

# Court of Protection (CoP) Protocol

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## 1. Introduction

This protocol has been produced to provide guidance to staff about good practice in case management prior to accessing the Court of Protection in welfare disputes and the procedure to follow when an application may be needed.

The text boxes are an aide memoire and refer staff to relevant legislation and/or steps to follow at certain stages in the process.

Where the term 'the person' or 'P' is used this refers to the person subject to an application in the Court of Protection (CoP)

This protocol also provides guidance on applications to the court to authorise deprivations of liberty in the community where there is no dispute about the application, there is a separate section regarding these applications.

The Court of Protection is a specialist court, set up as part of the Mental Capacity Act (MCA) (referred to as the Act from here onwards), to deal with decision-making for people aged 16 or over who may lack capacity to make specific decisions. The court has a range of powers, including making decisions about;

- whether a person has capacity to make a particular decision
- whether an action is in the persons best interests
- whether a person is being/should be deprived of their liberty and/or whether such a deprivation is necessary, proportionate and in their best interests
- The validity of lasting and enduring powers of attorney
- The appointment of deputies.

The MCA Code of Practice gives further advice about the Court of Protection in Chapter 8.

Decisions about whether an application should be made to the Court of Protection must be informed by the MCA Code of Practice and case law, staff must always apply the guiding principles of the MCA.

### Five Guiding Principles of the Mental Capacity Act

#### Principle 1:

#### A presumption of capacity

Every adult has the right to make their own decision and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume someone cannot make a decision for themselves just because they have a particular medical condition or disability or because they lack the capacity to make other decisions. If you believe the person may lack the capacity to make a particular decision, you must assess their capacity in relation to that specific decision, and the evidence you present must be relevant, clear, unambiguous and sufficient to rebut the presumption of capacity.

<p><b>Principle 2:</b>  <b>Individuals being supported to make their own decisions</b></p>	<p>You must take all practicable steps to support the person to make the decision before deciding that they lack capacity. This includes providing the person with the information they need to make the decision in a way they are best able to understand, choosing a time when they are best able to process information and engaging someone they trust to support them. If a lack of capacity is established, it is still important that you involve the person as far as possible in making decisions and that you take their past and present wishes and feelings into account.</p>
<p><b>Principle 3:</b>  <b>Unwise decisions</b></p>	<p>People might make what others regard as an unwise, eccentric or even risky decision based on their own values, beliefs and preferences. You cannot treat them as lacking capacity for that reason.</p>
<p><b>Principle 4:</b>  <b>Best interests</b></p>	<p>If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests. The person's best interests may be different to the preference of their family, carers, health care providers, or the local authority and you must be able to show that it is the person's best interests which are paramount. The Act sets out a range of considerations which must be made when making a best interest decision and you must provide evidence that you have taken account of these.</p>
<p><b>Principle 5:</b>  <b>Less restrictive option</b></p>	<p>When you are making a decision on behalf of a person who lacks capacity you must decide or act in a way that would least interfere with the person's basic rights and freedoms of action.</p>

## 2. Good practice in case management before considering an application to court

In all cases a thorough Care Act assessment is crucial to determine the person's care and support needs. The first principle referred to above indicates, the MCA directs that you must presume someone to have capacity, but if you have doubts you should undertake a formal mental capacity assessment. This assessment must determine whether the person has mental capacity to consent to the assessment and to the arrangements which are proposed to meet their care and support needs.

This must be recorded using the MCA document on Liquid Logic and will be followed, if capacity is lacking, by a Best Interests decision regarding the decisions required, which must also be recorded using the form available on Liquid Logic.

Each decision that needs to be taken in relation to the individual has to be considered separately as the person may have capacity to make some decisions but not others. A timeline may help identify what the changes in capacity are and how that challenges the person's continued independence.

The Best Interests' decision-making process (explained in more detail below) will then be able to consider available options. Consideration should be given to the Human Rights Act (1998) especially Article 8 right to family life and Article 5 right to liberty and evidence of this contained within the best interest decision record. You will need to have obtained confirmation of which option/s will be funded before proceeding any further, including what current funding is in place. This establishes which options are available to the person as the Act is clear that options should not be offered to someone who lacks capacity which would not be offered to someone who has capacity. Best Interests decisions should include an analysis of the benefits and burdens of all available options and alternatives that have been considered.

**See example at Appendix 1.**

In order to establish as much as possible about the person's wishes and feelings a pen picture (which may be evidenced in an assessment or review) will be needed of the person to include;

- historical biographical information,
- previous occupation,
- family circumstances,
- Community engagement.

This is vital to understand who the person is, their values and beliefs and what their current views are likely to have been had they still retained capacity. Though not determinative, the wishes and feelings of the person are to be given particular weight.

The Court of Protection has regularly emphasised the particular importance of establishing and taking into account what the person's wishes and feelings are.

Ensure an assessment of the carer (if appropriate) is carried out and needs addressed.

Would an increase in support enable the person to remain independent? All decisions must be evidence based and recorded.

## Practice tips

### Remember that capacity is time and decision specific

- Consider use of assistive technology to establish patterns of behaviour and to identify risks.
- Consider fluctuating needs that may impact on capacity. Making an accurate appraisal of fluctuating needs requires time to establish the full extent of the fluctuation but may be invaluable in enabling the person to make a capacitated decision. An expert opinion may be needed to support any assessment.
- Consider whether other agencies should be playing a more prominent role. For instance, if the person does lack capacity, would the decision maker be a health professional rather than a social care professional.
- Decisions must uphold the rights of the individual, should avoid the tendency towards overprotection of the individual who lacks capacity and not be risk averse. The MCA Code of Practice summarises this as follows: *'The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. But the Act also aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack capacity to make decisions to protect themselves.'* Bear in mind Mr Justice Mummery's famous judgement in the case of MM and Local Authority X 2007 where he said "What's the point of making someone safe if in doing so you just make them miserable?"

### 3. Steps in case management before an application to court in a disputed welfare case is considered

The following steps are essential in all situations when working with a person with care and support needs. If you are considering an application to the Court of Protection this means that you consider there to be a significant welfare dispute or unresolved conflict or if the required decision is not covered by the MCA code of practice, ie an exempt decision such as consent to sexual relations.

The following steps will already have been taken but it is the social workers responsibility to ensure they are robust.

1. Complete a Personal Profile (Care Act assessment) which will include an analysis of risk and a risk management plan.
2. Complete the Support Plan.
3. Complete a decision- specific capacity assessment (which is very clear as to what the decision to be made is and what the relevant information was which was given to P).
4. Ensure reasonable adjustments have been made to support the individual to participate in the process including if there is no 'Appropriate Person' consideration of the provision of advocacy. If the person has "significant difficulty" in participating in the assessment, an advocate should be engaged to support their participation and represent their views. This is separate from and in addition to the provision of an IMCA although in practice, the two roles can be fulfilled by the same person. If the decision is about whether to place the person into accommodation (for example a care home or a long stay hospital), or about whether to move people to different long stay accommodation, a referral for an independent Care Act advocate (IMCA) must be made.
5. Begin a chronology of events, ensure all observations are up to date and all communications are recorded.
6. Determine whether anyone holds a Lasting Power of Attorney for Health and Welfare decisions or whether there is a Deputy appointed for Health and Welfare.
7. Ask to see a copy of the LPA or Deputyship. If no copy is made available you can complete form 'OPG 100' to search the register. This is a free service. <https://www.gov.uk/find-someones-attorney-or-deputy> Determine which decisions are needed, who can make them and where necessary hold a best interests meeting.
8. Make sure that the Appropriate Person or advocate is included at each step.

