cannot be used to control or restrict contact between P and others. The purpose of this question is to help ascertain if such restriction on contact is taking place in P's best interests
- Any restrictions on community access must be set out here. Is P always supervised? Is P's contact with the community time limited/restricted to fit in with staff availability?



# Guidance on Completing a COPDOL11 Form



## PAGE 13, COPDOL11

(g) Are there any other relevant factors that relate to the deprivation of liberty?  Yes  No  
If Yes, please give details

- This is an opportunity to include anything else which you feel is relevant but has not been addressed in the preceding pages.

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

- Are the care arrangements which give rise to the deprivation of liberty being commissioned directly by the ICB or via a personal health budget (or both)? In either situation those arrangements are imputable to the state.

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 is a question which you will already have determined as otherwise you would not be completing the COPDOL10. If at this stage you are questioning whether P is deprived of their liberty, you should seek advice before proceeding



# Guidance on Completing a COPDOL11 Form



## PAGE 14, COPDOL11

### 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.

- It should be noted that the application will **only** be authorised if it is in P's best interests.

- **This Statement of best interests needs to reflect and repeat the information contained within the separate Best Interests Assessment document. It is recommended that this Section 6 of the COPDOL11 form is completed at the same time as the Best Interests Assessment.**

The following factors should be considered when determining if it is in P's best interests and your supporting evidence should demonstrate you have considered these factors:

- Working out what is in P's best interests cannot be based simply on P's age, appearance, condition or behaviour.
- All relevant circumstances should be considered when working out P's best interests .
- 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 the capacity to make a particular decision, then it may be possible to put off the decision until later if it is not urgent.
- P's past and present wishes and feelings, beliefs and values should be taken into account.
- The views of other people who are close to P should be considered, as well as the views of an attorney or deputy
- This question asks that you consider the risks involved should P not be deprived of their liberty. You should be specific in the answers provided, and ensure that you focus your answers to the information being sought.

**Consider using information gathered during Best Decision Making when devising care plan**



# Guidance on Completing a COPDOL11 Form



## PAGE 15, COPDOL11

(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.

- Set out why the restrictions are necessary. What harm would P come to without them? How serious is this harm? Be specific.

(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.

- Include detail of any less restrictive options tried or considered. How can you demonstrate that the current arrangements are the least restrictive possible?





# Guidance on Completing a COPDOL11 Form



## PAGE 16, COPDOL11

### 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.

### 8. Statement of truth

I believe the facts stated in this annex are true.

Signed

Name

Date

Name of organisation

Position or office held

- The main benefit to P of dealing with this application under the streamlined procedure in the Court of Protection is that it does not require a court hearing in order for the order authorising a deprivation of liberty in the community. It therefore avoids any potential need for P or P's family / representatives to attend at a hearing of the Court of Protection.
- The use of this streamlined procedure also ensures that applications are dealt with more quickly than might otherwise be the case. Using the COPDOL11 form therefore ensures that any deprivation of liberty arising as a result of the implementation of the care arrangements is authorised and therefore made lawful more quickly than might otherwise be the case should an application be brought to the Court of Protection under a COP1 form.



# Guidance on Completing a COPDOL11 Form



## PAGE 17, COPDOL11

### 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.

- Pay close attention to those persons who the court has asked are consulted as part of the application!
- Note: the form of the consultation can be in meeting, or simply by telephone or email.
- Your consultation with the relevant person(s) must address the following:-
  - (a) that the ICB is making an application to court;
  - (b) that the application is to consider whether P lacks capacity to make decisions in relation to his or her residence and care and whether he or she should be deprived of their liberty in connection with the arrangements set out in the care plan;
  - (c) what the proposed arrangements under the order are (i.e. explain that P will be deprived of their liberty for a period of time (usually 12 months) in accordance with the arrangements under their care plan)



# Guidance on Completing a COPDOL11 Form



## PAGE 18, COPDOL11

### 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

- You should ensure that you have consulted with at least 3 individuals.
- It is more important that the views of unpaid carers (i.e. family or friends) are sought than paid carers. However if family or friends cannot be consulted, the views of paid carers should be sought.
- If you are unable to consult with the minimum number of 3 persons please provide a brief note explaining why this has not been achievable.
- The main purpose of this section is to explain why persons within category (a) to (d) have not been consulted.
- If P does not have any family or friends to consult this should also be briefly explained within this section.
- You must make reasonable efforts to consult with persons within category (a) to (d), giving reasonable periods of time for response. However, if you simply are not receiving responses from those consulted, this should not delay you in completing this form.



# Guidance on Completing a COPDOL11 Form



## PAGE 19/20, COPDOL11

3. Of the people consulted please give the following information:

Name	
What has their approach been to issues relating to P's accommodation and care in the past?	
Why do you think they have and will provide support which is in P's best interest?	
What reasons does each person give for supporting the care package being provided under the care or support plan?	
Over what period and how frequently have they visited or otherwise communicated with P?	
Name	
What has their approach been to issues relating to P's accommodation and care in the past?	
Why do you think they have and will provide support which is in P's best interest?	
What reasons does each person give for supporting the care package being provided under the care or support plan?	
Over what period and how frequently have they visited or otherwise communicated with P?	



