

Court of Protection Protocol

This protocol has been produced to offer guidance to staff about good practice in case management prior to accessing the Court of Protection in relation to welfare disputes and the procedure to follow when an application may be needed¹. The text boxes are an aide memoire and refer staff to relevant legislation and/or steps to follow at certain stages in the process. Where the term ‘the person’ is used this refers to the person subject to an application under the Court of Protection.

INTRODUCTION

The Court of Protection is a specialist court, set up as part of the Mental Capacity Act (MCA), to deal with decision-making for persons (those aged 16 or over) who may lack capacity to make specific decisions. Generally, the court has a range of powers, including decisions about:

- whether a person has capacity to make a particular decision
- whether an action is in a person’s best interests
- whether a person is being deprived of their liberty
- the validity of lasting and enduring powers of attorney
- the appointment of deputies.

The MCA Code of Practice gives further advice about the Court of Protection in Chapter 8.

FIVE GUIDING PRINCIPLES OF THE MENTAL CAPACITY ACT	
Principle 1: A presumption of capacity	Every adult has the right to make their own decision and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume someone cannot make a decision for themselves just because they have a particular medical condition or disability.
Principle 2: Individuals being supported to make their own decisions	You must take all practicable steps to support the person before deciding that they lack capacity. If a lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.
Principle 3: Unwise decisions	People might make what others regard as an unwise or eccentric decision based on their own values, beliefs and preferences. You cannot treat them as lacking capacity for that reason.
Principle 4: Best interests	If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests.
Principle 5: Less restrictive option	When you are making a decision on behalf of a person who lacks capacity you must consider whether it is possible to decide or act in a way that would least interfere with the person’s rights and freedoms of action.

¹ Please note that this Protocol does not apply to applications to the CoP for community DoLS

Decisions about whether an application should be made to the Court of Protection must be informed by the MCA Code of Practice and case law, staff must always apply the guiding principles of the MCA

GOOD PRACTICE IN CASE MANAGEMENT BEFORE CONSIDERING AN APPLICATION TO COURT

In all cases a thorough Care Act assessment is crucial to determine the person's care and support needs. This step comes before any consideration of best interests. As the first principle referred to above indicates, the MCA directs that you must presume someone to have capacity but if you have doubts you should undertake a MCA assessment. This assessment will determine whether the person has mental capacity in relation to care and support needs.

This level of decision will need a formal assessment of the person's capacity if their capacity is in doubt. This will be formally recorded on the Shropshire Council Assessment tool and will be followed, if capacity is lacking, by a best interests decision regarding the decisions required. Each decision that needs to be taken in relation to the individual has to be considered separately as the person may have capacity to make some decisions but not others. A **timeline** may help identify what the changes in capacity are and how that challenges the person's continued independence.

The best interests' decision making process (explained in more detail below) will then be able to consider available options. You will need to have obtained confirmation of which option/s will be funded before proceeding any further including what current funding is in place. Best interests' decisions should include an analysis of the benefits and burdens of all available options and alternatives that have been considered. In order to establish as much about the person's wishes and feelings a **pen picture** will be needed of the person to include; historical biographical information, previous occupation, family circumstances, and community engagement. This is vital to understand who they are and what their views might have been had they still retained capacity. Though not determinative, the wishes and feelings of the person are of particular importance. Indeed the Court of Protection has regularly emphasized the particular importance of establishing and taking into account what they are. Ensure an assessment of the carer (if appropriate) is carried out and needs addressed. Would an increase in support enable the person to remain independent? All decisions must be evidenced based and recorded

Remember that capacity is time and decision specific

PRACTICE TIPS

- Consider use of **assistive technology** to establish patterns of behaviour and to identify risks
- Consider fluctuating needs that may impact on capacity. Making an accurate appraisal of fluctuating needs requires time to establish the full extent of the fluctuation. An expert opinion may be needed to support any assessment.
- Consider whether other agencies should be playing a more prominent role. For instance, is this more a health matter than social care
- Decisions should avoid the tendency towards protection of the individual who lacks capacity and not be risk averse

STEPS IN CASE MANAGEMENT BEFORE AN APPLICATION TO COURT IS CONSIDERED

The following steps are essential in all situations when working with a person with care and support needs. If you are considering an application to the Court of Protection this means that you consider there to be a significant welfare dispute or unresolved conflict. The following steps will already have been taken but it is the social workers responsibility to ensure they are robust.

