

Case Summary

Re RD & Ors (Duties and powers of RPRs and s.39D IMCAs) [\[2016\] EWCOP 49](#) **(Baker J)**

Issue

Article 5 – Deprivation of liberty procedure

Facts

Five test cases involving elderly people (RD, JB, JP, EP and JW) who suffered from a form of dementia were identified to enable the court to consider the question of when an application should be made to court under section 21A MCA. All five individuals were being deprived of their liberty in a care home or hospital setting under a DOLS authorisation.

Decision

The court gave general guidance as to the approach that should be adopted by RPRs and IMCAs in deciding whether to issue proceedings under s.21A. The focus of the question is whether P wishes to apply to court and not simply whether he or she objects to the arrangements for his or her care. The correct approach, in summary, is as follows:

- The RPR must consider whether P wishes, or would wish, to apply to the Court of Protection. This involves the following steps:
 - Consider whether P has capacity to ask to issue proceedings;
 - If P does not have such capacity, consider whether P is objecting to the arrangements for his or her care, either verbally or by behaviour, in a way that indicates that he or she would wish to apply to the Court of Protection if he or she had the capacity to ask.
- If P does not express a wish to start proceedings, the RPR, in carrying out his duty to represent and support P, may apply to the Court of Protection. The RPR must decide for himself or herself whether it is in P's best interests to apply to the Court of Protection.

The court also made the following important points:

- Consideration of P's circumstances must be holistic and usually based on more than one meeting;
- As an alternative to court proceedings, it may be appropriate to instigate a Part 8 review;
- The role of the s.39D IMCA is to take steps as practicable to support P and the RPR to understand the DOLS authorisation and their rights. It is different to the role of the RPR but the IMCA should also follow the court's guidance where relevant.

Practice implications

This is a very important judgment which sets out in detail practical guidance for RPRs and IMCAs to perform their respective roles. It is also useful to help other practitioners properly understand the roles of the RPRs and IMCAs as part of a holistic regime which protects P's legal rights. The reference to seeking alternatives to court proceedings should, though, not be taken as a licence to stop RPRs or IMCAs bringing applications in circumstances where it is clear that they are warranted.

The full version of this case report can be found [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).