### **CARE ACT REMINDER NOTE**

An Appropriate Person must not be:

- ✓ Already providing care or treatment to the person in a professional capacity or on a paid basis
- ✓ Someone the person does not want to support them
- ✓ Someone who is unlikely to be able to, or available to, adequately support the person's involvement
- ✓ Someone implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to event abuse or neglect

## 4. Best Interests decision making

Before any application to Court is considered there must be a clear record of the Best Interest decision/s under consideration.

The social worker must follow the statutory checklist and must use the Hull City Council document for recording on Liquid Logic

### 4.1 Best interests meeting tips

- Always use the statutory checklist as a process of acquiring evidence. Maintain focus on the best outcome for the person taking into account what is known about their wishes and feelings (which are of particular importance) and what is important to their wellbeing.
- Always seek the less restrictive option.
- Gather the views of all the professionals involved and other interested parties including family members, informal carers and provider services. It is an opportunity to clarify individual opinions and the reasoning for their view.
- All available options should be considered.
- Available options are those for which funding is in place or has been agreed.
- Provide a record of decision making and actions setting out why a particular course of action was identified.
- If the person's wishes cannot be adhered to, give reasons why. Consideration should be given to the potential need for further assessments or expert opinion.
- Record all opinions, including any dissent and the reasoning for each view. Conclude with a summary of decisions reached, actions to be taken, by whom and when.

### MCA 2005 statutory checklist for making best interest decisions

- It is important not to make assumptions on the basis of the person's age or appearance, condition or any aspect of their behaviour.
- The decision-maker must consider all the relevant circumstances relating to the decision in question.
- The decision-maker must consider whether the person is likely to regain capacity. If so, can the decision or act wait until then?
  - The decision-maker must involve the person as fully as possible in the decision that is being made. The decision maker must consider:
    - The person's past and present wishes and feelings (particularly if they have been written down)
    - Any beliefs and values (e.g. religious, cultural or moral) likely to influence the decision in question.
    - As far as possible the decision-maker must consult other people and take into account their views as to what would be in the best interests of the person lacking capacity, especially:

What they think is in their best interests

What they know about their wishes and feeling

Any other factors the person is likely to have considered if they could

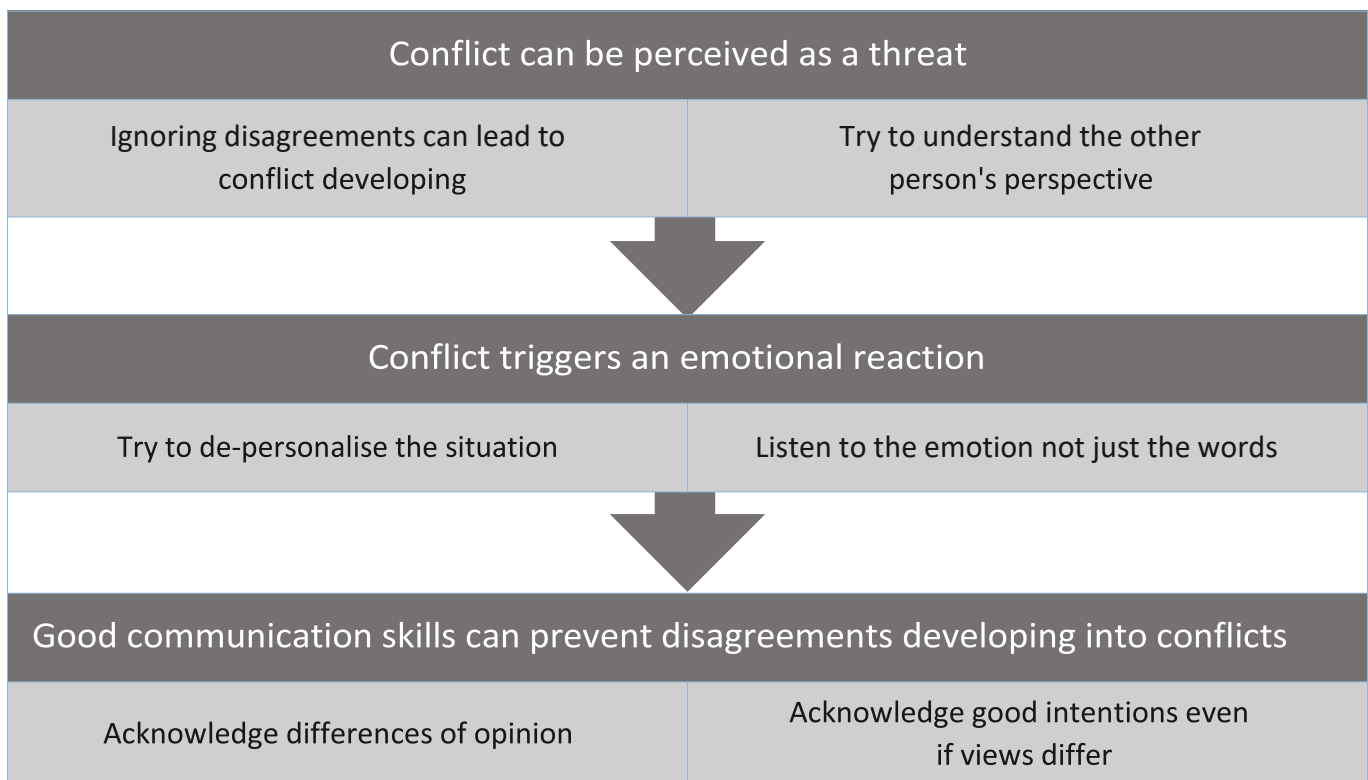


## 4.2 Disputes

The best interest’s decision-making process will help everyone to share their views and seek agreement on the way forward. However, disputes may arise when people cannot agree on which decision or course of action represents the person's best interests. Where there is a dispute it is important to try to defuse the situation using principles of conflict resolution (see table below) or to consider alternatives to legal action. These include:

- An independent advocate.
- Convening a formal best interest decision making meeting with an independent chair.
- Informal resolution processes, face to face meetings and mediation
- Following a complaints or disputes resolution procedure.
- Conflict Resolution

## 4.3 Conflict Resolution



The Social Worker, Practice Lead Manager and Operations Manager will need to be certain that all appropriate informal dispute resolution methods have been tried, without success before proceeding to consider an application to the Court of Protection.

For further information on Best Interests and MCA please click [here](#):

<https://www.hullapp.co.uk/contents/#mcmh>

## 5. Next Steps

If you are considering an application to Court this suggests that there is still a conflict or an unresolved welfare issue at the conclusion of the best interests' decision-making process. Remember that you do not necessarily need a consensus in order to proceed with the decision - this will depend on the kind of intervention necessary.

### Remember:

If the person has capacity for the decision in question then an application to the Court of Protection is not possible. In such circumstances, the only options available are the Mental Health Act 1983 if the person meets the criteria for detention or to consider the intervention of the Police (Police and Criminal Evidence Act) if it is deemed necessary to enter without warrant to save life or limb where there is a serious risk of harm.

In certain cases if the person is vulnerable and is experiencing undue pressure or duress an application can be made to the High Court for a decision under the inherent jurisdiction (appendix 8). Legal advice must be sought in these circumstances

If the person is in danger due to criminal activity then the police should be contacted.

If the person lacks capacity the following will need to be evidenced before a decision can be made on how to proceed.

- That all less restrictive interventions have been explored before a decision is taken to seek the intervention of the Court. This does not mean any less restrictive interventions need to have been tried first but if they have not, the practitioner needs to evidence why they are not appropriate given the likelihood and risk of harm.
- That a comprehensive risk assessment and plan in relation to the intervention required from the Court has been undertaken and recorded. This will identify the risks, the likelihood of the risk occurring and the proposed intervention in response to the risk.
- If it is anticipated that restraint will be necessary then each measure proposed should be identified from the least restrictive to the most restrictive including how each measure is proportionate to the likelihood and risk of harm.
- Any support required from outside agencies such as police, ambulance service should be identified.

