

# Court of Protection and deputies



**MPS**



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Advice correct as of January 2015

The Mental Capacity Act (the Act) established the Court of Protection, whose role it is to protect individuals who lack capacity and make rulings on difficult decisions about their care and welfare. This factsheet gives you more information about the role of the Court of Protection.

## The Court of Protection

The Court of Protection has the same powers, rights, privileges and authority as the High Court. The Court applies the statutory principles set out in the Act when making decisions. The Court can make declarations on difficult treatment decisions, whether or not an individual has capacity to make a particular decision, and can settle disputes over the healthcare and treatment of a person lacking capacity.

The Court of Protection can also consider cases that relate to the care and treatment of individuals under 18 years who lack capacity. It has the power to transfer the case to a court that has powers under the Children Act 1989.

## The Court of Protection and Lasting Power of Attorney (LPA)

The Court of Protection can:

- determine whether or not an LPA is valid
- give directions about using an LPA
- remove an attorney.

The Court can prevent an LPA being registered if it is suspected that the LPA was made as a result of undue pressure on the donor, through fraud, or if the attorney behaves, has behaved or is believed to be planning to behave in a way that is not in the best interests of the donor.

If you are unclear about the meaning of an LPA, the Court of Protection will be able to clarify it. The Court can also extend the powers of the attorney when the donor has lost capacity.

If you suspect that an attorney is abusing their position, you should contact the Office of the Public Guardian (OPG) immediately. In suspected cases of physical or sexual abuse, theft or serious fraud, you should contact the police. The OPG, in serious cases, will refer the matter to the Court of Protection, who may then revoke the LPA.

In specific situations the Court of Protection can consider cases of children under 16; for example, in relation to longer-term decisions and financial care.

## The Court of Protection and serious healthcare and treatment decisions

Some medical decisions are so serious that the courts have ruled that, in each case, an application should be made to the Court. These include:

- decisions about withholding or withdrawing artificial nutrition and hydration (ANH) from patients in a permanent vegetative state (PVS)
- cases involving organ or bone marrow donation by a person who lacks capacity to consent
- cases involving the proposed sterilisation of a person who lacks capacity
- cases where you have any doubt or dispute about whether a proposed treatment is in the best interests of the person without capacity.

## Court of Protection – Appointed deputy

In cases where important and necessary actions cannot be carried out without the court's authority, or there is no other way of settling the matter in the best interests of the person lacking capacity, a court may appoint a deputy. If specified, the deputy can make decisions about the healthcare of the person lacking capacity.

## Further information

- MPS factsheets, Mental Capacity Act series – [www.medicalprotection.org/uk/resources/factsheets](http://www.medicalprotection.org/uk/resources/factsheets)
- Mental Capacity Act (2005) – [www.legislation.gov.uk/ukpga/2005/9/contents](http://www.legislation.gov.uk/ukpga/2005/9/contents)
- Safeguarding Vulnerable Groups Act (2006) – [www.legislation.gov.uk/ukpga/2006/47/contents](http://www.legislation.gov.uk/ukpga/2006/47/contents)
- Mental Capacity Act 2005 Code of Practice, Chapter 10 – [www.publicguardian.gov.uk/mca/code-of-practice.htm](http://www.publicguardian.gov.uk/mca/code-of-practice.htm)
- Justice department, Mental Capacity Act: Making Decisions – [www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act](http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act)
- DH – [www.dh.gov.uk](http://www.dh.gov.uk)

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**For medicolegal advice please call us on:**

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This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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