

Making decisions for vulnerable people

What is the Court of Protection,
who does it help and how?



Leigh Day



What is the Court of Protection?

The Court of Protection is a specialist Court set up to make certain decisions for people who do not have capacity to decide themselves.

When making a decision for someone who lacks capacity the question the Court decides is what is in that person's best interests. The Court deals with financial matters and also cases involving a person's 'health and welfare'. This guide looks at 'health and welfare' matters only.

Although the Court of Protection is based in London, specialist Judges hear Court of Protection cases throughout the country in County Courts and so you should be able to access the Court of Protection wherever you live in England and Wales.

Contact us for advice
020 7650 1200





What to do before going to the Court of Protection

If you are concerned about decisions being made about a person without capacity, a good starting point is to ask for a best interest meeting to be held.

A best interests meeting is simply a meeting to discuss the disagreement. Anyone with an interest in the welfare of the person about whom the decision will be made should be invited. There is no formalised structure or process for these meetings as each case is different.

In general, decisions about a person's best interests should be collaborative and involve people relevant to the decision. Some decisions are very straightforward and can be made quickly, others are more complicated and may involve discussions with various people important to the person. Who this will be varies from person to person but can include the person themselves, their family, friends, carers, medical professionals and social workers.

It is common for there to be disagreements about what may be best for a person and so a best interest meeting is an opportunity for those involved in a person's life to meet to try to resolve any disagreement.

If you request a best interests meeting make sure you focus on the particular decision in question (i.e. the disagreement), what you think would be best for the person who lacks capacity and set out your reasons why. You should be able to bring someone to a meeting to support you. It is also a good idea to take notes so you have a record of what was discussed.

If it is not possible to resolve the disagreement by a best interests meeting, you can ask the Court of Protection to resolve the disagreement. If you have to go to Court you may want solicitors to help you with this.

Court proceedings can be stressful, unpredictable, expensive and can often take a long time. For that reason asking the Court to resolve a disagreement should always be a last resort. It is important to try to resolve any issues before going to Court.

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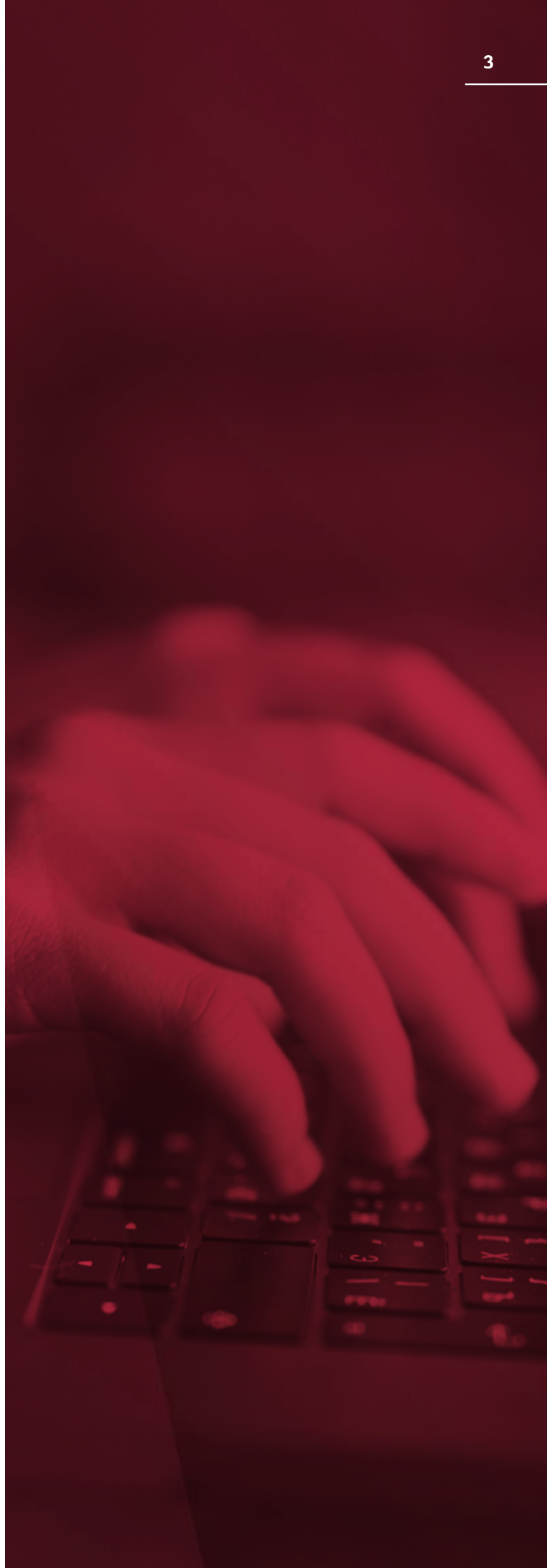


