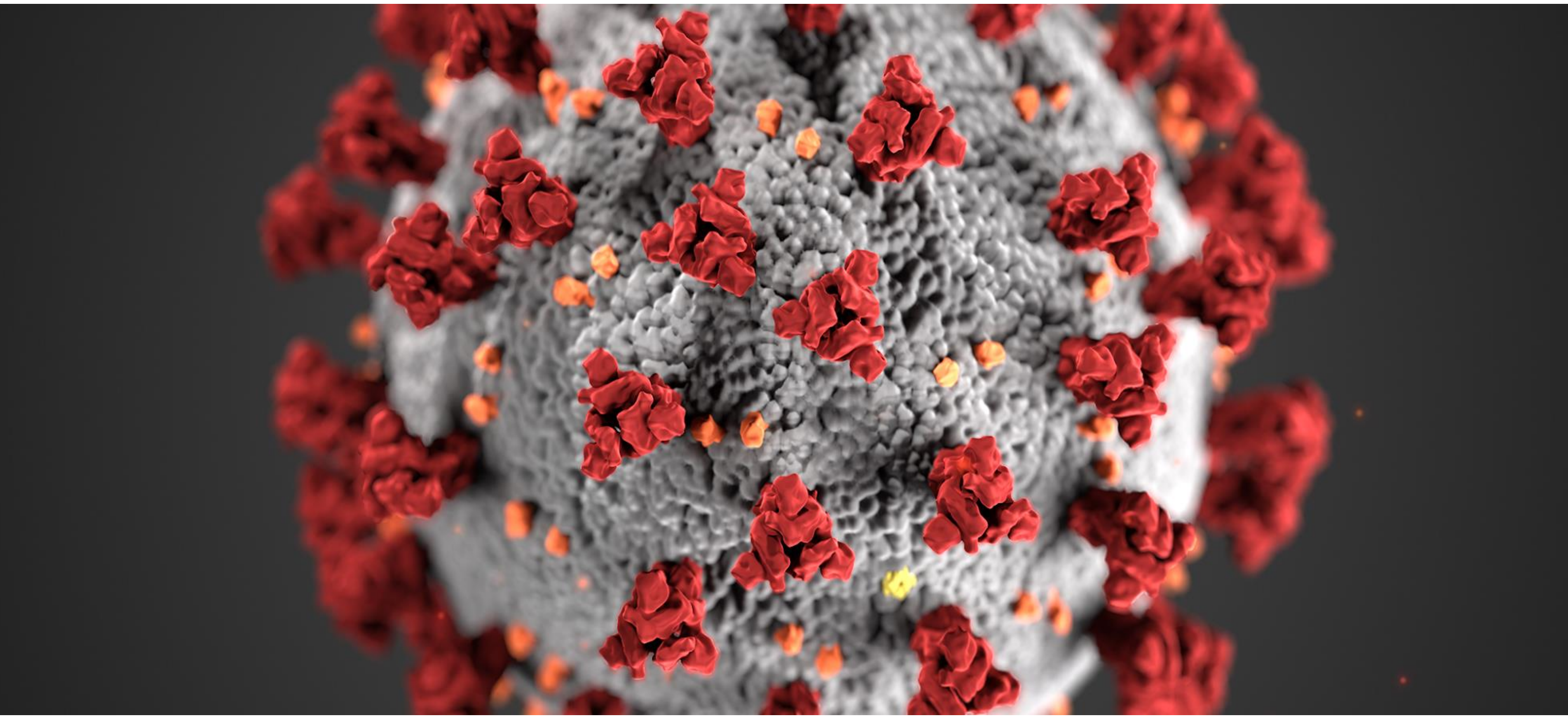
MANCHESTER
1824
The University of Manchester

The Justice Hub

FAQs: CARE & COVID-19

June 2020



Early diagnosis of a Cared-For Person

Mental Capacity

What is mental capacity and who decides if my partner has it?

Mental capacity is essentially a person's ability to make decisions that will affect themselves and other people. A person is said to lack capacity when they are unable to make decisions for themselves due to an impairment of the mind or brain. Lack of capacity can be partial, temporary or can fluctuate throughout a period of time.

A functional test is used to assess mental capacity. It looks at three elements:

- Is a person able to understand the information relevant to the decision?
- Are they able to retain that information?
- Can they use and weigh that information up when making a decision?

Assessments of mental capacity will usually be conducted by the person who is directly concerned with the individual at the time the decision will be made. This can, for example, be you (as a carer), a social worker, doctor or a lawyer.

In complex situations, there may be a greater need for formal assessment. For example, where a person's capacity to sign a legal document could later be challenged, in which case it is advisable to obtain an expert opinion. Professionals must also ensure that all information is confidential and is not disclosed without consent.

