

Things we may require.

Sometimes, if a person previously had capacity they may have made an Advance Decision or arranged for a Lasting Power of Attorney (LPA) to act on their behalf. It is important these people are made part of the application process.

We will have sent out a short questionnaire for completion prior to our visit and consultation, this will help with completion of the application to the Court and also identifies those involved in the persons care. We may also require access to and possibly copies of any care plans in place.

A Rule 1.2 Representative will need to be appointed. This will need to be a close family member or friend who is willing to oversee a person's care and support needs and inform the Court if there are any changes. This person must be able to:

- Review the person's care and needs with regular contact.
- Act in the person's best interests.
- Make sure the care provided is meeting the person's needs.
- Make sure the care provided is the least restrictive option.
- Be willing to challenge any decision if necessary.
- Highlight any change in the persons needs to the relevant professionals and to the Court of Protection.
- The representative must be over 18 years old.

In addition to or as an alternative to a Rule 1.2 Representative a person may have a Litigation Friend. A Litigation Friend is regarded by the Court as being an officer of the Court. The Litigation Friend will take the place of the person in the Court process and will be able to instruct the person's solicitor if they have one.

Useful Links

- www.gov.uk/courts-tribunals/court-of-protection
- www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/court-of-protection
- www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/court-of-protection



Understanding Deprivation of Liberty at Home or within Supported Living

The law states that everyone has the right to be safe and free, but sometimes caring for a person who may lack capacity involves reducing their independence or restricting their free will in some way.

If the person has not freely chosen where they will live in order to receive care, or the type of care that they receive, it is possible that this care will take away some of their freedom. In some cases, this may amount to a 'deprivation of liberty'. This is not always a bad thing, and it is often necessary when caring for someone, but it should only happen if it is in the person's best interests.

In order to authorise a deprivation of liberty in the community the Integrated Care Board (ICB) will need to take the case to the Court of Protection, rather than authorise the deprivation of liberty themselves.

There is no need for concern regarding the idea of

deprivation of liberty or the involvement of the Court of protection. The sole purpose of this process is simply to safeguard the well-being of persons who may lack capacity and may be subject to restrictive care. It is to ensure compliance with the principles of the Mental Capacity Act (2005) and ensure any restrictions that amount to a deprivation of liberty are in the person's best interests and are the least restrictive option.

How does this apply to us?

Where a person is identified as being deprived of their liberty and it is believed to be in their best interests, with no less restrictive alternative care or treatment possible or appropriate; an application must be made to the Court of Protection to authorise the deprivation of liberty.

For an individual in receipt of Continuing Healthcare funding (CHC) it is the responsibility of the funding ICB to make the application.

What will this process cost me?

There are some costs involved in submitting an application to the Court of Protection; however these will be covered by the responsible ICB and not the individual or their family.

What will I need to do?

The application will be completed by the ICB. We will visit and consult with the individual concerned and anyone else interested in the individual's welfare including family members, friends and others involved in their care. It will be necessary to gather information and evidence to submit to the Court and we may request this from you. Unless there are any issues or disputes the Court should be able to deal with the application without the need for a court hearing.

What is a deprivation of liberty?

There is no specific definition of deprivation of liberty in the Mental Capacity Act (2005). However, it must encompass the definition set down in Article 5 of the European Convention on Human Rights (ECHR) "*Everyone has the right to liberty and security of person*"

A deprivation of liberty can occur when all of the following factors apply:

- A person lacks the capacity to consent to their care, support and/or treatment arrangements
- The State (e.g. the NHS or Local Authority) is responsible for paying for, arranging or providing their care, support and/or treatment.
- The care, support and/or treatment a person needs means they are not free to leave and that they are under continuous supervision or control.

Liberty Restricting Measures

Everyday practices and methods involved in providing care that is considered to be in a person's best interests, can be classed as a form of restriction, restraint, supervision and control.

These can include:

- Close, constant or frequent supervision, observation or monitoring.
- The use of some medications (to calm or sedate).
- Isolation or confinement within a particular part of the place they live.
- Using locks or key pads which stop a person going out or into different areas of a building
- Physical restraint/intervention, including holding or verbally distracting so care can be given or to persuade against leaving.
- Mechanical restraint (bedrails, wheelchair straps, hoists, mittens, helmets)
- Assistive technology (Pressure pads, door alarms, motion sensors, CCTV)
- Support given with all/many everyday tasks – especially when this is provided in accordance to a timetable set by others.
- Only being allowed out if being accompanied.
- Preventing a person from leaving, even if they have never asked to do so.
- Having to ask someone else's permission to go out.
- Not being allowed to live elsewhere.