How do I get the Court of Protection involved?

To involve the Court of Protection an application must be issued by submitting a form and relevant documents.

Sometimes the local authority or CCG responsible for the person's care will agree to issue the application (and it is worth asking if they will do this). Otherwise an individual can issue an application using the forms provided by the Court of Protection. The forms and guidance notes can be found on the Court of Protection website. A fee is also payable. If the fee is unaffordable you can investigate whether you are eligible for legal aid or for a fee remission (which is where the whole or part of the Court fee is waived).

Once the Court has considered the application, it is likely to list a hearing to determine how the case will proceed. Often this takes a number of weeks. If the issue is urgent, you should highlight this on the application form. The Court can then consider having a hearing more quickly and can, in some very urgent circumstances, arrange hearings in a matter of days or occasionally even hours.





What the Court of Protection can do

The Court of Protection can only become involved if there is reason to believe a person does not have capacity to make certain decisions themselves.

The Court will generally require medical evidence confirming that the person does not have capacity to make the decision in question. If a person has capacity to make the decision themselves then the Court of Protection cannot get involved, but other legal routes may be available in some circumstances and you may wish to speak to specialist solicitors about this.

The Court has wide ranging powers to deal with cases involving a number of different issues such as (i) where a person should live (ii) what care they should receive (iii) who they should have contact with. The Court can also make decisions about medical treatment and can appoint Welfare Deputies to act for individuals.

The Court has the power to make orders and declarations about what is in someone's best interests. The Judges in the Court of Protection are specialists in dealing with issues for those who do not have capacity and in dealing with the complexities of these types of cases. The Court can make orders that deprive a person of their liberty and can also declare that certain things would be in a person's best interests (or not).





