



# Deprivation of Liberty – Do you have authorisation?

Deprivation of liberty in the community must be authorised by the Court to be lawful.

All CCGs must consider whether NHS funded care packages in the community contribute to an individual without capacity being:

- Under continuous supervision and control; and
- Not free to leave

If individuals meet these criteria then they are likely to be deprived of their liberty. If this deprivation is “at the instigation of the state” because it is caused either in whole or in part by a CCG funded package of care then the deprivation must be authorised. Unauthorised deprivations of liberty can result in damages being ordered against commissioners.

Since 2014, authorisation for uncontroversial deprivations of liberty in the community can be obtained by a paper application to the Court of Protection. These have been slow to start with, as CCGs grapple with a large number of potential applications, as well as ongoing renewals of authorisation.

The 18 page application form must contain enough relevant information to enable the Court to determine that the authorisation is in the individual’s best interests or the application won’t go through. From **1 December 2016**, a new form must be used for these applications, which is longer (25 pages) and requires additional information about the individual’s circumstances, care and people involved in his life. Commissioners will need to ensure this information is routinely captured in care planning documentation and kept under review. The new form will be available from 1<sup>st</sup> December and an embargoed copy is attached.

Capsticks has extensive experience in working with commissioners in managing applications for deprivation of liberty authorisation in the community, especially involving patients receiving NHS continuing healthcare funding.

Our innovative and invaluable “DOLS Healthcheck” is being successfully used around the country to help CCGs manage these applications and give you the assurance that your applications are court-ready. The fixed fee approach gives you certainty and our expert advice and training is excellent. See our brochure attached and if you would like to discuss how you are managing your deprivation of liberty cases, and how we can help, contact:



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