

Frequently asked legal questions

This factsheet gives answers to some of the most common legal questions that Alzheimer's Society receives in relation to [dementia](#).

Social services want to put my wife in a home - what are my rights as a carer?

The social services department of your local authority has a duty of care for vulnerable adults living in its area. It has to assess the needs of these adults and provide services and/or equipment to meet any assessed needs. This means that if social services believes that a person's care needs can no longer be met at home, it can place that person in an environment where their care needs can be met, such as a care home.

If the social workers and any doctors involved consider that someone with dementia can no longer be cared for at home, they will first try to persuade them to go into a care home. However, some people with dementia don't realise that they have a problem and are reluctant to leave their home. Striking a balance between their safety, the safety of others and their freedom is not easy.

The principles of the Mental Capacity Act 2005 include supporting people to make decisions for themselves wherever possible, and making decisions in the best interests of people who don't have mental capacity (ie the ability to make decisions for themselves). The Code of Practice which accompanies the act outlines how health professionals should support the person and/or include carers in the decision making process. (See [Factsheet 460, Mental Capacity Act 2005](#)).

In April 2009 the government implemented the Deprivation of Liberty Safeguards. The Deprivation of Liberty Safeguards are measures to protect people who don't have mental capacity from being kept in hospital or a care home inappropriately.

You can request an assessment under the Deprivation of Liberty Safeguards procedure. A healthcare professional will visit your wife to determine if putting her in a home will deprive her of her liberty. If this is the case, an assessment will be done to see if she has the mental capacity to make the decision for herself. If she does not then there will be an assessment to decide what is in her best interests. The views of the close family will be taken into consideration.

As a last resort, the social workers and doctors can force a person to go into hospital. This is commonly known as 'sectioning' the person, as it uses powers under a section of the Mental Health Act 1983 for England and Wales. The terms of the section allow a person at risk to be taken to a place of safety without their consent. This is an uncommon step, and is not taken lightly. It may, however, be

necessary in extreme situations.

If a carer or concerned friend or relative wants to prevent a person from being placed in a home, they should talk to the person's social worker about their concerns. There are ways to help manage the care of a person at home, including arranging for paid carers to visit up to three times a day to provide help with washing, dressing and cooking. Social services must act in the best interests of the person with dementia, so it is worth discussing whether putting the person in a care home would actually be the best thing for them.

The GP won't tell me my husband's diagnosis - can he be made to do so?

The Data Protection Act 1998 covers medical records, and medical professionals often quote it when families ask to see a person's medical notes or ask to be kept informed about their care. Medical professionals are within their rights to quote this piece of legislation. However, it could be argued that it is in the patient's best interests for the information to be made available so that the people who are involved in their care are well informed and able to act in the person's best interests.

If someone is named as a Lasting Power of Attorney for personal welfare, or a deputy for personal welfare, they ought to be able to access medical records and care plans. (See [Factsheet 472, Enduring power of attorney and lasting powers of attorney](#).) If the medical team still refuses to comply, the friends or family can complain to the primary care trust.

Social services want to put my dad in the only home available, which is 30 miles away, where it will be very difficult for my mum to visit him. There are homes nearer but there are no vacancies - what are our rights?

It depends on the situation of the person with dementia. If he or she is in hospital and has had their needs assessed, the local authority could be fined for every day that the person occupies a hospital bed. In this case, the local authority will be keen to have the person discharged as soon as possible (to avoid what is called 'delayed discharge'), and they might not want to wait until one of the more desirable homes becomes available.

If the person is living at home, the family could suggest that a package of care at home (paid carers coming in) be put in place until a place at the home of choice becomes available.

It may also depend upon how much money the person has. If they have more than the upper threshold for assets and savings (see [Factsheet 431, Benefit rates and savings/income thresholds](#)), they will be paying for care themselves. However, if they don't, the local authority will be contributing to their care, and there will be a limit to how much it will contribute. It may be that the only home within the budget of the local authority is the one 30 miles away.

In any case, the local authority has a legal duty to meet the needs of the person with dementia and to act in his or her best interests. The family could argue that the person has a need to be near to their family. If this is written into the care plan, the local authority must try to meet this need. Case law states that social services are not allowed to put someone in a home further away simply because it is the cheapest (see examples in 'Further reading and case law' below).

