

Contents

<i>Purpose of the Guidance</i>	1
<i>Powers of the Court</i>	2
<i>Disputes about a person's mental capacity</i>	2
<i>Disputes about health and welfare decisions</i>	2
<i>Resolving disagreements to avoid applications to the court</i>	2
<i>When Adult Social care must involve the court of protection</i>	3
<i>Rights of service users and family members</i>	3
<i>Advice to relatives about approaching the Court of Protection</i>	3
<i>Process for Advance Practitioners and Managers</i>	4
<i>Advice on Mental Capacity Act</i>	4
<i>Urgent Applications to the court</i>	4
<i>Adult Social Care Legal Team</i>	4
<i>Information/evidence that will be needed to compile a court application</i>	5
<i>Essential</i>	5
<i>Ideally included</i>	5

Purpose of the Guidance

This guidance explains the role of the court of protection, when adult social care should approach the court, how to advise family members in relation to seeking legal advice about the court and the steps that should be taken to seek an order from the court. Some of the information contained in the guidance is taken from the Mental Capacity Act code of Practice Crown Copyright 2007.

Powers of the Court

The Court of Protection has powers to:

- decide whether a person has capacity to make a particular decision themselves
- make declarations, decisions or orders on financial or welfare matters
- appoint deputies to make decisions
- decide whether an LPA or EPA is valid, and
- remove deputies or attorneys who fail to carry out their duties (this would usually be done in conjunction with the office of the public guardian www.gov.uk/government/organisations/office-of-the-public-guardian)

Disputes about a person's mental capacity

Applications concerning a person's capacity may be relevant if:

- a person or their relative wants to challenge a decision that they lack capacity
- professionals disagree about a person's capacity to make a specific decision

Disputes about health and welfare decisions

In relation to disputes about personal welfare such as care or residence, an application to the Court of Protection may be necessary for:

- particularly difficult decisions which may also involve significant risks
- disagreements that cannot be resolved in any other way
- situations where ongoing decisions may need to be made about personal welfare
- there is genuine doubt or disagreement about the existence, validity or applicability of an advance decision to refuse treatment
- there is a major disagreement regarding a serious decision (for example, about where a person who lacks capacity to decide for themselves should live)
- someone suspects that a person who lacks capacity to make decisions to protect themselves is at risk of harm or abuse from a named individual (the court could stop that individual contacting the person who lacks capacity).

Resolving disagreements to avoid applications to the court

It is usually best to try and settle disagreements before they become serious disputes by communicating effectively and taking the time to listen and to address worries

When professionals are in disagreement with a person's family, it is a good idea to start by:

- setting out the different options in a way that is easy to understand
- inviting a colleague to talk to the family and offer a second opinion
- offering to get independent expert advice
- using an advocate to support and represent the person who lacks capacity
- arranging a case conference or meeting to discuss matters in detail
- listening to, acknowledging and addressing worries, and
- where the situation is not urgent, allowing the family time to think it over.

When Adult Social care must involve the court of protection

Adult social care does not have powers to enforce best interest decisions against the wishes of a person or their relatives (even in situations involving safeguarding concerns. If there is a dispute about where a person should live or the care they should receive that cannot be resolved, adult social care staff should seek immediate legal advice. This will include situations where the person or their relative is objecting to a proposed plan that would amount to a deprivation of liberty.

Rights of service users and family members

An information booklet to help family members understand the Mental Capacity Act is available to download from: www.dca.gov.uk/legal-policy/mental-capacity/publications.htm

If there is a disagreement over decisions of adult social care, assessments or care plans, service users can use the statutory complaints and representations procedure. Relatives or other concerned parties may also make use of this procedure where a service user is unable to complain themselves. This may be because the relative disagrees with best interest decisions that are being made or how those decisions are being made.

