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Legal Literacy Change Project

Case study exercise and legal analysis tool

Dartington Trust

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This resource provides a case study with some questions about the legal rules that apply. A model answer is then provided along with guidance on subjecting a current direct practice example to a similar legal analysis. It will support people to:

- undertake a detailed analysis of the legal rules that apply in a current complex situation
- utilise understanding of the legal **powers** and **duties** held by a range of agencies where an adult is at risk
- apply legal analysis to current practice.

Task 1

Read the following case study and do the three exercises that follow. The case study describes a situation where a range of legal powers and duties, held by various agencies, apply.

Tom, who is in his fifties, lives alone in a ground floor flat that has become very neglected and dilapidated. He is well known in the local community, he does his own shopping, often accompanied by his dog, but has little contact with any social networks, having kept himself to himself for many years. His appearance is always rather unkempt, and it is clear that he does not wash or change his clothes. He often smells of alcohol.

Over recent months Tom has been seen far less, and neighbours have begun to express concern about the state of his flat, which has a small front garden and back yard, in which discarded household debris has accumulated. The police community support officer has visited and found him to be struggling to maintain a habitable home environment. The flat is very dirty, bleak and cold – he has no visible signs of heating and there are security risks from broken windows. What little furniture he has is broken, and it seems he spends most of his time sitting and sleeping on a sofa that is damp and dirty. In the back yard, there are dog faeces and signs of infestation among piles of discarded food. His mobility is impaired, and he appears to have little food left in his cupboards. The PCSO is very concerned about Tom's wellbeing.

1. **What legal powers and duties might apply in this situation?**

2. **Which agencies hold those powers and duties?**

3. **What do the powers and duties permit or require the relevant agency to do?**

4. **How might the powers and duties shape your approach to working with Tom and the other agencies involved? Where would you start? What might follow?**

Task 2

Having completed your own analysis in response to the questions above, read the legal analysis provided below and evaluate how well you identified the range of possible legal powers and duties. Use the following template to record your responses and to identify any actions you think you need to take to further develop your knowledge and understanding of the applicable legal rules.

Actions could include independent reading and/or use of online resources, discussion with colleagues, consultation with other departments or agencies, advice from legal colleagues.

Legal powers and duties relating to:	How well did you identify the powers and duties?				Actions to take	Date action to be completed
	Not at all	A little	Quite well	Fully		
Human rights						
Care, support						
Safeguarding						
Mental capacity						
Mental health						
Powers of entry						
Environmental health						
Housing						
Anti-social behaviour						
Fire & Rescue						
Court jurisdictions						

Take your self-evaluation into supervision for discussion with your supervisor, or into a team development session for discussion with colleagues. Together, identify what support you might need to carry out the actions designed to help you develop your knowledge and understanding of the applicable legal rules.

Task 3

Focus on a new referral you have received. Review the information you have available and map out the legal powers and duties you might need to engage with in order to work effectively. Identify legal powers and duties that regulate:

- your own role, department and agency
- what other departments and agencies might have available.

It will also be important to identify the likely sequencing of actions under the various legal rules – record:

- which might need to come first, and
- the subsequent likely order of progression.

This will require forward thinking to identify 'what if' questions – what legal rules would be engaged at different points depending upon the emergence of new information or the development of the person's circumstances?

Discuss your plans in supervision/team development and identify, with your supervisor's/colleagues' and manager's support, a pathway for working with the person in a way that draws on legal literacy.

Tom – legal analysis

The following legal rules could all be relevant in Tom's situation. The focus here is on **national statute and guidance**. It is important to note that **local policies, procedures and guidance** will also apply. While not a substitute for knowing and implementing the national rules, local protocols will provide important guidance on assessment and care pathways both within any one agency and between the range of agencies involved.

1. Care, support and safeguarding

Adult social care duties arise, for the local authority, under the *Care Act 2014*. Tom's situation triggers two possible courses of action. People who experience self-neglect will often have care and support needs that require assessment. Equally, because the Care and support statutory guidance 2018) lists self-neglect as one of the circumstances that falls within its definition of abuse and neglect (para 14.17), adult safeguarding duties may also apply.

Assessment of care and support needs	Safeguarding enquiries
Under section 9, the local authority must carry out an assessment if Tom **appears** to have care and support needs, regardless of their nature or level. They must then decide whether his needs are eligible to be met when judged against the national *Care and Support (Eligibility Criteria) Regulations 2015* and whether there is a duty to meet them under section 18 and 20.	Under section 42, the local authority must make enquiries (or cause enquiries to be made) where an adult with care and support needs: > is experiencing or at risk of abuse and neglect and, > as a result of their care and support needs, is unable to protect themselves. Again, Tom's circumstances could trigger this duty. The purpose is to determine whether any action should be taken to help and protect him, and, if so, what and by whom?

