

# All things Court of Protection Care England 3 March 2026

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Helen Claridge, Partner

“Definitely my go to law firm,  
would highly recommend.”

Andrew Lockett, Managing Director  
New Concept Care and Nursing

# Focus today on all things Court of Protection

- What the Court of Protection does and why you might be involved with it
  - LPAs and OPG
  - DOL challenges
  - Disputes
  - RTM attendance and disclosure requests
- Real world risks of getting it wrong
- What the future holds and how this may affect you and your business
- Top tips for navigating COP matters

Please do raise  
any issues/  
questions as we  
go



# What is the Court of Protection?

- Court of Protection created by the Mental Capacity Act 2005
  - Capacity
  - Best interests
- Its powers are:
  - to decide whether someone ("P") has capacity to make a particular decision themselves
  - to make declarations (decisions) or orders on financial or welfare matters where P lacks capacity
  - to appoint deputies to make decisions for P
  - decide whether an LPA or EPA is valid
  - remove deputies or attorneys who fail to carry out their duties

## What is the Court of Protection? (2)

- Judges often sit in the Family Division of the High Court and in the Court of Protection
- Main Court in London
  - Regional Courts including Manchester, Leeds and Newcastle
  - Sometimes judges will also sit in more local Courts
- For cases concerning adults (18+)
  - Can sometimes be used for children aged 16 or 17
- Clear rules, but largely intended to be inquisitorial
- Expectation that relevant statutory body/ies (LA, ICB or NHS Trust) would be involved

# What does the Court of Protection do?

- Common applications include:
  - Resolving disputes as to
    - medical treatment
    - care arrangements
    - where a person lives and/or
    - who they have contact with
  - Authorising deprivation of liberty and or challenging existing DOLS
  - Determining whether P has capacity to make a specific decision
  - Removing LPA/Deputy who is not acting in P's best interests

Key terminology – a very quick run through

- LPA
- Deputy
- OPG
- Advance decision and advance statement
- Deprivation of Liberty
- DOLS

## Lasting Powers of Attorney (LPA)

- Lasting Powers of Attorney: two types
  - Property and affairs
  - Health and welfare
- The essence of an LPA is that P appoints one or more other people to make decisions on P's behalf
- Must be registered to be valid
  - Stamped by Office of the Public Guardian
  - A photocopy is fine
- You must see the LPA in full
- **NB:** A personal welfare LPA only operates when P lacks the relevant capacity to make the decision
- **NB:** EPA = Enduring Power of Attorney – pre LPA

# Deputies

- Appointed by Court of Protection
- Two types:
  - Property and affairs
  - Personal welfare (including healthcare)
- Deputies must
  - Follow MCA principles
  - Make decisions in best interests
  - Have regard to Code of Practice
  - Only make decisions in line with their authority

- Office of the Public Guardian
- Registers LPAs – NB: before the individual loses capacity
- Supervises Deputies
- Investigates concerns of abuse or wrongdoing for either
- Reporting process on their website

# Advanced Decisions and statements

- **Advanced Decisions** - means a decision to refuse specified treatment made in advance by a person who has the mental capacity to do so.
  - Must be 18+ years old
  - If a valid and applicable advance decision exists, it has the same effect as if the patient has capacity and makes a contemporaneous decision to refuse treatment.
  - If refusing life sustaining treatment it must be in writing, be signed and witnessed and state clearly it is to apply even if life is at risk
- **Advanced Statements** - advance expressions of views, wishes and feelings - may be about preferred medical treatment or other wishes
  - do not legally compel professionals to meet patients' stated preferences, though they should be taken into account when making best interests decisions.

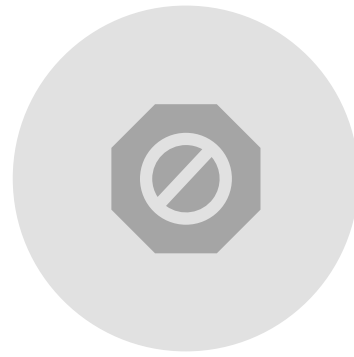
# Deprivation of Liberty (DoL)

- Three elements:
  - confinement in a particular restricted place for a not negligible length of time
    - The acid test
      - Continuous supervision and control
      - Not free to leave
  - lack of valid consent
  - responsibility of the state
- Key questions
  - Does P lack capacity to make decisions about care and treatment?
  - Is P subject to continuous supervision and control?
  - Is P free to leave should they wish to?

## Assessing a DoL

- Look at the “concrete situation”
- Intention is irrelevant: “A gilded cage is still a cage”
- Not all restrictions on liberty will be a DoL
- To consider:
  - Locked doors
  - Level of supervision/observation
  - Sensory mats
  - CCTV
  - Bedrails
  - Epilepsy sensor

# How is a DoL authorised?



DEPRIVATION OF LIBERTY  
SAFEGUARDS (DOLS)



MENTAL HEALTH ACT  
1983



ORDER OF THE COURT

When might I be involved in the CoP?

