



06 November 2014

Our ref:
Your ref:

Dear Court User

Re Implementation of the Re X procedure

I am writing to update you on the arrangements we are putting in place to implement the streamlined process for the Court of Protection (CoP) to manage applications for a court-authorised deprivation of liberty in the light of the Supreme Court decision in [P v Cheshire West and Chester Council and P and Q v Surrey County Council \[2014\] UKSC 19](#):

On 7 August 2014 the President of the CoP handed down his first judgment in [Re X and others \(Deprivation of Liberty\) \[2014\] EWCOP 25](#). I know that most of you are aware of the content of the judgment, but in summary it:

- Set out a broad framework for a streamlined process for handling the majority of cases on paper without holding a hearing;
- Identified trigger factors that would give rise to an oral hearing, including:
 - Where P does not consent to the DoL
 - Where P wishes to take part in the proceedings
 - Where anyone with an interest in P's welfare did not support the DoL
 - Where a previous decision made by P (eg advance directive) or on behalf of P (eg by attorney) conflicts with the proposed DoL
- Identified some issues that would need to be considered by the CoP Rules Group including: the wider question of how P should be involved in proceedings and potential changes to the rules on permission.

The MoJ and HMCTS intend to implement the new process, as set out in the judgment in 2 phases:

- Phase one: a new practice direction and forms to deal with judicial authorisations for a DoL. This will be an interim process and users will be invited to provide feedback on how it works in practice.

- Phase two: revision of the forms, practice direction and process to take into account any further guidance set out in the President's judgment, feedback from users, and any changes that come out of the CoP rules committee.

This letter explains what we are doing to implement phase one.

We have developed a new practice direction which will replace practice direction 10AA which currently deals only with applications relating to urgent and standard authorisations in hospital and care home settings. We have also developed new forms and guidance for applications for a court-authorized deprivation of liberty. As part of this process, we carried out an informal consultation with an ad-hoc group of users in the summer. Given the need to roll the process out as soon as possible, we do not plan to carry out any further consultation but will instead, pilot the process and invite feedback on how it works in practice. We hope to publish the forms and practice direction in the next couple of weeks along with standard draft orders.

To ensure there is sufficient judicial resource to deal with the work, HMCTS have run an expressions of interest to nominate judges working in the Social Entitlement Chamber to deal with applications under the streamlined procedure. The first group of nominees will be trained in mid-November.

We have also set up a dedicated team within the CoP which will deal exclusively with deprivation of liberty work. The new staff are already trained to do the existing CoP work, and have been briefed on the proposed new Re X processes. The intention is to ring fence the Re X work so it does not impact on the other work of the CoP.

We will be in touch shortly when the forms, practice direction and draft orders have been signed off by the President of the CoP, and in relation to the practice direction only, when it has been agreed by the Secretary of State. We will explain how to access the new forms, etc. and provide contact details for the deprivation of liberty team.

Finally, I must thank everyone who has been in touch since March for your patience and understanding while we have been developing these new processes; and a special thank you to all who have contributed to developing the new forms, etc, both as part of the ad-hoc user group and by email.

Yours faithfully,

James Batey
Court of Protection