**PLEASE REMEMBER:**

Section 5 of the MCA allows acts in relation to care and treatment to be carried out where the person lacks capacity to consent and the action is in their best interests.

Section 6 of the Act places limits on the use of force or restraint in relation to such action by specifying that it must be necessary to protect the person from harm and a proportionate response to the likelihood and seriousness of harm.

There are therefore many acts which can be carried out under the MCA, where the principles of the MCA have been fully adhered to and the use of force or restraint is demonstrably proportionate to the likelihood and seriousness of harm.

1. The practitioner needs to consider whether the proposed intervention may exceed what is allowed under the MCA. In particular the question of whether the restrictions in themselves amount to a deprivation of liberty (which cannot be authorised by Section 5) and would therefore be, without taking further steps, a breach of Article 5 of the Human Rights Act (HRA). If the intervention includes restrictions which exceed what is allowed under the MCA an application to the Court of Protection may be needed before any steps are taken. Legal advice will be needed.
2. The practitioner needs to consider whether any family member or person concerned in the welfare of the person who lacks capacity or indeed the person themselves, objects to the interventions proposed. If there is no family to support the person then an IMCA should be appointed as a matter of urgency. If the person themselves or their family objects then the practitioner must consider the implications of Article 8 HRA. If there is an interference with the person's family life (which includes decisions around sexual relationships) an application will need to be considered. Legal advice will need to be sought at this point
3. The practitioner should also consider whether the intervention is as a result of a significant welfare issue which cannot be resolved. Examples of such situations are moving a person who lacks capacity into residential accommodation in order to meet their care and support needs but where either they or their family object or where there is concern that contact of some kind between the person who lacks capacity and another individual is detrimental to their welfare. Legal advice will be needed.

## Acting in an emergency

Sometimes people lacking mental capacity to decide for themselves require action to be taken immediately and in response to an emergency situation. The person's safety is paramount and any essential action should be taken. A full written record should be made as soon as possible and where appropriate (for example where the intervention involves a deprivation of liberty) an application to the Court of Protection should be made. You can make an emergency application to the Court of Protection if you need a court order for a decision in a very serious situation and there's an immediate risk to the person for example when someone's life or welfare is at risk and a decision has to be made without delay i.e. to give them treatment for a serious medical problem they are unable to consent to. If the court agrees, you'll be able to make the necessary decision on behalf of the person who lacks mental capacity. You will not get a court order unless the court decides it's a serious matter with an **unavoidable** time limit. It has not been defined when an application should be classified as "urgent". Consensus is that an urgent application is where the court would need to deal with an application as soon as possible, usually within 24 hours. It is usual for urgent applications to be made within court hours and dealt with at the court itself. On rare occasions, an application can be made out of hours by contacting the court by telephone and explaining the purpose of the application. If made by telephone, the court will require an undertaking that the application form in the terms of the oral application will be filed at court, probably on the next working day. An urgent order can be used for a variety of reasons these applications usually relate to medical treatment but can also be used for instance for removing someone from their home to a care home and depriving them of their liberty at the care home. Legal advice will be needed in this situation. The social worker has been the decision maker to this point and will have been discussing the case with their line manager but from here on in full discussion must take place with the Practice Lead Manager and the Operations Manager **before** instigating a legal planning meeting. The following issues must be discussed:

1. What attempts have been made to resolve the dispute and are there further attempts which could be made?
2. Is there still a substantive dispute relating to the welfare of a vulnerable person who lacks capacity to make a decision on the issue?
3. Does the LA believe it is necessary to commence proceedings in the Court of Protection so as to protect the person from abuse or neglect or otherwise to promote their best interests?

If having followed all the procedures identified above the issue remains unresolved and the consensus is that an application to the court may be required, legal advice will be needed at this point and a Legal Planning Meeting should be convened.

## 5.1 Legal planning meetings

The operations manager in consultation with the appropriate Head of Service and Legal Services will set up a legal planning meeting. Consider whether or not this should be a joint planning meeting with health (if jointly commissioned package). Legal Planning meetings will be chaired by the appropriate Head of Service or a delegated senior officer.

Please note that a legal planning meeting should not be used for crisis resolution or in response to an emergency, but should be part of a planning process.

It is important to identify at the outset, who should be involved in the legal planning meeting and to avoid (where possible) duplicate or multiple meetings. Minutes and emails of relevance should be shared with all those who are considered to be necessary participants in the process.

Prior to the legal planning meeting the social worker should prepare a report which contains:

1. A description in summary of the presenting situation
2. The outcomes being sought from the court.
3. A summary of all the steps taken thus far to resolve the dispute (remember applying to the Court of Protection is very much a last resort).
4. A clear analysis of how you have reached your professional judgement in respect of the desired outcomes (and confirmation you have funding approval)
5. A summary of your own professional credentials (qualifications, length of experience in this role and any specific training or expertise in particular conditions). This is to go into any witness statement prepared for the Court application

Be prepared to present your summary verbally and to be able to articulate your decision making within the legal planning meeting. You will need to begin collating all assessments and related documents. A standard agenda can be used for these meetings. **See Appendix 3**

## 5.2 At the Legal Planning Meeting

The meeting will:

1. Consider the case put by the social worker
2. Explore with them any care and support options not previously explored
3. Explore any dispute resolution options not already attempted
4. Consider which legal options are available
5. Determine the next steps including input from other professionals
6. Consider the finances of the individual
7. Consider who will act as litigation friend to the person

The outcome of the legal planning meeting is to decide whether there is sufficient evidence to support a request for authorisation from the Head of Service proceed to the Court of Protection. It will also indicate how soon it is considered necessary to make the application i.e. either “extremely urgent” (24-48 hours), “urgent” (within 7 days) or “standard” (up to 28 days). The Chair will complete the Record of Decision for submission to Head of Service for approval. [See Appendix](#)

## 5.3 Change of circumstances after a decision to proceed to court

It is possible that circumstances may change, even at this stage. For example, the issue causing concern may resolve or conversely the situation may worsen. It is important to keep this under constant review. If approval to proceed to Court has been given but is no longer necessary as the risks are removed, or if the approved timescales for the making of the application, are not met the Decision Record must be reviewed by the senior officer and the Head of Service must be informed. If authorisation to proceed to Court was not given, but the situation worsens the Decision Record must be reviewed in order for the Head of Service to review their decision.

Once approval is given for an application to Court, the Social Worker or Social Care Support Officer will complete the Court of Protection Review Panel Checklist and submit to the Practice Surgery for discussion, oversight and endorsement. Once endorsed the checklist will be forwarded to the COP Review Panel [courtprotection@hullcc.gov.uk](mailto:courtprotection@hullcc.gov.uk) for recording oversight and monthly monitoring.

## 5.4 Preparation for a hearing

Social workers will be expected to attend Court in the event of a Court application being made.

The first step is to prepare the witness statement for proceedings. A template will be provided by Legal Services.

Legal services will then inform the social worker of the date and time of the hearing, where the court is and how to get there what needs to be done in preparation for the hearing such as any further actions or reports needed as a result of any interim decisions or directions by the Court

## 5.5 Following the hearing

Any directions issued by the Court must be followed within the timescale set by the Court. If a timescale has not been set, the directions must be followed as soon as is reasonably practicable. Ensure you follow the court decisions taking responsibility for any further actions. Be aware of key dates and what is expected of you by the court

Summary of Steps in a disputed Court of Protection Application	
1.	Where, having considered the principles set out above, an application to the Court of Protection may be necessary, discuss the case with the Practice Lead Manager or your Operations Manager with their agreement make contact with Legal Services to request a Legal Planning Meeting to include senior managers. This can be done via a conference call or MS Teams if the matter is sufficiently urgent that a physical meeting cannot be arranged in time.
2.	If the Legal Planning meeting agrees that an application is appropriate, formal authorisation needs to be sought to commence proceedings from the appropriate Head of Service at the Quality and Risk Panel. This will be done by the Chair of the meeting using the Record of Decision from the meeting.
3.	If proceedings are authorised then the social worker, with appropriate assistance from legal services, will need to complete the following: <ol style="list-style-type: none"> <li>1. Witness statement – a template is provided at Appendix 5.</li> <li>2. CoP 1 and 1B (please speak to Legal Services)</li> <li>3. CoP3 – this is the assessment of capacity. Unless the assessment is complex the Court is likely to be satisfied with an assessment from the social worker but if a medical practitioner is willing and able to complete the form that may be preferable, especially if there is any disagreement over whether P lacks capacity.</li> </ol>
4.	If authorisation is not given to commence proceedings the situation must be kept under review and the Decision Record should be reviewed and updated for the Head of Service if circumstances change.
5.	Legal Services will finalise and submit the documentation to court and include a position statement dealing with the urgency of the situation.