- Please use this page to detail the consultations you have had with the individuals identified on page 18



# Guidance on Completing a COPDOL11 Form



## PAGE 21, COPDOL11

### 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:

- A litigation friend / Rule 1.2 rep does not need to be a solicitor. In principle, anyone can act as a litigation friend for P if they:
  1. Are able to conduct proceedings on behalf of P competently and fairly;
  2. Have no interests adverse to that of P;
  3. Agree to act as litigation friend.
- The most likely sources are a family member, friend, IMCA etc. For the purposes of the COPDOL11 a person simply needs to be identified who is willing and able to act in this capacity. The person should not be a paid carer.
- Assuming the application is straightforward, can be dealt with by the court on the papers rather than at hearing, and is uncontentious (as it should be if seeking court approval for a deprivation of liberty via the COPDOL11 process), very little (if any) practical involvement from the identified litigation friend / rule 1.2 rep may be required other than their brief statement.
- The litigation friend / Rule 1.2 rep can be a deputy or attorney. It cannot be a person employed by the CCG.
- If you cannot identify a litigation friend / Rule 1.2 representative you should keep note of the steps you have taken to try to identify a suitable person and provide a statement setting out these steps at Section 4(b) on this page.



# Guidance on Completing a COPDOL11 Form



## PAGE 22, COPDOL11

(e) Is the proposed Litigation friend/Rule 1.2 Representative able and likely to provide information to the Court of Protection on the implementation of the care or support plan in connection with any review of the arrangements for the care and accommodation of P carried out by the Court of Protection?

Please confirm here whether you consider the proposed LF or Rule 1.2 Rep is able and likely to provide this information to the Court

(f) Is the proposed Litigation friend/Rule 1.2 Representative able and likely to apply to the Court of Protection for earlier review if they consider that the care or support plan is no longer in the best interests of P?

Please confirm here whether you consider the proposed LF or Rule 1.2 Rep is able and likely to perform this duty should this be necessary

### 5. Statement of truth

I believe the facts stated in this annex are true.

Signed

Name

Date

Name of organisation

Position or office held



# Guidance on Completing a COPDOL11 Form



## PAGE 23, COPDOL11

**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.

**1. Details of the person undertaking the consultation**

Mr.  Mrs.  Miss  Ms.  Other

First name

Middle name(s)

Last name

- Any person can undertake the consultation with P. It does not need to be the same person who has completed the remainder of the form (although in the majority of cases this may be most convenient).
- The fact that P has no prospect of understanding the court application does not mean that consultation should not take place.



# Guidance on Completing a COPDOL11 Form



## PAGE 24, COPDOL11

### 2. Statement by the person undertaking the consultation

Describe your relationship to P

How long have you known them?

Date of consultation

(a) Confirm that you explained to P:

- (i) that the applicant is making an application to court;  Yes  No
- (ii) that the application is to consider whether P lacks capacity to make decisions in relation to their residence and care, and whether to authorise a deprivation of their liberty in connection with the arrangements set out in the care or support plan;  Yes  No
- (iii) what the proposed arrangements under the order sought are;  Yes  No
- (iv) that P is entitled to express their 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;  Yes  No
- (v) that P is entitled to seek to take part in the proceedings by being joined as a party or through an appointed representative, what that means, and that the person undertaking the consultation will ensure that any such request is communicated to the court;  Yes  No
- (vi) that the person undertaking the consultation can help them to obtain advice and assistance if they do not agree with the proposed arrangements in the application.  Yes  No

You must give details of the steps you have taken to communicate the above information to P

If you have been unable to comply with the above please provide reasons other than the lack of capacity of P

- i.e. social worker, nurse, care co-ordinator, carer, mother, father, friend, IMCA etc.

- This should be the date the consultation with P took place, which may not be the same as the date that this form was completed and signed.

- The details provided may be quite lengthy if P is able to demonstrate some understanding, or may be quite short if no understanding is demonstrated.

- The details should state *"I confirm that I have explained (or made efforts to explain) to Mr / Mrs X those matters set out set out at (a)(i) to (a)(vi) above."*

- You should briefly explain how you explained or tried to explain what the application is about to P.





# Guidance on Completing a COPDOL11 Form



## PAGE 25, COPDOL11

(b) Did P express any views, wishes or feelings in relation to the application and the proposed/actual deprivation of liberty?  Yes  No

If Yes, please give details and the manner of expressing those views if appropriate

(c) Does P wish to take part in the proceedings?  Yes  No

If Yes, please explain how

(d) Are you aware of any present or past wishes, feelings or beliefs (including religious, cultural and moral beliefs of P) and values that must be taken into account before the court authorises a deprivation of liberty?  Yes  No

If Yes, please give details; include in particular any relevant oral or written statements made or views expressed by P when they had capacity. Set out any beliefs and values which might influence the decision if they had capacity and any other factors that they would be likely to consider were they able to do so.