Assessors must take all practicable steps when attempting to help people make decisions, such as:

- understanding the nature and effect of the decision to be made

- having access to relevant documents and background information, for example, obtaining health care records if assessing a person's capacity in respect to medical treatment or views of carers
- explaining all the relevant information to the individual in the most appropriate and effective form
- avoiding closed questions that need only a "yes" or "no" answer as it is not a reliable way to assess the person's capacity to make a decision. If there is no alternative, for example where the individual has severe communication problems, if the assessor uses this method he should check the response by asking the same questions but in a different way.

My partner can usually go out by herself but she does not understand the need for social distancing because of cognitive impairment. Should I stop her going out if I can't go out myself as I'm shielding?

As of 12 June 2020, government guidance for those who are shielding states that they should continue to take precautions, but they can now leave their homes if they wish as long as they practise social distancing.

However, if you do not want to leave your home but your partner does not understand the importance of social distancing, you must consider if they understand the decision they are making. This can be done by weighing up the relevant factors, such as

- your partner's reasons for going out
- your partner's ability to care for themselves when out
- its effect on their mental wellbeing
- their thoughts towards government guidance
- the risk of contracting COVID-19 and potentially infecting you

If you still reasonably believe that your partner does not understand the decision they are making, you can restrict them from going out, as long as this is done in a way that is proportionate to the risk that they face. This however, could be considered a deprivation of liberty and specialist advice should be obtained.

My mother doesn't want to talk about the future and will not consider a Lasting Power of Attorney (LPA). She has not been diagnosed with dementia but has 'mild cognitive impairment'. What can be done if her mental capacity declines and she cannot manage independently?

LPAs are extremely useful when helping those with declining mental capacity. If someone does not want to appoint an LPA, and if they have now lost mental capacity, you have the option to apply to become a Deputy through the Court of Protection. Further information on both of LPAs and Deputyships can be found below.

Funding care

What are local authority obligations to 'self-funders'?

The Care Act 2014 sets out 3 principal local authority obligations to 'self-funders'. If requested by the self-funder, the local authority must carry out the following:

- An assessment regarding the needs of the person or their carer and whether they are eligible for services
- A financial assessment to determine eligibility for council funded care for these services
- To make arrangements for the eligible needs. No financial assistance is given. There is a power to charge for this arrangement.

Self-funders therefore have no right to financial assistance from their local authority.

What are the implications for the self-funder person with dementia and their carers?

A self-funder is someone who pays the full cost for their own care and support requirements. As seen above, they generally have no right to financial assistance from their local authority.

It is therefore important for a person with dementia and their carers to understand the financial implications of care. If the person has wealth, or is not considered eligible, or does not involve the local authority, then no financial assistance will be given.

However, under s117 of the Mental Health Act anyone who has been detained for treatment in hospital under the longer term provisions of the Act are entitled to free after-care services. The local authority and NHS have a joint duty to arrange after-care services if a person needs them. This must be provided free of charge, regardless of how much money the person has.

What is ‘deprivation of assets’ and what are the implications for the person with dementia and their carers?

Deprivation of assets is where a person may have tried to deliberately avoid paying for care and support costs through depriving themselves of assets – either capital or income.

By depriving themselves of assets, they would fall below the £23,250 capital threshold and be eligible for council funded care.

In such cases, the local authority may either charge the person as if they still possessed the assets or seek to recover the lost income from the charges from that person.

When deciding if deprivation was ‘deliberate’ the local authority may look at the following aspects:

- The motive/intention behind the disposal, i.e. was the main reason to avoid care charges?
- Timing of the disposal
- Amount

It is therefore important for a person with early signs of dementia to address their financial situation as early as possible. A solicitor's advice would be beneficial.

How do financial assessments and charges work?

A local authority can decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs.

The overarching principle is that people should only be required to pay what they can afford. This requires a financial assessment.

The upper capital limit is currently set at **£23,250**. If a person's wealth is found to be above this amount, the person is not entitled to any local authority financial support. The only support available are those obligations owed to 'self-funders' (see above).

The lower capital limit is currently set at **£14,250.** If a person's wealth is found to be below this threshold, the person is entitled to full local authority financial support. They do not need to contribute to the cost of their care.

If your capital value is between these two limits, you may be charged a 'tariff income'. For every £250 in capital above £14,250, you may be charged £1 per week.

The local authority must not charge more than it costs them to meet the assessed needs of the person. In other words, a person shall not pay any administration fee to the local authority.

What are 'advance directives', how do they work and when and how can they be drawn up?

An 'advance directive', or advance decision', is a statement made by a person regarding the refusal of specified medical treatment. This is for treatment in the future when they may lack the capacity to consent to or to refuse the treatment.

Providing the advance decision is valid and applicable, it has the same effect as a decision that is made at the time by a person with capacity. Healthcare professionals must follow this decision.

An advance decision can be made relatively informally; a signed written document is sufficient.

However, if the decision is regarding a case of life-sustaining treatment, there are more rigorous formalities to adhere to. It is preferable for a solicitor and a health care professional to help with this.