Which route to follow, or whether to incorporate one form of enquiry within the other, will depend on local procedures, and on the circumstances of each individual person. Tom's circumstances would certainly meet the threshold for care and support needs assessment under section 9. In relation to safeguarding, the statutory guidance 2018 states:

> 'self-neglect may not prompt a section 42 enquiry. An assessment should be made on a situational basis. A decision on whether a response is required under safeguarding will depend on the adult's ability to protect themselves by controlling their own behaviour. There may come a point when they are no longer able to do this without external support'.

This would be difficult to judge without having some conversations with Tom to identify the degree to which he has **choice and control** over the circumstances in which he is living. The two routes are not mutually exclusive: a section 9 care and support needs assessment may identify that the circumstances also warrant a section 42 safeguarding enquiry; equally, a safeguarding enquiry may identify that a full care and support needs assessment is required.

Whichever route is followed initially, the local authority must consider whether Tom has substantial difficulty understanding and taking part in the process. If so, they must appoint an **advocate** to help him making his views known if there is no other suitable person who can do this (sections 67 and 68).

The local authority may also consider it important to involve **other professionals and agencies**. Section 7 provides a duty of cooperation between the local authority and relevant partners and any agency so requested must comply unless to do so would be incompatible with its own duties or adversely affect its work.

Section 1 of the *Care Act 2014* also provides the principle of **wellbeing**, which must underpin everything the local authority does. They must start by:

- assuming Tom is **best-placed to judge his own wellbeing**
- paying due regard to his **views, wishes, feelings and beliefs**.

Section 1 also lists other factors that influence decision-making, for example the need to:

- **protect** Tom from abuse and neglect
- ensure that any restriction on his rights or freedom of action is the minimum necessary for achieving the goal sought from any intervention – **the least restrictive option**.

Assessment under section 9 requires Tom's consent, provided he has mental capacity to give this (see below). In relation to safeguarding, his consent is not a pre-requisite; the statutory guidance 2018 (para 14.15) requires an explicit focus on '**making safeguarding personal**' (for which there is a toolkit), defining this as '**person-led and outcome-focused**'. It notes that the concept of wellbeing is very important in working with someone who may be experiencing self-neglect, **'where it will be crucial to work alongside the person, understanding how their past experiences influence current behaviour'** (para 1.12). It recognises, however, that there are circumstances in which a safeguarding enquiry may depart from the individual's wishes: while **'what happens as a result of any enquiry should reflect the adult's wishes wherever possible'** (para 14.79). As such, the outcome of a section 42 enquiry may lead to actions with which Tom disagrees if the circumstances warrant it.

Following assessment, the local authority must determine which of Tom's care and support needs are eligible to be met (section 13). The *Care and Support (Eligibility Criteria) Regulations 2014* sets out three criteria which require consideration:

1. Whether his needs arise from a **physical or mental impairment or illness** (formal diagnosis not required).
2. Whether, as a result of his needs, he is **unable to meet two or more outcomes** listed.
3. Whether, as a consequence, there is a **significant impact on his wellbeing**.

All three criteria must be met for eligibility to be established.

The outcomes listed include many that are likely to be compromised in self-neglect:

- maintaining nutrition
- managing personal hygiene and toilet needs
- being appropriately clothed
- maintaining a habitable home environment and using it safely.

If Tom's needs are deemed eligible following assessment, a care and support plan must be made (section 25) and a personal budget set (section 26). The plan must be:

- **kept under review**, and
- **revised** if Tom's circumstances change in a way that affects his care and support plan.

In addition to the statutory duties outlined above, the local authority must exercise its common law **duty of care** in their work with Tom. A duty of care is owed to anyone who may be affected by actions taken (or not taken) in circumstances where injury can be foreseen. This means that if the local authority acts in a way that is unreasonable according to the law, then there may be liability in negligence if these actions cause harm to an individual.

Court decisions have increasingly established that public authorities owe a duty of care when carrying out (or deciding not to make) social care interventions, for example *Poole Borough Council v GN* [2019] UKSC 25 eroding their immunity from court interference when exercising their statutory duties. The question of whether such a duty of care exists, however, is decided by the courts on a case-by-case basis and it can be difficult to predict in advance whether a duty of care will be held to exist. The prudent course is to assume it does and to ensure that actions taken are reasonable judged according to prevailing good practice standards.

Two further acts underpin how the local authority exercises its powers and duties under the *Care Act 2014*.