1. Complete the Personal Profile which will include an analysis of risk and a risk management plan
2. Complete the Support Plan (following approval of the options if necessary by PDF)
3. Ensure reasonable adjustments have been made to support the individual to participate in the process
4. If the person has “significant difficulty” in participating in the assessment, identify an “appropriate individual” to represent them (for further detail see the blue box below).
5. Complete a capacity assessment
6. If there is no “appropriate individual” refer to CAAN for an independent advocate or consider an IMCA referral if the mandatory requirements are met.
7. Begin a chronology of events, ensure all observations are up to date and all communications are recorded.
8. Determine whether anyone holds a Lasting Power of Attorney for Health and Welfare decisions or whether there is a Deputy appointed for Health and Welfare.
9. Ask to see a copy of the LPA or Deputyship. If no copy is made available you can [complete form ‘OPG 100’](#) to search the register. This is a free service. <https://www.gov.uk/find-someones-attorney-or-deputy> Determine which decisions are needed, who can make them and where necessary hold a best interests meeting.
10. Make sure that the advocate or “appropriate individual” is included at each step.

CARE ACT REMINDER	
<p>“Substantial difficulty” means difficulty in one of these areas</p> <ul style="list-style-type: none"> • Understanding relevant information • Retaining information • Using or weighing up information (as part of being involved in the key process) • Communicating their views, wishes and feelings 	<p>Appropriate individual must not be</p> <ul style="list-style-type: none"> • already providing care or treatment to the person in a professional capacity or on a paid basis • someone the person does not want to support them • Someone who is unlikely to be able to, or available to, adequately support the person’s involvement • Someone implicated in an enquiry into abuse or neglect or who has been judged by a safeguarding adult review to have failed to prevent abuse or neglect.

BEST INTERESTS DECISION MAKING

Before any application to Court is considered there must be a clear record of the best interest decision/s under consideration. The social worker must follow the statutory checklist and must use the Shropshire Council template for recording on Carefirst.

BEST INTERESTS MEETING TIPS

- Use the statutory checklist as a process of acquiring evidence
- Maintain focus on the best outcome for the person taking into account what is known about their wishes and feelings and what is important to their wellbeing, bearing in mind the less restrictive option.
- The persons wishes and feelings are of particular importance
- Gather the views of all the professionals involved and other interested parties including family members, informal carers and provider services. It is an opportunity to clarify individual opinions and the reasoning for their view.
- All available options should be considered **but** please ensure funding is in place or has been agreed
- Provide a record of decision making and actions why a particular course of action was identified.
- Consideration should be given to what further assessments or expert opinion may be needed
- Record all opinions, including any dissent and the reasoning for each view
- Conclude with a summary of decisions reached , actions to be taken, by whom and when

MCA 2005 statutory checklist for making best interest decisions

- It is important not to make assumptions on the basis of the person's age or appearance, condition or any aspect of their behaviour.
- The decision-maker must consider all the relevant circumstances relating to the decision in question.
- The decision-maker must consider whether the person is likely to regain capacity. If so, can the decision or act wait until then?
- The decision-maker must involve the person as fully as possible in the decision that is being made.