Care Home Fees

My father is a self-funder in a care home and the care home has increased the fees because of additional Covid costs. Does he have to pay?

Yes.

Care homes regularly increase prices to keep up with inflation or as a result of rising costs. Self-funders have to meet this increase.

In the case of additional Covid costs, the same principle applies.

My mother has had to go into a care home, but she has been given no choice about where she has gone. She does not know how much she will need to be paying and care home fees vary a lot. What is the legal position on this?

The first issue here is the lack of choice given. Local authorities must ensure that a person has a genuine choice regarding accommodation. If the local authority has indeed given her ‘no choice’ they are likely to be in a breach of their duties. The Coronavirus Act has given local authorities the power to not follow these duties in limited circumstances during the pandemic, however it is unlikely that this has been used for this circumstance.

The second issue is regarding the funding. If your mother is entitled to local authority funded care, she may not need to worry about funding. Given that she has been given no choice where she has gone, this indicates that the local authority has chosen one of their care homes that they will cover the full cost for.

If the local authority has indeed placed your mother in a care home which is more expensive than they are willing to pay for, expecting her to pick up the tab without her consent, then legal advice may be needed. A local authority may place a person in a more expensive care home as long as it is the wishes of the person at hand and they are able and willing to pay for it.

It would be beneficial to speak to a care worker to fully explain what has happened. Giving all the available information to a solicitor would be advisable.

The care home says that we as carers must pay a top-up to fund our father's care. Our jobs are now insecure and we can't afford to pay anything. What are 'top-up's' and what will happen if we don't pay?"

Top ups are an extra fee charged typically to a third party to cover the difference between payments the council is willing to offer and the rate charged by the care home. Therefore, if you, as a carer, are unable to afford top ups, your father may have to be moved to a care home within the Council's prescribed budget presuming he is not a self funder.

NHS Continuing healthcare

My mother is now living in a care home having moved from her own home. Can she be considered for NHS Continuing Healthcare at the moment? How can we apply?

Yes, she can be considered.

NHS Continuing healthcare is a package arranged and funded by the NHS. The current living situation of your mother living in a care home does not affect this.

For this, she will need an assessment. This can be done by asking her GP or social care worker to arrange one.

There may be a delay in how quickly an assessment is carried out due to current circumstances. Speaking to your GP is the best route.

Your Caring Role

LPA and deputyship

What is a Lasting Power of Attorney (LPA) and why is it important to carers of people with dementia?

As symptoms of dementia get worse over time, you may no longer be able to make decisions about things like your finances, health or welfare. This is sometimes referred to as lacking mental capacity.

You may want to make plans now for a person you trust to make decisions on your behalf as this will ensure that your future wishes for care can be respected. It'll also help give your family peace of mind.

An LPA enables an individual to appoint one or more people, to make decisions on their behalf. This continues to take effect after the incapacity of the donor. LPAs were introduced and replaced the old enduring powers of attorney (EPAs) from 1 October 2007. If you have an EPA this will be valid and can still be used. If you do not have one, then you will have to make an LPA. You can cancel an LPA if you no longer need it or want to make a new one having satisfied the mental capacity to do so.

You can choose one or more attorneys to work separately or jointly and they must be over 18.

There are two forms of LPA:

Property and financial affairs

This can involve:

- managing a bank or building society account
- paying bills
- collecting benefits or a pension

- selling your home used when you do and don’t have capacity in the future

Health and welfare

This can involve:

- your daily routine (washing, dressing, eating)
- medical care
- moving into a care home
- life-sustaining treatment (if you have made an advance decision, this will be overruled) used for future use when you no longer have capacity.

The two types of LPA are independent and the donor may appoint different persons to act as attorneys under each type of LPA.

How do I get an LPA?

To apply for an LPA, you do not need a solicitor although sometimes it is advisable. You simply fill out the forms online or download them.

An LPA can only be used after it's been registered at the Office of the Public Guardian (OPG).

It costs **£82** for one and **£164** for both. This payment can be made by card or cheque. Reductions or exemptions can be made if you receive certain benefits or if your income is less than **£12,000** (this will allow you to pay then you can pay 50%).

If you need further guidance on how to use and fill out an LPA you can either:

- contact the OPG on **0300 456 0300**
- talk to a solicitor, preferably one who specialises in this area, by searching the Law Society's online directory
- consider using an advocacy service – the social services department of your local authority may be able to help with this
- Or you can call:

Alzheimer's Society's National Dementia Helpline on **0300 222 1122**

Age UK's Advice Line on **0800 055 6112**

Independent Age on **0800 319 6789**

These charities aren't able to give legal advice, but can suggest reliable sources of information.

What do I need to consider?

A valid LPA must satisfy the following criteria:

- you need to get other people to sign the forms, including the attorneys and witnesses.
- You must register your LPA or your attorney will not be able to make decisions for you
- It might take longer to make and register an LPA because of coronavirus (COVID-19). It will be quicker if you make it and pay online.

