


<b>Learning Disability, Transition and Autism Team Practitioner Guideline Deprivation of Liberty Order for Supported Living</b>	 <b>Cumbria</b> <b>County Council</b>	
<b>GUIDANCE</b>	<b>v</b>	<b>XXXX-XX-XX</b>

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**1: Introduction:**

Under the Human Rights Act 1998, individuals cannot be deprived of their liberty unless in accordance with procedure prescribed by law. Deprivation of liberty is not, therefore, a new concept. However, the, now well-reported, Cheshire West case created a new test for what amounts to a deprivation of liberty and stated factors such as compliance with the regime, and agreement from family members are irrelevant. As a result of this, the number of adult social care services users who are now considered to be deprived of their liberty has significantly increased, and now includes a number of people living in the community under tenancies and in supported living placements as well as potentially people living within their own homes.

As individuals living in supported living placements and private tenancies fall outside of the Deprivation of Liberty Safeguards scheme created by Schedule A1 Mental Capacity Act 2005, the only way that deprivation of liberty in this environment can be made lawful, is with approval of the Court of Protection. A specific procedure was, therefore, adopted by the Court of Protection to deal with these cases, which has adapted to developments in the case law since the Cheshire West decision. This procedure allows for matters, if all relevant parties are in agreement, to be dealt with on the papers and without the need for oral hearings, but still requires detailed evidence from the local authority, and appointment of a representative to speak on behalf of the incapacitated individual. A representative should be a family member or friend of the service user who visits them regularly, is involved in care reviews and is

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able to offer the Court an informed view of the current arrangements. Where such a representative cannot be found, the court proceedings are stayed, pending the identification of a representative and/or further funding from central government to enable paid advocates or Court of Protection Visitors to take on this role.

The below guidance is intended to provide learning disability practitioners with a simple walk through of how to make an initial application/review submission to the Court of Protection for a deprivation of liberty authorisation (DOL) for a person in supported living who is being deprived of their liberty and does not have capacity to agree to their support and accommodation.

### **2: Locating Folders for DOL:**

- Open Learning Disabilities folder on S-Drive.
- Open Staff Access folder [S:\Learning Disabilities\Staff Access Folder](#)
- Open DOL Supported Living folder [S:\Learning Disabilities\Staff Access Folder\Dol Supported Living](#). You will find North, South, and West folders. In these you will find the current/previous documents on individual clients.
- There is also a presentation and the DOL Spreadsheet in this folder.
- Templates will also be in a folder for new and repeat applications.

### **3: DOL Spreadsheet:** [S:\Learning Disabilities\Staff Access Folder\Dol Supported Living\DOL SUPPORTED LIVING LIST.xlsx](#)

- Consult the spreadsheet to plan when reviews are needed. The completed paper work will need to be with the legal team at least 2 months before the DOL expires so that it can be submitted to the Court at least 1 month prior to the Order's expiration.
- Ensure you use the "Key" on the spreadsheet as work is done and new review dates are entered.
- If a new DOL is applied for enter details of individual on the spreadsheet.

### **4: Complete COP 3 Form:** [S:\Learning Disabilities\Staff Access Folder\Dol Supported Living\Templates\COP 3 blank.doc](#)

- If available view previous COP 3 and bring forward information that remains the same.
- Complete a Capacity Assessment round care, accommodation and the capacity to litigate. Visit the client at home or day care and ensure someone that knows them is with them to. This is recorded on the COP 3 and IAS.
- Send COP 3 to legal team or named Solicitor you are dealing with.
- The COP 3 will be returned to you once checked. Make amendments and then sign and Scan back to the legal team.

