

The Capacity (Bailiwick of Guernsey) Law 2020

Easy Read Summary



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This is the consultation draft of the Easy Read Code of Practice for the Capacity (Bailiwick of Guernsey) Law, 2020 issued by the Committee for Health & Social Care on 20th January 2023 for comment..

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The Capacity (Bailiwick of Guernsey) Law 2020

Introduction

1.0 The Capacity Law is a law to support the rights of people aged 16 and older. The Law affects people who have a learning disability, dementia, brain injury or other mental disorder which affects their ability to make decisions. The Law protects people who cannot make their own decisions about some things, such as where they live or medical treatment. This is called 'lacking capacity'.

1.2 The Law tells people:

- how to help people to make their own decisions.
- how to work out if people can make their own decisions
- how to support people when they cannot make their own decisions.

1.3 What does the Capacity Law cover?

The Law introduces:

- Lasting Powers of Attorney
- The Mental Health and Capacity Review Tribunal
- Independent Capacity Representatives
- Advanced Care Planning

There is a Code of Practice which tells people how to follow the Law. This booklet is a summary of the Code of Practice.

Chapter 2

Capacity

2.0 The Law protects and supports people who lack capacity. This means when a person cannot make their own decision because they have a learning disability, or dementia or other mental disorder.

2.1 The Law says that people should be supported to make their own decisions, if they can. Professionals and others must:

- always think that people can make their own decisions
- give people support to help them to make their own decisions
- not stop people making a decision just because they think it is wrong

2.2 If a person is assessed to lack capacity, any professional or carer making that decision or doing something for them, must always make sure that it is in the person's best interests.

They should also try not to limit that person's freedom and rights too far.

2.3 Assessing capacity

How do professionals and carers decide whether people can make their own decision?

The Law and the Code of Practice explains how to assess whether a person has capacity to make a decision. Anyone assessing capacity must follow what the Law says. They must not assume that you cannot

make your own decision just because you have a disability, or because of your age, or how you look or how you behave.

2.4 Sometimes a person can make some decisions for themselves but not others. The Law says that just because you cannot make a particular decision this does not mean that you cannot make other decisions. This means that if someone thinks that you cannot make a particular decision, they must follow the Law and assess your capacity for that matter.

2.5 How do people decide whether you have capacity to make a decision?

The Law sets out a test which must be followed. They should explain to you what the decision is and any different options, for example a choice between where you should live or whether to have a particular medical treatment. They should give you information about the different options and they should make sure that you have support to make your decision, if possible.

2.6 What support should you have to make your decision?

If you need an interpreter (including signing) this must be provided.

If you use any communication aid you must be able to use this.

If you need extra time to think about your decision, this should be offered if the decision is not urgent.

You have the right to have someone familiar with you for the assessment.

2.7 The person assessing your capacity will need to check whether you can do all of the following:

- understand the information about the decision
- retain that information long enough to make your own decision
- use that information to make your own decision
- and tell people what your decision is.

If you cannot do one or more of these things due to a mental disorder, this means that you do not have capacity to make your own decision and that this will be made by someone else. This is known as making a 'best interests decision.'

2.8 Who assesses capacity?

The Law says that certain people, involved in providing care and treatment should assess capacity. If you need to make a decision about medical treatment, the doctor should assess your capacity to decide about this. If your social worker is talking to you about where you should live, they should assess your capacity to decide about this. If you have a carer and you have to make lots of decisions during the day, such as when to wash or eat, your carer will be assessing your capacity for these decisions but they won't do a full assessment each time. It is likely that you will have a care plan which covers these areas of your care and the person writing the care plan should assess your capacity to agree to this.

2.9 What happens if my condition changes from day to day?

It is important that the assessment of your ability to make your own decision is completed when you are best able to do this. The assessor will consider whether the changes in your condition affect your ability to make your decision. This may depend upon the decision, for example whether this is a complex or a more simple decision.

2.10 If you have a temporary condition, such as an infection, it may be possible to wait until you are better before seeing whether you can make your own decision.

2.11 What happens if I or my representative do not agree with the assessment?

If you are not happy with the assessment you should discuss this with the person who wrote this. It may be that this can sort out any disagreements. You can also make a formal complaint to the organisation the assessor works for. In some circumstances you or your representative can apply to the Mental Health and Capacity Review Tribunal (see chapter 7).

2.12 Do I have to agree to an assessment?

Nobody can force you to have an assessment however, it is important that you understand that the aim of the Law is to uphold your rights and to support you to be involved in decision making. If you refuse the assessment the person responsible for deciding what is in your best interests will speak with your family or friend and with your carers or other people supporting you. They will then consider whether they have enough information to decide that you are unable to make your own decision. It may be necessary to ask the Mental Health and Capacity Review Tribunal to decide whether you have or lack capacity to make the decision.

2.13 Will I get a copy of the report written by the assessor?

The assessor should provide you with a copy of their report so that you know how they reached their conclusions.

Chapter 3

Best Interests

3.0 If you cannot make your own decision, it will be made in your best interests. The Law explains how people making decisions in your best interests should do this.

3.1 The person responsible for deciding what is in your best interests must listen to what you want. They should also ask people who know you. They should, if possible, arrange a meeting to discuss this. You can attend this meeting because it is important that you are involved in any decision made for or about you.

3.2 If you need an interpreter or someone to support you at a meeting, this should be arranged. You can also have someone you trust to support you at the meeting.

3.3 They must not decide what is in your best interests just because you have a disability, or because of your age, or how you look or how you behave.

3.4 The person deciding what is in your best interests can only consider what is available for you at the time the decision is being made.

3.5 Are there any decisions that cannot be made for me?

Yes. The Law says that other people cannot make a decision for you to:

- marry someone or to have a civil partnership
- vote

- place a child for adoption or
- have sex with someone.

However, if you are assessed to lack capacity to make these decisions, you may be restricted from doing these things.

3.6 How do people decide what is in my best interests?

Any person deciding what is in your best interests must try to find out what you would want to happen. This means talking to you about your wishes and views and also talking with your family or friend, or anyone you have asked to be consulted. They should also include any professionals or carers involved with you. If you have written an Advanced Care Plan or an Advance Decision to Refuse Treatment (see chapter 9), these must be considered by the person making the decision. A best interests meeting should be arranged, which you can attend. Your views are very important.

3.7 Less restrictive option

Any person making a best interests decision must consider whether there is a different option which is “less restrictive”. This means, for example, before deciding that you should move to a care home, they should consider whether, with support, you could manage in your own home. If so, you should be supported to stay at home, with suitable support.