## 6 Specific situations that require a legal planning meeting

### 6.1 Admission to residential care with objection

Sometimes the issue facing the practitioner involves consideration of moving the person from their home into residential care in order to meet their care and support needs but where either they or their family objects. It is important to be aware that the Council has no right to require anyone to move from their home against their wishes without either applying the safeguards described below or applying to the CoP for prior approval. This is a difficult area as sometimes it is necessary for a person to move in order that their care and support needs can be met. Each situation will be different, and it will be necessary to assess the urgency to decide which approach is appropriate.

Practitioners will need to have explored all options for supporting the person at home, perhaps with an increased package of care, before any decision about admission to residential care is considered.

Practitioners will also need to be familiar with the remit (and limits) of Sections 5 and 6 of the Mental Capacity Act ("MCA"). Section 5 provides a practitioner with protection from liability for their actions where they reasonably believe that an individual lacks capacity to consent to their admission to residential care and that such an admission is in their best interests (provided the practitioner does not act negligently).

Section 6 then goes on to provide that if restraint is necessary in the course of moving the person, then the practitioner will be protected by Section 5 but only if they reasonably believe that it is necessary to restrain the person to prevent harm to them and the act is a proportionate response to both the likelihood of the individual suffering harm, and the seriousness of that harm. This will require a clear risk assessment.

Additionally, case-law has established that it is good practice to seek court approval in any situation where the LA is in doubt as to whether it is lawful for them to require the person to move into residential care from their own home.

Some people will need to move into care because of a breakdown in arrangements at home (caused for example by a fire, flooding, provider failure or an increase in their care needs) and where there is no objection (either from the person themselves or their family) then a move can take place.

**PRIOR** to any move there must be an assessment of capacity, best interest decision and, if relevant a Deprivation of Liberty Safeguard's Urgent or Standard Authorisation will be required.



This is particularly true if either the person who lacks capacity or someone concerned with their welfare, objects to their proposed deprivation of liberty in residential care, (even if only respite is proposed - see below).

If the circumstances are too urgent to wait for the granting of a Standard Authorisation, then the local authority must seek the approval of the Court of Protection prior to the deprivation of liberty arising. In these situations, it is also possible to rely on Section 4B of the MCA which allows a person to be deprived of liberty pending an application to Court in order to either provide life sustaining treatment or to do a vital act.

<b>Summary of Possible Situations</b>	
<b>Circumstances</b>	<b>Legal Framework</b>
P and family/others concerned with P's welfare all agree residential care is necessary and in P's best interests.	Section 5 MCA (and possibly s 6 if P resists at any point and restraint is necessary and proportionate to prevent harm to P). If P is to be deprived of their liberty within the care home a Standard Authorisation needs to be in place prior to the move.
P does not object to the move to residential care but someone legitimately concerned with P's welfare does.	As a minimum a Standard Authorisation needs to be in place prior to the move, though CoP approval (bearing in mind Neary*) should be considered.
Where P is to be deprived of their liberty at a care home and there is not time to ensure a Standard Authorisation is in place first.	Court approval will be needed prior to the move (though see s 4B MCA)
Where P objects (whether expressly or impliedly) to the move.	Court approval is likely to be needed prior to the move as there will be a serious interference with P's Article 8 right to respect for their private and family life and their home.

\* London Borough of Hillingdon accepted Steven Neary, a young man with disabilities, into respite care for a few days at the request of his father and then kept him there for a year in circumstances which gave rise to a breach of his rights under Articles 5(1) and 8 ECHR. The Judge determined that, by failing to (i) refer the matter to the Court of Protection sooner and/or (ii) appoint an IMCA for Steven sooner and/or (iii) conduct an effective review of the DOL best interests assessments under Part 8 of Schedule A1 of the Mental Capacity Act 2005, Hillingdon had deprived Steven Neary of his

entitlement to take proceedings for a speedy decision by a court on the lawfulness of his detention, this was a breach of Article 5 (4) ECHR.

## **6.2 What if the Person Will Not Allow Access to the Practitioner?**

For the most extreme situations, emergency police intervention is available under section 17(1)(e) of the Police and Criminal Evidence Act 1984 to save life or limb or to prevent serious damage to property.

Risk of serious harm would suffice<sup>2</sup>; mere concern for the person's welfare would not<sup>3</sup>.

Whilst this power would not authorise the person's compulsory removal, it would permit compulsory entry.

Section 115 of the Mental Health Act 1983 ("MHA") authorises an approved mental health professional ("AMHP") to enter and inspect private premises (although not by force) if they have reasonable cause to believe that a mentally disordered person is not under proper care.

Section 135 of the MHA provides that the AMHP can obtain a warrant from the Magistrates' Court to enter premises, if need be by force, if certain welfare criteria are met. The person can be removed to a place of safety and held there for up to 72 hours with a view to the making of either (a) an application under the MHA or (b) "other arrangements for his treatment and care."

*2 Baker v CPS [2009] EWHC 299*

*3 Syed v DPP [2010] EWHC 81*

## **6.3 What If the person has capacity?**

If the person is assumed to have capacity or if the assessment concludes they have capacity, they cannot be admitted to residential care using the MCA. In such circumstances, the only options available are:

1. the Mental Health Act 1983 if the person meets the criteria for detention or to consider the intervention of the Police (Police and Criminal Evidence Act) to enter without warrant to save life or limb if there is a serious risk of harm (though this does not authorise removal).
2. In certain cases, if the person is vulnerable and is experiencing undue pressure or duress an application can be made to the High Court for a decision under their inherent jurisdiction (appendix 8). Legal advice must be sought if this is a possibility.
3. If the person is in danger due to criminal activity, then the police should be contacted.

## 6.4 How Should Respite be treated?

Short stay placements to be considered in exactly the same way as when considering a permanent placement.

The same questions need to be asked regarding deprivation of liberty. Respite for a period of anything more than a few (2-3) days will be a deprivation of liberty if the acid test is met and this period could be even less in settings where particularly intense measures of control are imposed. In addition, the following further points may be relevant:

- The impact of being in an unfamiliar setting on the person and how his or her care plan provides for a response to unsettled behaviour.
- The impact of reduced contact with a primary carer.
- The underlying intention of the placement: is there any prospect that it will be extended or made permanent? It is important that a move is not described as “respite” when, in reality, it is intended to be permanent.

**NB:** there may be some limited circumstances under which it may be lawful to conceal from the person the true purpose of their move, but these are very likely to be circumstances in which the sanction of the Court is required.

### Acid Test to determine a deprivation of liberty

For a person to be deprived of their liberty, they must lack mental capacity to make the decision about where to be accommodated to receive care and treatment AND be subject both to complete or continuous supervision and complete or continuous control and not be free to leave.