You need to sign the forms before you send them off. They also need to be signed by:

- the attorneys
- witnesses
- a 'certificate provider', who confirms you're making the LPA by choice and you understand what you're doing

It takes between 8 and 10 weeks to register an LPA. Before you register, send a form to notify people (LP3) to all the 'people to notify' (also called 'people to be told') you listed in the LPA. They'll have 3 weeks to raise any concerns with the OPG. You can register it with the OPG online or send via post.

If you want to remove one of your attorneys, you will need to send OPG a written statement called a 'partial deed of revocation'.

If you have mental capacity and you would like to end your lasting power of attorney (LPA) yourself, you need to send the OPG both:

- the original LPA
- a written statement called a ‘deed of revocation’

What is the role of the Office of the Public Guardian?

This is who your LPA gets registered with. Once it is registered, the LPA will take effect. They can also help with advice on LPA, if required.

What is the difference between an LPA and a Deputyship?

If you don't make an LPA and later become unable to make decisions yourself, nobody will legally be able to make decisions for you. This can make things difficult for your family as they won't be able to pay bills or make decisions about your care.

If a cared for person does not want an LPA, or does not appoint one at the point of their mental capacity declining, then a deputyship can be made. Both LPAs and deputyships come in two forms:

- Personal welfare
- Property and affairs

Both of these must be appointed to people who are over 18. However there are some important differences to note.

LPAs	Deputyship

Cared for people must have capacity at the time of appointing an LPA	Deputyships are appointed after a cared for person has lost their mental capacity
LPAs can be applied for online and are registered with the OPG	Deputyships are applied for through the Court of Protection which can be a costly, as you will most likely need a solicitor throughout this process
It is relatively easy to obtain a personal welfare or property and affairs LPA	Personal welfare deputyships are usually hard to obtain as it is difficult to prove to the court they are necessary
LPAs can make life and death decisions such as those concerning life sustaining treatment	Deputies cannot make life and death decisions
There is no obligation to make reports on your LPA	Deputies must make yearly reports to the OPG

Needs and Carer Assessments

What is the Care Act and what does it mean for carers of people with dementia?

Under the Care Act 2014, local authorities must carry out an assessment of anyone who appears to require care and support, regardless of their likely eligibility for state-funded care. There are 2 processes

- the implementation process
- the consultation process.

There is a national minimum eligibility threshold for social care. This will set the minimum criteria for when local authorities have to provide support to people.

The Act is of most relevance for people with dementia and their carers in these areas:

- General responsibilities of local authorities
- Determining who is entitled to care and support
- Charging for care and financial assessment
- personal budgets
- Integration and partnership working between health, social care and housing Information Advice and Advocacy
- Adult safeguarding

What are Care Act easements and how do I know that they are being used?

Care Act easements were created under the Coronavirus Act 2020 but only certain local authorities have activated them.

This involves 4 main changes:

- Local authorities will not have to carry out detailed assessments of people’s care and support needs
- Local authorities will not have to carry out financial assessments
- Local authorities will not have to prepare or review care and support plans
- The duties on local authorities to meet eligible care and support needs, or the support needs of a carer, are replaced with prioritising the most pressing needs.

These are temporary changes and carers still have a duty to not breach any human rights.

These easements should only be exercised when there is a depletion in the workforce, or increased demand for social care which puts life at risk. They should also make a record of all decisions made. As at early June 2020, only Solihull Council have the easements activated.

What is a ‘needs assessment’, who is it for and will I be involved as a carer?

A social care professional will usually come to see you to find out how you’re managing everyday tasks. You may be offered a telephone or online assessment. Local authorities should still assess people’s social care and support needs throughout this period and should make a written record of this assessment.

During the pandemic, it may not be possible or necessary for assessments themselves to be face-to-face. Local authorities should therefore consider whether assessments could be delivered through other means, taking into consideration people’s cognitive and communication needs and mental capacity. Other ways can be carried out including online/telephone, a third party or allied professional, self assessment with family.

What is a ‘carers assessment’, who can apply for one and what are the benefits? Has the Coronavirus Act changed carer assessments?

Anyone over 18 can do a carers assessment and they are free. If you care for someone, you can have an assessment to see what might help make your life easier. The benefits of this include:

- someone to take over caring so you can take a break
- gym membership and exercise classes to relieve stress
- help with taxi fares if you don't drive
- help with gardening and housework
- training how to lift safely
- putting you in touch with local support groups so you have people to talk to
- advice about benefits for carers

I have asked my local authority for a carers assessment but they say they are not doing these now because of the Care Act easements (they have not invoked stage 3 or 4). Can they do this?

Only Solihull Council has activated the easements but they can still have flexible ways to do so as already stated legally prior to the easements.

Direct Payments

If you, or the person you are looking after, have been assessed as needing social services support from your local council, you have the option of asking for a direct payment instead of receiving the support arranged by the local council. You will need to have an assessment with your local authority before receiving a direct payment. If then you are assessed as needing support, the local authority will work out how much you require. You can then ask the local authority for support or a direct payment to meet your needs or the person you are looking after.

