

Appendix 2 – Legal options

There are many legislative responsibilities placed on agencies to intervene in or be involved in some way with the care and welfare of adults who are believed to be vulnerable.

It is important that everyone involved thinks pro-actively and explores all potential options and wherever possible, the least restrictive option e.g. a move of the person permanently to smaller accommodation where they can cope better and retain their independence.

The following is a summary of the powers and duties that may be relevant and applicable steps that can be taken in cases of dealing with persons who are self-neglecting and/or living in squalor. It is not necessarily an exhaustive list and in all cases legal advice should be sought as appropriate.

Human Rights Act 1998

Public authorities must act in accordance with the Convention of Human Rights, which has been enacted directly in the UK by the Human Rights Act 1998 and therefore can be enforced in any proceedings in any court.

Article 5 – Right to Liberty and Security.

Everyone has the right to liberty and security of persons.

Article 8 – Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as permitted by the law, is for a lawful purpose e.g. is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country; for the prevention of disorder or crime; for the protection of health or morals, or the protection of the rights and freedoms of others and is proportionate.

The First Protocol Article 1 – Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one should be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Environmental Health

Environmental Health Officers in the Local Authority have wide powers/duties to deal with waste and hazards. They will be key contributors to cross departmental meetings and planning, and in some cases e.g. where there are no mental health issues, no lack of capacity of the person concerned, and no other social care needs, then they may be the lead agency and act to address the physical environment.

Remedies available under the **Public Health Acts 1936 and 1961** include:

- Power for LA to remove accumulations of rubbish on land in the open air (section 34)
- power of entry/warrant to survey/examine (sections 239/240)
- power of entry/warrant for examination/execution of necessary work (section 287)
- Power to require vacation of premises during fumigation (section 36)
- Power to disinfect/destroy verminous articles at the expense of the owner (Section 37)

Remedies available under the **Environmental Protection Act 1990** include:

- Litter clearing notice where land open to air is defaced by refuse (section 92a)
- Abatement notice where any premise is in such a state as to be prejudicial to health or a nuisance (sections 79/80)

Other duties and powers exist as follows:

- **Town and Country Planning Acts** provide the power to seek orders for repairs to privately owned dwellings and where necessary compulsory purchase orders.
- The **Housing Act 2004** allow enforcement action where either a category 1 or category 2 hazard exists in any building or land posing a risk of harm to the health or safety of any actual or potential occupier or any dwelling or house in multiple occupation (HMO). Those powers range from serving an improvement notice, taking emergency remedial action, to the making of a demolition order.
- Local Authorities have a duty to take action against occupiers of premises where there is evidence of rats or mice under the **Prevention of Damage by Pests Act 1949**.
- The **Public Health (Control of Disease) Act 1984** Section 46 sets out restrictions in order to control the spread of disease, including use of infected premises, articles and actions that can be taken regarding infectious persons.

Housing – landlord powers

These powers could apply in Extra Care Sheltered Schemes, Independent Supported Living, private-rented or supported housing tenancies. It is likely that the housing provider will need to prove the tenant has mental capacity in relation to understanding their actions before legal action will be possible. If the tenant lacks capacity, the Mental Capacity Act 2005 should be used.

In extreme cases, a landlord can take action for possession of the property for breach of a person's tenancy agreement, where a tenant fails to comply with the obligation to maintain the property and its environment to a reasonable standard. This would be under either under Ground 1, Schedule 2 of the **Housing Act 1985** (secure tenancies) or Ground 12, Schedule 2 of the **Housing Act 1988** (assured tenancies).

The tenant is responsible for the behaviour of everyone who is authorised to enter the property.

There may also be circumstances in which a person's actions amount to anti-social behavior under the **Anti-Social Behaviour, Crime and Policing Act 2014**. Section 2(1)(c) of the Act introduces the concept of "housing related nuisance", so that a direct or indirect interference with housing management functions of a provider or local authority, such as preventing gas inspections, will be considered as anti-social behaviour.

Injunctions, which compel someone to do or not do specific activities, may be obtained under Section 1 of the Act. They can be used to get the tenant to clear the property or provide access for contractors. To gain an injunction, the landlord must show that, on the balance of probabilities, the person is engaged or threatens to engage in antisocial behaviour, and that it is just and convenient to grant the injunction for the purpose of preventing an engagement in such behaviour. There are also powers which can be used to require a tenant to cooperate with a support service to address the underlying issues related to their behaviour.

Powers of Entry

The following legal powers may be relevant, depending on the circumstances:

- **If the person has been assessed as lacking mental capacity in relation to a matter relating to their welfare:** the Court of Protection has the power to make an order under Section 16(2) of the MCA relating to a person's welfare, which makes the decision on that person's behalf to allow access to an adult lacking capacity. The Court can also appoint a deputy to make welfare decisions for that person.
- **If an adult with mental capacity, at risk of abuse or neglect, is impeded from exercising that capacity freely:** the inherent jurisdiction of the High Court enables the Court to make an order (which could relate to gaining access to an adult) or any remedy which the Court considers appropriate (for example, to facilitate the taking of a decision by an adult with mental capacity free from undue

influence, duress or coercion) in any circumstances not governed by specific legislation or rules.