## 6.5 How do I Transport the Person to the Care Home/Hospital?

Transporting a person who lacks capacity from their home, or another location to a hospital or care home by ambulance in an emergency will not usually amount to a deprivation of liberty and can be achieved under the wider provision of the MCA (see Sections 5 and 6 above), as long as being in hospital or a care home will be in their best interests. There may be exceptional circumstances where transporting the person will amount to a deprivation of liberty and therefore you will need to seek authorisation from the Court of Protection either before the move takes place or (in the emergency situations contemplated by Section 4B MCA) at the same time as the move takes place.

The Court will expect a detailed conveyance plan to be prepared and submitted which will usually include planning for restraint and consideration of the less restrictive options in relation to the move.

Please note that it is generally understood<sup>4</sup> that a standard authorisation does not provide authority for depriving a person of their liberty when they are being conveyed from their home to a care home specified in the authorisation. However, if the individual is subject to guardianship under the MHA, s18(7) provides an AMHP with the power to take and convey the person to a specified place of residence.

<sup>4</sup>*GJ v Foundation Trust [2009] EWHC 2972 (Fam)*

## 6.6 What if the deprivation of liberty is not anticipated?

Where it was not anticipated that an authorisation would be needed but once the person is moved it is clearly needed then the care home is able to issue an Urgent Authorisation which must be accompanied by a request for a Standard. Case law suggests this will rarely happen as the Courts view is that it should be clear in advance when a situation will amount to a deprivation of liberty.

Further advice on deprivation of liberty can be obtained from the DoLS Team [Dols@hullcc.gov.uk](mailto:Dols@hullcc.gov.uk)

### Transport situations which may need court approval

These include where:

- it is necessary to arrange for the assistance of the police to gain entry to the person's home to assist in their removal.
- it is or may be necessary to do more than persuade or use transient physical restraint of the person during the move so that, for example, force or threats have to be used to overcome the person's resistance to being transported.
- the person may have to be sedated.
- the journey is exceptionally long or otherwise very onerous for the person.
- Subterfuge has to be used so that, for example, the person is falsely informed that they will be returning home shortly.

## 7 Deprivation of liberty in a setting other than a hospital or care home (often referred to as ‘streamlined community DoL applications’)

In any case where a person aged 16 or over is receiving care in a setting other than a hospital or care home, in a way that meets the acid test for a deprivation of liberty, these arrangements must be authorised by the Court. This applies even if the care is entirely privately funded, such as where a family arrange private carers or a court-appointed Deputy is administering personal injury awards and the local authority has been informed of the situation.

### 7.1 The Court of Protection (CoP) Review Panel

The COP Review Panel ensures a joined up approach to the consideration and approval of applications made by the council to the court in respect of Community Deprivation of Liberty (DoLs) - These DoLs are governed by the Mental Capacity Act and the council has a statutory obligation to make sure that any deprivation of liberty in the community that the council is aware of is authorised by the court and is therefore lawful.

The CoP review panel acts as the corporate mechanism to ensure that the integrity of this community DoL court application approval process is upheld.

The social worker for the person who is believed to be deprived of their liberty in the community completes a CoP panel checklist form which gives the panel information about the person to enable them to consider the need for a court application in respect of that person.

The outcome from the panel is to recommend to the referrer whether or not to progress the court application based on a priority of between 1 and 3 as follows, the Chair of the panel may then authorise the court application

- **Level 1 (low priority) – No set timescale. CoP panel to review after 2 months:**  
Living with family, some restrictions unlikely placement will breakdown, evidence of regular monitoring and oversight of case by allocated team.
- **Level 2 (medium priority)– Initial 4 week deadline, review after 4 weeks:**  
LA arranged accommodation CQC checks, considerable restrictions i.e. SLC, supported living.
- **Level 3 (high priority)– Immediate Allocation & Commencements of Case to Application:**  
Considerable restrictions, objections, risk of placement breakdown, provider requires DoL authorisation.

It is important that the ASC remains connected to the Panel in order to be aware of issues causing delays to individual cases and also to address higher level issues that require management intervention. The Panel has an ongoing monitoring role to ensure the cases authorised do progress to applications to the CoP. The CoP panel also monitors the number of CoP cases generally.

In basic terms the process for these CoP applications which are unopposed by P or people interested in P's care and support are quite straight forward the steps are as follows:

- 1 Complete the CoP panel checklist form (**See Appendix 4**) and submit to the Practice Surgery for discussion, oversight and endorsement. Once endorsed send the checklist, up to date Care Act Assessment, Mental Capacity Assessment and Best Interest Decision Record to the COP Panel [courtofprotection@hullcc.gov.uk](mailto:courtofprotection@hullcc.gov.uk) . The panel will consider and make recommendations regarding the checklist and proceedings may then be authorised.
- 2 Once proceedings have been authorised contact legal to request that a letter be sent by legal to P's GP requesting confirmation of P's diagnosis and that P is of 'unsound mind'
- 3 Complete the Court of Protection forms COPDOL11 and COP 3 ( found on the [Court of Protection - GOV.UK \(www.gov.uk\)](http://www.gov.uk) website) in draft and send them to legal for checking together with an up to date MLMW/EIA and BI decision that relates to residence and care and support ( including the restrictions amounting to a DoL).
- 4 Once the GP letter has been received and the documents above have been checked by legal and signed, legal will send them to the court.
- 5 The court will check the documents and then request a statement from the Rule1.2 representative ( see below) of P confirming they have received the papers, that they agree the care and support arrangements for P and that they do not require an oral hearing.
- 6 Once the court receives the statement from the Rule 1.2 representative it will then usually authorise the DoL for 1 year by way of a court order. This is usually a paper process with no court hearings required.

During the application to court, P will need support to make sure they are involved as much as they are able, in the process. This support can come from either a litigation friend or what is called a Rule 1.2 representative. The local authority should consider whether a family member or friend is willing to be the litigation friend (further detail can be found at <https://www.gov.uk/litigation-friend/suitability>) or Rule 1.2 representative. If there is no one who can or will do this the local authority could make a referral for an Independent Advocate or alternatively the court will be able to appoint a court visitor ( although it should be noted the court may take some time to make such an appointment).

Once the application has been made, the local authority may, if applicable, be authorised to deprive the person of their liberty under s 4B MCA.

## 8 Limiting Contact

Limiting contact between a person and their family or friends is likely to involve or to raise serious issues under Article 8 ECHR and as such is likely to require Court approval. The Court has previously issued useful guidance regarding contact arrangements with a person in a care home in their best interests (*WCC v GS* (2011) EWHC 2244 (COP)). This decision offers a framework where a practitioner considers restrictions need to be imposed on contact visits. These must be considered before an application to the CoP is made to restrict contact.

- 1 Keep the arrangements under review – nothing should be set in stone.
- 2 Detail every step of a contact session – In some cases there will be a need to manage every step from the arranging of the visit to the arrival of the family member at the home until their departure. In other cases, a more general approach can be appropriate.
- 3 Create a contact schedule – The dates and times of visits will need to be set out clearly in a contact schedule.
- 4 Have a contingency plan – this is sometimes needed to address problems, for example, if the family member cannot get to the home on a particular day due to an emergency.
- 5 Consider additional resources – Is it appropriate for financial assistance to be made available by the local authority or other relevant third party to the relative for travelling to and from a care home.
- 6 Consider supervision – If the visit is to be supervised, who is to supervise and what level of supervision is required. In some cases the supervision may take the form of detailed note taking by an independent person; in other cases it may be a cursory check-up by a member of the care home staff; in yet other cases, the allocated social worker may attend to just keep a watching brief.
- 7 Build in flexibility for the care home – The home or contact supervisor may need to cancel shorten or lengthen a visit the visit if circumstances deem it appropriate, either before the visit or during the visit.
- 8 Are conditions necessary – Contact arrangements may include provision that the family member not be rude to or harass staff or other residents, the point of entry and exit to and from the care home, the fact that other residents need to be left alone, that their care should not be interfered with, restrictions as to what food and drink can be brought into the home and the venue in the home for contact.
- 9 A record of the visit –The level of formality will depend on the situation. In more serious cases every word may need to be recorded and in other cases a note will simply be taken that the visit passed without incident and everything went well.