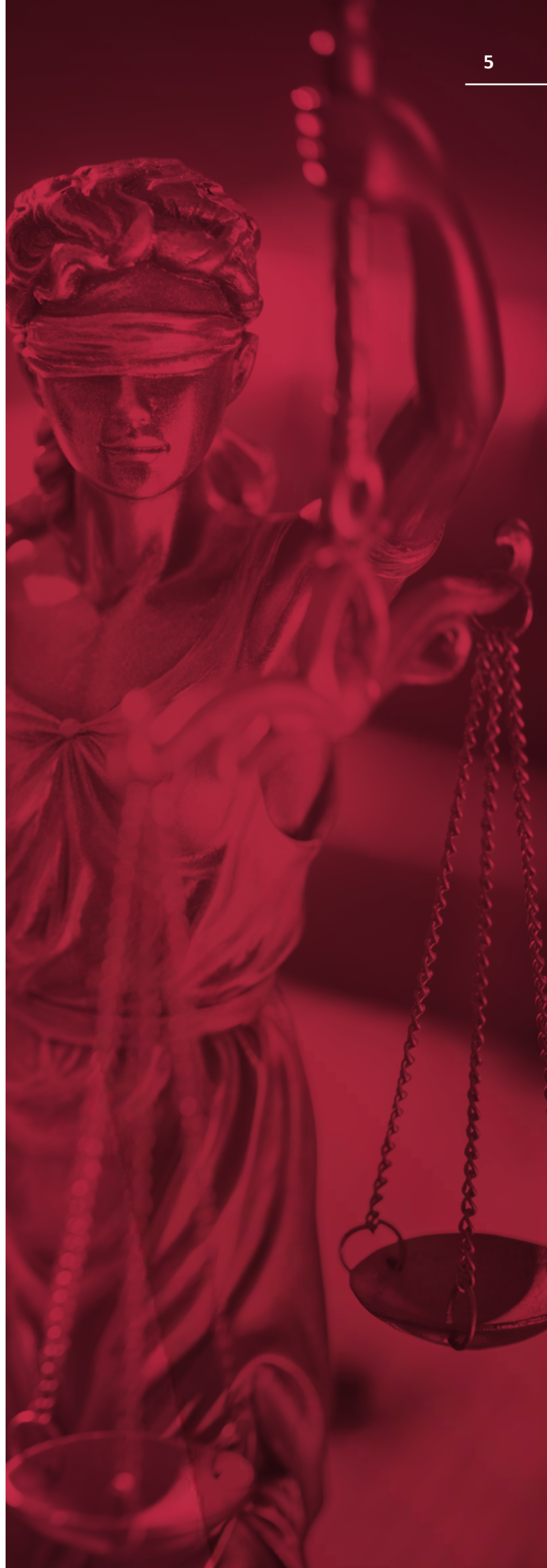
What the Court of Protection cannot do

The Court is not able to make a decision for a person if they are able to decide for themselves, even if the person is making a decision you may think is unwise or risky.

Although the Court of Protection makes declarations about what would be in a person's best interests, the Court of Protection cannot compel a local authority or CCG to do something it is not willing to offer as an available option (i.e. to move someone to a certain care home or to allow visits to take place in a care home).

This does not mean that local authorities and CCGs can do whatever they please. This is because local authorities, CCGs (and in certain circumstances) care homes must all make decisions that are compliant with the Human Rights Act and in particular must respect Article 8 which is the right to a private and family life.

If you are concerned about the decision a public body is making, you may wish to consider challenging this outside of the Court of Protection by a process called judicial review. It is important to seek legal advice about this at an early stage as there are strict deadlines for bringing this type of challenge.





COVID issues

The Covid-19 health pandemic has impacted all our lives and none more so than those who rely on others for care and treatment and who may be considered vulnerable due to age or disability.

Common issues that arise relating to the pandemic include: (i) whether it is in the best interests for people living in care homes to have visits with family members and/or friends (ii) whether a person who lacks capacity should be tested for Covid and/or have the vaccine (iii) whether a person can continue to access the community during lockdown restrictions (iv) whether a person should be discharged from their care home into their relatives' care.

The Court of Protection can and has been making difficult decisions about these issues throughout the pandemic.

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Funding available

You do not have to be represented by a solicitor to bring a case to the Court of Protection but often people do seek legal advice before bringing the application.

People also often instruct solicitors to represent them at court and in meetings (sometimes known as Round Table Meetings).

Legal aid is available for health and welfare matters in the Court of Protection. Generally legal aid is means tested and so your income and savings have to be below a certain level to qualify. There must also be sufficient merits (i.e. a good enough chance of your argument succeeding) to qualify for legal aid. In certain circumstances non means tested legal aid is available when a person is deprived of their liberty in a care home or hospital and is objecting to this. Legal aid rules are complex and so it is a good idea to discuss this with specialist solicitors.

The other option is to pay privately for advice. Unlike other courts you will generally only be responsible for your own costs (and not at risk of paying the costs of any other party). You should discuss funding arrangements with any solicitor you approach. CFAs (no win no fee agreements) are not usually available for representation in the Court of Protection.



Each case that comes before the Court of Protection is unique and individual to the person's life. Therefore this guide can only provide general advice and guidance. If you are faced with difficulties arising from the Covid-19 pandemic or otherwise, we would advise you to seek legal advice at an early stage.



Your Court of Protection team

We recognise the struggles many people face when seeking to protect the welfare of family members or friends.

Navigating these issues alone can be daunting and stressful. Our specialist team is on hand to discuss your case further to see if we can assist.



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