

Applications to the Court of Protection guidance notes

This is a quick reference guide to applications by Devon County Council to the Court of Protection.

If the person is in hospital, contact needs to be made by the appropriate hospital Trust solicitors.

An application to the Court will be one of two types.

- **Welfare application (Sec16 MCA)**
The Court is asked to give a decision on an aspect(s) of care or treatment for people 16 years and older who **lack** mental capacity. Welfare applications are made because there is disagreement (or it is unclear) as to what is in the person's best interests, or there is a question about whether the person lacks mental capacity.
- **Deprivation of Liberty applications (DoLS) (Sec21A)**
Applies only to those who are currently subject to a DoLS authorisation. The Court is asked whether the authorisation should continue. These applications will be managed by the Devon DoLS team.

You can get some useful background and reference from:

- [Mental Capacity Act 2005](#)
- [Mental Capacity Act 2005 – Code of Practice](#)
- [Mental Capacity Act Practice Guidance](#)
- [Mental Health Act 1983 Code of Practice \(revised 2008\)](#)
- [Mental Capacity Act 2005: Deprivation of Liberty Safeguards Code of Practice](#)
- [Preparing Care Plans, Transition Plans and Best Interest Assessments for Court of Protection Proceedings](#) by Victoria Butler-Cole (counsel) of 39 Essex Street, London (chambers)
- [Good Practice Guidance on Accessing the Court of Protection](#) Social Care Institute for Excellence (SCIE)

Initial stages

Seek specialist advice at any early stage if an application to the Court of Protection is contemplated.

You can get practice advice from the MCA/DoLs team on **01393 381676** or **deprivationoflibertysafeguards-mailbox@devon.gov.uk**

The MCA/DoLs team can also give you the correct DCC contact for legal advice.

Except in emergency situations, decisions to take a case to Court will normally be made in a **Legal planning meeting (LPM)**. The LPM will be restricted to DCC professionals to look at evidential issues and practical arrangements for a Court application. Responsibility for convening the LPM rests with the care manager. In preparation for the LPM, practitioners will complete a **Background Information Form** and send the information to a legal officer before the meeting.

The LPM **will always** take place after an assessment of capacity has taken place.

The LPM **will normally** follow on from a Best interests decision/meeting – however this may not always be the case due to issues such as safeguarding, or the need to get the matter to Court in a timely fashion.

If it may be necessary to convene an early legal advice meeting restricted to DCC professionals to look at evidential issues for any Court application.

Applications are made to the Court of Protection in London, although substance hearings may be heard by a designated County Court Judge in Devon - usually Exeter, Plymouth or Torquay.

Our DCC legal department has responsibility for drafting the Court application, but the solicitor will need the essential documentation to do this. Sending the core documents by email will help in the preparation. A signed original of a supporting statement of evidence will be required in any event.

Applications involving personal welfare issues

Relevant documents for the application process are identified in **bold**.

These applications are made under Section 16 of the Mental Capacity Act by DCC where the patient is resident in a care home.

The documentation required is

- Application (**Form COP 1**)
- Application for Permission (**Form COP2**)
- Supporting Application (**Form COP 1B**)
- Assessment of Capacity (**Form COP 3**)
- Witness Statements (**Form COP24**)
- Minutes of local authority Safeguarding Meetings (or similar)
- Local authority Care Plan/Support Plan for the patient

Applications involving Deprivation of Liberty

Relevant documents for the application process are identified in **bold**.

These applications are made under Section 21 of the Mental Capacity Act by the local authority where the patient is resident in a care home: paragraph 3.3 of the Mental Capacity Act 2005 : Deprivation of Liberty Safeguards Code of Practice.

There is a procedure for the Court of Protection to fast track urgent applications for continued deprivation of liberty but this cannot be guaranteed, so timescales for lodging an application should take this into account.

The documentation required is:

- Application (**Form COP 1**)
- Application for Permission (**Form COP2**)
- Supporting Application (**Form COP 1B**)
- Assessment of Capacity (**Form COP 3**)
- Witness Statements (**Form COP24**)
- Minutes of local authority Safeguarding Meetings (or similar)
- Copy of the Deprivation of Liberty (DoLs) authorisations
- Local authority Care Plan/Support Plan

For both applications you should complete the core information identified in Forms COP1 and COP1B to help the speedy preparation of the application. We have prepared How to prepare a statement guidance notes will help complete the Witness Statement Form COP24.

Procedure once the application has been made

The Court of Protection will usually make an interim Order after the Judge or District Judge has considered the application and supporting documentation. At this stage, the Court will also make directions for the next stage of the proceedings, often transferring the case to the relevant local County Court (in Devon, usually the Exeter County Court) for a designated County Court Judge sitting as a Judge in the Court of Protection to hear the case and make further Orders until a final hearing.

At this stage, it is essential that further social work and legal case planning takes place in good time in advance of listed hearings. It may involve a conference with Counsel who will be representing the local authority at the hearing.

The service user will almost invariably be represented by the official solicitor and their spouse, partner or involved members of the family will usually be parties to the proceedings (in each case, known as a respondent). Each will usually be represented by solicitors (and Counsel) experienced in this type of work.

DCC's decision-making and consultation process with the patient and family members, particularly in relation to any Care Plan/Support Plan, will be subject of scrutiny in the Court process. Conduct seen as unreasonable, such as inadequate consultation or failure to identify issues in dispute at an early stage, by the Court may result in DCC having to pay some or all of the Respondents' legal costs, particularly where the other parties have to fund the litigation out of their own resources.

The final hearing will determine the longer term plans for the patient.