3.8 What happens if I regain capacity?

Any person making a best interests decision should consider whether it is likely that you will regain capacity to make the decision. If this is likely the decision should wait until you can decide what to do, unless it is urgent.

Example

Samantha is 59 years old. She has a mild learning disability and is very independent. She lives in her own flat on the first floor, with support workers helping her to cook and to do her shopping. Samantha enjoys her independence but recently her support workers have seen a change as she has got older. She has had several falls and is finding it more difficult to manage the stairs to her flat. Her social worker thinks that she might need to move to a ground floor flat. She assesses Samantha to lack capacity to make this decision and decides to arrange a best interests meeting, however Samantha is suddenly admitted to hospital with a chest infection. She is very unwell and is assessed to lack capacity to make her own decisions about her treatment and about staying in hospital. The social worker decides to wait until she is better before arranging the best interests meeting, to see whether she regains capacity to make her own decision.

3.9 Life sustaining treatment

The Law says that anyone making a best interests decision about a treatment which is keeping you alive, must not decide what to do based on wanting you to die. All reasonable steps should be taken to keep you alive unless the treatment is not likely to be successful or could be very difficult for you to cope with. It is important that any decision about such treatment is discussed with your family. If there is no agreement about what to do, this will need to be decided by the Royal Court.



3.10 Do Not Attempt Cardiopulmonary Resuscitation Orders (DNACPR)

Doctors sometimes decide to make a DNACPR order if they think that it would not be in your best interests. The doctor must discuss this with your family or friend if you do not have capacity to make your own decision.

3.11 What happens if I have made an Advance Decision to Refuse Treatment

If you have made an Advanced Decision to Refuse Treatment about the treatment that is proposed, the doctor must follow this rather than go through the best interests process.

3.12 Who has to follow the best interests process?

Any person who is making a decision for you must follow the Law. This includes your Attorney under a Lasting Power of Attorney, carers and professionals.

3.13 What happens if people don't agree about my best interests?

Sometimes people may not agree about what is in your best interests. The person making the decision should listen to everyone's views but it is up to them to decide finally how to act and what is in your best interests.

3.14 Will there be a written record of a best interests decision?

Not all decisions need to be written down however professionals and attorneys should keep a written record of important decisions, including change of home, medical treatment and spending money on your behalf.

3.15 What happens in an emergency?

If you need urgent treatment healthcare professionals do not need to follow the best interests process.

Example

Mrs Gladys Jones has dementia. She lives alone but has carers who visit her four times a day. One morning they visit to find Mrs Jones lying on the floor. They call an ambulance and the paramedic thinks that Mrs Jones may have broken her hip. She is very confused and says that she does not want to go to hospital. The paramedics are very worried about Mrs Jones' health and decide to take her to hospital even though she says that she does not want to go. She is taken to hospital and treated in her best interests as an emergency.

3.16 Can staff restrain me?

The Law says that restraint is when a person uses medication, equipment or holds you to stop you from doing something. It includes restricting your freedom of movement. You can only be restrained if it is necessary to keep you safe from harm and any restraint used is proportionate to the risk of harm. Any restraint should only be for a minimal period.

Chapter 4

Lasting Powers of Attorney

4.0 A Lasting Power of Attorney (LPA) is a legal document which allows another person that you have chosen, to make decisions for you if you lose capacity in the future. You must be 16 or over to make a LPA but your attorneys need to be 18 or over.

4.1 There are two LPAs. A LPA can be made for Property and Financial decisions and also for Health and Welfare decisions. The attorney can only make the same decisions that you could have made when you had capacity. The attorney must act in your best interests and follow the Law.

Decision	What can the attorney do (Health and Welfare LPA)?	What the attorney cannot do.
Whether to have medical treatment.	The attorney can decide whether you have treatment or they can refuse this, if you have lost capacity to make this decision.	The attorney cannot make this decision if you have made an ADRT which applies to this treatment.
Whether to have a care package, including moving to a care home.	The attorney can decide whether you have support or where you should live.	The attorney cannot make the Committee provide a more expensive care package or placement.

Decision	What can the attorney do (Property and Financial affairs LPA)?	What the attorney cannot do.
Making financial decisions	The attorney can manage your money and make sure that your bills are paid.	The attorney cannot sell your house or property. This must be decided by the Royal Court.

Example

Mr Sinclair lives with his wife and he had made LPAs for health and welfare and also for property and financial affairs. His son John is his attorney. Mr Sinclair is in hospital as he has had a stroke. He has been assessed to lack capacity to decide where he should live. Mrs Sinclair cannot care for her husband as she is elderly. The social worker recommends that Mr Sinclair moves to a care home, as he needs 24 hour care. Mrs Sinclair does not have money to pay for 24 hour care at home. John decides that it would not be in his father's best interests to return home as he may not be safe there.

4.2 Who can be an attorney?

You can name someone to act as your attorney if:

- they are aged 18 or over
- they have not been made bankrupt (for a LPA for property and affairs)

- they are not on the Disclosure and Barring Service barred list.

Any person you choose must be able to act in your best interests. They should be trustworthy and should understand their responsibilities.

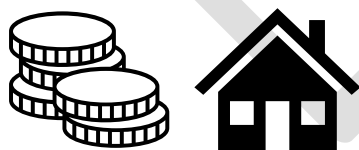
4.3 How many attorneys can I have?

You can choose as many people as you want but it is sensible to choose at least two, if possible. You should decide whether you want them to be able to make decisions together or whether they can do so independently.

4.4 What happens if my attorney loses capacity?

If someone that you have named as your attorney loses capacity they can no longer represent you. If you still have capacity, you can change your LPA. If you have also lost capacity, you cannot change your LPA and it will no longer be valid, unless you have more than one attorney or you have named a replacement attorney.

4.5 What decisions can an attorney make about my property and financial affairs?



Your attorney can manage your money and property which includes:

- managing your bank accounts
- claiming and managing benefits and pensions
- receiving any income on your behalf
- looking after your property, including doing any repairs or maintenance

- investing your money
- paying for medical treatment
- paying for residential or nursing care
- paying for any equipment you may need
- paying bills

However, an attorney cannot sell your home or any other property you own. You can also list any matters that you don't want your attorney to deal with.

4.6 If you wish, you can ask your attorney to manage your property and affairs whilst you still have capacity.

4.7 What decisions can an attorney make about my health and welfare?



Your attorney can make decisions about your health and welfare which includes:

- whether you have medical treatment
- where you live, including moving to a care home
- making arrangements for you to have care or treatment
- whether you take part in social or leisure activities
- any assessments for health or social care

However, your attorney cannot consent to you being subject to a significant restriction of your personal rights and freedoms. This must be

authorised under the Protective Authorisation scheme (see chapter 11).