The decision maker must in particular consider:

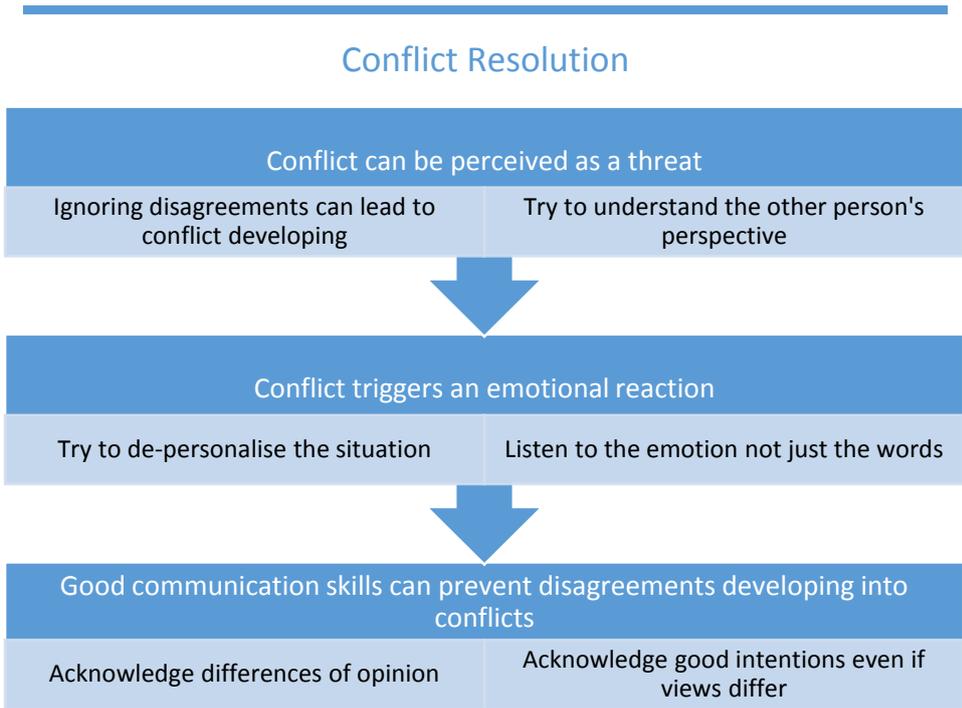
- The person's past and present wishes and feelings (in particular if they have been written down)
- Any beliefs and values (e.g. religious, cultural or moral) likely to influence the decision in question.
- As far as possible the decision-maker must consult other people and take into account their views as to what would be in the best interests of the person lacking capacity, especially:
 - What they think is in their best interests and
 - What they know about their wishes and feelings

Other factors the person would have

DISPUTES

Usually the best interest’s decision making process will help everyone to share their views and generally agreement will be reached on the way forward. Occasionally there will a dispute for example, a family member, advocate or the person themselves may have a strong view about what is in the person’s best interests, which may differ considerably from that of the local authority. Where there is a dispute it is important to try to diffuse the situation using principles of conflict resolution (see table below) or to consider alternatives to legal action. These include:

- Informal resolution processes, face to face meetings and mediation.
- Following a complaints or disputes resolution procedure.
- Suggesting that the family or person refer their concerns to the Local Government Ombudsman



The social worker, Senior and Team Manager will need to be certain that all informal dispute resolution methods have been tried, without success before proceeding to consider an application to the Court of Protection.

NEXT STEPS

If you are considering an application to Court this suggests that there is still a conflict or an unresolved welfare issue at the conclusion of the best interests' decision making process. Remember that you do not necessarily need a consensus in order to proceed with the decision this will depend on the kind of intervention necessary.