Can someone be taken off a Section 117 or be denied continuing care if they have been under a Section 117 or receiving continuing care for some time?

There are over 100 parts of the Mental Health Act. These are called sections. People can be placed under certain sections of the act, depending on their situation. For example, many people with dementia are placed under Section 3, which gives medical professionals authority to detain the person in hospital for treatment.

Section 117 applies to people who have been detained under certain sections, including Section 3. It deals with aftercare arrangements, and ensures that the person receives free appropriate aftercare when they are discharged from hospital. If an assessment is carried out six months after discharge and the person is assessed as no longer needing these services, they may be taken off the Section 117. However, case law demonstrates that extreme caution must be taken when making this decision (see examples in 'Further reading and case law').

The case may be similar with continuing care. A person may be assessed as having severe healthcare needs when they leave hospital and be assessed as qualifying for NHS funded care. However, with the right medication and attention some of their problems may become less serious, even though people do not 'recover' from dementia.

To challenge a decision in either case, the person should make a complaint to the relevant authority and highlight the fact that dementia is a degenerative illness that will not improve with time.

Why is/isn't the person I care for being sectioned while they are in hospital?

Practice varies regarding people with dementia who are admitted to hospital. [Health professionals](#) have to treat every case individually.

Carers' feelings about their friend or relative going into hospital and staying there for assessment also vary. Some feel that there is a stigma attached to being sectioned (placed under a section of the Mental Health Act). Others feel that it is wrong to detain a person with dementia in hospital if they have not been sectioned, as the person might not have capacity to consent to their stay in hospital as a willing patient.

Problems can arise when someone with [dementia](#) is unable to communicate his or her wishes. Hospital staff may interpret their behaviour as indicating a willingness to remain in hospital, while carers may feel that the opposite is true and that the person does not try to leave the hospital because they are too confused about where they are. The Deprivation of Liberty Safeguards (DOLS, mentioned above) are an attempt to address these difficulties. A carer can ask for an assessment under the DOLS procedure. The assessment will first decide if the situation means that the person with dementia is being deprived of their liberty. If this is the case a separate assessment will decide whether the person in the hospital can decide whether the person in the hospital can decide for themselves where they want to stay and, if not, what is best for them.

If a person is under section, their nearest relative can object to the section and have it reviewed at a tribunal if they feel that the person is being kept in hospital unnecessarily. If the person is considered to be a 'voluntary' patient, it is more difficult to arrange an independent review.

If you are concerned about someone who is in hospital, you can contact the patient advice and liaison service (PALS) based at the hospital. PALS provides information, advice and support to help patients, families and their carers, and can liaise with staff to resolve issues with hospital care or discharge.

What are the rights of a carer who feels that they cannot care any longer?

Partners or family members may feel morally responsible for the care of family and friends, but it is the local authority and the social services department that are legally responsible for the care they have assessed a person as needing.

If a [carer](#) feels that they can no longer care for someone with dementia but they know that the person would be at risk without their support, they should contact social services and tell them how the situation has changed. If the person is in hospital and the staff are talking about an imminent discharge, the carer must make it clear that they feel unable to care for the person at home. Hospital staff would be acting negligently if they discharged the person with dementia in this situation without a full investigation.

If the person with dementia is living at home with the carer, the carer should talk to their social worker about what extra help might be available to help them cope at home, or to give them respite care. In some cases, residential care may be the best option both for the individual and their carer. The carer can look at homes in the area and choose an appropriate environment for the person with dementia, but the social worker will have to be satisfied that the home meets the person's needs. Social services will also carry out a financial assessment (see [Factsheet 469, When does the local authority pay for care?](#)).

Social services must be satisfied that any vulnerable adult is living in an environment in which they can be adequately cared for. If the main carer says that they can no longer care, no pressure should be put on them to change their mind.

Why is it beneficial for us to arrange a lasting power of attorney (LPA) for property and affairs now?