If the person being assessed does not have mental capacity, or does have mental capacity but would be unable to manage a direct payment, then someone can be appointed to manage the direct payment on their behalf.

The direct payment will then be used on what you have been assessed as needing support on. For example, it can be useful for a carer to have help with costs of driving lessons so that they can drive to the person in their caring role.

What to do if you pay for a personal assistant (PA) using direct payments during coronavirus:

- Look at the plan you already have for when your personal assistant can't work because they are poorly or taking holiday – this will be in your care or support plan.
- Think about whether this plan will still work if your personal assistant needs to stay at home (self-isolate).
- If the plan you already have means you won't get the care and support you need if your personal assistant needs to self isolate, think about other ways you can get that care and support. E.g. Think of whether there is another personal assistant who could support you.
- If your personal assistant can't support you and you can't get support from anywhere else, you should contact the team who send your direct payments. This will be
  - your local social care team or
  - your NHS clinical commissioning group (CCG) team

Make sure your personal assistant has the PPE (Personal Protective Equipment) they need.

If you buy your care and support through a service like this, you should contact the service as soon as possible and make a plan about what to do if your usual care or support worker can’t work, or the service is not available because of coronavirus.

PPE

If you get direct payments and you normally buy personal protective equipment (PPE) yourself, you should carry on doing that. If you can’t get PPE in the usual way, or your direct payment isn’t set up to pay for PPE, ask for help from the local social care team or NHS CCG that provides the direct payment. They will support you to get and pay for the PPE that is needed.

Cared-For Person’s Best Interests

Best interests

What are ‘best interests’ and who decides? Do carers have a say in this?

If someone is unwell and cannot make a decision, anyone who decides on their behalf must do so in ‘their best interests’. If the individual chose someone to make decisions on their behalf if they became ill, by making a Welfare or Financial LPA when they were well enough to do so, this person must make a decision in their best interests. If not, the decision-maker might be a healthcare professional, a local authority or another person.

If you are making a decision on someone else’s behalf, you should take all possible steps to help them make the decision themselves (such as presenting the information in a clear way, giving them time, talking it through with them) before you decide for them.

What is included in best interests?

‘Best interests’ is not defined in legislation. The law sets out a process for making the decision by providing ‘a checklist’ you should go through in a best interest decision:

We use the ‘best interest’ test to construct a decision similar to what the person might have made if they were deciding for themselves. So, try and see the factors within the checklist from the patient’s point of view.

- decisions made must not be discriminatory and should not be made on the basis of unjustified assumptions about the patients’ condition or age.

- all relevant circumstances which the individual would consider if they were deciding for themselves. If the person might regain capacity soon (after medical treatment) then the best interest decision should not be made, and we should wait for the person to decide for themselves.
- find out the person's views on the options available. A good practice is to try and ask them if you can; and help them to express their wishes and feelings which you should then take into account when you are deciding for them. If they respond well, they may have capacity to make the decision on their own, so keep this in mind.
- consult others when deciding what is in the patient's best interest and seek the views of persons family members and those interested in the persons welfare including carers, particularly anyone who is an LPA as their view is most important. It could be helpful to ask them for more information about the individual's values/beliefs/feelings as this will help give you an idea of what the person would decide for themselves if they could.

Some factors on the best interest 'checklist' may be less relevant to the patient than others, but they must be considered even if they're disregarded quickly.

Assessors then weigh up all of these factors (including the carer's views) to make a decision in the person's best interests. Any decision made should restrict the person's rights as little as possible.

If the decision-maker is the local authority or a healthcare professional, they would normally arrange a 'best interests meeting' and invite carers, family, friends and others concerned with the person's welfare, to share information about the individual as they go through the checklist process. Decisions made will be documented to show the objective reasons for the decision and how it was made. During Covid-19, an assessor must still consult carers, family and friends remotely, by telephone or online webchat.

If you are a carer who makes a decision on behalf of another person who is unwell, you are legally protected where the decision you made was reasonable and in their best interest. You should keep a written record of the decision made, showing the reasons for it. If other people (healthcare professionals, family, or the local authority) disagree with which action is 'best', you can apply to the Court of Protection who can review the reasonableness of the decision.

What is in the person's best interest is specific to each decision and each individual. What is best for one person may not work for another person, or the same person in a different scenario. Decision-makers should not consider the pressures placed on hospitals because of covid-19 pandemic.

There are disagreements about how to administer the LPA between the attorneys. How does that get resolved?

If there are disputes between attorneys, you can start by looking at the LPA document to determine if it includes an instruction or a preference. If so, these instructions MUST be followed. The attorneys have no discretion.

Preferences have to be taken into consideration but not necessarily acted upon. They can therefore be more problematic.