REMEMBER

If the person has capacity for the decision in question then an application to the Court of Protection is not possible. In such circumstances, the only options available are

- the Mental Health Act 1983 if the person meets the criteria for detention or
- to consider the intervention of the Police (Police and Criminal Evidence Act) if it is deemed necessary to enter without warrant to save life or limb if there is a serious risk of harm.
- In certain cases if the person is a vulnerable and is experiencing undue pressure or duress an application can be made to the High Court for a decision under the inherent jurisdiction. Legal advice must be sought in these circumstances

If the person lacks capacity the following will need to be evidenced before a decision can be made on how to proceed

- all less restrictive interventions must have been explored before a decision is taken to seek the intervention of the Court. This does not mean any less restrictive interventions need to have been tried first but the practitioner needs to evidence why they are not appropriate given the likelihood and risk of harm.
- a comprehensive risk assessment and plan in relation to the intervention required from the Court. This will identify the risks, the likelihood of the risk occurring and the proposed intervention in response to the risk.
- If restraint is seen to be likely then each measure proposed should be identified from the least restrictive to the most restrictive including how each measure is proportionate to the likelihood and risk of harm.
- Any support required from outside agencies such as police, ambulance service should be identified.

The social worker has been the decision maker to this point but from here on in full discussion must take place with Senior and Team Manager before instigating a legal planning meeting

CONSIDERATIONS FROM THIS POINT ON

ARE YOU ABLE TO SAY YES TO THE FOLLOWING QUESTIONS?

1. Is there still a substantive dispute relating to the welfare of a vulnerable person who lacks capacity to make a decision on the issue?
2. Have attempts to resolve the dispute been unsuccessful?
3. Does the LA believe it is necessary to commence proceedings in the Court of Protection so as to protect the person from abuse or neglect or otherwise to promote their best interests?

Section 5 of the MCA allows acts in relation to care and treatment to be carried out where the person lacks capacity to consent and the action is in their best interests. Section 6 of the Act places limits on the use of force or restraint in relation to such action by specifying that it must be necessary to protect the person from harm and a proportionate response to the likelihood and seriousness of harm.

There are therefore many acts which can be carried out under the MCA, where the principles of the MCA have been fully adhered to and the use of force or restraint is demonstrably proportionate to

Acting in an emergency

Sometimes people lacking mental capacity to decide for themselves require action to be taken immediately and in response to an emergency situation. The person's safety is paramount and any necessary action should be taken. A full written record should be made as soon as possible and where appropriate (for example where the intervention involves a deprivation of liberty) an application to the Court of Protection should follow immediately.

Legal advice will be needed in this situation

the likelihood and seriousness of harm.

1. At this point the practitioner needs to consider whether the proposed intervention may exceed what is allowed under the MCA. In particular the question of whether the restrictions in themselves amount to a deprivation of liberty (which cannot be authorised by Section 5) and would therefore be, without taking further steps, a breach of Article 5 of the Human Rights Act (HRA) **If the intervention includes restrictions which exceed what is allowed under the MCA an application to the Court of Protection may be needed before any steps are taken. Legal advice will be needed.**

2. The practitioner needs to consider whether any family member or person concerned in the welfare of the person who lacks capacity or indeed the person themselves, objects to the interventions proposed. If there is no family to support the person then an IMCA should be appointed as a matter of urgency. If the person themselves or their family object then the practitioner must consider the implications of Article 8 HRA. If there is an interference with the person's family life (which includes decisions around sexual relationships) an application will need to be considered. **Legal advice will be need to be considered at this point**
3. The practitioner should also consider whether the intervention is as a result of a significant welfare issue which cannot be resolved. Examples of such situations are moving a person who lacks capacity into residential accommodation where either they or their family object or where there is concern that contact of some kind between the person who lacks capacity and another individual is detrimental to their welfare **At this point you need to make reference to the questions in the blue box above and this will give you some guidance as to whether an application may be needed to the Court of Protection. Legal advice will be needed at this point and a Legal Planning Meeting should be convened.**

LEGAL PLANNING MEETING

The meeting will:

1. Consider the case put by the social worker
2. Explore with them any care options not previously explored
3. Explore any dispute resolution options not already attempted
4. Consider which legal options are available
5. Determine the next steps including input from other professionals
6. Consider the finances of the individual
7. Consider who will act as litigation friend to the person

The outcome of the legal planning meeting is to decide whether there is sufficient evidence to support a request for authorisation from Head of Service to proceed to the Court of Protection.

