

# What do all the legal words mean?

Here are some of the words and phrases you may come across in the Court of Protection

<b>Accredited Legal Representative</b>	A specialist lawyer who the Court can appoint to act for P if P does not have capacity to conduct the case themselves.
<b>Advocate</b>	In this context, an advocate is likely to be an IMCA (see below). They may also be an advocate who has been appointed as an advocate for the person under the Care Act, the Social Services and Well-Being (Wales) Act or the Mental Health Act. An advocate is not a lawyer, and their main job is to talk to the person, get to know them, and to tell people what the person wants.
<b>Adjourn</b>	A hearing may have to be adjourned if the parties are not ready to have it. This is called an adjournment. If there is a hearing planned and you need more time to prepare, or there is some other reason why you think the hearing should be moved to a later date, you can apply for an adjournment using a COP9 form.

<p><b>Advocates Meeting</b></p>	<p>A meeting should take place at least five days before the Final Management Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Management Hearing, addressing each of the matters required by Practice Direction 4B and preparing a draft order</p>
<p><b>Appeal</b></p>	<p>If you think that a judge has made the wrong decision, you can ask the judge for permission to appeal to a higher level of judge. You can ask the judge at the hearing where s/he makes the decision, or you can ask for permission by filling in a form no later than 21 days after the judge's decision.</p>
<p><b>Applicant</b></p>	<p>The party who is asking the Court to do something.</p>
<p><b>Application</b></p>	<p>An application is when you ask the Court to do something, for example to make a decision on P's behalf, or to adjourn a hearing.</p>

<b>Attend a hearing</b>	To be at a hearing. At the moment, most hearings are held remotely (either by telephone or video) because of the Coronavirus pandemic.
<b>Attorney</b>	In England & Wales, this does not mean a lawyer, but a person who has been appointed to act under a power of attorney.
<b>Authorised Court Officer</b>	Certain types of straightforward decisions about P's property and affairs can be taken by an Authorised Court Officer. They are specialist civil servants who work under the supervision of the judges at the Court of Protection.
<b>Barrister</b>	A barrister is an independent lawyer who speaks to the judge in court.

<b>Best interests</b>	If someone lacks capacity to make a decision, that decision will have to be taken by someone else. When you make a decision for someone who lacks capacity, you have to act in their best interests. This is not the same as deciding what P would have wanted, but it is very important to find out what P's wishes are. You also need to consider the views of people who care for P, for example P's friends, family and carers. You use all of this information to help decide what would be the best thing to do for P.
<b>Bundle</b>	The set of documents that the court has before it at the hearing. The bundle should be the same (and be numbered the same) for everyone that the parties have so that everyone is looking at the same thing.

<p><b>Capacity</b></p>	<p>Capacity means having the ability to make your own decisions. If you lack capacity, it means that you have something about your mind or your brain which stops you from being able to make decisions. This might be because you cannot understand what the choices are, or because your memory is very bad, or perhaps because you find it difficult to think about lots of information at once.</p> <p>It is important to try to help people to have capacity to make their own decisions, for example by giving them simple and clear information, at a time when they are at their best.</p>
<p><b>Case Management Conference</b></p>	<p>A hearing arranged shortly after the case has started so that the judge can decide what they need to do in order to be able to answer the questions in the case. The judge may say that some of the questions that have been set out in the various documents before them are not relevant, so do not need to be considered further.</p>
<p><b>Circuit Judge</b></p>	<p>A Circuit Judge is the next level up from a District Judge.</p>

<b>Consent order</b>	A consent order is an order that all the parties agree with. If you can agree what should be written in a consent order, then you may not need to have a hearing to ask the judge what to do.
<b>Contempt of court</b>	If you disobey a court order that tells you to do something, or not to do something, then you will be in contempt of court. This means that the court could decide to make you pay a fine, or could send you to prison. If you see an order which says 'penal notice' on it, you must make sure that you obey the order.
<b>Counsel</b>	Another name for barrister.
<b>Declaration</b>	The Court has the power to declare that something is the case so that everyone knows what the position is. For example, the Court could declare that P lacks capacity.
<b>Deprivation of liberty</b>	A person may not be free to leave somewhere, and also be under continuous supervision and control. If the person does not have the capacity to agree to this, then they will be deprived of their liberty.