Next, you can look at how the LPAs are expected to work together. This can be done in three ways

- Jointly - this means they act as one and all attorneys must agree for a course of action to go ahead.
- Jointly and Severally - this means it is for the attorneys to decide whether they will act jointly on a matter, or whether one of the attorneys will make the decision on their own. This would be specified in the LPA document.
- A combination of Jointly and Severally. This would be specified in the LPA document.

If the LPA doesn't state which one applies, it will be assumed that the attorneys must act jointly.

If an individual did create an LPA before they became unwell, and a dispute arises between what the attorney and another person, the attorney's view stands as long as it is reasonably in their best interests.

Attorneys should try to resolve issues between themselves. If this yields no results, advice should be sought from the OPG.

If it is clear that the two attorneys cannot work together, the court can intervene, and the LPA can be cancelled (unless a replacement attorney is named in the LPA).

What do I do if I am concerned about how another attorney is using the LPA?

If you are concerned that the attorney is not acting in the best interests of a cared-for person, and they have capacity to do so, they can revoke the Lasting Power of Attorney. To be well enough to do this, they must understand who the attorneys are, what authority they have, why revocation is necessary, and the consequences of revoking the power. If they do understand these things, they may submit a Deed of Revocation to the Court of Protection and should inform the attorney they are revoking their power in writing.

If they are not well enough to revoke the LPA themselves, they should notify the OPG and they will investigate whether they are acting in the person's best interest (form LPA 008). You should apply to the Court of Protection to ask them to remove the attorney (COP7), and you may want to apply for a Court Order allowing you to make an urgent decision on the person's behalf if necessary for the person at hand (form COP9).

If you apply to the Court of Protection for the removal, you should do the following:

- Serve the application form, and any supporting documents which prove the attorney has behaved contrary to the person's best interests (receipts proving unreasonable gifts, or the person's unpaid care bills), and a copy of the LPA (if available), to every attorney including the one subject to the revocation claim. Serve these documents to all attorneys (and the person) as soon as you can, within 14 days of applying for the revocation.

- Within 7 days of serving these documents, issue a COP 20 certificate. You do not need permission from the Court to do this.
- The application fee and hearing fee will be payable, and Court proceedings will begin in which the CoP will ask you and other relevant people questions to help them decide whether the attorney has acted against the person's best interests.

I have an LPA for health and welfare but I am not being consulted by health and social care professionals at the current time. The LPA doesn't seem to be recognised by the system (not acknowledged by the GP and being completely excluded from care decisions, best interest decisions, discharge processes). Are LPA's still valid in the time of Covid or can they be overridden? What happens if I am a carer but do not have a LPA?

The roles and responsibilities of LPAs remain the same as usual throughout the coronavirus outbreak. Though you should follow social distancing in conducting your duties, it is very important that you complete them. Welfare LPAs owe the person a duty of care which can't be delegated to another person or a local authority, and you must participate in relevant decision-making in their best interest, as they chose you to do so by making the LPA when they were well.

LPA decisions must be followed by health and social care professionals as far as is possible. However, an attorney is not allowed to demand specific forms of treatment or care provisions which healthcare staff do not think are appropriate or necessary for the donor's condition. So, you must make a reasonable choice from the available options and healthcare staff have to follow this.

You should clearly inform healthcare professionals that you are an LPA in writing and provide them a copy of the LPA if possible. NHS staff must check whether a patient has set up an LPA by contacting the Office of Public Guardian, who will tell them whether an LPA is in place and provide details so they can contact you as the Welfare attorney. This is important because Welfare attorneys are responsible for a range of Welfare issues such as consenting to/refusing treatment, deciding what is in the patient's best interests, and decisions about care.

If there is no LPA, the individual can only make one if they are well enough to do. If they are not, healthcare professionals will make decisions for them in their best interests. Carers must be consulted to give views about what is in the patient's best interest, and the decision-maker must consider these views when deciding along with the patient's beliefs and values and that of their family, friends and other relevant persons.

My relative has 2 hours home care a day and her son provides the remaining 22 hours care. His sister doesn't live with them but usually helps out a lot. The care agency has said that if she visits then they will stop providing a service. It is having a very bad effect on the son's well being. Can the care agency do that?

If care homes have banned visitors, they should be making alternative arrangements to ensure residents can contact their family and friends.

Government guidelines are lacking when it comes to care homes however some homes may now be prepared to allow arranged visitors in outdoor, socially distanced spaces. It is likely that visitors will have to wear face masks to reduce the risk of infection spreading.

Alternative forms of contact include writing letters, telephone calls, video chats, meeting through a window and pre-recorded messages.

It is important to remember that while it is difficult not to have contact with loved ones, these measures are in place to protect the most vulnerable members of society. Care homes have experienced a high mortality rate from Covid-19 therefore every precaution should be taken.

My husband is self funding but we are having problems accessing PPE and equipment. What is the legal position?

If you cannot purchase PPE through wholesalers, and the need is urgent, you should contact your local resilience forum. If this is not possible, the National Supply Disruption Response service can be contacted to make emergency requests.