### **5: Medical Diagnosis Letter:**

- All new applications for DOL must be accompanied by a signed letter from a medical professional detailing the individual's diagnosis and their view as to whether this causes a lack of capacity to make the relevant decisions. This letter must be dated within the last 12 months. If a review then a letter is needed once every two years.
- If in Furness or South Lakes contact Medical/Senior Secretary Specialist Community Learning Disability Team to see if the case is open to Psychiatry. If so email a request for a medical diagnosis letter. If closed to Psychiatry

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complete a referral to the CTPLD requesting a medical diagnosis letter for the purpose of DOL <S:\Learning Disabilities\Staff Access Folder\DoI Supported Living\Templates\REFERRAL FORM GENERIC.APRIL 17.doc>

- If in Carlisle, Eden, Allerdale, Copeland approach the LD consultant directly or contact GP for medical diagnosis letter. There will be a fee if the local GP is contacted. The GP may also request a consent letter from relative or appointed person <S:\Learning Disabilities\Staff Access Folder\DoI Supported Living\Templates\Template letter to GPs 2.docx>
- Scan letter and send to legal team.

### **6: Complete COPDOL 11**

<S:\Learning Disabilities\Staff Access Folder\DoI Supported Living\Guidelines\DoL Supported Living draft guidelines final.doc>

- Gather copies of up to date provider support plans and risk assessments. They will need to be dated within the last year.
- Ask provider to sign front cover template for Support Plan so it can go with bundle to court.
- If this application is being made whilst a person is in transition to a new placement the care plan from the previous placement can be used with a front cover signed by the new placement. This is only when the care arrangements have stayed the same. Any changes will require a care plan from the new placement.
- If available look at previous COPDOL 11 form and make changes needed in light of new Support Plan/Risk Assessments.
- Consult with family about care and accommodation and record on COPDOL 11. Annex C of the form should be completed by a family member or friend. A Social Worker should only complete as a last resort.
- Ascertain that the Litigation Friend/Rule 1.2 Rep is willing to continue in that role and enter details on COPDOL 11. In an initial application it is very important that a relative/friend is asked to take on this role. If no representative can be found the matter can be stayed indefinitely. It is unlikely but the Official Solicitor may be appointed which can be costly for the client if they have assets as there is no legal aid funding available for the appointment of representatives in these proceedings. If no representative can be found and a Final Order is needed CCC may need to fund a private advocate. The role is not onerous and involves attending reviews and completing a statement on a COP 24 about their views of the care and accommodation.
- Send to legal team or named Solicitor you are dealing with.
- The COPDOL 11 will be returned to you once checked. Make amendments and then sign and Scan back to the legal team.

### **7: Complete Best Interest Record Form: <S:\Learning Disabilities\Staff Access Folder\DoI Supported Living\Templates\Recording Best Interests.doc>**

- Look at previous year's form and ascertain if participant's views remain the same or not and change accordingly. If differing people involved then change form/views accordingly.
- Send to legal team or named Solicitor you are dealing with or the LIR address.
- This form will be returned to you once checked. Make amendments and then sign and Scan back to the legal team.

**8: Complete COP 24:** <S:\Learning Disabilities\Staff Access Folder\Dol Supported Living\Templates\COP24V1-V1.doc>

- This is a witness statement and the legal team may ask you to complete if there has been a change in legal rep or one cannot be found. If the application is for a review and the appointed representative remains the same this does not need to be completed.
- Send to legal team or named Solicitor you are dealing with.
- The COP 24 will be returned to you once checked. Make amendments and then sign and Scan back to the legal team. The legal rep is also sent a bundle of all the papers and is asked to complete a COP 24. They may ask for your support to do this. Legal send them a simple guide and can talk to them about this.

**9: IAS recording:**

- Save all work in client folders in DOL Supported Living file depending on area.
- Upload any court orders, DOL forms and letters of Diagnosis to client record on IAS.
- Case note all contacts on IAS.
- In the Factors and Risk section of IAS on a client record under special factors add that a DOL is in place and when the next review date at court will be.

**DOCUMENT HISTORY**

RELATED DOCUMENTS	
RELATED DOCUMENTS	
DOCUMENTS SUPERSEDED BY THIS GUIDANCE	

APPROVAL AND REVIEW	
Original Author:	Rodger Melville/Gary G Wilson
Current Author: <i>(If different to original author)</i>	
Approved By: <i>(Insert groups/ bodies and dates)</i>	
Consultation: <i>(Insert details of who has been consulted on this guidance)</i>	Sara-Lyn Strong [Solicitor – Legal Services]
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