<p><b>Deprivation of Liberty Safeguards</b></p>	<p>Part of the Mental Capacity Act 2005 The Deprivation of Liberty Safeguards ('DoLS') are part of the Mental Capacity Act. A person can be deprived of their liberty in a hospital or care home under an urgent or a standard DOLS authorisation. There are special protections in place for the person, including support by a Relevant Person's Representative. More details about the DoLS can be found in the <a href="#">DoLS Code of Practice</a>.</p>
<p><b>Deputy</b></p>	<p>A Deputy is a person who the court chooses to make decisions on behalf of P. This could be about their health and welfare, their property and affairs, or both.</p>
<p><b>Directions</b></p>	<p>Directions are orders that the judge makes about what should happen in the proceedings, for example that a local authority should give everyone a copy of P's care plan, or that a family member should write a witness statement.</p>
<p><b>Disclosure</b></p>	<p>Providing documents to the other parties and to the court.</p>

<b>District judge</b>	A District Judge is the lowest level of judge in the Court of Protection. Most cases in the Court of Protection which need a hearing are heard by District Judges.
<b>Dispute Resolution Hearing</b>	A hearing arranged in cases involving disputes about property and affairs. This is a chance to see whether the case can be resolved and avoid unnecessary litigation. The hearing is therefore held entirely in private, and before a different judge who would then hear the case if the dispute cannot be resolved.
<b>Draft</b>	Draft is the word that lawyers use to mean write - for example, a lawyer might say that they have drafted an order.
<b>Evidence</b>	Evidence is the information that the judge is given to help her decide what to do. There can be written evidence in witness statements, or oral evidence, when someone speaks to the judge in court.
<b>Exhibit</b>	An exhibit is a piece of information that is part of the evidence, for example a letter, or a bank statement. If you want the judge to see a document, you can attach it to your witness statement and call it Exhibit A etc.

<b>Expert</b>	An expert is someone who knows a lot about a particular topic, for example psychiatry, or social work. The judge may decide that she needs an independent expert to help figure out the questions the judge has to answer about P.
<b>Fact-finding</b>	Fact-finding is when the judge decides whether or not things are true. For example, if the local authority says that in the past, P's family neglected P, then the judge will decide whether or not this really happened. Usually, the judge will listen to what everyone has to say, and then decide who she believes.
<b>File</b>	To file a document is to send it to the court.
<b>Final declaration</b>	A final declaration is the final decision by the Court about the things that it has been asked to decide.
<b>Final hearing</b>	A final hearing is the last hearing in the case, where the judge decides (often) whether or not P has capacity to make the decision(s), and if they do not, what decision is in their best interests.

<b>Final Management Hearing</b>	Before the final hearing, the Court will have one last hearing to make sure that it has all the evidence it needs to answer the questions before it.
<b>Hearing</b>	A hearing is when you go to court to speak to the judge. Hearings can sometimes be by telephone or by video link.
<b>High Court Judge</b>	A High Court Judge is the highest level of judge who hears cases in the Court of Protection. There are more senior judges in the Court of Appeal and the Supreme Court.
<b>IMCA</b>	An IMCA is an independent mental capacity advocate. An IMCA's job is to talk to P and get to know them, and to tell people what P wants to happen.
<b>Instruct</b>	To instruct a solicitor or barrister means to ask them to represent someone. To instruct an expert means to ask them to report to the court.
<b>Interim declaration</b>	An interim declaration is a declaration that the Court makes before the proceedings have finished. The judge might decide that she needs more information before she can decide