3.8 You can list any decisions that you do not want your attorney(s) to deal with.

Your attorney can only make these decisions after you have lost capacity to make your own decisions about your health and welfare.

4.9 How do I make a LPA?

To make a LPA you must be 18 or older and you must have capacity to make this. This means that you can understand the purpose of the LPA and the decisions that your attorney(s) can make for you. You must complete the LPA form and attend The Greffe to register this. If you cannot get to The Greffe it is possible to arrange a home visit but there is an additional cost for this. The LPA will be registered if HM Greffier is satisfied that you have capacity to make this.

4.10 When can my attorney use the LPA?

You can give permission to your attorney to manage your property and financial affairs whilst you still have capacity. Your attorney cannot use the health and welfare LPA unless you have lost capacity to make your own decisions about your health or your welfare. Your attorney must activate the LPA before it can be used. This means that the attorney will need to have evidence that you do not have capacity to make your own decision about your health or your care. The attorney will need to speak with your social worker or your doctor who will assess whether you still have capacity. If they assess that you lack capacity, your attorney must apply to HM Greffier for the LPA to be activated. Once this has been

done, the attorney can act for you and make decisions about your health and welfare.

Case example

Mr Paul Cox has lived alone since the death of his wife, two years ago. He had been diagnosed with dementia but has always been independent and had managed well, with support from a carer who helps with the housework. However, recently his son, John, has been contacted by a neighbour to say that Mr Cox has been found outside in the middle of the night, appearing confused and distressed. When he visits his father, John sees that his house is neglected and his father does not appear to be washing often. The fridge is nearly empty and a lot of medication is found in the kitchen, so it seems that Mr Cox has not been eating well or taking his medication. The carer tells John that his father told her that he did not need her support anymore.

John talks with his father about having help in the house and with his personal care, but he does not appear to understand how bad things have got and says he can manage. John thinks that his father may not be able to make his own decisions about his health and care. As his father had previously made a Lasting Power of Attorney for Health and Welfare, John contacts the GP and requests a capacity assessment. If Mr Cox is assessed to lack capacity, the GP can complete the certificate to activate the LPA.

4.11 What happens if I regain capacity after my LPA has been activated?

Sometimes people have a condition or an illness which means that they lose capacity for a short time but then regain this. If your attorney has activated your LPA they must stop using it and you should tell HM Greffier that you have regained capacity.

4.12 What happens if I want to change my LPA?

If you have capacity, you can make changes to your LPA. You must make an appointment at The Greffe to do this. You cannot make any changes if you have lost capacity.

4.13 Should attorneys keep records or accounts?

Attorneys should keep records of how they have used your money.

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Chapter 5

Protection from Liability

5.0 The Law gives protection to staff and to carers who are giving care and treatment to a person who lacks capacity. This means that, if they follow the Law, it allows them to make best interests decisions and to provide care for people who lack capacity. This is covered in section 8 of the Law.

5.1 This covers day to day support such as helping a person to wash or to eat, as well as more serious matters such as making decisions about medical treatment or going to live in a care home. Everybody has the right to a private and family life. This means that nobody should interfere with your body or your property unless you have given them permission. However, even if you lack capacity, you may still need care and/or treatment. Section 8 of the Law gives protection to people who provide you with necessary care and treatment, where you cannot consent to this support.

5.2 Actions covered by this part of the Law include:

- helping you with washing, dressing or personal hygiene
- helping you to eat and drink
- helping you to communicate
- helping you to get around
- helping you to attend activities or education
- checking that you are safe, including coming into your home
- doing your shopping or buying other necessary items using your money (but not your bank account)
- helping you in your home with cleaning or providing meals

- giving you your medicine
- providing you with treatment
- taking you to medical appointments

5.3 Anyone providing care or treatment is allowed to do this if they

- check whether you have capacity to consent to this
- believe that you lack capacity and
- believe that the care or treatment is in your best interests.

5.4 If it is a serious matter, the person making the decision for you should keep a record of how they decided what was in your best interests. This includes:

- deciding that you should move to a care home
- deciding whether you should have medical treatment
- giving you medication against your wishes

5.5 Can anyone stop you from seeing another person?

Sometimes it may be necessary to restrict or to supervise contact you have with another person. If this is against your wishes because you want to see that person, this must be referred to the Mental Health and Capacity Review Tribunal to decide what is in your best interests.

Case example

Steven Neary¹ has a learning disability and lived with his father. He had carers who visited him at home to support him. In 2009 his father wanted a short break from looking after his son and asked the social worker to arrange for him to stay in a respite care home. When Mr

¹ London Borough of Hillingdon v Neary & Anor [2011] EWCOP 1377 (09 June 2011)

Neary asked for Steven to come back home, the social worker said he needed to stay in the respite home.

Mr Neary was very unhappy about this and so was Steven. Mr Neary asked a judge in the Court to decide what should happen. The judge decided that Steven should return home to live with his father. The judge said that any decision to stop a person who lacks capacity from seeing someone else, against their wishes, must be made by a Court (or the Mental Health and Capacity Review Tribunal).

5.6 Can people restrain someone who lacks capacity?

Sometimes it may be necessary to restrain you so that you can have necessary care or treatment. This should only happen if it is necessary to prevent harm to you and for the shortest possible time. This includes using physical force, medication or equipment to restrain you whilst you are provided with care or treatment or to transport you to hospital for treatment.

5.7 Emergency situations

If you need urgent or emergency treatment to save your life or to prevent serious harm, this should be provided without delay. This means that doctors and other professionals can treat you without needing to consult with other people.

5.8 Advanced decisions to refuse treatment (ADRT)

If you have made an advanced decision to refuse treatment, doctors and other health professionals must follow this, if it applies to the treatment you may need. If they give you treatment against the ADRT, they will

not be protected from liability, unless they did not know about the ADRT or did not think that it applied to the particular treatment.

5.9 What is harm and what is a proportionate response?

What is harm depends on each situation. If you have poor road sense you might be at risk of harm from traffic or, if you have a poor memory you may be at risk of getting lost if you go out on your own. Anything a person does to protect you from harm should be 'proportionate' to the risk. This means doing only what is necessary to keep you safe. For example, arranging for someone to go with you when you go out but it would not be 'proportionate' to stop you from going out completely.

5.10 The Law does not protect people from negligence

The Law explains how professionals, carers and attorneys should act to support you. However, if they don't treat you properly or fail to look after you this is called negligence and they can be charged with this. If you have made a relevant Lasting Power of Attorney, professionals must follow decisions made by your attorney. This is to protect your rights.

