

CALDERDALE METROPOLITAN BOROUGH COUNCIL
ADULTS, HEALTH AND SOCIAL CARE
INFORMATION & GUIDANCE

INFORMATION FOR FAMILIES, FRIENDS, AND OTHER PARTIES
(Regarding applications to the Court of Protection via the RE: X Process)

1.0 DEPRIVATION OF LIBERTY AND HUMAN RIGHTS

- 1.1 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'.
- 1.2 If someone lacks the mental capacity to consent to their care arrangements, is not free to leave the place where they live, and is subject to continuous supervision and control then the law says they are deprived of their liberty.
- 1.3 The Deprivation of Liberty Safeguards (DOLS) is the procedure prescribed in law when it is necessary to deprive someone of their liberty in a care home or hospital, but in other settings the local authority must ask the Court of Protection (CoP) to authorise it.
- 1.4 The important point to remember is that DoLS is about *safeguarding* human rights when people are deprived of their liberty. The Court of Protection is a special court which was set up in order to deal with these sorts of issues. It is not a criminal court and no-one is being prosecuted for committing an offence. However it is unlawful for someone to be deprived of their liberty without authorisation.

2.0 APPLICATIONS TO THE COURT OF PROTECTION FOR DOLS AUTHORISATION

- 2.1 The local authority will apply for a decision by the court (a court order) by asking a social worker or other competent person to complete an application form referred to as Form CoPDOL10.
- 2.2 The form will be sent to the CoP for processing via a streamlined process that usually does not require the person deprived of their liberty (known as 'P') to attend. However, it is important that the judge understands the wishes and feelings of P, and therefore the social worker will need to talk to the person and any relatives, friends, or other people who know them well.
- 2.3 The social worker will need to establish that the person is really deprived of their liberty and lacks the mental capacity to consent to it. They will also need to make sure that the care arrangements are in the person's best interest and that any restrictions are proportionate and necessary in order to deliver the care they require. They will look at other options that are less restrictive and make sure that the person's wishes and feelings are taken into account.
- 2.4 In order to complete the form the social worker will try to speak to other people as well as P. Parts of the form require consultation with other people involved in the care of the person e.g. any donee of a Lasting Power of Attorney (LPA), court appointed deputy, anyone caring for the person or interested in their welfare.
- 2.5 In some more complicated cases (e.g. when there are any disagreements about the application) there may be a need for a more formal hearing. In case this might happen the form asks if anyone is prepared to speak for the person if they can't represent themselves. This is known as a Litigation Friend.
- 2.6 Another part of the form requires evidence that the person deprived of their liberty has been consulted about the application. They must be given the opportunity to express their wishes and views in order to help the Court make their decision.

The person undertaking the consultation should be someone who knows the person the application is about, and who is best placed to express their wishes and views. It could be a relative or close friend, or someone who the person has previously chosen to act on their behalf. 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.

- 2.7 Those undertaking consultations will be asked to sign a statement to confirm that they believe the facts they have stated are true. They may also need to complete a witness statement (on a separate form) if they have other information that would be helpful to the Court.

3.0 THE DECISION OF THE COURT

- 3.1 Once the judge has made a decision the court order will be issued. It is important that everyone named in the order obeys any instructions that it contains.
- 3.2 Once the order is in place, the Court will want to appoint someone to keep an eye on things in the future. This is usually a family member or friend who knows them well and is known as a Rule 3A representative.

4.0 RULE 3A REPRESENTATIVE

- 4.1 If you agree to fulfil the role of Rule 3A representative then you have several responsibilities. These include:
- The Court is asking you, as someone who knows the position on the ground, to consider whether from the perspective of P's best interests you agree or do not agree that the Court should authorise P's package of care and support.
 - This will involve you weighing the pros and cons of that package of care and support, comparing it with other available options and (if appropriate) proposing changes to the applicant authority. For example, if you consider that some of the restrictions it puts in place are unnecessary or inappropriate and should be changed, you should raise this with the applicant authority and, if they do not agree with what you propose, the Court.
 - If you consider that P has capacity to consent to the package of care and support, or parts of it, you should raise this with the applicant authority and the Court.
 - In any event, you should inform the Court about what P has said about, and P's attitude towards, the package of care and support.
 - You should also check from time to time that the package of care and support is being properly implemented and whether it needs to be changed because P's condition has changed, or for any other reason. If you conclude that its implementation or terms should be changed you should raise this with the applicant authority and the Court if the changes are not made.

[Extracted from RE: VE (Mr Justice Charles; Case Number 12755071)]

5.0 FURTHER INFORMATION

Here we could include hyperlinks to the various case law e.g.

<http://www.39essex.com/content/wp-content/uploads/2016/06/Judicial-Deprivation-of-Liberty-authorisations-June-2016.pdf>

http://www.familylaw.co.uk/system/froala_assets/documents/511/Re_VE_Deprivation_of_Liberty_2016_EWCOP_16.pdf