<b>Joint instruction</b>	A joint instruction is when two or more parties ask an expert to write a report to help the court decide whether P has capacity, or what is best for P.
<b>Judgment</b>	A judgment contains the reasons that the judge has made the decision that they have.
<b>Jurisdiction</b>	Jurisdiction means the powers of the court. If the court has no jurisdiction, that means it cannot make any decisions. For example, the court has no jurisdiction to make decisions on behalf of people who have capacity to decide for themselves.
<b>Letter of instruction</b>	A letter of instruction is the letter that you send to an expert, explaining what the case is about and what you want the expert to help you with.
<b>Liberty to apply</b>	Liberty to apply means that if the court makes an order without you having had a chance to tell the judge what you think should happen, you can make an application to the judge to ask her to change her mind. If you still disagree with the judge's decision even after you have told her what you want, you can ask for permission to appeal.

<b>Litigation capacity</b>	The capacity to make decisions about what to do in the case, for instance what arguments to make or what evidence to put to the judge.
<b>Litigation friend</b>	<p>A litigation friend is someone who takes P's place in the proceedings, if P lacks capacity to conduct the proceedings himself. For example, the litigation friend could instruct solicitors on behalf of P, or the litigation friend could speak to the judge directly on P's behalf. A litigation friend could be a family member, a friend, an advocate or the Official Solicitor.</p> <p>A litigation friend has to act in the best interests of P. This means that they may have to argue to the judge that even though it is clear what P wants this would be so harmful to P that the judge should not do it. The litigation friend must always make sure that the judge knows as much as possible about P's wishes, feelings, beliefs and values.</p> <p>In some cases, a litigation friend might also be appointed to act for another party who does not have capacity to conduct the proceedings.</p>
<b>Lodge</b>	To provide a document to court – also known as filing the document.

<b>Managing authority</b>	The care home or hospital where someone is deprived of their liberty under a DoLS authorisation.
<b>Mediation</b>	A process by which someone can help you resolve disagreements without needing to go to court. Mediation can also be used even after a case has started to help you either narrow the areas of disagreement or to bring about an agreement on everything.
<b>Oath</b>	A solemn promise to the court
<b>Official Solicitor</b>	The Official Solicitor is a civil servant and a lawyer who is appointed by the government, but is independent of them. If there is no one suitable to act as litigation friend (and if arrangements can be made to meet her legal costs) then she can be the litigation friend for the person. She has staff who work on different cases in the Court of Protection.
<b>‘On the papers’</b>	A decision made by the Court without a hearing.
<b>Oral judgment</b>	A judgment given by the judge at the end of the hearing (or at the end of the part of the hearing dealing with a specific question).

<b>Order</b>	An order is the document that the court produces when the judge has made some decisions or has told people what to do. It is very important to obey court orders if they apply to you.
<b>P</b>	P is the initial which the Court uses to refer to the person the proceedings are about. It stands for 'person' not 'patient' (even if they are a patient in hospital).
<b>Parties</b>	The parties to the proceedings are the people or organisations who are most involved in the case, so need to be able to make arguments to the judge as to what should happen. Being a party means having the right to speak to the judge and also (usually) the right to see all the documents.
<b>Position statement</b>	A document setting out what the party wants to happen at a particular hearing.

<p><b>Power of attorney</b></p>	<p>A document created by someone who has capacity who decides in advance who they would like to make decisions for them, if they later lose capacity. The person can appoint an attorney (or more than one attorney) to make decisions on their behalf about their health and welfare, about property and affairs, or both. There are important rules that have to be complied with about how a power of attorney is created and how an attorney has to behave.</p>
<p><b>Practice Direction</b></p>	<p>One of a set of documents which accompany the Court of Protection Rules and set out what the Court expects you to do.</p>
<p><b>QC</b></p>	<p>Queen’s Counsel: a senior barrister</p>

