

MENTAL CAPACITY ACT FACTSHEET

ROLE OF THE COURT OF PROTECTION: THE MENTAL CAPACITY ACT

What is the Court Of Protection?

The Court of Protection was created under the Mental Capacity Act 2005; it makes decisions on financial, health or welfare matters for people who can't make decisions at the time they need to be made as they lack capacity to make that decision.

The court is able to:

- Make declarations of capacity
- Make declarations as to what is in an individual's best interests
- Decide whether a lasting power of attorney (LPA) is valid
- Commission reports from the Public Guardian, local authorities, NHS bodies or Court of Protection visitors
- Appoint deputies to make decisions for people lacking capacity

Healthcare staff can give life sustaining treatment or treatment which stops a condition getting worse whilst the court is coming to a decision.

The court must be involved in decisions about:

- Withholding/withdrawing artificial nutrition and hydration (ANH) from patients in a permanent vegetative state (PVS)
- Organ/bone marrow donation by a person who lacks capacity
- Non-therapeutic sterilisation of a person who lacks capacity

Applying to the Court of Protection to be a deputy?

If a person lacks capacity to make decisions for themselves at the time it needs to be made- an application can be made to the COP to be that person's deputy.

For more information on court appointed deputies- including the application process- please refer to the MCA Project Factsheet on Court Appointed Deputies.

Making an urgent or emergency application to the Court of Protection

You can apply to the Court of Protection to get an urgent or emergency court order in certain circumstances, e.g. when someone's life or welfare is at risk and a decision has to be made without delay. If the court agrees, you'll be able to make the necessary decision on behalf of the person who lacks mental capacity.

You won't get a court order unless the court decides it's a serious matter with an unavoidable time limit.



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Applying for a one –off decision from the Court of Protection

You can apply to the Court of Protection if both of the following apply:

- You're concerned about the personal welfare or property and financial affairs of someone who's lost mental capacity
- You want to get a one-off decision, e.g. to stop someone visiting a person who's lost mental capacity in a nursing home

You can only apply to the court if there's a major disagreement about a serious decision which can't be agreed any other way. There are general rules and examples in the Mental Capacity Act 2005 Code of Practice.

Deprivation of Liberty Orders

- If a person objects to a Deprivation of Liberty authorisation or there are concerns about that the authorisation was not processed properly- then they must make an application to the COP
- If a person is receiving a state funded package of care in their own home and the person lacks capacity to consent to the care, is thought to have a care package which is in their best interests but deprives them of their liberty, then the organisation funding the care package must apply to the COP for a Deprivation of Liberty Authorisation

Applying to the Court of Protection

Details of the application process and links to the application forms can be found at-

<https://www.gov.uk/courts-tribunals/court-of-protection>

This fact sheet is based on information provided on the above website and was documented in December 2016.