It is important that any restrictions or limitations upon the ability of an individual to have any contact with another is authorised by the Court and this would include any requirement for such contact to be supervised.

## 9 Tenancy Agreements

If a person lacks the mental capacity to make his or her own informed decision about whether or not to accept a tenancy offer, then an appropriate person can make the decision through the best interest process outlined in the MCA.

Alternatively, if there is a registered enduring or lasting power of attorney (property and financial affairs) in place; or a Deputy for property and financial affairs has already been appointed, then the attorney or deputy would usually make that decision (see below).

Although the MCA allows for decisions to be made in a person's best interests this does not extend to signing legal documents, such as tenancy agreements. Someone can only sign a tenancy agreement on the person's behalf if they are:

- An attorney under a registered lasting power of attorney (LPA) or enduring power of attorney (EPA) with such lasting power of attorney having no relevant restrictions within it;
- A deputy appointed by the Court of Protection subject to any restrictions contained within the Order appointing the deputy; or
- Someone else authorised to sign by the Court of Protection.

In some circumstances, landlords may be willing to accept unsigned tenancies. Even if the landlord will accept an unsigned agreement, it would also be appropriate to make an application to the Court where there is a dispute or if it is not clear whether the tenancy offer is in the person's best interests.

If the person has a registered attorney under an EPA or LPA, or has a deputy appointed to make decisions on their behalf, then the deputy or attorney can terminate or enter into a tenancy agreement without further authorisation from the court subject to there being no relevant restrictions contained within either the LPA or the relevant Order of the Court.

A Deputy does not need to be appointed if the sole purpose of the application is to sign or terminate the tenancy, and the application should be for an order that specifically deals with the tenancy matter. If, however, the adult lacks capacity to manage other aspects of their property and affairs and they have assets and income other than social security benefits then it will usually be necessary to appoint a deputy to deal with all these decisions.

In relation to council tenancies in order to maintain a secure tenancy, council tenants are required to live in their property as their only or principal home. Once they become permanent in ie residential care the council property ceases to be their only or main home. Once a tenant fails to fulfil this occupation requirement, their secure tenancy lapses and HCC housing can then serve 28 day notice to quit to end the remaining insecure contractual tenancy. As long as there are no other people living in the property, a decision specific capacity assessment is undertaken and best interest decision is made that the tenancy should be ended then it is likely the HCC



Housing Team and, possibly some other landlords would be willing to end the tenancy in this manner saving the expense and time involved in a CoP application.

If a court application has to be made the court will require:

- ✓ A COP1 Application form setting out the order or declaration required with the tenancy agreement annexed;
- ✓ A COP3 Assessment of capacity for P. The assessment should deal specifically with the adult's capacity to sign or terminate the agreement;
- ✓ A COP24 Witness statement setting out the circumstances behind the move and confirming that a best interests assessment has been carried out, including consultation with close family members, or people in close contact with the person, where applicable.
- ✓ An application fee.

The application form should request the court to make an order or declaration that it is in the person's best interests for the tenancy arrangement to be signed or terminated on their behalf.

## **10. Section 21A deprivation of liberty appeals**

Where a DoLS authorisation is in place the route to challenge it is an appeal to the Court. This is known as a section 21A appeal or challenge. The appeal is a key Article 5 protection for the person and attracts non-means tested legal aid.

There are protections in place to ensure the person is supported with an appeal through the appointment of a Relevant Persons Representative ("RPR") or in some circumstances the involvement of an IMCA. Case law has also made it clear that the Council as the Supervisory Body must also act robustly to ensure cases are taken to Court where such an appeal is required and that the duty upon the Local Authority to bring such matters to Court is not discharged to the RPR or IMCA, as appropriate.

The case of *RD & Ors (Duties and Powers of Relevant Person's Representatives and Section 39D IMCAs)* [2016] EWCOP 49 gave detailed guidance to help in determining whether an appeal should be brought. This involves considering first the person's capacity to bring an appeal and then whether their wishes can be evidenced from their preferences or from their behaviour.

## **11. Other Scenarios**

Consideration of a court application may also be needed in the following situations if the Council believes that a person with care and support needs lacks the capacity to take the relevant decision and:

- There is reason to believe that they are engaging in sexual relations or may be about to enter into a marriage;

- Someone has funds other than state benefits, but has no one to administer them, or
- The Local Authority has concerns about the person administering them.

## APPENDICES

### Appendix 1–

#### Benefits and burdens, best interests balance sheet

This case involved an 80-year-old female with a diagnosis of dementia, physically well, very active and mobile but without mental capacity to make care, treatment, risk or financial decisions or to litigate.

She was constantly asking to go home and had tried to leave respite care.

The balance sheet approach was used in this complex case with the following outcomes:

Benefits of own home (a)	Benefits of care home (b)
<ol style="list-style-type: none"> <li>1. Continues to remain in a familiar place.</li> <li>2. She does not feel unsafe.</li> <li>3. She wants to be independent.</li> <li>4. She wonders why she is in a hotel and not at home.</li> <li>5. More family contact and maintaining community contacts.</li> <li>6. Increased care package.</li> <li>7. This is where she is happiest.</li> </ol>	<ol style="list-style-type: none"> <li>1. Regular meals/hydration.</li> <li>2. Prompting with medication.</li> <li>3. Prompting with personal care/hygiene.</li> <li>4. Pressure/skin area support/treatment.</li> <li>5. Physical safety improved.</li> <li>6. Staff available 24/7 to deal with crisis.</li> <li>7. Ongoing reassurance for her anxieties.</li> <li>8. Improved dignity.</li> <li>9. Release strain on family members.</li> <li>10. Anti-depressants and anti-psychotics can be administered.</li> <li>11. She enjoys the company of others.</li> <li>12. TLC and treatment may slow her decline.</li> <li>13. Less need for her to contact emergency services.</li> <li>14. Reduced possibility of exploitation/cold callers.</li> </ol>
Plus burdens of own home (a)	Plus burdens of care home (b)

8. Not eating or drinking enough.	15. Likely to be affected by not being in own home.
9. Insufficient/irregular medication.	16. Loss of independence.
10. Deteriorating personal hygiene.	17. Inevitable short term anger/distress.
11. Deteriorating pressures areas.	18. Stronger possibility of depression.
12. Risks of wandering/falls.	19. She may just give up.
13. Increased psychological distress.	20. Problems with contact and community activities.
14. Community/family support has failed	

## Appendix 2 –

### Decision Record – Court of Protection Application Head of Service Approval

Name of person		Date of Record of Approval	
Summary of concerns			
Summary of all measures to date to manage the risk			
Date of legal planning meeting		Outcome of legal planning meeting (copy of minutes)	
Urgency of Proceedings (Please indicate how soon it is intended the application should be made. Please note that if, following approval, these timescales are not met the relevant Service Manager MUST contact the Assistant Director)	Extremely Urgent (24-48 Hours)	Urgent (up to 7 days)	Standard (up to 28 days)
Date submitted for Head of Service Approval		Head of Service Approval	
		YES	NO
Date and sign			
Date proceeding issued			
If proceedings are not issued, please review all the above information and update to inform the Head of Service			

Date resubmitted to Head of Service – Quality and Risk	Head of Service approval	
Date and sign	YES	NO
Change of circumstances requiring a review of the above information		
Date of resubmission to Head of Service	Head of Service Approval?	
	YES	NO

## Appendix 3 –

### Legal Planning Meeting

#### Standard agenda

- Welcome and introductions
- Confidentiality and sharing agreement
- Identification of necessary attendees (and any apologies)
- Summary of social workers report to include: A *description in summary of the presenting situation, A summary of all the steps taken so far to resolve the issue, The outcomes being sought from the court, A clear analysis of how the outcome required, was arrived at*
- Update on any of the information, by any attendees
- Update on mental capacity issues
- Discussion by all attendees
- Agreement on plan
- Legal advice (has the threshold for proceedings in the Court of Protection been met)
- Recommendations and proposed actions, with specific reference to timescales

**NB** Following the conclusion of the Legal Planning Meeting approval for the commencement of proceedings in the Court of Protection must be sought by the Service Manager from the Head of Service via the Quality and Risk Panel. A Decision Record for the Court of Protection will be completed by the Head of Service.

