

# 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

Please ensure before proceeding that P and their family/ significant others, have had the CoM DoL process explained to them. Recommend they are given a written information leaflet which the DoLS team can supply

Please request a COPDOL11 form from the SBC MCA DoLS team which will be partly prefilled with details such as the payment by account number etc.



For office use only
Date received
Case no.
Date issued

### 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 note the Court of Protection Practice Direction 11A requires the applicant's evidence to be succinct and focussed, and reminds the applicant of their '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'.

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).

## 2. Order sought

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

Duration of the Order sought

Duration cannot exceed 12 months.

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

The Court of Protection can order a two location package if required.

If Yes, please provide details

The Court of Protection orders the Community DoL (Judicial Authorisation) in accordance with the care plan and then annexes the care plan to the Order. The care plan contains the detail.

## 3. Your details (the applicant)

Mr.  Mrs.  Miss  Ms.  Other \_\_\_\_\_

Full name

Post held/Job title

Name of organisation

Address

DX number

Telephone

Email

DX = Document Exchange; secure legal post for which SBC pays a license fee.

#### 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

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

P must be 16 or over

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)

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

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

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

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

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.

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)

delete ('s solicitor)

During the COVID-19 crisis the Court of Protection is accepting electronic and digital signatures

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

**Name**

**Date**

**Name of organisation**

**Position or office held**

N.B. using the fill and sign function of this form will lock the form so please do not use it until you are absolutely sure you have completed the 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 use FACE V3 assessment of capacity, not the COP3.

The decision in question is: whether 'P' is able to consent to live at (insert the address and the type of accommodation) to receive the care and treatment set out in their care plan.

N.B. the FACE form does not prompt you to record the causative nexus so please make sure you state in the FACE form that it is *because of the impairment of, or disturbance in the functioning of, their mind or brain that P is unable to make the decision.*

The assessment record must have a signature and date on it, typing your name in a signature box will not be acceptable to the Court. If you convert the FACE document to a PDF you will then be able to insert an electronic/digital signature.

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

The medical practitioner does not have to be a GP. Written evidence must be less than a year old and must evidence 'unsoundness of mind'. The DoLS Team have a template letter to use.

The applicant ideally needs to obtain evidence of 'unsoundness of mind' prior to completing the COPDOL11: it *may* be appropriate to hold off completion of the COPDOL11 until the applicant has received written confirmation that P has an 'unsoundness of mind'. However, it can take a significant amount of time for the medical professional to return the confirmation letter. Therefore, if the applicant is certain P has a mental disorder and lacks mental capacity to consent, then gathering evidence and commencement of the COPDOL11 should not be delayed, as this can be a time consuming piece of work.

### 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?

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

A copy of the transition plan will be required.

If Yes, on what date did P move to the care placement?

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

- (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

**NB It is possible to apply to the Court for a single issue finance order for authority to sign a tenancy agreement on P's behalf. This is a relatively quick process.**

#### **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.

(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.**

(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.

(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?

## 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

(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.

P may also be under physical restraint if their movements are restricted (i.e. by locked doors, stairgates etc). They are therefore being physically restrained, as a result of the actions of another (i.e. the locking of doors).

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

(g) Are there any other relevant factors that relate to the deprivation of liberty?

Yes

No

If Yes, please give details

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

**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.

(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.

(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.

**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 Court is accepting electronic and digital signatures during the COVID-19 pandemic

N.B. using the fill and sign function of this form will lock the form so please do not use it until you are absolutely sure you have completed the form.

## **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 ensure the COM DOL process has been explained to P's family and significant others before embarking on consultation with them.

**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.

**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

If there are more people to consult than boxes, create a copy of these boxes in a continuation sheet word document. Clearly label the continuation sheet at the top. For example, Continuation sheet for (insert P's name) Annex B, Section 3, 'of the people consulted please give the following information'. At the bottom of the continuation sheet give your name, role, date and sign.

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

<b>Name</b>	
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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?

<b>Name</b>	
-------------	--

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?

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-------------	--

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Over what period and how frequently have they visited or otherwise communicated with P?

<b>Name</b>	
-------------	--

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?

**If required, add more pages for additional people consulted.**

Anyone who is willing to act must complete a COP24 (witness statement) which is submitted with the COPDOL 11. The DoLS team can provide you with a blank COP24. The COP24 needs to state the role in which they are willing to act: Rule 1.2 Rep, or Litigation Friend plus the information set out a 'b' below. Recommend the the applicant supports the person to complete the CoP24 to promote their positive engagement in the process, and to ensure that all necessary info. is included.

**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

If you are not confident that a proposed 1.2 rep. is suitable, you can let the Court know through sections 4(b) to (f) of Annex B which is not shared with family / friends or care providers. Please note Annex B might be shared with people if they are appointed as the litigation friend/1.2 rep or otherwise become a party to the proceedings.

(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?

(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?

**5. Statement of truth**

I believe the facts stated in this annex are true.

**Signed**

**Name**

**Date**

**Name of organisation**

**Position or office held**

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N.B. using the fill and sign function of this form will lock the form so please do not use it until you are absolutely sure you have completed the form.

# 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)

The person carrying out the consultation with P usually completes Annex C, not the applicant. The applicant identifies who will carry out the consultation with P. The person carrying out the consultation must take all reasonable steps to assist P to make a decision. P 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. The person carrying out the consultation should be given a completed copy of Annex A, a blank copy of Annex C and copies of the attendant care and treatment plans etc. Recommend the the applicant supports the person to complete Annex C to promote their positive engagement in the process, and to ensure that all necessary info. is included.