A person can arrange an LPA for property and affairs to choose who they would like to deal with their property and finances. Lasting powers of attorney replaced Enduring powers of attorney (EPAs) in 2007, when the Mental Capacity Act came into force. EPAs remain valid if they were made prior to 1 October 2007 (see [Factsheet 472, Enduring power of attorney and lasting powers of attorney](#)). There are procedures for registration of this power at the Office of the Public Guardian (OPG). An LPA property and affairs or EPA will enable the attorney to deal with a person's property and finances if they are no longer capable of managing their own affairs.

If a person no longer has the mental capacity to make an LPA, the Court of Protection can appoint a deputy to handle a person's finances. The Court of Protection can remove deputies or attorneys who fail to carry out their duties. While the majority of people are honest and would not defraud someone with dementia, there are a minority who would try to exploit the situation.

An LPA property and affairs, or valid EPA, is also important because bank accounts are generally set up to operate on the condition that the person or people in whose name the account is held is capable of managing that bank account. For example, if an account is held in joint names but one of the account holders becomes unable to understand or manage the account, the bank could freeze all transactions and only release funds once someone produces an LPA, a valid EPA or a deputy order for the person who has lost capacity. This means that the person with capacity is also unable to get access to the funds in the account.

I have been told that I have to wait 12 weeks for my aunt to be assessed by social services. Is this right?

Currently there is no set timescale in which [assessments](#) should be carried out. Each local authority has its own assessment procedure set out in a local charter called 'Better care, higher standards', available from the local social services department. However, if someone is refused an assessment, experiences an unacceptable delay, or finds that their needs are not met by the care plan drawn up as a result of the assessment, they can complain to social services.

If the person's needs are urgent, social services can provide appropriate services before the assessment is carried out. Social services need to be informed of this situation.

Provision of services must never be based on ability to pay. If someone with dementia is assessed as needing a service, it must be provided. Arrangements for payment should be made separately.

For details of Alzheimer's Society services in your area, visit alzheimers.org.uk/localinfo
For information about a wide range of dementia-related topics, visit alzheimers.org.uk/factsheets

Further reading and case law

Case in which it was demonstrated that eligibility criteria cannot be tailored due to shortage of money from the local authority: Regina v Gloucestershire County Council, ex parte Barry, 1997.

Regarding Section 117 and removal of Section for people with dementia, see R v Richmond London Borough Council, ex parte Watson, 1999.

The Court of Protection operates under statutory guidance deriving from Part VII of the Mental Health Act, and the Mental Capacity Act 2005.

Useful organisations

Alzheimer's Society

Devon House
58 St Katharine's Way
London E1W 1LB
T 020 7423 3500
0300 222 11 22 (helpline)
E info@alzheimers.org.uk (general information)
helpline@alzheimers.org.uk (helpline)
W alzheimers.org.uk

The UK's leading care and research charity for people with dementia and those who care for them. The helpline provides information, support, guidance and referrals to other appropriate organisations.

Department of Health

Richmond House
79 Whitehall
London SW1A 2NS
T 020 7210 4850 9.00am-5.00pm
020 7210 5025 (textphone)
E use the enquiry form on the website (see below)
W <http://www.dh.gov.uk/>

The government department responsible for health, social care, and the National Health Service (NHS). Provides a range of information and literature, including on help with NHS costs.

NHS Direct

T 0845 46 47
E use the enquiry form on the website (see below)
W <http://www.nhsdirect.nhs.uk/>

Official website and 24-hour telephone helpline for the NHS. Provides information about health problems and how to keep healthy.

Office of the Public Guardian (OPG)

PO Box 15118
Birmingham B16 6GX
T 0300 456 0300 (customer services, 9.00am-5.00pm weekdays)
E customerservices@publicguardian.gsi.gov.uk

W www.direct.gov.uk/mentalcapacity

The OPG supports and promotes decision making for those who lack capacity or would like to plan for their future, within the framework of the Mental Capacity Act 2005. It provides free booklets on enduring power of attorney and receivership. The Court of Protection is at the same address.

Factsheet 475

Last updated: August 2011

Last reviewed: October 2008

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Alzheimer's Society National Dementia Helpline

England, Wales and Northern Ireland: 0300 222 11 22

9.00am-5.00pm Monday-Friday

10.00am-4.00pm Saturday-Sunday

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