- **If there is any concern about a mentally disordered person:** Section 115 of the MHA provides the power for an approved mental health professional (approved by a local authority under the MHA) to enter and inspect any premises (other than a hospital) in which a person with a mental disorder is living, on production of proper authenticated identification, if the professional has reasonable cause to believe that the person is not receiving proper care.
- **If a person is believed to have a mental disorder, and there is suspected abuse or neglect:** Section 135(1) of the MHA, a magistrates court has the power, on application from an approved mental health professional, to allow the police to enter premises **using force if necessary** and if thought fit, to remove the person to a place of safety if there is reasonable cause to suspect that they are suffering from a mental disorder and (a) have been, or are being, ill-treated, neglected or not kept under proper control, or (b) are living alone and unable to care for themselves.
 - **Power of the police to enter and arrest a person for an indictable offence:** Section 17(1)(b) of PACE
 - **Common law power of the police to prevent, and deal with, a breach of the peace.** Although breach of the peace is not an indictable offence the police have a common law power to enter and arrest a person to prevent a breach of the peace.
 - **If there is a risk to life and limb:** Section 17(1)(e) of the PACE gives the police the power to enter premises without a warrant in order to save life and limb or prevent serious damage to property. This represents an emergency situation and it is for the police to exercise the power.

Anti-Social Behaviour 2003 (as amended)

Anti-social behaviour is defined as persistent conduct which causes or is likely to cause alarm, distress or harassment or an act or situation which is, or has the potential to be, detrimental to the quality of life of a resident or visitor to the area.

Questions about whether an application for an Anti-Social Behaviour Order would be appropriate should be made to the Designated Police Officer (it may be appropriate to involve the police in the multi-agency work), the Registered Social Landlord or the Local Authority.

Misuse of Drugs Act 1971

Section 8 (this creates an offence if the occupier of premises permits certain acts to take place on the premises)

'A person commits an offence if, being the occupier or concerned in the management of the premises, he knowingly permits or suffers any of the following activities to take place on those premises...'

s8 (a) Producing or attempting to produce a controlled drug...'

s8 (b) Supplying or attempting to supply a controlled drug to anotheror offering to supply a controlled drug to another....'

s8 (c) Preparing opium for smoking

s8 (d) Smoking cannabis, cannabis resin or prepared opium'

Mental Health Act 1983

Sections 2 and 3 of the Mental Health Act 1983

Where a person is suffering from a mental disorder (as defined under the Act) of such a degree, and it is considered necessary for the patient's health and safety or for the protection of others, they may be compulsorily admitted to hospital and detained there under Section 2 for assessment for 28 days. Section 3 enables such a patient to be compulsorily admitted for treatment.

Section 2 - Admission for Assessment

Duration of detention: 28 days maximum

Application for admission: by Approved Mental Health Professional or nearest relative. Applicant must have seen patient within the previous 14 days.

Procedure: two doctors (one of whom must be section 12 approved) must confirm that:
a) the patient is suffering from a mental disorder of a nature or degree which warrants detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period; *and*

b) S/he ought to be detained in the interests of his/her own health or safety or with a view to the protection of others.

Section 3 – Admission for Treatment

Duration of detention: six months, renewable for a further six months, then for one year at a time

Application for admission: by nearest relative or Approved Mental Health Professional in cases where the nearest relative consents, or is displaced by County Court, or it is not 'reasonably practicable' to consult him

Procedure: two doctors must confirm that:

a) the patient is suffering from a mental disorder of a nature or degree which makes it appropriate for him/her to receive medical treatment in hospital; *and*

b) it is necessary for his/her own health or safety or for the protection of others that he/she receives such treatment and it cannot be provided unless s/he is detained under this section; *and*

c) appropriate treatment is available to him/her

Renewal: under section 20, Responsible Medical Officer can renew a section 3 detention order if original criteria still apply and treatment is likely to 'alleviate or prevent a deterioration' of patient's condition.

In cases where patient is suffering from mental illness or severe mental impairment but treatment is *not* likely to alleviate or prevent a deterioration of his/her condition, detention may still be renewed if s/he is unlikely to be able to care for him/herself, to obtain the care s/he needs or to guard himself against serious exploitation

Section 117 allows for aftercare following a section 3 detention in certain circumstances

Section 7 of the Mental Health Act 1983 – Guardianship

A Guardianship Order may be applied for where a person suffers from a mental disorder, the nature or degree of which warrants their reception into Guardianship (and it is necessary in the interests of the welfare of the patient or for the protection of other persons.) The person named as the Guardian may be either a local social services authority or any applicant.