LEGAL PLANNING MEETINGS

If having followed all the procedures identified and the issue remains unresolved consider whether the triggers for an application to the Court of Protection have been met.

If the triggers appear to be met then the team manager in consultation with the service manager /legal services will set up a legal planning meeting. Consider whether or not this should be a joint planning meeting with health (if jointly commissioned package)

Prior to the legal planning meeting **the social worker** should prepare a report which contains:

1. A description in summary of the presenting situation
2. The outcomes being sought from the court.
3. A summary of all the steps taken thus far to resolve the dispute (remember applying to the Court of Protection is very much a last resort).
4. A clear analysis of how you have reached your professional judgement in respect of the desired outcomes (and confirmation you have PDF approval)
5. A summary of your own professional credentials (qualifications, length of experience in this role and any specific training or expertise in particular conditions). This is to go into any witness statement prepared for the Court application

Be prepared to present your summary verbally and to be challenged (in a supportive way) on your decisions. You will need to begin collating all assessments and related documents.

PREPARATION FOR A HEARING

Your legal advisor should let you know

- the date and time of the hearing, where the court is and how to get there
- what needs to be done in preparation for the hearing

FOLLOWING THE HEARING

Ensure you follow the court decisions taking responsibility for any further actions. Be aware of key dates and what is expected of you by the court

APPENDIX 1 - COMMON SITUATIONS WHICH REQUIRE A LEGAL PLANNING MEETING

1. REMOVAL FROM HOME

Sometimes the issue facing the practitioner involves consideration of removing the person from their home. In these cases the following further considerations are necessary.

- What evidence is required?

The practitioner must gather evidence of the harm the person is suffering to their welfare/wellbeing or in the case of safeguarding there should be sufficient evidence collected through the enquiry process to justify the level of intervention proposed.

- What is the purpose of removing the person?

It is essential to be clear about the reason why the worker is recommending removal from home and whether this is for the purposes of care or treatment as the route may be different.

If the removal from home is for the purposes of treatment it is also essential to identify whether this is for a physical or a mental disorder and whether the person is expected to object to this.

- If the person has capacity

If the person is assumed to have capacity or if the assessment concludes they have capacity they cannot be removed from their home using the MCA. In such circumstances, the only options available are

1. the Mental Health Act 1983 if the person meets the criteria for detention or to consider the intervention of the Police (Police and Criminal Evidence Act) to enter without warrant to save life or limb if there is a serious risk of harm (though this does not authorise removal).
2. In certain cases if the person is vulnerable and is experiencing undue pressure or duress an application can be made to the High Court for a decision under their inherent jurisdiction. Legal advice must be sought if this is a possibility.
3. If the person is in danger due to criminal activity then the police should be contacted.

As explained above, if you need to act in an emergency you may be entitled to deprive some one of their liberty if the action you are taking is to prevent a serious deterioration in their condition as long as this is accompanied by an immediate application to the Court of Protection. Section 4B of the MCA allows for deprivation of liberty necessary for life sustaining treatment or doing any "vital act". A "vital act" is defined by the MCA as "any act which the person doing it reasonably believes to be necessary to prevent a serious deterioration in the person's condition".

Seek legal advice

- What if the move will result in the person needing to be deprived of their liberty but there is time to plan for the move?

Caselaw has established that where either the person who lacks capacity or someone concerned with their welfare, objects to their proposed deprivation of liberty in residential care (the person will generally be deprived of liberty if they are prevented from leaving that accommodation and kept under continuous supervision and control – see “acid test” box below), then a Standard Authorisation² ought to be in place prior to the move taking place (even if only respite is proposed - see below). If the circumstances are too urgent to permit the granting of a Standard Authorisation, then the local authority must seek the approval of the Court of Protection prior to the deprivation of liberty arising (though note also section 4B mentioned above)

- How should respite be considered?

