

Answering questions, you might have about the case studies

Q1: Why can't John claim housing benefit for home 1?

A1: Housing benefit cannot be claimed until the local authority has signed a tenancy agreement. They cannot sign the agreement without the court's express authority.

Q2: What is a deprivation of liberty authorisation?

A1: Where a person lacks mental capacity to make decisions about where they live and their care, if they are under continuous supervision and control by the people providing the care and not are free to leave, they will be 'deprived of their liberty'. To avoid a breach of their human rights, authority must be obtained. For people deprived of their liberty in a care home or hospital the authority is given by the local authority's deprivation of liberty team. That team can only grant authorisation following numerous assessments which confirms deprivation of liberty is in the person's best interests.

If a person is deprived of their liberty in their own home, the court is required to authorise their deprivation.

Q3: Why does the court want evidence of the person's deprivation of liberty before they will make an order to sell the person's home?

A3: The person may be opposed to their deprivation of liberty. Even if they lack mental capacity to make the decision about where they live or their care, the person can seek a review or challenge their deprivation of liberty. They will have a representative appointed to make a challenge on their behalf.

A different team at the court deals with deprivation of liberty cases from the team that deals with financial deputyship cases. The court will not give authority to sell the person's home in a deputyship order to avoid the person's home being sold before the court resolves the deprivation of liberty challenge.

Q4: Why does the court not give a deputy automatic authority to sign a tenancy agreement?

A4: The court are concerned that if the person were subject to a deprivation of liberty in their home, authorisation might not be sought from the court.

Q5: What is a trustee application?

A5: As Faisal and Huda own their home in joint names, this is a form of trust. Huda must apply to the court for authority that she can appoint someone else to step into Faisal's shoes to give a valid receipt for the sale of the home. The deputy is not the person selling the home in this case, but Huda as a trustee with the new trustee.

Q6: What is NHS continuing health care?

A6: NHS Continuing Healthcare (CHC) is a package of fully funded care arranged and paid for by the NHS, for people who have significant ongoing healthcare needs, typically due to disability, illness, or after a serious injury.

Q7: Why does the deputy need authority to challenge a decision that a person does not qualify for CHC?

A7: Making an application for CHC funding falls within the general authority of a property and affairs deputy, to ensure that the person receives all the funds they are entitled to. Where an application is refused, the deputy can seek advice as to whether there is merit in challenging the application. However, the deputyship order does not extend to sending a letter of appeal to the local NHS commissioning body. There are different rules between England and Wales. In Wales the letter of appeal must be submitted within 28 days of the decision. In England it is locally determined but it is usually a similar short time scale. Once the local review process has been exhausted the person can challenge the decision to the independent review stage, but this must be submitted within 6 months of the local decision.