- If any of the answers are 'yes' it is very important that you clearly set out what the views expressed were.
- It may be easier to establish past wishes, feelings or beliefs of P where P has previously been capacitated in their lifetime (such as for example an older person rather than a young person with a severe learning difficulty).
- 'Beliefs and values' may be established by speaking with family and friends of P.



# Guidance on Completing a COPDOL11 Form



(e) Provide any other information that you consider to be relevant to the court



## PAGE 26, COPDOL11

- This is an opportunity to set out any further information in relation to the consultation with P which you feel is not covered elsewhere in Annex C.
- If there is no further information please state 'None'
- It is important that you are able to verify that the information you have provided in this form (in the main form as well as all three annexes) is correct and accurate. It is your responsibility to ensure that you do not knowingly include false or misleading evidence in the form, or fail to include important information.
- A false statement made in a document verified by a statement of truth may lead to liability for contempt of Court. Proceedings for contempt of Court may be brought against a person if he or she makes false statement without an honest belief in its truth. Contempt of Court may be punishable by a fine and/or imprisonment and/or the sequestration of assets.
- If you have any concerns in relation to the accuracy of the information provided in the form, please ensure that you set out these concerns within the form and seek advice if needed.

### 3. Statement of truth

I believe the facts stated in this annex are true.

Signed

Name

Date

Name of organisation

Position or office held



# Guidance on Completing a COPDOL11 Form



## 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

## PAGE 27, COPDOL11

- This checklist is provided to assist you in ensuring you have completed all of the necessary paperwork
- Remember, evidence of capacity does not have to be on a COP3 form. It may also be presented in an alternative format.
- The mental health assessment will usually simply take the form of a letter from a GP or other doctor which confirms whatever medical diagnosis is related to the P's incapacity.
- Advance Decision, LPA and Court orders to be supplied if relevant (see page 5 of the COPDOL11 Form)
- Note that only the care and support plan is required, The care assessment / needs assessment is not required.
- This is the best interest assessment regarding the care arrangements set out in the care plan
- The application fee of £400 must be submitted to the Court with the application itself.

How to make direct COPDoL applications to the court



# Guidance on Completing a COPDOL11 Form



## PAGE 31, COPDOL11

### Application to authorise a deprivation of liberty

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

Your application must answer the following matters, either in the body of the application form or in attached documents.

Failure to provide the information required may result in the case not being suitable for the application to be dealt with under the streamlined process for an authorisation to deprive a person of their liberty under existing or continuing care arrangements.

#### Information required:

1. If necessary have you given reasons for the particular <b>urgency</b> in determining the application?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Have you confirmed that 'P' (the person the application is about) is 16 years old or more and is not ineligible to be deprived of liberty under the 2005 Act?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Have you attached the relevant medical evidence stating the basis upon which it is said that 'P' suffers from unsoundness of mind?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Have you attached the relevant medical evidence stating the basis upon which it is said that 'P' lacks the capacity to consent to the care arrangements?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Have you attached a dated copy of 'P's' care or support plan?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Does the care or support plan state the nature of 'P's' care arrangements and why it is said that they do or may amount to a deprivation of liberty?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Have you stated the basis upon which it is said that the arrangements are or may be imputable to the state?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Have you attached a statement of best interests?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Have steps been taken to consult 'P' and all other relevant people in 'P's' life (who should be identified) of the application and to canvass their wishes, feelings and views?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Have you recorded in Annex B any relevant wishes and feelings expressed by 'P' and any views expressed by any relevant person?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Have you provided details of any relevant advance decision by 'P' and any relevant decisions under a lasting power of attorney or by 'P's' deputy (who should be identified)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12. Have you identified anyone who might act as a Litigation friend or Rule 1.2 Representative for 'P'?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13. Have you listed 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 impact upon the court's decision), being factors: a) needing particular judicial scrutiny; or 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?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14. Have you enclosed the fee?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

The following triggers may indicate that your application is not suitable to be made under the streamlined process and that an oral hearing may be required in the first instance:

1. Any contest by P or by anyone else to any of the matters listed at 2 – 8 above
2. Any failure to comply with any of the requirements referred in 9 above.
3. Any concerns arising out of information supplied in accordance with 10, 12 and 13 above.
4. Any objection by P.
5. Any potential conflict with any decision of the kind referred to in 11 above.
6. If for any other reason the court thinks that an oral hearing is necessary or appropriate

- This checklist is provided to assist you in ensuring you have completed all of the necessary paperwork prior to submission of the application to the Court.
- You must be able to answer 'yes' to all questions in this checklist, except for question 1; which may be either 'yes' or 'no' depending on the application.
- **Question 1:** If this is answered 'yes' the information in relation to why the application is urgent must be set out at page 1 of the COPDOL11 form.