When considering respite, exactly the same questions need to be asked as when considering whether a move to a permanent placement would constitute a deprivation of liberty.

Respite for a period of anything beyond a few (2-3) days will be a deprivation of liberty if the acid test is met and even this period is likely to be less in settings where particularly intense measures of control are imposed. In addition, the following further points may be relevant:

- The impact of being in an unfamiliar setting on the person and how his or her care plan provides for a response to unsettled behaviour.
- The impact of reduced contact with a primary carer.
- The underlying intention of the placement: is there any prospect that it will be extended or made permanent?

Acid Test to determine a deprivation of liberty

For a person to be deprived of their liberty, they must lack mental capacity to make the decision about where to be accommodated to receive care and treatment AND be subject both to complete or continuous supervision and complete or continuous control **and** not be free to leave.

- What about the move itself?

Transporting a person who lacks capacity from their home, or another location to a hospital or care home by ambulance **in an emergency** will not usually amount to a deprivation of liberty and can be achieved under the wider provision of the MCA, as long as it is considered that being in hospital or a care home will be in their best interests. There may be exceptional circumstances where transporting the person will amount to a deprivation of liberty and

² Though Legal Advice should be sought because if there is a potential breach of Article 8 there may still be a need for a CoP application to be made.

therefore you will need to seek authorisation from the Court of Protection before the move takes place:

- Where it is necessary to arrange for the assistance of the police to gain entry to the person's home to assist in their removal
 - Where it is or may be necessary to do more than persuade or use transient physical restraint of the person during the move
 - Where the person may have to be sedated
 - Where the journey is exceptionally long
- What if the deprivation of liberty is not anticipated?

Where it was not anticipated that an authorisation would be needed but once the person is moved it is clearly needed then the care home is able to issue an Urgent Authorisation which must be accompanied by a request for a Standard. Caselaw suggests this will rarely happen as the Courts view is that it should be clear in advance when a situation will amount to a deprivation of liberty.

Further advice on deprivation of liberty can be obtained from the DoLS Team on 01743 255850 or dols@shropshire.gov.uk

2. LIMITING CONTACT

The Court has previously issued useful guidance regarding contact arrangements with a person in a care home in their best interests (WCC v GS (2011) EWHC 2244 (COP)) This decision offers a framework where a practitioner considers restrictions need to be imposed on contact visits. These must be considered before an application to the CoP is made to restrict contact.

1. **Keep the arrangements under review** - nothing should be set in stone.
2. **Detail every step of a contact session** - In some cases there will be a need to manage every step from the arranging of the visit to the arrival of the family member at the home until their departure. In other cases, a more general approach can be appropriate.
3. **Create a contact schedule** - The dates and times of visits will need to be set out clearly in a contact schedule.
4. **Have a contingency plan** – this is needed to address problems, for example, if the family member cannot get to the home on a particular day due to an emergency?
5. **Consider additional resources** - Is it appropriate for financial assistance to be made available by the local authority or other relevant third party to the relative for travelling to and from a care home.
6. **Consider supervision** - If the visit is to be supervised, who is to supervise and what level of supervision is required. In some cases the supervision may take the form of detailed note taking by an independent person; in other cases it may be a cursory check-up by a member of the care home staff; in yet other cases, the allocated social worker may attend to just keep a watching brief.

7. **Build in flexibility for the care home** – The home or contact supervisor may need to cancel shorten or lengthen a visit the visit if circumstances deem it appropriate, either before the visit or during the visit.
8. **Are conditions necessary** - Contact arrangements may include provision that the family member not be rude to or harass staff or other residents, the point of entry and exit to and from the care home, the fact that other residents need to be left alone, that their care should not be interfered with, restrictions as to what food and drink can be brought into the home and the venue in the home for contact.
9. **A record of the visit** - The level of formality will depend on the situation. In more serious cases every word may need to be recorded and in other cases a note will simply be taken that the visit passed without incident and everything went well.