Home care providers should routinely update the care quality commission on stock availability using the 'Update CQC on the impact on COVID' online form.

Does my employer have to provide me with PPE?

The Health and Safety at Work Act says employers must do everything that is reasonably practicable to safeguard their employees. Your employer cannot make you pay for your own PPE. EU law also states that employers must provide PPE to employees who are exposed to the relevant health risks where other preventative methods would be ineffective.

If you are self-employed, you are responsible for providing PPE for yourself.

Carers being told that they cannot leave their home to go out with the person living with dementia who is in extreme distress at being cooped up - both in the shielded group and by family members. Do carers have to do this or can they follow their instinct?

If you are thinking about taking the person you care for outside, you must consider the associated risks.

Dementia patients and carers may be more at risk of contracting coronavirus than the general public. They are not however classed as 'clinically extremely vulnerable' unless they also have a severe lung condition or weak immune system.

Providing you and the person you care for can understand and adhere to the social distancing restrictions, with or without assistance, you both should be able to go outside to exercise, meet people or shop, as per the latest government advice.

Person's behaviour is worsening, and they might terminate his placement, because he cannot go out like he is used to before the lockdown. Being around others all the time is a sensory overload and his behaviour is challenging carers. Can he go out?

If the person is well enough to make the decision to go out themselves, they should be allowed to do so, since government restrictions on exercising once per day have been lifted. They should observe social distancing when going outside and should have a carer accompanying them if they need one to help ensure they are doing this. It is presumed, as this person has gone out before the lockdown, that they are capable of deciding to go out, and doing so safely.

To prove that they are too unwell to decide to go out, care staff must be reasonably sure that they suffer from an impairment of functioning which prevents them deciding to go outside. To be unable to decide, a person must not understand or be able to retain information about the risks of going outside (contracting coronavirus) and be unable to understand the consequences of these risks (becoming severely ill or infecting others), or to weigh up the information to come to a decision. You should support the person to decide themselves if at all possible, by communicating the relevant information with them clearly at a time and in a location where they are relaxed.

Circumstantial evidence is important in assessing whether they are well enough to decide to go outside. If they frequently put themselves in harm's way when they go outside, such as by not observing social distancing, this demonstrates a lack of understanding about the risks of going outside, which may suggest they are too unwell to decide. You should record this information. If they are too unwell to decide for themselves, a decision must be made for them in their best interests using the 'checklist' process.

Where someone is too unwell to decide themselves, choosing not to allow them to go outside should be approached with caution. This at least restricts and may deprive them of their liberty depending on the degree of control exercised over them. If the person is confined (inside), supervised constantly (by carers or staff), lacks capacity to make his own decision, and the local authority is aware of this confinement, this will likely constitute a deprivation of liberty which is unlawful unless justified. If so, an independent assessment must be conducted to find out if locking the person inside is in their best interests.

Residential and End of Life Care

Contact with Relatives

Some care organisations are issuing blanket bans on garden visits, so families are restricted in being able to physically see their relative, this is particularly an issue for those people living with dementia where technology increases distress levels. Is this legal?

No amendments have been made to the Deprivation of Liberty Safeguards (DoLS), so these safeguards do not justify restrictions upon contact.

However, it is not illegal for care homes to restrict visitors access if this is necessary and proportionate to protect their residents within the care home.

If a care home does decide to restrict visitors, then the care home must go out of its way to ensure its residents are able to communicate with their relatives, this may include visiting residents from outside their bedroom window. If a care home is refusing to provide carers with an alternative form of contact, then this would be illegal as the care home cannot isolate their residents from their loved ones.

Blanket bans on garden visits do interfere with Articles 5 ECHR which is the right to liberty and security of a person as well as Article 8, the right to respect one's private and family life. Coronavirus has had an unprecedented effect on personal liberty, therefore the legality of the decision to refuse visits in care homes rests upon whether it can be "justified by the threat that would otherwise be posed to the lives of those within the care home".

Not being able to visit my mum in her care home - the way she was

going she might not know who I am when I eventually get to see her. Also I was in the process of emptying mum's house to get it on the market to pay for her care, as it is 50 miles away I can't do anything now, and house sales have stopped… Mum's money in the bank is starting to run out so I am worried about how to pay her bills if it does run out. What can I do?

Where care homes have restricted visitors, they must offer practical alternatives to the maintenance of such contact as can be achieved. Therefore, you could try and arrange to meet with your mother from her bedroom window or anything else which will provide a suitable barrier between your mother and yourself.

Alternatively, you could enquire about the potential to arrange a skype or facetime call with your mother. The care home does have a duty to enable contact between you and your mother, including virtual, so if you are still in contact with her, unfortunately there is not much else which can be done whilst Coronavirus remains fatal threat.

With regards to the sale of your mother's house, it is important that you have the legal authority to sell your mother's house on her behalf, e.g. an LPA for the management of property and financial affairs. Provided you already have a legal right to sell your mother's house but find for whatever reason you are unable to sell your property at the moment, you may be able to seek a deferred payment.