<p><b>Recital</b></p>	<p>Things set out at the start of an order which set out the basis upon which the order is made. For instance, they could be a recital setting out who the Judge heard from at the hearing, or what documents they had before them. It could also record what things a party has promised to do (called an undertaking). A recital usually contains the words “Upon,” for instance “Upon the Court hearing from Mr and Mrs Jones.”</p>
<p><b>Remote hearing</b></p>	<p>A hearing taking place by video or telephone.</p>
<p><b>Reserved judgment</b></p>	<p>If the judge does not give a judgment at the hearing there and then, but gives it later in writing, this is called ‘reserving’ judgment.</p>
<p><b>Respondent</b></p>	<p>Someone who is responding to the application. They may agree or disagree with what the applicant is asking for.</p>
<p><b>Revoke</b></p>	<p>To revoke means to cancel or change an earlier decision.</p>

<b>Relevant Person's Representative</b>	A person appointed to support someone subject to a standard authorisation under the Deprivation of Liberty Safeguards. They can be unpaid (a family member or friend) or paid.
<b>Round table meeting</b>	A meeting during the course of a case to try to reach agreement. It will usually include the solicitors and/or barristers involved and, often, be chaired by the solicitor or barrister who is instructed on behalf of P if P is a party.
<b>Section 21A</b>	Section 21A is the part of the Mental Capacity Act 2005 which allows you to challenge a deprivation of liberty authorisation in the court.
<b>Section 49 report</b>	A report that the judge asks to be provided to them. They are known as section 49 reports because that is the section of the Mental Capacity Act 2005 which gives the judge the power to ask for them. The judge can ask for a section 49 report from a Visitor who will visit P and give a report to the court. Sometimes they might require a local authority or an NHS body to provide particular information to the court in a section 49 report.

<b>Serve</b>	To serve a document is to provide it to someone else (not the court: to provide a document to the court is called to file it).
<b>Skeleton argument</b>	A written document setting out the legal arguments why the judge should do something.
<b>Solicitor</b>	Solicitors are a type of lawyer.
<b>Standard authorisation</b>	A standard authorisation is something that a local authority (or in Wales in some cases a Local Health Board) can put in place when P is deprived of his liberty in a care home or a hospital. If you think that P should not be in the care home or the hospital, you can apply to the court to stop the standard authorisation and to say that P should be allowed to live somewhere else.
<b>Statutory will</b>	If a person does not have the capacity to make their own will, the Court of Protection can make one for them. It has to follow a specific procedure to do so.

<b>Submissions</b>	Submissions are when you explain to the judge what you want them to do, or what you think she should decide is best for P.
<b>Substantive hearing</b>	A substantive hearing is a hearing where the judge will make decisions about important things, not just give directions.
<b>Supervisory body</b>	The local authority (or sometimes in Wales, the Local Health Board) which is responsible for granting a DoLS authorisation where a person is deprived of their liberty in a care home or hospital.
<b>Transparency Order</b>	An order which the court makes if the hearing is in public explaining what can and cannot be said about the case (in particular about P).
<b>Undertaking</b>	A promise made by the party to the court to do something (or not do something).

<b>Urgent authorisation</b>	An urgent authorisation is something that a care home or hospital can put in place when they think that P is being deprived of his liberty. If you think that P should not be deprived of his liberty, you can apply to the Court to stop the urgent authorisation. Urgent authorisations last for a week, but can be renewed once, so that they can last a maximum of two weeks. A standard authorisation should have been put in place by the time the urgent authorisation runs out.
<b>Vacate</b>	To vacate means to cancel a hearing.
<b>Vary</b>	To vary means to change.
<b>Visitor</b>	A person appointed by the Court to visit P and report back on the things that the Court has asked them to. A Visitor could be a General Visitor, who who may have a social work, advocacy, nursing or finance background, or a Special Visitor, who will be a psychiatrist.
<b>Witness</b>	Someone who is giving evidence to the judge. An expert witness is a witness who is giving their expert opinion about something (for instance whether P has capacity to make a particular decision).

<b>Witness statement</b>	A witness statement is an important piece of evidence for the judge, where someone explains what they think about the questions that the judge has to decide. Witness statements must have a statement of truth, where the person who has written the statement signs to say that it is definitely true. You can be fined or go to prison if you sign a witness statement that you know not to tell the truth.
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