3. TENANCY AGREEMENTS

When is it necessary to apply to the Court of Protection?

If a person lacks the mental capacity to make his or her own informed decision about whether or not to accept a tenancy offer, then an appropriate person can make the decision through the best interest process outlined in the MCA.

Alternatively, if there is a registered enduring or lasting power of attorney in place; or a deputy for property and affairs has already been appointed, then the attorney or deputy would usually make that decision (see below).

Although the MCA allows for decisions to be made in a person's best interests this does not extend to **signing** legal documents, such as tenancy agreements. Someone can only sign a tenancy agreement on the person's behalf if they are:

- An attorney under a registered lasting power of attorney (LPA) or enduring power of attorney (EPA);
- A deputy appointed by the Court of Protection; or
- Someone else authorised to sign by the Court of Protection.

In some circumstances, landlords may be willing to accept unsigned tenancies. Even if the landlord will accept an unsigned agreement, it would also be appropriate to make an application where there is a dispute or if it is not clear whether the tenancy offer is in the person's best interests.

Can a deputy or attorney sign or terminate the tenancy agreement?

If the person has a registered attorney under an EPA or LPA, or has a deputy appointed to make decisions on their behalf, then the deputy or attorney can terminate or enter into a tenancy agreement without further authorisation from the court.

Does a deputy need to be appointed in all cases?

No, if the sole purpose of the application is to sign or terminate the tenancy, then the application should be for an order that specifically deals with the tenancy matter. If, however, the adult lacks

capacity to manage other aspects of their property and affairs and they have assets and income other than social security benefits then it will usually be necessary to appoint a deputy to deal with all these decisions.

How to make an application

The court is prepared to deal with all of the adults required to sign the tenancy agreement(s) in a single application. This is on the understanding that the only order required from the court relates to the tenancy agreement and no further directions, for example the appointment of a deputy, are necessary.

The court will require:

- A single COP1 Application form setting out the order or declaration required with a list of all the adults required to sign the agreement annexed;
- A COP3 Assessment of capacity for **each** adult. The assessment should deal specifically with the adult's capacity to sign or terminate the agreement;
- A COP24 Witness statement for **each** person setting out the circumstances behind the moves and confirming that a best interests assessment has been carried out, including consultation with close family members, or people in close contact with the person, where applicable.
- An application fee.
- A covering letter clearly stating that the applications relates to tenancy agreements in respect of more than one person

The application form should request the court to make a single order or declaration that it is in all the person's best interests for the tenancy arrangement to be signed or terminated on their behalf. The procedure above can also be adapted for applications relating to individuals.

Appendix 2 - Benefits and burdens, best interests balance sheet

Example 1

This case involved an 80 year old female with a diagnosis of dementia, physically well, very active and mobile but without mental capacity to make care, treatment, risk or financial decisions or to litigate. She was constantly asking to go home and had tried to leave respite care. The balance sheet approach was used in this complex case with the following outcomes:

BENEFITS OF OWN HOME (A)	BENEFITS OF CARE HOME (B)
<p>1. Continues to remain in a familiar place. 2. <i>She does not feel unsafe.</i> 3. She wants to be independent. 4. She wonders why she is in a hotel and not at home. 5. More family contact and maintaining community contacts. 6. Increased care package. 7. This is where she is happiest.</p>	<p>1. Regular meals/hydration. 2. Prompting with medication. 3. Prompting with personal care/hygiene. 4. Pressure/skin area support/treatment. 5. Physical safety improved. 6. Staff available 24/7 to deal with crisis. 7. Ongoing reassurance for her anxieties. 8. Improved dignity. 9. Release strain on family members. 10. Anti-depressants and anti-psychotics can be administered. 11. She enjoys the company of others. 12. TLC and treatment may slow her decline. 13. Less need for her to contact emergency services. 14. Reduced possibility of exploitation/cold callers.</p>
PLUS BURDENS OF OWN HOME (A)	PLUS BURDENS OF CARE HOME (B)
<p>8. Not eating or drinking enough. 9. Insufficient/irregular medication. 10. <i>Deteriorating personal hygiene.</i> 11. Deteriorating pressures areas. 12. Risks of wandering/falls. 13. <i>Increased psychological distress.</i> 14. Community/family support has failed</p>	<p>15. Likely to be affected by not being in own home. 16. Loss of independence. 17. Inevitable short term anger/distress. 18. Stronger possibility of depression. 19. She may just give up. 20. Problems with contact and community activities.</p>