- The local authority **must not discriminate** on grounds of protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) (*Equality Act 2010*).
- The *Human Rights Act 1998* incorporates the *European Convention on Human Rights* into domestic law, requiring the local authority to act in ways compatible with **Convention rights** and to positively promote them. The following are important in working with Tom:
  - article 3 - protection from inhuman and degrading treatment
  - article 5 - right to liberty and security
  - article 8 - right to respect for private and family life.

Where the local authority does infringe a Convention right, the concept of proportionality requires that this must be for a legitimate aim and done according to law, and that the measures used must be suitable, necessary and reasonable. The statutory guidance 2018 (para 1.14) makes the following points:

> **'where the local authority has to take actions that restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary'**
>
> **'concerns about self-neglect do not override this principle'.**

The *Care Act 2014* does not provide any additional powers of intervention in order to safeguard Tom (and it specifically repealed provision under section 47 of the *National Assistance Act 1948* to remove a person living in 'insanitary conditions' to a place of safety). Further relevant powers and duties, are now found elsewhere (covered later in this analysis) and may be drawn upon as part of a care and support assessment or safeguarding process.

2. Mental capacity

Establishing Tom's mental capacity to understand the risks involved in his situation and to decide how to meet his personal and household needs will be a crucial part of both section 9 assessment and section 42 enquiries. A failure to assess and review mental capacity and risk of self-neglect can amount to maladministration (Local Government Ombudsman and Worcestershire CC [2011] Case No 09 013 172). The *Mental Capacity Act 2005* is the key statute, with its accompanying Code of Practice 2007.

In addition, the *Mental Capacity (Amendment) Act 2019* will, when implemented in 2022, change the arrangements for providing care and support in circumstances that amount to a **deprivation of liberty** where the individual concerned lacks capacity to consent to those arrangements.

Application of the 5 principles (**section 1**)	Tom must be **assumed to have capacity** unless it is established he does not: > All practicable steps must be taken to support him to make **his own decision**. > He is not to be treated as unable to make a decision merely because he makes an **unwise decision**. > If he is assessed as **lacking capacity**, anything done on his behalf must be in his **best interests**, and the outcome must be achieved in the way that is **least restrictive to his rights and freedoms**.
Assessing capacity (**section 2** and **section 3**)	Capacity must be determined in relation to a **specific matter at a specific time**. Tom will lack capacity to take a specific decision if: (a) he is unable to make the decision, and (b) this inability is as a result of an 'impairment of, or disturbance in the functioning of, the mind or brain' Being unable to make a decision means being unable: (a) to **understand** the information relevant to the decision (b) to **retain** that information (c) to **use or weigh** that information as part of the process of making the decision, or (d) to **communicate** the decision (whether by talking, using sign language or any other means). Inability to perform **any one of these four functions** will, if arising from an 'impairment or disturbance in the functioning of the mind or brain', lead to a finding that Tom **lacks capacity** in relation to the specific matter under consideration.
Making best interests decisions (**section 4**)	If Tom is assessed as **lacking capacity** to make a decision on a specific matter, those making decisions on his behalf in his best interests must: > **avoid assumptions** based on his age or condition > consider all the circumstances, including: - Tom's **past and present wishes and feelings, and the beliefs and values** that would be likely to influence his decision if he had capacity - the **views of people within his network**, including any carers.

Deprivation of liberty (**schedule A1**)	If his **best interests** involve care and support arrangements that amount to a **deprivation of liberty**, additional legal safeguards must be applied. Deprivation of liberty takes place if Tom is **under continuous supervision and control, and is not free to leave** (***P v Cheshire West and Chester Council and another; P and Q v Surrey County Council*** [2014]). Until the Liberty Protection Safeguards come into force in April 2022, authorisations for deprivations of liberty taking place in a hospital or care home must be sought from the local authority as the supervisory body; the process requires a defined set of assessments and consultations. For arrangements in any other location, authorisation must be sought from the Court of Protection. **Implementation of the Liberty Protection Safeguards (April 2022)** *The Mental Capacity (Amendment) Act 2019* introduces the **Liberty Protection Safeguards**, a new model for authorising deprivations of liberty. These apply in a wider range of settings (such as supported living and private dwellings) as well as in non-residential settings such as transport or day services. The arrangements are authorised by a **responsible body** (the hospital manager, the local authority or the clinical commissioning group, dependent upon the location of the deprivation of liberty). The person must lack capacity to consent to the arrangements and have a 'mental disorder' within the meaning of the *Mental Health Act 1983* (as amended by the *Mental Health Act 2007*); the arrangements must be: > necessary to prevent harm to the person, and > proportionate to the likelihood and seriousness of that harm. **Consultations** must take place and an **appropriate person** or **Independent Mental Capacity Advocate** (a role introduced by the *Mental Capacity Act 2005*) appointed to **represent and support** the person. In addition, an **independent pre-authorisation review** must be conducted, with a power (and in some circumstances a duty) to involve an **Approved Mental Capacity Professional** (a new role introduced by *The Mental Capacity (Amendment) Act 2019*) for approval of the proposed arrangements. The LPS arrangements will be fully implemented in April 2022 with some new roles and training introduced ahead of this. In advance of implementation there will also be a twelve week public consultation on the draft Regulations and Code of Practice. The following resources provide updates on the LPS as they emerge: Case Law and Legal Summaries Policy Updates Mental Capacity Law and Policy website