Complaints and representations can be made by contacting the customer relations team:
Customer Relations Team, Ground Floor, Ballard House, West Hoe Road, Plymouth, PL1 3BJ
By telephone: 01752 307304
By email: complaints.social.services@plymouth.gov.uk

Advice to relatives about approaching the Court of Protection

Service users, relatives and other concerned parties may seek legal advice about the Mental Capacity Act and their ability to challenge decisions of the adult social care by making an application to the court of protection. Some parties must ask permission of the Court of Protection before making an application. People who do not need permission include:

- a person who lacks, or is alleged to lack, capacity in relation to a specific decision
- the donor of the LPA an application relates to – or their attorney
- a deputy who has been appointed by the court to act for the person concerned
- a person appointed by a supervisory body as a relevant person's representative

If the adult social care are aware of a dispute about capacity or best interest, adult social care should seek legal advice. It is not appropriate to advise family members that it would be their responsibility to approach the court. They may seek legal advice if they choose to do so; however it is the responsibility of adult social care to bring matters to the attention of the court. This includes situations where a person or their relative object to a deprivation of liberty authorisation.

Cost

The cost of legal advice and representation may be covered by legal aid in certain circumstances depending on a person's financial means and the legal merits of the case. Relevant Person's representatives under the deprivation of liberty safeguards have non-means tested access to legal

aid to bring a challenge to the deprivation of liberty authorisation on behalf of the person. Further information about legal aid and public funding can be obtained from www.gov.uk/legal-aid/overview Information about solicitors working with the mental capacity act is available from: <http://www.mhla.co.uk/find-a-lawyer/court-of-protection-lawyers/>

A relative may choose to seek legal advice prior to a best interest meeting. If there is a dispute about what is in a person's best interest, the chair of the meeting should advise relatives that they can seek legal advice following a formal best interest meeting if the dispute has not been resolved.

Process for Advance Practitioners and Managers

If it appears that it may be necessary to seek an order from the court of protection, the relevant manager should contact the Plymouth City Council Adult Social Care legal department for advice.

If it is necessary to seek an order from the court, the advance practitioner should discuss the situation with their service manager. The legal representative will need authorisation from an appropriate budget holder to submit an application due to the potential cost involved. Initial costs are likely to be at least £400, rising to £10,000 if a hearing is required. The full cost could be as much as £50,000 or £60,000 including other potential costs.

The legal representative will compile reports and forms which are required to make an application; however, they will require the care manager or other professional involved to provide all relevant information and sufficient evidence to support the application (see below).

Advice on Mental Capacity Act

Livewell staff requiring advice may also contact Ian Stevenson, MCA lead on 01752 434058. Ian can also advise on approaching the court of protection for service users whose care is health funded.

Urgent Applications to the court

Urgent applications can be made to the Court of Protection if there is a serious risk that someone may suffer serious loss or harm AND you need an immediate decision, where the court needs to consider the application within 24 hours or on the same day.

The legal representative will follow Court of Protection practice directions and contact the court as appropriate to discuss the application. It is possible to make an urgent application outside of normal office hours. Prior to making the application, the legal representative will need to have access to the information as listed below. If only partial records are available, the case should be discussed with the legal team to ensure there is sufficient evidence to proceed.

Adult Social Care Legal Team

Diane Dawson, legal assistant	306188
Jackie Burch, lawyer	304376
Linda Torney, assistant head	304330

Information/evidence that will be needed to compile a court application***Essential**

- Up to date needs assessment
- Proposed care plan / treatment plan
- Record of consideration of best interest checklist and professional judgment
- Up to date risk assessment (relevant to care plan) including description of risk of harm to the person if the order were not made
- Summary of the facts of the current dispute and solution sought
- Detailed and issue-specific capacity assessments
- Record of attempts made locally to reach consensus including minutes of any best interest meeting or relevant safeguarding meeting
- Details of any power or deputy of attorney that has been appointed

Ideally included

- Confirmation by medical professional of health needs and diagnosis
- History of the case including relevant family dynamics
- The court continues to prefer medical evidence in relation to capacity assessments. Therefore, it would be advisable to request a capacity assessment from a medical professional in advance if possible

* This list does not apply to applications to authorise deprivation of liberty in a community setting (re: x applications). Advice for these applications should be sought separately from the legal team.