Chapter 6

Payment for Goods and Services

6.0 At times it may be necessary to spend your money on things you need or to provide you with care. This means that your carer can use your money to buy you food or toiletries, however they cannot take money from your bank account. Anyone using your money must keep records of what they have bought and how much it cost.

6.1 Who can take money from my bank account?

If you are still able to go out to the bank you can withdraw money to pay for the things you need. Anyone supporting you to go to the bank should only ask you to withdraw what you need to pay to meet your needs. If you do not have a Lasting Power of Attorney, no one else should withdraw money from your account.

6.2 Who can manage my bank account?

If you have a Lasting Power of Attorney for property and financial affairs, your attorney can manage your bank account, including withdrawing money to pay for things you need. If you don't have a LPA and you cannot withdraw money yourself, it may be necessary for a Guardian to be appointed to manage your money and to make payments that are needed.

Chapter 7

Applications to the Court and the Tribunal



7.0 This chapter explains the role of the Court and the Tribunal for people who lack capacity to make their own decisions. The Court or the Tribunal can be asked to decide whether you have capacity to make your own decision about your health and welfare and your property and financial affairs. This will only happen if people disagree about whether you have capacity to make an important decision. If the Court or Tribunal decides, having heard all the evidence, that you lack capacity, then it can make the decision for you.

7.1 What matters can the Court or Tribunal consider?

The following matters can be considered by the Court or the Tribunal:

- where you should live
- whether you have contact with a particular person or people
- whether to prevent someone having contact with you
- whether you should have a medical treatment
- whether you should stay in a particular place under a Protective Authorisation
- managing your property or your business
- paying your debts

7.2 The Court can also make decisions about:

- making a will for you if you are 18 or over
- whether any ADRT is valid and applies to proposed treatment
- any other matters about your welfare or health

7.3 Who can apply to the Court or the Tribunal?

The following people can ask the Court or Tribunal to make a decision about you or your affairs:

- You (the person who lacks capacity)
- A parent of, or person with parental responsibility for a person aged 16 or 17, who lacks capacity
- An attorney under a Lasting Power of Attorney or the grantor
- A Guardian appointed by the Court
- A person named in a relevant order made by the Court or the Tribunal
- Your representative under a Protective Authorisation, including an Independent Capacity Representative

Any other person who wishes to apply to the Court or Tribunal will need permission from the Court or from the Tribunal.

7.4 Can I get Legal Aid?

You can only get legal aid if you are challenging a Protective Authorisation or for decisions about withdrawing life sustaining medical treatment. For all other cases you will not be able to get legal aid.

7.5 Do I need legal advice to bring a case?

It is advisable to get legal advice however some cases should be referred to the Court or the Tribunal. These are cases where there is a complex decision to be made including:

- Medical treatment where family and medical staff do not agree
- You are objecting to your care arrangements under a Protective Authorisation
- A decision to restrict contact between you and another person or people

7.6 What should be considered before applying to the Court or the Tribunal?

Before making an application, other than for the cases above, it should be considered:

- Whether there is any other way to sort out the matter
- Can the matter wait if it is possible that you may regain capacity to make your own decision?
- Is this the best way to deal with the matter?
- Do you still have capacity to make a LPA or advance decision, if this would deal with this matter?
- Is there an attorney or a guardian who can make this decision for you?
- Is there another legal option such as the Mental Health Law which could be used?
- Would mediation help? Could an Independent Capacity Representative be appointed to help deal with the matter?

7.7 When should an application be made to challenge a Protective Authorisation?

Some people are quite happy in a care home or to have some limits on their freedom in their own home. However, sometimes people are unhappy about these arrangements. If you are objecting to your care arrangements under a Protective Authorisation, you can apply to the Tribunal to decide whether it is in your best interests to stay in the home or to be restricted by others. As you will have a representative under the Protective Authorisation, they must apply to the Tribunal for you. In some cases your representative should apply to the Tribunal even if you don't want them to do so. This is because their role is to represent you and they may consider that it is necessary to make this application.

Example – challenging a Protective Authorisation

Mr Alfred Bluett was living in his own home. He was quite independent however, he had a fire in the house and cannot live there until it has been repaired. He has been admitted to a care home on a temporary basis to keep him safe, whilst repairs are being made. Mr Bluett has been diagnosed with dementia although this is not very advanced and he can make some basic decisions for himself. He understands that he cannot live in his house until the repairs are completed.

Mr Bluett's nephew is his attorney and decides that it would be in his uncle's best interests to stay in the care home, rather than returning home. He thinks that it would be better to sell his uncle's home to pay the care home fees rather than spending money on the repairs. The social worker allocated to Mr Bluett submits the relevant assessments for a Protective Authorisation as part of the application to place him in the care home. As Mr Bluett's nephew does not live in Guernsey, an Independent Capacity Representative is appointed as his representative.

The ICR appointed as representative visits Mr Bluett who is very distressed that there has been no progress on him returning home. He says that he does not wish to stay in the care home. The ICR contacts Mr Bluett's nephew and attorney who advises that he is planning on selling the house and for his uncle to stay in the care home.

The ICR speaks with Mr Bluett who says that he wishes to make a legal challenge to the Protective Authorisation. The ICR agrees that the application should be made, given how strongly Mr Bluett feels about his situation and because potentially there is a less restrictive option available, which would be for him to return home. The ICR, as representative, makes the relevant application to the Tribunal.

7.8 Are there decisions that the Court or Tribunal cannot make?

The Court and the Tribunal cannot make a decision for you if you have capacity to make your own decision? The Court and Tribunal can only decide between options which are available. This means that if your doctor has decided that a particular treatment is not available, the Court cannot make the doctor provide this to you.

7.9 Can the Court make any decisions regarding my Lasting Power of Attorney?

If there are concerns that your attorney is not acting in your best interests or dealing properly with your affairs, the Court can rule whether to end the attorney's appointment.

7.10 What happens to vulnerable adults if the Capacity Law does not apply?

The Capacity Law only applies to people who lack capacity to make a particular decision. However, sometimes people are concerned about an individual who has capacity but who is considered to be very vulnerable. In such cases, the Royal Court can make orders to protect you under the 'inherent jurisdiction'. The inherent jurisdiction is where the Royal Court makes orders to protect vulnerable adults who are at risk of harm due to

the actions, or lack of action, of another person(s). This may happen if a person is using undue influence or control over a vulnerable adult. Professionals should seek legal advice as to whether the inherent jurisdiction can be used to protect the vulnerable individual.

