What is the Court of Protection?

The Court of Protection makes decisions about the property, finances and personal welfare of people who lack mental capacity to make those decisions themselves. The rules governing what the Court of Protection can do are contained in the Mental Capacity Act 2005.

What sort of decisions can the Court of Protection make?

The Court of Protection's role is to decide what is in a person's best interests, where that person lacks capacity to make a particular decision themselves. As a starting point. the court must determine whether a person lacks mental capacity to make a particular decision. The person at the centre of the Court of Protection proceedings is sometimes referred to as "P".

Sometimes the court is asked to make a one-off decision about what is in P's best interests in a particular situation or to resolve a dispute between the people involved in P's life. Such decisions and disputes might include:

- What type of care it is in P's best interests to receive;
- Where it is in P's best interests to live;
- Whether P's contact with certain people should be restricted;
- Whether P has capacity to decide to have sex or to marry;
- Whether P's ability to use the internet and social media should be restricted;
- Whether it is in P's best interests for their money to spent in a particular way;
- Whether it is in P's best interests to be deprived of their liberty;
- Whether it is in P's best interests to receive serious medical treatment;

The court can appoint a "deputy", who has the authority to make certain decisions on an ongoing basis.

The court may also be asked to decide whether it is in P's best interests for an "attorney", who was previously appointed by P directly, to continue in their role.

How does the Court of Protection become involved?

An application must be made to the court to ask it to consider a particular issue. The application can be made by anyone with an interest in the welfare of a person who lacks mental capacity to make certain decisions, such as a local authority, a healthcare organisation, the Office of the Public Guardian, a family member or P themselves. In some cases, the court's permission is required to make the application.

How does the Court of Protection decide what is in P's best interests?

The Mental Capacity Act 2005 and the accompanying Code of Practice detail various factors that must be considered when deciding what is in P's best interests. The court will examine the evidence before it in order to make a decision, having regard to these factors. The court has the power to call for additional evidence where needed. The evidence required will depend on the decision in question and may include medical and care records, expert opinions, views of family members and a record of the views expressed by P.

Who takes part in the decision-making process?

Although the court will have the final say in any matter before it, there may be several participants in the court proceedings. "Parties" are individuals or organisations formally appointed by the court to participate in the proceedings. They may be required to provide

evidence to the court and they will be invited to express their views. In many cases P will be a party to the proceedings. If P lacks capacity to conduct the proceedings, they will assisted by a “litigation friend” or “accredited legal representative”. Often the local authority and/or healthcare body responsible for P’s care and wellbeing will be a party. Sometimes family members will be parties too.

How long does the process take?

There is no general timeframe applicable to all Court of Protection applications. Very urgent and potentially life-threatening matters could be dealt with in a matter of hours or days. Other applications may take many months to resolve. In all cases, upon receiving the application, the court will consider the urgency and decide whether to “list” (arrange) a hearing or to set “directions” for evidence to be provided. The court’s decision will be recorded in a court order.

See our factsheet “What happens at a Court of Protection hearing?” for more information about the hearing process and formalities.