Guidance

Guide to the Court of Protection and Deprivation of Liberty Safeguards for the busy care home manager

What is the Court of Protection?

The Court of Protection (CoP) is a court that makes welfare and financial decisions in the best interests of people who cannot make the decisions at the time that they need to be made, because they lack mental capacity to do so.

Deprivation of liberty

Under UK law, everybody has the right to liberty. However, people can be lawfully deprived of their liberty in certain circumstances, when done in accordance with the law.

The legal test to establish whether someone is deprived of their liberty is whether they are under continuous supervision and control and are not free to leave. In practice, this is the case in many environments where people are receiving care and treatment, such as care homes and hospitals.

If someone lacks capacity to consent to such arrangements (known as 'P' in CoP proceedings), the arrangements will need to be authorised. If P is living in a care home, the relevant framework is the Deprivation of Liberty Safeguards (DoLS). Under the DoLS framework, the care home must ask the local authority if they can deprive P of their liberty. Assessments will then take place to determine whether the arrangements are in P's best interests, before the deprivation of liberty is authorised by way of 'standard authorisation'. If the care home needs to authorise the deprivation of liberty in the interim, an 'urgent authorisation' can be put in place.

Section 21A proceedings

If P is objecting to the arrangements for their care and residence, or someone on P's behalf has concerns that the arrangements are not in P's best interests, P has the right for the arrangements to be reviewed by the CoP.

The CoP regularly deals with cases whereby someone is challenging the standard or urgent authorisation of their deprivation of liberty in a care home environment. These are known as 'section 21A proceedings' because the challenge is brought under section 21A of the Mental Capacity Act 2005.

P's objection may not always be a verbal objection. Some actions are indicative of an objection; for example, if P packs their bags to leave.

Role of the care provider in section 21A proceedings

Let's consider a scenario in which P lives in a care home and is objecting to their care arrangements. P has been assessed to lack capacity to consent to the care arrangements, which amount to a deprivation of P's liberty. A standard authorisation is in place.

In light of P's objections, their advocate instructs solicitors to issue proceedings under section 21A. P's representatives file an application form (COPDLA) with the CoP. The CoP considers the application and makes an initial order which lists the matter for a hearing.

The manager of the care home where P resides will often be notified of the application and may be invited to apply to become a party to proceedings (a 'respondent' to the application), using form COP5.

In our experience, care providers are not usually parties to the proceedings, although they may wish to be in some circumstances.

It is more usual for care providers to be involved in proceedings through participation in 'round table meetings' between the parties. This enables the care provider to give their view on P's care and residence arrangements. In particular, the parties are likely to be interested in the provider's views on whether P is settled at the care home, whether the provider feels able to continue to meet P's needs, and whether anything could be done to make the care home placement less restrictive for P.

Section 21A proceedings often require consideration of the suitability of P's current care home placement, and whether any alternative options are available for P's residence and care. Alternative options may include P's own home, other care homes and supported living arrangements.

However, the issuing of section 21A proceedings does not mean that P must move. If there are no alternative placements or the current care home placement is the most suitable option, the proceedings may conclude without any further steps being required.

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Section 21A: Flowchart