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Chapter 8

Disclosing information

8.0 Carers and professionals who are caring for or managing your money, may need information about you so that they can:

- assess your capacity to make a decision
- decide what is in your best interests

There are laws which protect you as this information may be sensitive or confidential.

8.1 Under the Data Protection (Bailiwick of Guernsey) Law 2017 you have the right to see personal information that an organisation holds about you. You can also authorise someone else to see this information on your behalf, if you have capacity to do so.

8.2 If you cannot give consent for someone to see your personal information (you lack capacity), they may still be able to see this. This would be:

- if the person who wants to see your information is your attorney or other representative
- if allowing the person to see the information is in your best interests
- if it is necessary to provide you with appropriate care or treatment

Any information provided must only be what is necessary and in your best interests.

8.3 Examples of this would be a doctor telling your carers what medication you take so that they can give this to you. Or your family or attorney explaining your care needs to a possible care home manager so that they can decide whether they can offer you a placement.

8.4 Sometimes it will be necessary to give personal information about you to others because it is in the public interest. This means when this is thought necessary to prevent a serious crime or to prevent serious harm, such as the spread of an infectious disease. It could also be necessary to protect you from physical or mental harm or abuse. In such cases the health or social care staff should take legal advice before providing such information.

8.5 How should carers treat information?

Carers, attorneys and professionals should treat personal information in confidence and should not share it with anyone else unless there is a lawful reason to do so. If the information is in writing, it should be stored safely and should not be kept for any longer than is necessary.

8.6 What happens if there is a disagreement about seeing personal information?

Your carer should always ask you if you are willing to share your information. However, if you lack capacity the carer should ask the professional who has your personal information and explain why they need this. If the professional refuses but the carer is not happy about the reason for this, they can use the complaints process. If there is no agreement the carer can apply to the Court for the right to see the information.

Chapter 9

Advanced Care Planning

9.0 Advance Decisions to Refuse Treatment



The Law supports your right to make your own decisions about your care and treatment, whilst you have capacity to do so. The Law allows you to write an Advanced Decision to Refuse Treatment (ADRT). This applies to a specific treatment only. If you later lose capacity and need the treatment listed in your ADRT, your doctor must follow your ADRT. This means that the doctor cannot give you that treatment. This is the same as when you have capacity and can decide whether or not to have treatment.

Example – advance decision to refuse treatment

Mr Albert is 86 years old and has been treated for cancer. This included chemotherapy and he had suffered very bad side effects from this. Mr Albert has now been diagnosed with dementia. He is concerned that, if the cancer returns, he may no longer have capacity to make his own decision about treatment however he is very clear that he would not want to have chemotherapy again. He writes an ADRT which states that, if he is diagnosed with cancer again, he would not want to have chemotherapy treatment. He includes a statement that the ADRT is to apply, even if his life is at risk. Because the ADRT could mean that he dies (as he is refusing treatment for cancer), Mr Albert speaks with his doctor about this decision. The GP gives Mr Albert information about treatment and the risks of

refusing this but accepts that he has capacity to make his ADRT. The GP signs the ADRT.

9.1 Who can write an ADRT?

An ADRT can be written by anyone aged 16 or over and who has capacity to make this decision.

9.2 What information must be included in the ADRT?

An ADRT must be in writing. It must include the following information:

- your name, date of birth, address and any distinguishing features
- the name and address of your GP and whether you have given the GP a copy of the ADRT
- a statement that the ADRT should be used if you lose capacity to make your own decision about your treatment
- details of the treatment that you are refusing and the circumstances when the ADRT should be used
- that the ADRT should still apply even if your life is at risk (if the ADRT applies to life sustaining treatment)
- if the ADRT covers life sustaining treatment it **MUST** be signed by a doctor or other healthcare professional to confirm that they have given you advice
- the date of the decision and

you must sign the ADRT. If it relates to life sustaining treatment, your signature must be witnessed.

9.3 What happens if I haven't written my ADRT but I have told people my wishes?

Your ADRT must be in writing to make sure that it is clear what you have decided. If you have told people your wishes this is not a legal ADRT and your doctor does not have to follow that. However, if you have lost capacity, the doctor will follow the best interests process. They will consider your views as part of that process.

9.4 Can someone help me to write my ADRT?

If you cannot write your ADRT, perhaps because you have a physical disability, someone can write this for you. If you cannot sign the form, you will need to have a witness who can confirm that it has been signed by another person at your request and in your presence.

9.5 What happens if anyone thinks that the ADRT does not apply to the treatment?

Your doctor should decide whether your ADRT applies to the treatment which has been proposed for you. If there is any disagreement between health staff or between your family and the doctor there should be a discussion to see if this can be resolved. The main purpose is to decide whether the ADRT is valid and applies to the treatment.

9.6 No one can override your ADRT just because they do not agree with what it says. However, if you have made a Lasting Power of Attorney **after** you wrote the ADRT, then it is up to your attorney to decide whether you have the treatment.

9.7 If there are doubts about whether your ADRT is valid and this matter cannot be resolved, this should be referred to the Court for a decision.

9.8 What happens if it seems that I may have changed my mind after writing the ADRT?

If you have capacity you can change or end your ADRT. You should make sure that you tell your doctor and your family about the changes or that you do not want the ADRT to be used any longer.

9.9 If you have lost capacity the ADRT will still apply. However, if there are concerns that you may have changed your mind whilst you still had capacity, your doctor should check whether there is any evidence to support this.

Example

Mrs Allen is 85 years old. She has been divorced from her husband for 30 years. Mrs Allen's husband is a Jehovah's Witness. Mrs Allen had also been a Jehovah's Witness and she had written an ADRT many years ago, to refuse all blood products. Mrs Allen has two daughters. She has always told them that she would wish to be resuscitated if her health declined. She had not mentioned to her daughters that she had made an ADRT. Mrs Allen has not attended Jehovah's Witness services since her divorce.

Mrs Allen has been diagnosed with dementia and she lives in a care home. One day Mrs Allen has a fall and breaks her leg badly. The doctor wants to operate but notes that there is an ADRT on her notes. The doctor is concerned about operating on her in case she loses a lot of blood. When he speaks with Mrs Allen, she is very confused and he

assesses her to lack capacity to decide about her treatment. When her daughters visit her the doctor explains the problem about operating. Mrs Allen's daughter explains that she has never known about the ADRT. She explains that her mother has always been keen to live a long life and that she has always said that she would want to be resuscitated if needed. Mrs Allen's daughter tells the doctor that her mother is not a practising Jehovah's Witness any longer and therefore she would not refuse blood products.