**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

An Independent Mental Capacity Advocate (IMCA) or another independent advocate should be appointed to complete Annex C if there is no one else available. An IMCA can be arranged via the Swindon Advocacy Movement - this service will need to be spot purchased, so will have to be agreed by the applicant's manager. If an IMCA is appointed to complete Annex C, they will need to be given completed copies of the application section, completed copies of annexes A and B of the COPDOL11, a blank copy of Annex C and copies of the attendant care and treatment plans.

An IMCA should also be considered if the family have a strong view (either against or in support of the application) and there are concerns that they may (consciously or not) influence P.

## 2. Statement by the person undertaking the consultation

Describe your relationship to P

How long have you known them?

Date of consultation

D	D	M	M	Y	Y	Y	Y
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(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

(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.

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

**3. Statement of truth**

I believe the facts stated in this annex are true.

**Signed**

**Name**

**Date**

**Name of organisation**

**Position or office held**

The applicant needs to gather all documents to support the COPDOL11 application. The checklist section at the end of the COPDOL11 form (page 27) sets out what is needed.

The applicant needs to submit all paperwork, including supporting documents, to the DoLS Team / SBC Legal department (whichever has been agreed) where a Draft Order will be completed, and the application submitted to the Court with a covering letter.

The DoLS team will send an email to [legalwpandadmin@swindon.gov.uk](mailto:legalwpandadmin@swindon.gov.uk) giving the date of submission, the type of application (i.e. Court of Protection Community DoL application), the full name of P, Eclipse number, the anticipated cost, (currently £365), and the relevant cost code. The Legal Team manage the PBA account and therefore require this information.

# 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~~

# General information for completing form COPDOL11 for a Court authorised deprivation of liberty.

These forms should be used to make applications to the Court of Protection for the court to authorise a deprivation of liberty for people who are receiving care in domestic settings such as shared lives and supported living. The forms should not be used for applications to vary or terminate a standard or urgent authorisation made by a supervisory body under Schedule A1 of the Mental Capacity Act 2005.

## 1. COPDOL11 – The Application Form

- P – the person who lacks capacity, who is subject of this application, is referred to as ‘P’ throughout the application.
- Order sought – you must specify in the box the nature of the order you seek, i.e a declaration that P lacks capacity to make decisions relating to their care and residence or an order that it is in the best interests of P to deprive that person of their liberty. You may also request authorisation from the court to sign a tenancy or residential agreement on behalf of P in this section.
- Date of Birth – Proof that P is 16 years old or over.

## 2. Annex A – Evidence in Support of Application

In most cases the allocated social worker with the relevant skill and knowledge, involved with the care arrangements may complete the form. However, if one or more of the trigger factors apply, someone independent (who may still be employed by the applicant public authority) to the allocated social worker should provide the evidence.

- The purpose of the mental health assessment is to establish that P has been diagnosed as being of ‘unsound mind’, and therefore comes within the scope of article 5 of the European Convention on Human Rights.
- The evidence may be provided by a registered medical practitioner or psychiatrist, evidence from a social worker or other non-medical practitioner listed in the notes to form COP3 will not be accepted. The practitioner does not need to be approved under section 12 of the Mental Health Act 1983.
- The mental health assessment may take the form of a letter setting out the diagnosis, including reference to whether P is of ‘unsound mind’, the name of the practitioner and their qualifications. If it is not possible to provide the original letter, a copy certified by the applicant as a true copy of the original will be acceptable. The evidence should not be more than 12 months old.
- In cases where suitable mental health evidence is not readily available, then it would be acceptable to provide the assessment of capacity and mental health assessment as a single document using form COP3, but the combined evidence must be provided by a registered medical practitioner or psychiatrist.
- Is P free to leave? This does not relate to the ability of P to express a desire to leave but depends on what those with control over their care arrangements would do if they attempted to leave.
- Is P under constant supervision and control? 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.
- Is P under physical restraint/is sedation being used? You should describe the situations when physical restraint is used. The type of restraint the frequency and duration. If sedation is used please describe the type of sedation administered.
- 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 made either by a local authority or the NHS?

- Is P prevented from having contact with others? Authorisations for deprivation of liberty cannot be used to regulate or restrict contact between the person for whom the authorisation is sought and others – this includes family members or others who share living arrangements with P.
- Statement of Best Interests You may find it helpful to refer to paragraph 5.13 in the Mental Capacity Act 2005 Code of Practice.

### **3. Annex B – Consultation with People with an interest in an application to authorise a deprivation of liberty.**

Section 4(7) of the Mental Capacity Act 2005 places a duty on a decision maker to consult with 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;

together with, if possible, at least three people in 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 tell the people you consult with that

- (a) that the applicant 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 they should be deprived of their liberty in connection with the arrangements set out in the care or support plan;
- (c) what the proposed arrangements under the order sought are and that you are under an obligation to tell P;
- (d) that they are entitled to express their views, wishes and feelings in relation to the proposed arrangements and the application and that the person undertaking the consultation with them will ensure that these are communicated to the court;
- (e) that they are entitled to seek to take part in the proceedings by being joined as a party or otherwise, what that means, and that the person consulting with them will ensure that any such request is communicated to the court;
- (f) that the person consulting them can help them to obtain advice and assistance if they do not agree with the proposed arrangements in the application.

If the people you consult with express any views about the application or the proposed deprivation of liberty you should provide details, including attaching statements.

#### **4. Annex C**

Annex C Consultation with P is used to inform the court that P has been consulted about the application.

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 one is available, then the allocated social worker may undertake the consultation and complete the form, but where appropriate, an IMCA (Independent Mental Capacity Advocate) or another independent advocate should be appointed to assist.

P must be consulted regarding the application and the person undertaking the 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 detention 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.

# 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