## Care homes

- Completing the Urgent Authorisation form for a DoL
- Applying for a Standard Authorisation for a DoL
  - P lacks capacity
  - P is under continuous supervision and control
  - P is not free to leave
  - the deprivation is imputable to the state – ie it is being funded by the state
    - caution
- When P / family / RPR are objecting to a DoL
- Third Party Disclosure Order

When might I be involved in the CoP?

## Supported living / domiciliary care providers

- working with the LA or ICB in making an application to the CoP where P is deprived of their liberty in their own home (whether owned/rented)
- if everyone agrees on the placement and care, the LA or ICB can make a paper based application (COPDOL 11) to the Court
- if there is any dispute, the LA or ICB will need to make an application to Court for a hearing, for a judge to determine the location or type of care
- more complex cases will be the ones that are progressed and your input will be needed into the paperwork to Court

## What if P or their family object?

- Care Home DoL challenge – s21A challenge
- Brought by P - usually via their RPR
- Court proceedings against the LA as they are the Supervisory Body for the DoL
- Will often bring in the ICB as another party, if the ICB are funding any part of P's package of care
- Very rare for the provider of care – you – to be named as a party but you will need to input into the process

## DoLS challenges

- Funded by Legal Aid for P
- Low threshold to start proceedings
  - P objecting
  - P wants to go home
  - P asking to leave
- Requires the LA or ICB to draw up a balance sheet analysis of care options for P
  - staying in current placement
  - moving to a different care home
  - going home
  - moving into the community

## DoLS challenges (2)

- Court is a vehicle to keep the review on track – often no need to attend court in person
- Sets a timetable
- Starting point is checking capacity
  - might need someone from the Mental Health Trust to prepare a s49 report for the Court
  - if P has capacity – the CoP has no jurisdiction and can't get involved
- Establish P's wishes and feelings incl any relevant historical background, condition and prognosis
- LA/ICB prepare balance sheet analysis of options
- Round table meetings (RTM) or best interests meetings

## DoLS challenges (3)

- RTM or BI meetings are usually online
- Home manager / P's key worker / carer who knows them well should attend
- Parties will want to know how P presents on a day-to-day basis
- P will have a representative appointed for them, who will visit them and speak to the care home team but they don't know P like you do
- Many clients who you support will say they want to leave or go home but perhaps to a childhood home so perhaps unrealistic expectations

## DoLS challenges (4)

- Restrictions on P are supposed to be at a minimum level
- Many DoLS challenge relate to P not being supported to engage in the community
- As a Provider, look at each resident and whether they are living their "best life"
- What other activities could be put in place for them?
- Could they be supported into the community more
- Do they need 1:1 support to access the community – apply to the LA or ICB for funding to support that (could avoid a DoLS challenge and save them £ in responding to it)

## DoLS challenges (5)

- Ultimately, you may find P moved from your service
- You may be asked to support P in visiting other services and preparing transition plans
- Might be asked to prepare a statement around P's activities but you will be supported to do this and shouldn't need to incur any legal costs
- You will be asked to share copies of P's care plans
- Stay in touch with the social worker /case manager so you know what's happening
- There shouldn't be any need for the provider to be joined into the Court proceedings and it would be very rare that you need to attend Court

# Hospital discharges

- P lacks capacity
- Fit for discharge from hospital but family won't agree the placement
- What to do?
- LA / ICB can apply to CoP for an order that it is lawful and in P's best interests to move to care home 1
- There should be no need for you to be a party to the proceedings but again, stay in touch with LA / ICB as to the plan, especially if you are being asked to keep a bed open!

## Care at home disputes

- P lacks capacity
- Cared for at home
- Family interfere with the package / service breaks down
- What to do?
- LA / ICB apply to CoP for order that it is lawful and in P's best interests to be removed from the home, and placed in a care home / alternative accommodation
- Again, you don't need to be a party – but stay in touch with LA / ICB

## Third Party Disclosure Order

- Can be very onerous
- Court order so compliance required
- Is there any way to say no if unreasonable?
- Advice?

# Risks



Regulatory



Legal



Financial



Reputational

## Top tips

- Good knowledge of the basics and the principles
  - Capacity
  - Best interests
  - Deprivation of liberty
- Patient centred care
  - Timely assessments
- Good communication
- Timely acknowledgement of any court orders
- Attendance at meetings if invited
- Escalate as needed

## The future - Liberty Protection Safeguards?

- The future of DoLS?
- Designed to feel more positive than negative
- Will apply to arrangements made where P
  - is aged 16 or over,
  - lacks capacity and
  - has a mental disorder
- Future is uncertain
  - April 2023 - *"delayed beyond the life of this Parliament"*
  - November 2025 – *"fresh consultation"* in 2026

# LPS obligations

- So who will have to do what?
- The responsible body for P
  - if P is CHC = ICB
  - otherwise LA
- Potentially significant obligations on care home managers
  - statements
  - consultation
- What can you be doing now?

# Questions/ discussion



HEMPSONS

Seek advice

# Hempsons free social care advice line: 01423 724056



HEMPSONS

## Social care advice line

Dial **01423 724056** and ask for the social care advice line for 30 minutes\* free preliminary advice. Alternatively email [socialcare@hempsons.co.uk](mailto:socialcare@hempsons.co.uk)

\*non-partner organisations are eligible for 20 minutes free advice

# Contact

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