Because of the different concerns the doctor asks the Court to decide whether the ADRT is valid, because Mrs Allen appears to have changed her mind about the ADRT.

9.10 What happens in an emergency?

Emergency treatment should not be delayed unless there is a valid ADRT or reason to believe that there is one. The Law says that life sustaining treatment or urgent treatment can be provided, including while waiting for a decision by the Court.

9.11 Advanced Care Plans (ACP)

The Law introduced Advanced Care Plans. You can use this to say what you would like to happen if you lose capacity in the future.

Professionals do not have to follow the Advanced Care Plan but they should consider it when making a best interests decision.

9.12 Who can make an Advanced Care Plan?

To make an ACP you must be aged 16 or over and you must have capacity to write this. It should be in writing.

Example

Mr Spencer has recently been diagnosed with dementia. His wife also has dementia and her social worker has assessed her to need a care home placement. She moves to Sunview Care Home. Mr Spencer sees how well his wife is cared for and writes an Advanced Care Plan stating that, when his needs increase so that he cannot manage in his own home, he would like to go to a care home, preferably the same one as his wife. He also says that, if that is not possible, he would like to be living close to his wife so that he can visit her.

Mr Spencer understands that, at the time that he needs full time care, it may not be possible for him to move to Sunview care home, however his views (as expressed in the ACP) should be considered when a decision is made.

9.13 Can someone help me to write my Advanced Care Plan?

If you cannot write your ACP, perhaps because you have a physical disability, someone can write this for you. If you cannot sign the form, you will need to have a witness who can confirm that it has been signed by another person at your request and in your presence.

9.14 Do professionals have to follow my ACP?

An ACP does not have to be followed. You may have said that you do not want to move into a care home but, if you later need a lot of care and help, it may not be possible for you to stay in your own home. The professional making the best interests decision should consider the ACP as your wishes but they do not have to follow it, if that is not in your best interests.

Chapter 10

Independent Capacity Representatives

10.0 The Law says that any person making a decision in the best interests of a person who lacks capacity, must consult with your family or friends. Most people will have someone that can support them and who can be consulted about what is in your best interests. However, if you do not have anyone suitable to be consulted for certain decisions, an Independent Capacity Representative (ICR) should be appointed.

10.1 What is an ICR?

An ICR is a person who has been trained to support people who lack capacity and who do not have any family or friends to speak for you. The ICR's job is to try to find out your wishes and views. They do not make the decision and they are independent of the person making the best interests decision.

10.2 An ICR can support you if you are aged 16 or over and have been assessed to lack capacity. An ICR must be instructed to represent you regarding:

- a decision about serious medical treatment
- under the Protective Authorisation Scheme

An ICR can also be instructed to represent you regarding:

- a decision about where you live
- for a safeguarding investigation.

10.3 An ICR can be appointed if it is thought that it would be in your best interests, for example if it is not possible to contact your family and the decision cannot wait.

10.4 What is serious medical treatment?



If you need medical treatment and you lack capacity to decide whether to have this, an ICR must be instructed if:

- the benefits and risks of the treatment are finely balanced
- there is more than one treatment option and it is difficult to decide which to choose
- there are risks or consequences from the proposed treatment, such as distress or pain,
- it may have an impact on your future choices, such as affecting your fertility.



10.5 Serious medical treatments include:

- treatments for cancer
- sterilisation
- major surgery
- amputation
- one that could result in you losing your sight or hearing
- terminating a pregnancy
- withholding or stopping artificial nutrition and hydration.

An ICR must be instructed for a decision about whether to give or not to offer the particular treatment. The ICR can ask for a second opinion.

10.6 Protective Authorisation

An ICR must be instructed if you are having an assessment for a Protective Authorisation (see Chapter 11) and you do not have family or friends to consult or if you do not have anyone to act as your representative (other than paid carers).

10.7 Decisions about where you live.



If a decision needs to be made about where you should live and there is no one suitable to consult, an ICR can be instructed. The ICR will try to gain your views about where you live and will represent you for the best interests decision.



10.8 Safeguarding investigations

If someone is concerned that you may have been hurt by another person, an ICR can be appointed to support you whilst this is investigated, if you do not have anyone suitable.

10.9 What does the ICR do?

Making a decision

The ICR must follow the Law to support you. The ICR appointed to support you:

- should try to find out your views and wishes about the decision
- can meet you in private and can see your medical and care records
- should speak with the professionals and carers who are looking after you and treating you
- can ask for a second opinion or question any decision made for you
- see whether the decision can be delayed if you may regain capacity

The ICR must write a report for the person making the decision.

Example

Mr Davies lives alone. He has had a stroke and is in hospital. He is fit to go home however the doctor in the hospital does not think that he will be able to manage. She thinks that he should go into a care home. The social worker is involved to decide what should happen. She assesses Mr Davies to lack capacity to decide where to live. As he does not have any family, she asks an ICR to meet Mr Davies and to represent him.

The ICR meets Mr Davies and they talk about where he would like to live. The ICR goes to the best interests meeting with Mr Davies and explains what he would like. The social worker listens to what the ICR says when she considers what is in Mr Davies' best interests.

10.10 Protective Authorisation Scheme before an authorisation is given.

What does the ICR do?

If you are living (or going to be living) where the care arrangements include a significant restriction of your rights and freedoms, this has to

be authorised under the Protective Authorisation Scheme (see chapter 11). Your social worker or the Capacity Professional must speak with your family or friend to make sure that these care arrangements are in your best interests. If you don't have any family or friends to speak with, an ICR must be instructed.

10.11 The ICR:

- should try to find out your views and wishes about where you live and the different places being considered
- can meet you in private
- can see your care records and any assessments
- should speak with the professionals and carers who are looking after you and treating you
- consider other options which may be available or question any decision made for you
- see whether the decision can be delayed if you may regain capacity

The ICR must write a report for the Capacity Professional.

10.12 Protective Authorisation Scheme after an authorisation is given.

What does the ICR do?

If you are living (or going to be living) where the care arrangements include a significant restriction of your rights and freedoms, this has to be authorised under the Protective Authorisation Scheme (see chapter 11). If a Protective Authorisation is agreed and granted, you must have someone to represent you. This person must:

- visit you every few weeks
- try to find out your views and wishes about your care and treatment

- support you to understand about the Protective Authorisation and your right to challenge this
- support you to make a legal challenge to the Tribunal or asking for a review of your care arrangements
- do anything else that is reasonable to support you

10.13. An ICR can also be appointed to support you if you have capacity to choose this and if you do not want a member of your family to act as your representative. Your representative can also ask for an ICR to support them.