Example 2

This hypothetical involves a woman in her 70s with bipolar affective disorder, vascular dementia and personality disorder who was being required to reside by her guardian in a nursing home, which she was also subject to a DOLS authorisation, but wanted to return to her own home.

BENEFITS OF CARE HOME (A)	BENEFITS OF RETURNING HOME (B)
<ol style="list-style-type: none"> 1. Staff are able to facilitate regular contact with her son. 2. Encouraged to engage in leisure and social activities routinely with support. 3. Is able to attend local church, go shopping and see friends. 4. Familiar environment where she has mostly resided for more than 1 year. 5. Mental health and associated symptoms can be effectively monitored and deterioration minimised. 6. Accurate standardised and functional assessments can be offered and more effectively completed. 7. Readily available support to maintain self-care and activities of daily living. P will accept help with self-care in the nursing home, and in fact will demand it, whereas will refuse it at home. 8. Nursing home staff are able to manage her emotional responses to promote positive mental health and wellbeing. 9. Staff are able to manage her diet, fluid intake and prescribed medication in respect of her physical ill health. 10. Encouraged to use walking frame to maintain mobility and to minimise risk of falls. 11. Minimises risk of financial exploitation. 12. Friend now believes that she requires 24 hour support. 	<ol style="list-style-type: none"> 1. Recognises her Article 8 right to respect for her home, private and family life. 2. This is where she feels most content and where she probably feels as though she belongs. 3. During trial was observed as being able to use her mobility scooter safely. 4. She believes that she can cope at home. 5. Accepted breakfast being prepared by care team during trial. Friend indicates that she will eat if not eating alone. 6. Able to use local shops independently during trial to purchase fast food. Was supported by shop staff to put her purse away safely and to carry items to her scooter. 7. Was mostly able to manage her medication during trial. 8. During trial was able to wash her own clothes and attend to self-care, although care staff observed that personal care was not attended to.
PLUS BURDENS OF CARE HOME (A)	PLUS BURDENS OF RETURNING HOME (B)
<ol style="list-style-type: none"> 13. Reflects her clearly and consistently expressed wish is to return home. 14. Has previously indicated her dislike with the nursing home and that she felt like a prisoner. 15. Emotional and psychological distress caused by having her requests to return home overruled by her guardian. 16. Proportionate restrictions are placed on her liberty in her best interests. 	<ol style="list-style-type: none"> 9. Does not realise the risks to health and Safety. 10. History of refusing to engage with assessments and community care services (eg declined occupational therapy assessment during trial). 11. History of neglecting her diet (eg did not engage in meal preparation during trial). 12. History of overusing telephone.

<p>17. Risk of losing her home. 18. Not able to access the community without support. 19. Risk of losing her independence. 20. Risk of becoming deskilled. 21. Has on occasion been aggressive to other residents and staff.</p>	<p>13. Gets anxious in the community. 14. Likely to misuse her medication with consequent risks such as aggressive outbursts. 15. Was aggressive with friend during trial when she tried to assist with medication monitoring. 16. Has previously been aggressive to care staff who have been unable to support her. 17. GP has also previously voiced concerns over returning home, believing she should be in 24 hour care due to vulnerability and care needs. 18. Previously refusing medication and overusing A&E and GP, calling for ambulances inappropriately</p>
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* With acknowledgement to Neil Allen