

# What is an objection?

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# Aims of the session:

- ✓ This workshop will help you decide if a person is objecting to their placement
- ✓ how to interpret behaviour and
- ✓ the grounds on which to apply to the Court of Protection and
- ✓ understand whose responsibility this is

# AJ v A Local Authority [2015] & Re RD & ORs [2016]

“When, if at all, does the requirement under Article 5(4) to assist P to exercise his or her right of appeal to the Court of Protection under s.21A of the MCA arise in cases other than those in which P expresses a clear and consistent objection to the arrangements for his/her care and treatment?”

J. Baker gave guidance of what the RPR should consider...

# Scenarios 1 & 2

## Mrs. Howes in hospital

# To decide if P's behaviour constitutes an objection consider:

- What are the possible reasons for P's behaviour?
- Is P being medicated for depression or being sedated?
- Is P actively trying to leave the care home/hospital?
- Does P take preparatory steps to leave e.g. packing bags?
- What is P's demeanour and relationship with staff?
- Are there any records of challenging behaviour and what are the triggers for this?
- Is P objecting to particular aspects of their care arrangements or are they objecting to everything about being in a home/hospital?

# Any statements made by P about their wishes / feelings in relation to issuing proceedings



# Any statements made by P about residential care



# P's current emotional state



# The frequency of P objecting / asking to leave



# How consistently do they express their wishes / emotional state?



**Are there any alternative reasons for their expressed wishes or emotional state?**



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# The role of the Relevant Person's Representative (RPR)

- What is the role of the RPR ?
- Who can be the RPR and their role?
- Choosing the RPR
- This will change when LPS is implemented – objection will be everyone's business

# Proportionality, protection from liability and P's legal rights

# Protection from Liability S.5 MCA

- Providing lack of capacity established and S4 Best Interests checklist has been followed then S.5 MCA 2005 gives protection for acts amounting to **restriction of liberty**, but not to a **deprivation of liberty**
- S.6 MCA 2005 places clear limits on the use of force/restraint

# CoP Handbook extract

## Section 5 protection extends to:

“If the person uses restraint, he or she reasonably believes both that it is necessary to do the act in order to prevent harm to the person and that the act is a proportionate response to the likelihood of their suffering harm and the seriousness of that harm.

- The Act states that for these purposes one person restrains another if he or she a) uses, or threatens to use, force to secure the doing of an act which he or she resists, or b) restricts their liberty of movement, whether or not they resist.
- Restricting someone's liberty or using force is always undesirable. If used to give care or treatment, the requirement here is essentially that the care or treatment is necessary and does more good than the restraint does harm; it is the lesser of two evils”.

# Conveyance to alternative accommodation / hospital

## **Section 4 process prior to any move to alternative accommodation:**

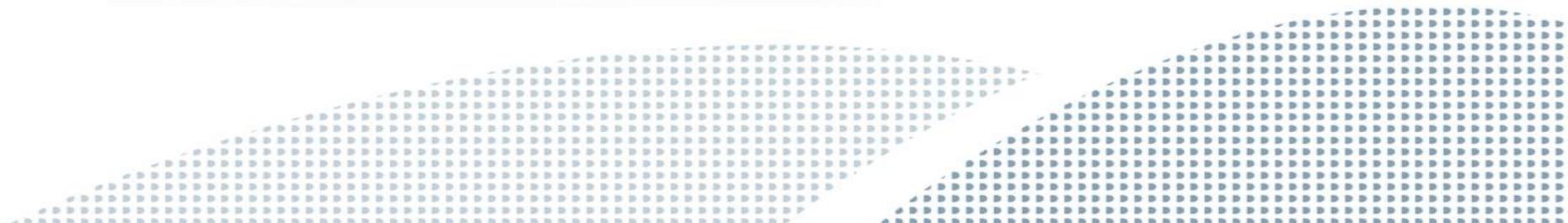
1. Care act assessment to determine needs for care and support
2. Assessment of capacity
3. Determination of best interests – checklist in S4
4. Consideration of whether P agrees to the move, which often includes the social workers identifying a placement and enabling P to view pictures, visit the care home and so on.

- When P objects to move to residential care or clear family disagreement then s16 welfare application to CoP for determination of best interests in situations and the move itself amounts to a DoL.
- **Specialist transport, safe holds and sedation all amount to deprivation of liberty requiring court authorisation.**
- The CoP Handbook states “one cannot reasonably believe that it is in the person’s best interests to delay going to court and to continue to provide the care or treatment under section 5 if there is significant disagreement about whether it is in the person’s best interests which cannot be resolved”. This also applies to objection from P themselves.

# If an emergency placement is needed legal advice is recommended:

## Options:

1. Application to CoP under s.16 MCA 2005/S21A if objections to current DoL
2. Move without CoP authorisation (if no objection following S4 BI process) and proportionate restrictions during conveyance then DoLS in place as necessary
3. Consider criteria for s.135 MHA 1983 for removal to place of safety for other arrangements for treatment and care if immediate risk of harm to P



# Thank you for listening!



You are now free to leave...

# Thank you for coming!

You will be emailed your evaluation form, please complete and then your certificate will be emailed



An evaluation form with five options, each with a checkbox. The 'Excellent' option is checked with a red checkmark.

- Excellent
- Very good
- Good
- Average
- Poor