Example

Mr Adkin is living in a care home as he has had a car accident and needs care and treatment. However he does not like it and wants to go back home to live. Mr Adkin's partner, Mr James, would like him to come home too. He is able to act as the representative but he thinks is will find it difficult to apply to the Tribunal without support. The Capacity Professional arranges for an ICR to support Mr James and he makes the Tribunal application.

10.14 Do I have to have an ICR supporting me?

If you have capacity to decide whether an ICR supports you, you can refuse this. However, if you are assessed to lack capacity but refuse an ICR, a best interests decision will be made about this. It is important to remember that the ICR is there to help and support you when people are making difficult decisions about your care and your treatment.

10.15 Does an ICR act independently?

Yes. Anyone who is caring for you and being paid to care for you, cannot act as you ICR. The ICR must not have any connection with the person who has instructed them or to other people who are caring for you or treating you, which could affect their independence.

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Chapter 11

Protective Authorisation Scheme

11.0 What is the Protective Authorisation Scheme?

If you lack capacity to decide where you live and you need care or treatment, you may have some restrictions on your rights and your freedoms. For example, you may be living in a care home where the doors are locked and you cannot go out on your own. Or the staff may decide what time you have your meals or a bath. If you are not able to leave the place where you are living and other people are making decisions for you, it is likely that this is a 'significant restriction of your personal rights'. This must be agreed under the Protective Authorisation Scheme, which is a legal process.

11.1 The Protective Authorisation Scheme gives you the right to challenge your care arrangements or where you are living, if you, or your representative or attorney are not happy about these. This means that you can ask the Mental Health and Capacity Tribunal to decide whether these arrangements are in your best interests (see chapter 7).

11.2 Who is affected by the Protective Authorisation Scheme?

The Protective Authorisation Scheme (PAS) applies if you are 16 years old or over and lack capacity to agree to the arrangements for your care. You can be staying in a care home, hospital, in supported accommodation or in your own home. The PA Scheme applies if carers or staff supervise and control what you do and if you are not free to choose where you live. The Law calls this a 'significant restriction' of your personal rights.

Example

Mr Welch has a learning disability. He has recently moved into a care home as his parents are quite old and cannot care for him. His social worker arranged for him to move there. Mr Welch needs help to wash and to dress. He cannot cook so the support workers make his meals and drinks, although he is able to help in the kitchen. The staff do not let Mr Welch go into the kitchen on his own because they worry that he might hurt himself on a hot oven or from a sharp knife. When he goes out into the community the staff go with him as Mr Welch does not understand about road safety and the staff have seen him walk into the road close to cars. When Mr Welch is in the care home he can spend time in his bedroom but his support worker checks on him every hour to make sure that he is safe.

Mr Welch had been assessed to lack capacity to decide whether to move to the care home so his social worker has made sure that he has a Protective Authorisation in place before he moves in. Even though he seems quite happy when he does move there, there are restrictions to keep him safe from harm, so he needs to have the Protective Authorisation.

11.3 What is a significant restriction?

The Law says that a significant is when:

- someone has decided where you should live and would stop you from leaving there, if you wanted to and
- carers or staff know where you are throughout the day and the night
- carers or staff know what you are doing, and
- carers or staff would stop you from doing something if they thought you might be at risk of harm

and you have not agreed to this because you lack capacity.

11.4 There are many examples of restrictions which, taken together may mean that others are supervising and controlling your life. These can include:

- having a carer or support worker (or more than one) with you for part of, or all of the day
- the doors are locked and you are not given the key. This includes locking the door to the kitchen as well as doors to the garden and the main entrance door.
- there is CCTV monitoring you, or there is a sensor mat which alerts staff when you get out of bed
- there are bedrails in place
- staff escort you to go out
- staff stop you from having alcohol or restrict you from smoking
- staff hide your medication in your food or drink so that you do not know that you are being given this (this is known as covert medication)
- staff use physical restraint to stop you from doing something
- staff or other people restrict who you see or spend time with (although this usually needs to be authorised by the Court or the Tribunal)
- staff or carers would stop you from leaving to live elsewhere if you asked or tried to do so

Any restrictions should be reviewed regularly to make sure that these are still necessary to keep you safe from harm.

11.5 What happens if I am paying for my care at home or to stay in a care home?

If you, or your relative, have arranged for your care and are paying for this, you will not need a Protective Authorisation. This is because a PA

is only needed if your care or your placement has been arranged by a social worker or another health or social care professional.

11.6 What happens if I go into hospital?

If you are admitted to hospital and do not have capacity to agree to this, the hospital staff will arrange a short PA for up to 28 days. If you have to stay in hospital for longer, it is likely that a Capacity Professional will visit you to get your views about staying there. You will have the same rights to go to the Tribunal if you are not happy about staying in hospital.

11.7 What happens if I have a Lasting Power of Attorney for health and welfare?

Your attorney cannot agree to the significant restriction and they cannot prevent the Capacity Professional from arranging the assessments. However, if your attorney is not happy with your care arrangements, they can refuse the PA but they will need to make other arrangements for your care. If they cannot do this, for example if there is nowhere else suitable for you to stay, your attorney can support a challenge to the Tribunal as your representative. If you lack capacity to select your representative, your attorney can decide who this should be.

11.8 What happens if I am not happy about my care arrangements under a Protective Authorisation (PA)?

If you, or your representative do not think that you should be living in the care home or that the restrictions are not necessary, you can make an application to the Mental Health and Review Tribunal. You will be entitled to have an advocate to support this and you may get legal aid for this.

Example

Ms Cox is 25 years old. She was in a car accident which caused a brain injury. Although she can manage some of her care needs, she is very vulnerable as she does not know how to keep herself safe from harm. For example, she talks to strangers and does not believe that some people may try to take advantage of her. Ms Cox has moved into Halstow House which is a locked care home. This is a short-term placement where she has support to re-learn the skills that she lost when she had the brain injury.

Ms Cox's social worker arranged a Protective Authorisation as he has assessed her to lack capacity to consent to staying at Halstow House. Her father is her Representative for the PA. Ms Cox has a member of staff with her when she goes out to the shops and for walks. She is very unhappy about this as she does not agree that she would not be safe on her own. She tells staff that she wants a key for the front door and to be able to go out on her own. The staff refuse. When Ms Cox's father visits she tells him that she is unhappy about staff stopping her from going out alone and she does not want to stay at Halstow House. Her father supports an application to the Mental Health and Capacity Review Tribunal because Ms Cox is objecting to the restrictions and to staying in the care home.