## Appendix 4 –

<b>Court of Protection and DOL in the Community Authorisations Checklist</b>		
<p>(Applications to the COP can only be made if the individual concerned lacks capacity to make the <b>specific</b> decision or decisions relevant to the application. This must be established by an assessment which sets out evidence sufficient to rebut the presumption of capacity to make the <b>specific</b> decision(s))</p> <p><b><u>All sections should be answered in full</u></b></p>		
Name	DOB	LAS ID
Worker Team Team Manager / Supervisor		
Who is funding the care package or placement?		
<p>1) Does the person lack the capacity to make the specific decision or decisions relevant to the application and/or to consent to the care and support arrangements? Has this been established by an assessment which sets out evidence which is sufficient to rebut the presumption of capacity and has the assessment been checked to verify that the evidence does meet this threshold? (If so please attach. If not, please carry out such an assessment)</p>		
<p>2) What are the person's past and present wishes and feelings in relation to the care and support arrangements and/or the matter forming the basis of the application? These may be expressed verbally or through facial expression, body language or behaviour</p>		

3) Diagnosis and behaviours i.e. learning disability, vascular dementia, autism, etc.
4) Brief history i.e. previous placements/difficulties in placements/offending history/ family relationships etc.
5) Current circumstances for example placement type, main carer details i.e. family member
6) Is a move proposed and if so, why?
7) As far as you are aware does anyone have a welfare Power of Attorney or welfare Deputyship Order for the person? If so what are their views on the application and the specific decision or decisions relevant to it?
8) Is the person prescribed or administered medication to help manage their behaviour? Please give detail, including if medication is being given covertly.
9) What level of support is provided with daily living? Is there continuous supervision and control of the person i.e. 1-1 and will this change in the foreseeable future? Please give detail
10) Does the person need regular restraint such as lap straps, bath straps, cot sides, door sensors or physical holding to keep them safe, or will they need this in the foreseeable future? If so under what circumstances and for how long?
11) Is the person free to come and go from their home unaccompanied as they please or to move home if they wished? Please give details
12) Is the person able to move freely about their home? If they are prevented from leaving certain areas or prevented from accessing certain areas, how is this managed at present?
13) What has been tried to minimise or avoid the need for such restrictions and what was the result? Please give details

14)What has been tried to minimise or avoid the need for such restrictions and what was the result? Please give details
15)What has been tried to minimise or avoid the need for such restrictions and what was the result? Please give details
16)Has anyone i.e. relatives, an IMCA, the subject, expressed any objections to any part of the care and support arrangements or the person's residence? If yes please give full details.
17) Other information you consider may be relevant in particular if the proposed application to the COP is unusual i.e. in relation to any of the following decisions: <ul style="list-style-type: none"> <li>- The person needs to be removed from his current placement and there are objections to the move from the subject/relatives/IMCA</li> <li>- The person is to marry or expresses a wish to do so</li> <li>- The person is having sexual relations or expresses a wish to do so</li> <li>- The person is having inappropriate/ unsafe contact with someone and the risks cannot be managed in any less restrictive way than preventing contact.</li> </ul>
Worker's Signature:
Checklist Completion Date:

## Appendix 5 –

### Guidance on producing a Witness Statement

[AMR 12/4/21]

#### Introduction

A witness statement is a primary piece of evidence, it is the testimony of an individual directly involved in the case. When you are asked to prepare a witness statement, this is likely to be to support the initial application or as an update when a hearing is to take place, at various points throughout proceedings.

The statement should be:

- - recorded electronically using COP24 ( available on the CoP Gov.Uk website);
- - clear and concise;
- - well-structured (the use of headings is appropriate in most cases);
- - relevant to the circumstances and issues in question;
- - evidence based;
- - signed and dated;
- - submitted in a timely way.
- 

For ease of reference each page and paragraph should be numbered. Every piece of supplementary evidence ( for instance a specific diary record ) that you refer to in the witness statement should be attached to the statement and should be given an exhibit number (for example, Exhibit A, Exhibit B, Exhibit C). Whenever you refer to an exhibit you should also refer to the name of the document.

The CoP 24 form is the form for statements produced by the CoP it is not very user friendly, the boxes in the form do not expand so it is likely in most cases the statement will need to continue on separate pages that should be attached to the form. The boxes on the form all have some guidance next to them as to what information should be in each box.

### **Content and Headings**

The content of the statement will depend on the specific circumstances of each case however the following information will need to be in most statements:

1. The authors name, professional address, qualifications and brief details of experience.
2. The nature of the author's involvement with the person subject to the proceedings (P) ie allocated social worker and how long you have been in that role.
3. Background to the case - include P's family structure ie which relatives are involved with P, is there a LPA/deputy, which professionals are involved, what relevant consultations have there been with these people
4. Information about diagnosis and capacity (note in the vast majority of cases a capacity assessment will be produced separately to the statement and filed at court so you can refer to that assessment in your statement)
5. Information about the current placement/ any proposed placement
6. Restrictions in place (include when any SA is due to expire)



7. P's wishes and feelings, any values and beliefs s/he has/had which would likely influence any decision if s/he had capacity and any other factors s/he would likely consider if able to do so.
8. BI information including previous relevant decisions
9. Current care and support plan (note in the majority of cases a care and support plan will be filed at court separately to the statement so you can refer to that document in your statement )
10. Care funding information ie who is responsible HCC or CHC
11. current situation/issues
12. Attempts at mediation/dispute resolution
13. Available options and balance sheet analysis

*This is a non-exhaustive list. Dates should be provided for when specific events took place ie when P moved to the current placement, when a proposed move is to take place. A chronology could be attached to the statement as a useful way of providing much of the historic information needed in date order.*

### **Tips for completing a witness statement**

1. Take a considered approach
2. Don't rush or panic.
3. Witness statements can be as long or short as they need to be.
4. Avoid complicated language (people need to understand what you are saying as quickly as possible).
5. Explain your rationale.
6. Understand what you have written as you may be questioned on it if you give oral evidence.
7. If you use abbreviations ensure you explain what they mean the first time you use them in the statement ie ADHD (Attention-deficit/hyperactivity disorder) don't just assume the Judge will know what the abbreviations mean.
8. If, as you are preparing your statement you identify further relevant evidence, submit it to legal for consideration.

Don't forget you can seek support from your line manager and legal whenever you need it.

