



The Law Society

Identifying a deprivation of liberty: a practical guide

Further resources

This guidance does not constitute legal advice, which must be sought - if necessary - on the facts of any specific individual case. While care has been taken to ensure the guidance is accurate, up to date and useful, no legal liability will be accepted in relation to it.

A: Cheshire West and its implications

- *Cheshire West* judgment, available on [Bailii](#)ⁱ

Official guidance

- Department of Health [Guidance](#)ⁱ on the obligations of local authorities following the decision in *Cheshire West* (28 March 2014)
- Department of Health [Guidance](#)ⁱⁱⁱ on reducing the use of restrictive practices, inter alia in health care settings, issued by Department of Health (April 2014)
- Care Quality Commission [briefing](#)^{iv} for providers in health and social care settings (updated April 2014)
- The [letter](#)^v from Niall Fry of the Department of Health to MCA DOLS leads addressing the initiatives that are in place to address the impact of the Supreme Court decision (September 2014)
- ADASS [Advice Note](#)^{vi}: “Guidance for Local Authorities in the light of the Supreme Court decisions on deprivation of liberty” (November 2014)
- The [letter](#)^{vii} from Niall Fry of the Department of Health to MCA DOLS leads addressing, amongst other things, palliative care and unconsciousness (January 2015)
- The [letter](#)^{viii} from the Chief Social Worker, Lyn Romeo, on the MCA 2005 and the vital role of social workers (January 2015)

Commentary

- [P, P and Q: The key to the gilded cage](#)^{ix} - a video featuring Jenni Richards QC, Fenella Morris QC, Nicola Greaney and Ben Tankel, all of Thirty Nine Essex Street (March 2014)
- [P v Cheshire West and Chester Council – Supreme Court decision – March 2014](#)^x - a webinar produced by Ben Troke of Browne Jacobson (March 2014)
- “*Psychiatry and the Law: An enduring interest for Lord Rodger*”: The Lord Rodger Memorial Lecture 2014, a [speech](#)^{xi} given by Lady Hale in October 2014, which includes a very interesting discussion of the judgment.

Particular practice areas

- [Deprivation of liberty in the hospital setting](#)^{xii}: a paper written by Alex Ruck Keene and Catherine Dobson of 39 Essex Chambers, which considers the law relating to deprivation of liberty in the hospital setting, including what it takes to have capacity to consent to such a deprivation of liberty, and whether the MCA 2005 or the MHA 1983 will apply (March 2015)
- [Mental Capacity Act - Update following P v Cheshire West and P & Q v Surrey County Council cases](#)^{xiii}: a paper focusing on the impact of the decision for psychiatrists and AMHPs by Julie Chalmers, Specialist Advisor in Mental Health Law to the Royal College of Psychiatrists (April 2014)
- [Guidance](#)^{xiv} from the Intensive Care Society as to the implications of the decision in the intensive care setting (October 2014)

¹ All hyperlinks are given in full in the endnotes to this chapter for those who have printed it out.

B: Changes to the procedures for the authorisation of deprivation of liberty

DOLS

- ADASS's [new forms](#)^{xv} for applications for DOLS authorisations (January 2015). These also include a new form (28) for notifying a Coroner of a death of a person subject to an authorisation.

Re X

- The [first](#)^{xvi} and [second](#)^{xvii} judgments of the President of the Court of Protection setting out the outlines of the 'streamlined' court authorised DOL process, in particular for supported living and DOL in a person's own home. NB, these are under appeal to the Court of Appeal, the hearing being in February 2015, and judgment being awaited at the time of writing.

Re X process

- [Practice Direction: 10AA: Deprivation of Liberty applications](#)^{xviii} (note, the material paragraphs for these purposes are paragraphs 27 and onwards). Even though this is still called Practice Direction 10AA, it now contains both the procedures for an appeal against a DOLS authorisation as well as the procedures for the Court's handling of applications under the Re X cases.
- COP DOL10 [form](#)^{xix} and unofficial [Word version](#)^{xx}
- Model [order](#)^{xxi} (in Word)
- A [guide](#)^{xxii} to Re X applications written by members of the 39 Essex Chambers Court of Protection team

C: Other resources relating to deprivation of liberty

- DOLS [Code of Practice](#)^{xxiii} (though Chapter 2 must now be read subject to the cases decided since the Guide was written – see paragraphs 2.59-2.61 of the main body of this guidance)
- For procedures to resolve issues between local authorities as to which local authority is responsible for a DOLS authorisation, see ADASS [Protocol for inter authority management of DOLS applications](#)^{xxiv} (November 2009). Note this that does not reflect the changes that came into force in April 2013 in England with the abolition of PCTs.
- The Chief Coroner's [Guidance](#)^{xxv} on Deprivation of Liberty safeguards