11.9 Who does the assessments for a Protective Authorisation?

The Law has introduced a new role of a Capacity Professional. This will be someone who is not involved in your care or treatment, so that they can be more independent. The Capacity Professional will complete

some assessments or they may ask your social worker or your doctor to do these. However, a Capacity Professional will be responsible for making the final decision that a PA is granted. Your social worker or the Capacity Professional will speak with you to ask for your views about the arrangements for your care and treatment. They will also speak with your family or other person who can represent you.

11.10 Do I need a Protective Authorisation if I go for respite care breaks?

If you lack capacity to consent to the respite care arrangements and these amount to a significant restriction, a PA will be needed. This is to make sure that the arrangements and the restrictions are necessary and in your best interests.

11.11 What is the role of the representative?

The Law says that you must have a representative if you have a PA.

The representative:

- should meet with you every few weeks
- must explain about the PA and get your views on this
- can read your care plans and other relevant information
- must represent your views and wishes, including making an application to the Tribunal
- must make sure that any conditions on the PA are followed

Your representative has the right to meet you in private. This means that you do not have to have your carers with you when you meet your representative.

11.12 I am due to move to a different care home. Will I need to have a new Protective Authorisation?

If you are moving from one place to another and your care and the restrictions are very similar, it is possible that the PA can be transferred to the new home. However, if you are living in supported accommodation and move into a care home, it is likely that you will have more restrictions in place. If so, the Capacity Professional will arrange new assessments. This is to make sure that the increased restrictions are necessary and are in your best interests.

11.13 My needs have changed since the PA was granted.

If your needs have increased, this may mean that you are more restricted. Your representative, your carer or the care home manager should request a review of PA, to take account of these changes. This will make sure that any increased restrictions are necessary to keep you safe from harm.

Example

Mr Lowden is 65 and has a learning disability. He has been living in a care home for 20 years and is quite happy there. He enjoys going to the shops to buy a drink and a newspaper and this is part of his daily routine. He has always done this on his own, without staff, however recently he has been getting very confused. His GP thinks Mr Lowden may have dementia and has arranged for him to have some tests. On a couple of days, Mr Lowden has gone out to the shops but he has not returned. The staff had had to look for him and he was found a long way away. He did not know how he had got there.

The staff speak with Mr Lowden's social worker and agree that, to

keep him safe and whilst the tests are being done, a support worker should escort Mr Lowden to the shop. They also lock the door of the care home so that he cannot go out alone. As these are quite big restrictions, the care home manager contacts the Capacity Professional to arrange a review of the PA.

11.14 My condition has improved or changed and I don't think that I need the restrictions.

If your health or your condition has improved, it may not be necessary for all the restrictions to continue. It may be that you have regained capacity or that you would be safe to do more things, such as go out on your own. You, your representative or your carer/care home manager should ask the Capacity Professional to review the PA.

Mr Chisolm had a stroke 6 months ago and was admitted to a nursing home for rehabilitation support. When he arrived there he had problems speaking and was very muddled. He was assessed to lack capacity and a PA was granted. Mr Chisolm was unsteady on his feet and needed a frame, but he would often forget to use this. The carers would always walk with him to remind him to use his frame and to make sure that he was safe. He was not able to go out of the home without staff with him.

In the home Mr Chisolm has had physiotherapy support and speech and language therapy. He can now walk with a stick and he does not forget to use this. His speech has improved and he can communicate well. His representative believes that Mr Chisolm has regained capacity and also that he no longer needs to be restricted. She requests a review of the PA. The Capacity Professional will make sure

that an up to date capacity assessment is completed and will also consider whether all the restrictions are necessary.

11.15 Is there anything that the Protective Authorisation does not cover?

A PA cannot be used to stop you from having contact with other people. This would be a conflict with Article 8 of the European Convention on Human Rights. If anyone is concerned about your safety around a person or other people, this will need to be referred to the Tribunal for a decision.

Mrs Andrews has been living in Meadows House care home for five years. She had previously lived with her son, Brian, and she is very close to him. She is under a PA with Brian named as her representative. Mrs Andrews now has advanced dementia and has difficulty swallowing. The speech and language therapist has recommended that she has a special diet so that she doesn't choke on food.

Brian visits his mother every day. He often arrives at lunchtime and stays until 10pm, when the staff have to ask him to leave. Brian brings food and drinks for his mother and insists upon feeding her with food which is not suitable for her to swallow safely. When the staff speak to Brian about his mother's diet, he shouts at them. Twice they had to call the police.

One day, Brian arrives to see his mother. He is dirty and smells of alcohol. During his visit he is very rude to the staff and the other residents. The manager asks Brian to leave but he refuses and continues to shout at staff. Eventually, the manager calls the police, who remove Brian from the care home. The care home manager writes to Brian to say that he cannot visit his mother at the home. Brian is very unhappy about this.

Brian contacts the Capacity Professional to request a review of the PA, due to the increased restrictions imposed on his mother. The Capacity Professional says that

the care home cannot stop Mrs Andrews having contact with her son as this goes against her Article 8 rights, and therefore cannot be authorised under a PA. The Capacity Professional refers the matter to the MHCRT.

The Tribunal can decide whether Brian's visits are in his mother's best interests or that he should be prevented from having contact with her. The tribunal may make recommendations to support supervised contact, if it is decided that this is in Mrs Andrews' best interests to have contact with her son.

11.16 A PA authorises care arrangements to protect you from harm. In most cases, it does not authorise restrictions to prevent you harming other people. It may be that the Mental Health Law would be more appropriate.

11.17 What happens to patients who are in hospital for life saving treatment?

If you are in hospital and you need life saving treatment, this is not a significant restriction. You will not need a PA. However, if your health improves and you need to stay in hospital for more treatment, this may be a significant restriction and you may need a PA.

Chapter 12

Ill treatment or neglect

12.0 The Law makes it an offence for your carer, attorney or guardian to neglect you or to treat you badly. These people can be prosecuted under the Law. It does not matter whether they are paid to care for you or if they are an unpaid carer.

12.1 Examples of ill treatment or neglect include where a carer:

- does not provide you with your medication
- does not provide you with meals and drinks

and where you lack capacity to make your own decision about your care and treatment.

It also includes a situation where you are not offered medical treatment which may be in your best interests.

Example

Mrs Georgiou lives in a care home because she is no longer able to look after herself. She has been happy in the home but recently a new carer has started work there. This carer is rude to the residents and has hit a gentleman in the home. Mrs Georgiou tells her daughter about this and she reports it to the manager. The police investigate and decide to prosecute the carer as her behaviour is deliberate ill treatment.