

How the Courts Can Support Adult Safeguarding

A Brief Guide to Role of the Court of Protection and the Inherent Jurisdiction of the High Court



Most of the time local safeguarding partners can make a safeguarding plan which effectively safeguards an adult at risk without needing to go to court.

There are a range of powers available to professionals set out in the Care Act 2014 and the Mental Capacity Act 2005, as well as some housing law, which can be utilised without going to court. There are also powers under a range of criminal justice laws that police officers can use to keep people safe.

However, there are some situations in which legal powers can only be used by a court. This briefing looks at the role of the Court of Protection, the inherent jurisdiction of the High Court, and magistrates courts in safeguarding adults.



Courts and Tribunals Judiciary



The Court of Protection

The Court of Protection was established under section 45 of the Mental Capacity Act 2005. It is a specialist court which makes specific decisions, or appoints other people known as deputies, to make decisions on behalf of people who lack the capacity to do so for themselves.

The Court of Protection can:

- decide whether a person 'has capacity' (is able) to make a particular decision for themselves - sometimes the court does this in complex of controversial situations
- make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make these decisions
- appoint a deputy to make ongoing decisions for people lacking capacity to make those decisions
- decide whether a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) is valid
- remove deputies or attorneys who fail to carry out their duties
- rule on cases concerning objections to register an LPA or EPA.

Expert Resources

39 Essex Chambers has developed a set of resources for those seeking to apply and understand the Mental Capacity Act 2005. Their Mental Capacity Resource Centre includes:

- A caselaw database, which summarises and comments upon the cases decided by the Court of Protection
- Mental Capacity Reports - free, monthly, reports covering all areas of law and practice relating to the MCA
- Wider resources, including guidance notes on assessing capacity and best interests, and articles written by members of the chamber's Court of Protection team.



The Mental Capacity Act 2005 enables professionals and families to take action or make decisions about care and treatment in the best interests of someone who lacks capacity to do so for themselves.

Things like care packages, changes of accommodation from home to a care home, what someone wears and eats day to day, suitable medication, and most medical procedures can be decided by relevant decision makers in accordance with s.5 of the Mental Capacity Act 2005.



Here is a practice briefing from the Safeguarding Partnership about the Mental Capacity Act

However, some decisions can ONLY be made by the Court of Protection on behalf of the person who lacks capacity:

- Where there are unresolved disagreements, for example between professionals and families, about what is in someone's best interests
- Where ongoing decisions need to be made about the finances or personal welfare of a person, and where there is no Lasting Power of Attorney or Enduring Power of Attorney already in place
- Challenges to existing LPAs, Deputies or EPAs
- Continuing detention under Deprivation of Liberty Safeguards where the person objects
- Authorisations of deprivation of liberty in a person's own home, including supported accommodation
- Particularly difficult/controversial decisions
- Decisions which do not relate to care and treatment e.g., forced entry to remove hoarded belongings.
- Ending or beginning tenancy or license agreements

Caselaw Example: An order to remove severe hoarding

X had lived in her local authority rented maisonette for over 27 years. Over two years of proceedings, strenuous and creative attempts had been made by a range of services to address the significant risks posed by the level 9 hoarding on the [clutter image rating scale](#). Evidence of the extensive attempts to address the hoarding was provided to the court.

Justice Theis assessed X's capacity to make decisions about her residence, her care/support and her hoarded belongings. Her wishes were also clearly gathered - X consistently did not want her belongings removed and she did not want to leave her home.

The judge concluded that X lacked mental capacity to make the decisions in question. The court ruled that it was in X's best interests to be removed (with restraint as a last resort) and deprived of her liberty at a nearby supported living placement for a limited period of time to enable the clearance to take place, with a plan to return her once the works required had been undertaken. This decision was taken using section 16 Mental Capacity Act. The decision could not have been made by professionals working with her because it went beyond care and treatment.

Justice Theis said:

I readily accept the considerable risks that are being taken in overriding X's expressed wishes and the consequences for her of such a step being taken, bearing in mind her mental disorder and the suicide threats she has made. Those matters weigh heavily in the balance. Having said that, I consider the balance is tipped the other way by what I regard as the substantial and increasing risks X would be left exposed to if this order was not granted... There is no prospect of any other step being taken that would bring about any meaningful change. The evidence set out in the detailed contingency plan includes provision that would seek to mitigate the impact on X... where X would have the continuing involvement and support of the Official Solicitor and a hearing to review the next steps by the court.

A Local Authority v X [2023] EWCOP 64

The Inherent Jurisdiction of the High Court

'Inherent jurisdiction' refers to the ability of the High Court to make orders to protect adults who do not have mental capacity to make relevant decisions, but are nonetheless vulnerable and at risk from the abusive or coercive actions of other people, or in exceptional circumstances, from themselves.

It has been described as 'the great safety net', to fill the gap left by the fact the Mental Capacity Act only applies to those lacking mental capacity by virtue of an *impairment in the functioning of mind or brain*. The MCA does not account for those people whose decision making capacity is affected by the *situations* and *relationships* in which they find themselves.

Inherent Jurisdiction only belongs to the High Court. It is separate from the powers of Court of Protection.



"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."

Justice Munby in *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942, (Fam) at paragraph 77,



Professionals often feel stuck and frustrated, with limited powers to intervene, when someone appears to have capacity but is still making very risky decisions or not engaging with support and interventions. Safeguarding people in these situations can be very complex. Occasionally it is appropriate to seek input from the High Court.

The sort of situations where the inherent jurisdiction of the High Court is most likely to apply are:

- Coercive Control
- Domestic Abuse
- Cuckooing
- Grooming for any kind of abuse or exploitation
- Someone is refusing care/support because of the influence of another person
- Someone's access to care is limited by the behaviour of another person

Involve the Police



Wherever any of these safeguarding issues arise, it is essential that the police are involved in developing a safeguarding plan, as these issues indicate potential crimes against the adult.