**D: Other free legal resources^{xxvi}**

Website	Contents
www.bailii.org	British and Irish Legal Information Institute: transcripts of judgments including increasing numbers of decisions of the Court of Protection and older judgments accessible in the Family Division area.
www.copcasesonline.com	Site maintained by 39 Essex Chambers with searchable database of cases relating to mental capacity law, as well as back issues of newsletter (available for free on a monthly basis. To be added to the mailing list email: marketing@39essex.com)
www.courtsofprotectionhandbook.com	A free site accompanying the Court of Protection Handbook (Legal Action 2014) with links to relevant statutory material and updates on practice and procedure cross-referenced to the book.
www.gardensocial.co.uk	Garden Court Chambers has a website and newsletter dedicated to social welfare, including community care, mental health and incapacity issues.
www.gov.uk/apply-to-the-court-of-protection http://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=court_of_protection	Contains all the Court of Protection forms and current details as to fees
www.judiciary.gov.uk/publication-type/practice-directions/ https://www.justice.gov.uk/courts/rcj-rolls-building/court-of-protection	Contains Practice Directions and Court of Protection Rules
http://hmctsformfinder.justice.gov.uk/courtfinder/forms/cop042-eng.pdf	A booklet giving guidance on applying to the Court of Protection
www.justice.gov.uk/about/opg	A useful guide to LPAs and deputyship which can be of assistance when trying to assess what powers (if any) an attorney or deputy has in relation to deprivation of liberty
http://www.law.manchester.ac.uk/medialibrary/Main%20site/LAC/Acting-as-a-Litigation-Friend-in-the-Court-of-Protection-October-2014.pdf	Guidance commissioned by the Department of Health for IMCAs, RPRs and others considering acting as a litigation friend in the Court of Protection; includes a guide to welfare proceedings in the Court of Protection written for the benefit of non-lawyers.



Website	Contents
www.mentalhealthlawonline.co.uk	Extensive site containing legislation, case transcripts and other useful material relating to both the Mental Capacity Act 2005 and Mental Health Act 1983. It has transcripts for more Court of Protection cases than any other site (including subscription-only sites).

E: Other useful free resources related to mental capacity law

Website	Contents
www.scie.org.uk	The Social Care Institute for Excellence website includes good practice guidance in a number of areas relating to mental capacity and related law. It also includes a directory of mental capacity resources.
www.mclap.org.uk	A website maintained by Alex Ruck Keene dedicated to improving understanding of the law and practice in the field of mental capacity law, including articles, papers and other resources on the MCA 2005 and discussion forums.
http://thesmallplaces.wordpress.com	Blog site maintained by Lucy Series, socio-legal researcher and expert commentator upon the Court of Protection.
www.communitycare.co.uk	Online magazine dedicated to community care matters, which frequently includes useful stories relating to the MCA 2005.

- i <http://www.bailii.org/uk/cases/UKSC/2014/19.html>
- ii http://www.39essex.com/docs/newsletters/dh_letter_re_supreme_court_dols_judgment_final_28_march_2014.pdf
- iii https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300293/JRA_DoH_Guidance_on_RP_web_accessible.pdf
- iv http://www.cqc.org.uk/sites/default/files/20140416_supreme_court_judgment_on_deprivation_of_liberty_briefing_v2.pdf
- v <http://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2014/09/DH-Letter-to-MCA-DoLS-Leads-September-2014.pdf>
- vi http://adass.org.uk/uploadedFiles/adass_content/policy_networks/mental_health/key_documents/DoLS%20Guidance%20note%20November%202014.pdf
- vii <http://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2014/04/DH-Letter-to-MCA-DoLS-Leads-14-January-2015-FINAL.pdf>
- viii http://www.adass.org.uk/uploadedFiles/adass_content/news/press_2015/Letter%20-%20MCA%20-%20social%20workers%2014%20Jan%202015%20FINAL.pdf
- ix <http://www.39essex.com/a-deprivation-of-liberty-post-cheshire-west-and-p-q-2/>
- x <http://www.bjhealthlawyers.com/resource/p-v-cheshire-west-and-chester-council-supreme-court-decision-march-2014/>
- xi <https://www.supremecourt.uk/docs/speech-141031.pdf>
- xii http://www.39essex.com/docs/articles/deprivation_of_liberty_in_the_hospital_settingv3.pdf
- xiii <http://www.rcpsych.ac.uk/policyandparliamentary/mentalhealthlaw/mentalcapacityact.aspx>
- xiv <http://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2014/04/1504320.pdf>
- xv <http://www.adass.org.uk/mental-health-Drugs-and-Alcohol/key-documents/New-DoLS-Forms/>
- xvi <http://www.bailii.org/ew/cases/EWCOP/2014/25.html>
- xvii <http://www.bailii.org/ew/cases/EWCOP/2014/37.html>
- xviii <http://www.judiciary.gov.uk/publications/10aa-deprivation-of-liberty/>
- xix <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/cop-dol10-eng.pdf>
- xx <https://courtofprotectionhandbook.files.wordpress.com/2014/07/copdol10-word-form.doc>
- xxi <https://courtofprotectionhandbook.files.wordpress.com/2014/07/copdol10-word-form.doc>
- xxii http://www.39essex.com/content/wp-content/uploads/2014/11/judicial_deprivation_of_liberty_authorisations_guide.pdf
- xxiii http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087309.pdf
- xxiv <http://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2014/04/DOLS-9.11.9.doc>
- xxv <http://www.judiciary.gov.uk/wp-content/uploads/2013/10/guidance-no16-dols.pdf>
- xxvi Reproduced in part from the Court of Protection Handbook (Legal Action Group 2014), with the permission of the publishers