What is a Section 21A Application?

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"Section 21A" refers to section 21A of the Mental Capacity Act 2005. Section 21A applies where an individual is deprived of their liberty in hospital or in a care home and is subject to either a *standard authorisation* or an *urgent authorisation*. Section 21A sets out the court's powers in relation to the deprivation of the individual's liberty.

Section 21A gives the court the power to decide whether the individual meets the criteria to be deprived of their liberty and to determine any question relating to how long the individual should be deprived of their liberty and for what purpose. There may be conditions attached to the standard/urgent authorisation and the court is permitted to determine any question relating to the conditions.

If the court determines that the individual does not meet the eligibility criteria to be deprived of their liberty, it can vary a standard/urgent authorisation or bring it to an end, or it can require the supervisory body to do so.

What is a deprivation of liberty?

A person is deprived of their liberty when they are under continuous supervision and control, they are not free to leave, and they lack capacity to consent to these arrangements. For example, the placement where an individual lives has a locked door which they cannot open, or staff are constantly aware of their whereabouts and they need permission to go out into the community.

Please see our factsheet entitled "What is a deprivation of liberty?" for more information.

When and why would a Section 21A application be brought?

A section 21A application can be brought if the person deprived of their liberty is objecting to this or another interested party, such as a family member is objecting to the individual's deprivation of liberty. For example, an individual may be deprived of their liberty in a care home and they or their family wish for them to return to live in the community.

A section 21A application is made to the *Court of Protection* to review the deprivation of the individual's liberty.

The court may be asked to determine certain questions relating to the deprivation of liberty, such as whether the person lacks capacity to make decisions in relation to their residence and care, and whether it is in the person's best interests to be a detained resident in their current placement.

Who brings a section 21A application?

Those who are subject to a standard authorisation are appointed a *relevant person's representative* ("RPR"). Part of a RPR's role is to support the individual to make a section 21A application if they are objecting to the arrangements amounting to a deprivation of their liberty. If a RPR considers that it is appropriate to make a section 21A application, they will generally approach a solicitor to act on the person's behalf. The individual's legal representation in this type of case is funded by non-means tested legal aid. This means that the individual will not have to pay to have a solicitor represent them.

Any interested party in relation to the individual's residence and care can also bring a section 21A application to the Court of Protection.

In certain circumstances, the local authority may make a section 21A application to the court on the individual's behalf.

How is a section 21A application brought?

An application is submitted to the *Court of Protection* by the completion and submission of a COPDLA form, or a COPDLB form if the application needs to be considered as a matter of exceptional urgency, together with supporting documents.

The application must detail on what grounds the individual is bringing their application and this should be supported by evidence.

To process the application, the court will charge an issue fee. This is currently £371.00, but the fee is reviewed periodically by the court.

Who will be involved in the court proceedings?

The individual is usually the applicant in proceedings and a *litigation friend* or *accredited legal representative* will ensure their participation in the proceedings if they lack capacity to conduct the proceedings themselves.

The local authority will usually be joined as a party to proceedings as it is the supervisory body which authorises the deprivation of the individual's liberty. Other public bodies (such as the NHS Trust or an Integrated Care Board) may also fund part of/all of the individual's care and so consideration will need to be given as to whether it is appropriate for them to also be a party to proceedings. Interested parties such as family members may wish to be *joined as a party to proceedings*.

What does the court do with the application?

Once the court receives the application, it will be allocated to a judge. The judge will consider the application and make a court order. This will either list a court hearing as the first step, or it will set out directions for evidence to be provided before the first court hearing takes place.

The parties will be required to assist the court in preparing and obtaining evidence to enable the court to determine the application. There may be a number of court hearings as the case progresses where it is felt that more evidence is needed for the court to make a final determination.

This process will continue until the court is in a position to make a final decision as to whether the individual meets the qualifying requirements of the standard authorisation and the proceedings will come to an end.

What will the outcome be? Will P leave their care home?

There are numerous possible outcomes to section 21A proceedings and it is rarely possible to know what the outcome will be at the point of making the court application. The court will need to consider the various options available to P and often it is not clear what all of the options are at the beginning of the proceedings.

Possible outcomes might include:

- P returning to live in their own home (where available);
- P moving to live in an alternative placement or less restrictive setting;
- P remaining in their existing placement but with changes made to their care arrangements.