The inherent jurisdiction cannot be used as an alternative to police efforts to disrupt and prosecute criminal activity.

It is important to adhere to guidance in Achieving Best Evidence and supporting vulnerable victims and witnesses, and also to consider victimless prosecutions.



39 Essex Chambers has developed this in depth briefing, published in 2020 about use of the inherent jurisdiction for adults.



The inherent jurisdiction is a last resort option. Specialist legal advice must be sought to explore the relevance and feasibility of any potential application to the High Court. This may result in identification of alternative legal options that might be available in the first instance. The inherent jurisdiction cannot be used where there is existing statute to address the issue.

When judges exercise the inherent jurisdiction they do not use powers set out in any statute, but rather they use their discretion, shaped by existing caselaw, to provide legal authority to temporarily intervene into people's personal lives and relationships.

The aim of such interventions is primarily to restore or preserve people's freedom to make considered decisions for themselves, free from coercion, grooming or manipulation by another person. The intention is to achieve this by making orders against the person believed to be responsible for the coercion or manipulation.

Because they are not using existing statutes, each order will be tailored entirely to the specific circumstances of the situation and individuals involved, and will depend on the particular judge hearing the case.

In rare and exceptional cases judges have used their power to protect someone who is not at risk from someone else, but this is controversial.

An order granted needs to be workable, proportionate and necessary.

There is no criminal penalty for failure to comply with an order so it needs to be a practicable order with a reasonable chance of it actually being followed.

It is critical that ALL other options are thoroughly exhausted first. This takes time.

Efforts the court will expect safeguarding partners to have made prior to an application to the court:

- Relationship based working
- Investigate all possible crimes and criminal justice options to reduce or remove the risk
- Emotional support
- Exploring all other legal avenues - Housing law, Mental Capacity Act 2005, Mental Health Act 1983, Forced Marriage Act 2007, FGM Act 2003, Domestic Violence Protection Notice.

Coming before a judge in the high court can take many months. This is not a speedy solution to any safeguarding concern.



Caselaw example: An order to protect BF from his son

BF was a 97 year old man with significant disabilities. BF lived with his son KF, who was substance dependent and intimidating to visiting care staff such that all ultimately refused to provide BF with care at home. The house became squalid and BF was neglected.

BF and KF moved out of BF's property while extensive renovations were carried out. Sadly, after returning to the property together things deteriorated again and BF was seriously neglected. BF was taken into care after having lost mental capacity, but once he had regained capacity he agitated to return home to his son.

The High Court used its inherent jurisdiction to prohibit him from living with his son or at his home. This decision was appealed by both BF and by his local authority on the grounds that they believed this contravened his human rights. But the appeal judge upheld the decision and declared this was an appropriate use of the inherent jurisdiction to protect BF's welfare from the deleterious impact of his son's conduct.

Read the 39 Essex Chambers summary [here](#)

Magistrates Court

There are some civil law powers available to magistrates courts that can support safeguarding practice. When safeguarding partners work together to assess and manage risk to people it is important to consider legal options that may be available to safeguard people.

Anti-Social Behaviour, Crime and Policing Act 2014

Cuckooing, exploitation and other forms of anti-social behaviour affecting vulnerable adults require multiagency working to establish what is going on. The Anti-Social Behaviour, Crime and Policing Act 2014 provides powers to the magistrates court to make a closure order on properties to prevent individual properties from continuing to be used.

This can be a powerful tool for removing or reducing risks in a safeguarding process. Applications for closure orders can be made to the court by a police officer or by a local authority officer (usually Street Scene Enforcement Team or Tenancy Management, depending on the type of tenure). It will be important to ensure professionals work together to pool knowledge about the circumstances so that courts have access to all the necessary information to reach decisions. Also, planning for the support and accommodation needed by the adult at risk in the aftermath of a closure order needs partnership working.

Environmental Protection Act 1990

Hoarding and/or severe neglect of a property can pose significant risks to someone in the context of self-neglect. There are some powers available to manage such risks which can be granted by a magistrates court.

The Environmental Protection Act 1990 provides, among other things, powers to deal with a 'statutory nuisance' inside people's homes, as well as in public areas. When a property is in such a condition as to pose a risk to health, of either a resident or the wider community, this may be a statutory nuisance. The local authority can apply to a magistrates court for the power to compel a resident to resolve a 'statutory nuisance' inside their property, and has the power to enter a property, inspect and potentially remedy a 'statutory nuisance' inside a person's home in certain circumstances. It is necessary for professionals to work together to build the evidence needed to make an application to the court under this act,

Mental Health Act 1983

Section 135 of the Mental Health Act 1983 provides powers to a magistrate where, on the basis of information provided by an Approved Mental Health Professional, there is reasonable cause to suspect that a person believed to be suffering from mental disorder

- has been, or is being, ill-treated, neglected or kept otherwise than under proper control, or
- is unable to care for himself and is living alone.

The judge may issue a warrant authorising any police officer to enter, if need be by force, a specific premises in which that person is believed to be. The warrant also permits the officer, if they think it appropriate, to remove the person to a place of safety with a view to an Approved Mental Health Professional detaining the person in a mental health hospital, or making other arrangements for their treatment or care. This power could be an important part of a safeguarding plan for some people with mental health problems.

Approved Mental Health Professionals (AMHP) are people employed by the local authority with special training to enable them to exercise powers under the Mental Health Act. The AMHP Service in Hillingdon is contactable on 01895 485 181. All referrals to them should be made by phone.