A Guardianship Order confers upon the named Guardian the power to require the patient to reside at a place specified by them; the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training; and the power to require access to the patient to be given, at any place where the patient is residing, to any registered medical practitioner, approved mental health professional or other person so specified.

In all three cases outline above (i.e. Section 2, 3 and 7) there is a requirement that any application is made upon the recommendations of two registered medical practitioners.

Section 135 Mental Health Act 1983

Under Section 135, a Magistrate may issue a warrant where there may be reasonable cause to suspect that a person believed to be suffering from mental disorder, has or is being ill-treated, neglected or kept otherwise than under proper control; or is living alone unable to care for themselves. The warrant, if made, authorises any constable to enter, if

need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove them to a place of safety.

Section 135 lasts 72 hours and is for the purpose of removing a person to a place of safety with a view to the making of an assessment regarding whether or not Section 2 or 3, or 7 of the Mental Health Act should be applied.

Section 136 Mental Health Act 1983

Section 136 allows police officers to remove adults who are believed to be “*suffering from mental disorder and in immediate need of care and control*” from a public place to a place of safety for up to 72 hours for the specified purposes. The place of safety could be a police station or hospital.

Mental Capacity Act 2005

Five Key Principles to determine Mental Capacity

Principle 1:

A presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that it cannot be assumed that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

Principle 2:

Individuals are supported to make their own decisions – a person must be given all practicable help before they are treated as not being able to make their own decisions. This means that every effort should be made to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that the person is involved as far as possible in making decisions.

Principle 3:

Unwise decisions – people have the right to make decisions that others might regard as unwise or eccentric. A person cannot be treated as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

Principle 4:

Best interests – anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.

Principle 5:

Less restrictive option – someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person’s rights and freedoms of action, or whether there is a need to decide or act at all. Any intervention should be weighed up in the particular circumstances of the case.

The powers to provide care to those who lack capacity are contained in the Mental Capacity Act 2005. Professionals must act in accordance with guidance given under the Mental Capacity Act Code of Practice when dealing with those who lack capacity and the overriding principal is that every action must be carried out in the best interests of the person concerned.

Where a person who is self-neglecting and/or living in squalor does not have the capacity to understand the likely consequences of refusing to cooperate with others and allow care to be given to them and/or clearing and cleaning of their property a best interest decision can be made to put in place arrangements for such matters to be addressed. A best interest decision should be taken formally with professionals involved and anyone with an interest in the person’s welfare, such as members of the family.

The Mental Capacity Act 2005 provides that the taking of those steps needed to remove the risks and provide care will not be unlawful, provided that the taking of them does not involve using any methods of restriction that would deprive that person of their liberty.

However where the action requires the removal of the person from their home then care

needs to be taken to ensure that all steps taken are compliant with the requirements of the Mental Capacity Act. Consideration needs to be given to whether or not any steps to be taken require a **Deprivation of Liberty Safeguards** application.

Where an individual resolutely refuses to any intervention, will not accept any amount of persuasion, and the use of restrictive methods not permitted under the Act are anticipated, it will be necessary to apply to the Court of Protection for an order authorising such protective measures. Any such applications would be made by the person's care manager who would need to seek legal advice and representation to make the application.

Emergency applications to the Court of Protection

An urgent or emergency court order can be applied for in certain circumstances, e.g. a very serious situation when someone's life or welfare is at risk and a decision has to be made without delay. However, a court order will not be obtained unless the court decides it's a serious matter with an unavoidable time limit.

Where an emergency application is considered to be required, relevant legal advice must be sought.

Inherent Jurisdiction

There have been cases where the Courts have exercised what is called the 'inherent jurisdiction' to provide a remedy where it has been persuaded that it is necessary, just and proportionate to do so, even though the person concerned has mental capacity.

In some self-neglect cases, there may be evidence of some undue influence from others who are preventing public authorities and agencies from engaging with the person concerned and thus preventing the person from addressing issues around self-neglect and their environment in a positive way.

Where there is evidence that someone who has capacity is not necessarily in a position to exercise their free will due to undue influence then it may be possible to obtain orders by way of injunctive relief that can remove those barriers to effective working. Where the person concerned has permitted another reside with them and that person is causing or contributing to the failure of the person to care for themselves or their environment, it may be possible to obtain an Order for their removal or restriction of their behaviours towards the person concerned.

In all such cases legal advice should be sought.

Animal welfare

The **Animal Welfare Act 2006** can be used in cases of animal mistreatment or neglect. The Act makes it against the law to be cruel to an animal and the owner must ensure the welfare needs of the animal are met. Powers range from providing education to the owner, improvement notices, and fines through to imprisonment. The powers are usually enforced by the RSPCA, Environmental Health or DEFRA.

Fire

The fire brigade can serve a prohibition or restriction notice to an occupier or owner which will take immediate effect (under the **Regulatory Reform (Fire Safety) Order 2005**). This can apply to single private dwellings where the criteria of risk to relevant persons apply.