Deferred payment is a loan offered by the Local Authority where it is agreed they will cover care home costs. The loan must be repaid when you choose to sell the home or after the person's death. However, Local Authorities can charge interest on DPAs, up to a specified maximum. This is currently **2.65%**. Interest is charged to cover costs and not to make a profit. Authorities are also not obliged to enter into DPAs that cover the cost of any 'top up.'

Authorities do have an eligibility criteria, so if you have more than **£23,250** in savings excluding the value of the home then you will not be eligible. The authority must also be able to obtain adequate security for the payment of the deferred amount. It is a condition that the authority has the consent of any person who has an interest in the land or asset in respect of which the charge will be obtained. Lastly, the council are required to enter into a DPA with anyone whose home is not to be disregarded for the purposes of financial assessment for example, not occupied by a spouse

Some care homes only have a landline (which is always engaged), with no technology to facilitate virtual contact. What can I do?

If you would like to speak to a resident in the care home on the phone, try to organise a phone call schedule with the care home via email so the landline won't be engaged when you try to make contact.

If this is not possible, you may have to write a letter or send postcards until the Pandemic is over and care home visits are allowed

If you believe it is a necessary need for the adult to have virtual contact with their carer, then this need will need to be assessed in court under the Care Act. If it is agreed virtual contact is a necessary need, then the council will need to facilitate this. If virtual contact is found to not be a necessary need, then nothing will be done and you will need to try the first two points mentioned above.

DOLS

My mother has been moved into a care home but there is not a DOLS in place? What is 'DOLS' and how do they work?

Deprivation of Liberty Safeguards aim to ensure people in care homes and hospitals are looked after in a way which does not inappropriately restrict their freedom.

There is a set of rules which the council must follow such as reviewing the deprivation at least every 12 months, seeking an independent assessor to determine the person's best interests and seeking objective medical expertise. Depriving someone of liberty without the safeguards is not lawful and legal advice should be sought.

Planning

Can my father change his will if he has dementia?

As long as your father does not lack mental capacity, he maintains the right to change his will regardless of whether or not he has dementia. Generally speaking, someone who wishes to make a Will must have the requisite mental capacity and understanding to make a valid Will. Otherwise, their Will is very easily open to challenge after they have died.

However, if your father's condition is severe and he lacks the mental capacity to make him capable of changing his will, an alternative must be sought. There is a procedure whereby someone can make a Will on behalf of someone who lacks mental capacity. This would be the creation of a statutory will by the Court of Protection, under the Mental Capacity Act 2005.

In this instance, an Attorney under an LPA would have to make an application for a statutory Will. A Statutory Will is just as effective as if the person had full mental capacity and made the Will themselves.

If you are a deputy, this is a more complicated process as it involves the Court of Protection and can be expensive and time consuming. It is advisable to see a solicitor to gain a statutory will in this instance. Whether this is necessary depends on the mental capacity of your father.

DNAR – a letter has been sent from the GP to care home residents saying that if the person gets Covid-19, they would not send the

person to hospital and would not attempt to resuscitate. Can this happen without consultation with the person and their carer?

During COVID19 many GPs and hospitals have been exercising blanket DNARS (do not attempt resuscitation). This is unlawful.

For a DNAR to be issued, consent is compulsory. The practitioner must consult with either the person it concerns or the person responsible for their wellbeing if they lack mental capacity (LPA/carer).

Both the courts and the Government have stressed that blanket DNARs (ie advance care plans to be applied to groups) are not lawful. These decisions must be made on an individual basis and consultation is necessary.

End of life issues around blanket DNAR, refusal to allow family to visit, refusal of referrals to palliative care teams, concerns over new track and trace system and how carers are going to care if they are contacted and told to isolate. What are carers rights and what can they do?

Blanket DNARs are illegal: if the patient is mentally incapacitated, it is the LPAs place to decide whether or not a DNAR may be filed, NOT the GPs. The doctor is supposed to give options which the LPA may decide from (in the best interests of the patient).

In line with the MCA 2005, decision making should be as close to what the patient would want, the further away from that, the more need there will be to justify.

How are carers going to care if they are contacted and told to self-isolate?

If your carer works for a care institution and is asked to self-isolate, the institution may provide you with a replacement carer.

However, if your carer is, for instance, a family member and there is no one else could replace them during this period of self-isolation, an alternative may need to be sought. The local council may have to step in at this point to provide you with a temporary carer.

Nonetheless, this remains a difficult situation as the council or a care home may not be prepared to risk the health of one of their carers.

It is suggested that during a time where case numbers are falling and there is more hospital space, perhaps elderly could be sent to stay in at hospitals temporarily during this time e.g. Nightingale Hospitals. This uncertainty arises due to the risk of COVID19 to the elderly and the inevitable hesitance for care home owners to risk the danger of bringing the virus into care homes.