

Inherent Jurisdiction Briefing (in respect of Adults)

1.What is Inherent Jurisdiction?

Before the Mental Capacity Act 2005 the means to intervene in the life of a person mentally incapacitated was through the High Court's inherent jurisdiction powers. The MCA 2005 now provides for best interest decisions to be made on behalf of someone deemed to lack capacity to make that decision and to seek orders through the Court of Protection.

However, the High Court retains powers of inherent jurisdiction where there are no powers based in statute to protect adults who have the mental capacity to make decisions but are vulnerable and at risk.

The court can only intervene where necessary and proportionate and with regard to [European Convention on Human Rights](#), but can issue an interim order pending a full investigation.

2.When would this be needed?

Where a person is deemed to have capacity under the MCA2005 then their decision making is not hindered by an impairment or disturbance of the mind. However, through abuse, fear, coercion or control a 'vulnerable adult' may be impaired in their ability to make free and unhindered decisions. If someone has capacity to make decisions but these decisions are highly risky / as a result of coercion, then you should seek advice from your organisation and consider legal advice.

Orders can be made for example to protect or recover funds or assets, prevent contact with another, or deciding where someone lives, ensure access to support and medical care.

3.Who can apply?

Any person or body with a legitimate interest can bring an application to the court. It will always be necessary to consult your legal department as the law in this area is evolving.

4.Considerations

Before an order under Inherent Jurisdiction is sought, other less restrictive alternative measures should be considered with the person being abused or coerced.

Every incident of concern should be clearly documented including the risk and the actions taken. The behaviours of control and abuse need not be with malice, the court is concerned with the harm they cause and there being no alternative but for the court to intervene.

The court will need to know that the individual is likely to understand the purpose of the order and the implications of breaching it.

5.Example 1

An elderly couple were subject to bullying behaviour by their son to get them to move out of their home where he also lived, preventing them from seeing friends and disrupting help from carers. The father was found to lack capacity and so was protected under the MCA 2005, however his wife was protected by the high court under inherent jurisdiction with an injunction restricting their sons behaviour.

6.Example 2

DD was a young woman with complex learning disabilities. She had been taken abroad for an arranged marriage in 2003 but was subsequently judged to lack capacity in relation to marriage under the MCA. The local authority sought an order that would declare that the marriage was not recognised in England and Wales (a non-recognition order).

This order was not available to the judge using the MCA, but it was decided that it could be granted using the inherent jurisdiction.

7.Resources

[mental capacity law and policy.video](#)

[Mental capacity act – making decisions](#)

[Research in Practice – Legal Literacy tool](#)

[Research in Practice inherent jurisdiction practice guide 2020](#)