

COMMUNITY DEPRIVATION OF LIBERTY AUTHORISATION APPLICATIONS BY THE CCG

Under the Mental Capacity Act 2005 the CCG is legally required to make an application to the Court of Protection to seek authorisation of care arrangements they fully commission where the following have been established:

- the individual has been assessed as lacking the capacity to consent to his/her care arrangements.

- that these care arrangements meet the criteria for a deprivation of liberty. These are that the individual is confined to a particular place for a not negligible period of time; that they are unable to consent to these arrangements, and that the care provided is imputable to the State. The Supreme Court ruling “Cheshire West” (2014) further defines a deprivation as occurring when the individual is under continuous supervision and control and is not free to leave, which is generally referred to as the “acid test”. In 2017 the Court of Appeal stated that “leaving in the sense of removing [him/herself] permanently in order to live where and with whom [he/she] chooses” The streamlined Community DoL process authorises this situation within a legal framework and meets our obligations under Article 5 of the European Convention on Human Rights (1953).

To support the Deprivation of Liberty application evidence is required from a GP setting out when the GP last saw them, his/her medical condition, the fact that he/she was diagnosed with the condition and that this is a permanent and non-treatable condition, and that the individual is of “unsound mind”.

The term “unsound mind” is derived from Article 5 and is not defined. It is understood that the new Liberty Protection Safeguards framework, which is expected to come into force in April 2022, will replace this with “has a mental disorder or disability of the mind”. The term mind should be given its ordinary meaning in the sense of “the mental faculties of reason, memory and understanding” (R v Kemp [1957]). It has been suggested by Lord Diplock, in the case of R v Sullivan [1983], that if a disorder “severely impairs those faculties then it can be characterised as a disorder of mind, irrespective of the aetiology of the disorder (Richard Jones, Mental Health Act Manual 21st Edition).