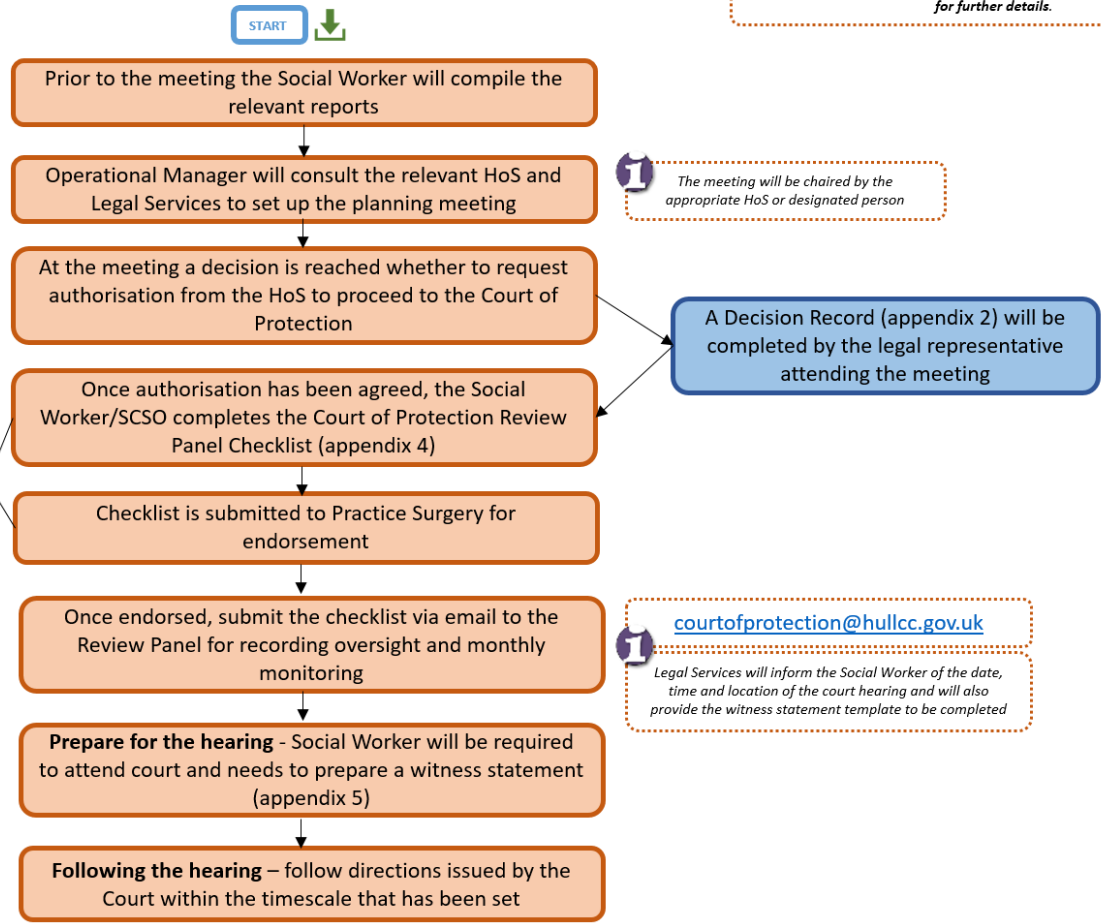
## Appendix 6 –

### Legal Planning Meetings

**NOTE:** Legal planning meetings should **not** be used for crisis resolution or in response to emergencies however in the event of such a situation please see your Ops Manager to make emergency arrangements

**NOTE:** in the event an emergency meeting is arranged you must still complete the Checklist in retrospect and submit this to Practice Surgery the following week for audit and monitoring of the application for CoP

**NOTE:** Please see Section 5.1 – Legal Planning Meetings - of the CoP Protocol for further details.



CoP Flowcharts Jun 2021 V1

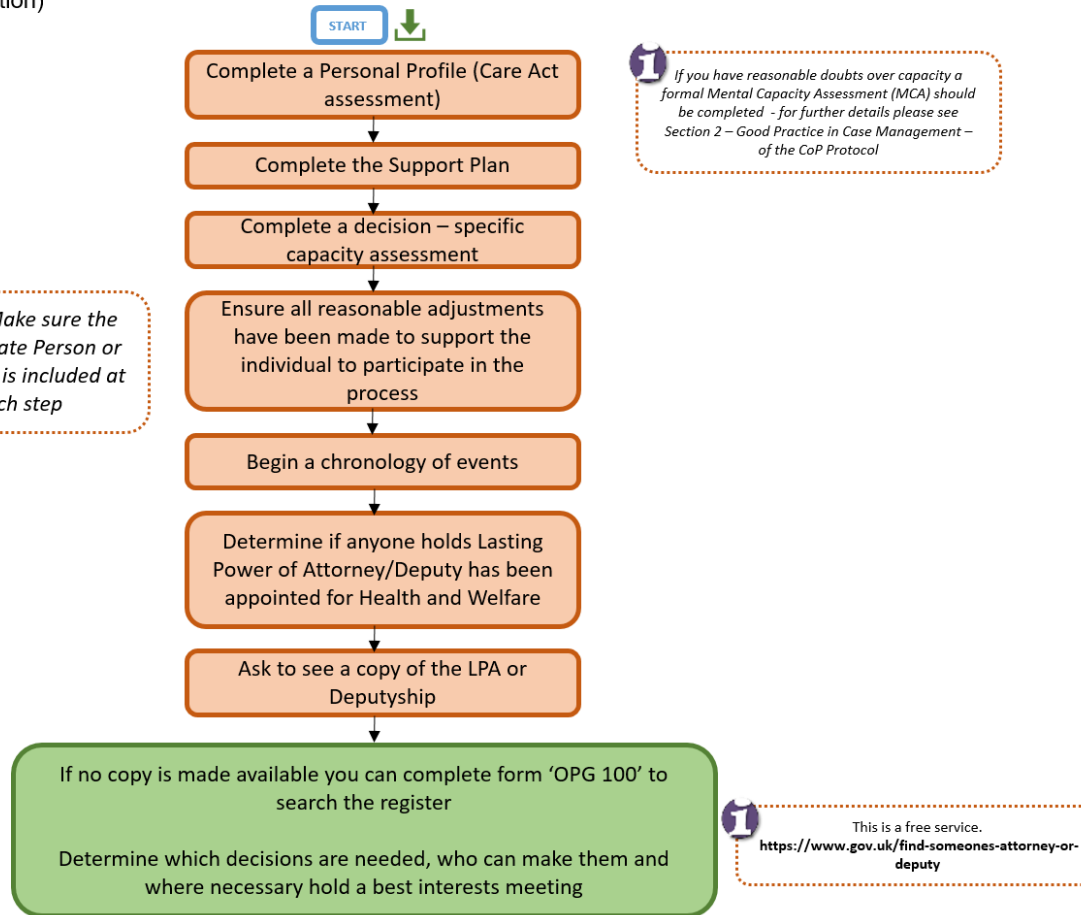
## Appendix 7 –

### Case Management Steps

(Before a disputed welfare case court application)

*NOTE: Please see Section 3 – Steps in case management - of the CoP Protocol for further details.*

*NOTE: Make sure the Appropriate Person or advocate is included at each step*



COP Protocol Process Maps June 2021 V1

## Appendix 8

### Inherent Jurisdiction

The inherent jurisdiction is best understood as the ability of the High Court to make declarations and orders to protect adults who have mental capacity to make relevant decisions but are vulnerable and at risk from the actions (or sometimes inactions) of other people. It has been described as 'a safety net,' used by High Court judges to fill the gap left by the fact the Mental Capacity Act ('MCA 2005') only applies to those lacking mental capacity.

The courts have explained that "*the inherent jurisdiction can be exercised in relation to a vulnerable adult who, even if not incapacitated by mental disorder or mental illness, is, or is reasonably believed to be, either (i) under constraint or (ii) subject to coercion or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.*" .

If the person has mental capacity to make the relevant decisions (so that the MCA 2005 is not applicable), but the person appears to be vulnerable in the ways set out above, then it will in principle be appropriate to consider making an application to the High Court in the Inherent Jurisdiction. This will mean considering, in particular, what relief (what orders) the court will be being asked to make. The primary purpose of the inherent jurisdiction in the sort of situation envisaged here is to "*allow the individual to be able to regain their autonomy of decision making.*" Orders directed against the subject – for instance requiring them to stay away from someone, or to live in a different place to someone else – are unlikely to achieve this goal. Far more likely to achieve this goal are orders directed against the other person.

For further reading: <https://www.39essex.com/mental-capacity-guidance-note-inherent-jurisdiction/>

### Version Control

Version	Date	Initials	Description
V1	21.07.21	NJW (CTT)	First version of the Cop Protocol