Even if it is judged, following assessment, that Tom has mental capacity, consideration will need to be given to the possibility that his decision-making is in some way unduly influenced by someone else.

Coercive and controlling behaviour is a criminal offence under the *Serious Crime Act 2015*, and will need to be investigated should there be an indication that a third party is exercising **undue influence** and limiting Tom's exercise of free will. Equally, civil court intervention may be sought in order to protect him from that third party (see section 7 on court jurisdiction and The inherent jurisdiction of the High Court: Practice Guide 2020).

3. Powers of entry

Any assessment of care and support should be underpinned by the strengths-based principles outlined by the **Strengths-based social work: practice framework and handbook**. This ensures any conversations and plans for care and support are part of a collaborative process between practitioner and person, and are drawn from the person's own aspirations, goals, strengths and assets. Where, despite evidenced attempts, this hasn't been possible, powers of entry may need to be used.

(a) The ***Mental Health Act 1983, section* 135(1)** empowers an Approved Mental Health Professional (AMHP) to request a **magistrate's warrant** authorising a police constable (accompanied by an AMHP and a doctor) to enter Tom's house if it is believed he is 'mentally disordered' and is being ill-treated or neglected, or lives alone and is unable to care for himself.
He may be taken to a **place of safety for 24 hours**, or kept **at his house for up to 24 hours**, for the purpose of a *Mental Health Act* assessment in order to assess the need for hospital admission or to make other arrangements for his care or treatment.

(b) The ***Housing Act 2004*** (sections ***239*** and ***240***) provides the local authority with **power of entry** to

properties for the purposes of inspection to identify hazards that pose risk of harm to health or safety. The local authority must normally provide **24 hours' notice** to both the owner and the occupier and may be accompanied by others when entering the property. A magistrates warrant may, in circumstances where entry is refused, confer power of entry (including entry by force if necessary).

(c) The ***Police and Criminal Evidence Act 1984*** (**section 17(1)(e)**) permits the **police entry to premises**

without a warrant in order to:

- save life or prevent injury, or
- prevent serious damage to property.

It is applicable only in a **genuine emergency**, not in response to general concerns about welfare.

4. Mental health

The *Mental Health Act 1983*, (as amended by the *Mental Health Act 2007*) which is under review, with recommendations made in a 2019 report to government, provides other possible routes to intervention.

If Tom has a 'mental disorder', and there are concerns about his mental health (which are associated with risks to his health or safety, or the protection of others) he may need to be assessed under the *Mental Health Act 1983*. Ideally this would result in Tom receiving treatment in the community. However if this is not possible, he may need to be admitted to hospital for treatment. Ideally this would be through a **community referral** or **voluntary hospital admission**, for which he would need to give valid and informed consent. As such, people must be given the information they need to make an informed decision. To give valid consent, *The Code of Practice: Mental Health Act 1983* (para 24.34) states that people must have:

> 'sufficient knowledge of the purpose, nature, likely effects and risks of their treatment, including the likelihood of its success and any alternatives to it'.

The Code also sets out five guiding principles to work by:

- least restrictive option and maximising independence
- empowerment and involvement
- respect and dignity
- purpose and effectiveness
- efficiency and equity.

In the event a community referral or voluntary hospital admission has not been possible, a referral for assessment under the *Mental Health Act 1983* may be appropriate to determine whether Tom can be detained in hospital and treated **against his wishes**.

Admission for assessment: **section 2** and **section 4**	Tom may be admitted and detained for **up to 28 days** if he has a 'mental disorder' of a nature or degree that: > warrants admission to hospital for assessment, and > admission is in the interests of his health or safety, or is for the protection of others. An AMHP (or his nearest relative) would make an application to the hospital, on the recommendation of two doctors (in the case of detention under section 2) or one doctor (under section 4, where the admission is of urgent necessity).
Admission for treatment: **section 3**	Tom may be admitted and detained for up to **six months** initially if he has a 'mental disorder' of a nature or degree that: > makes it appropriate for him to **receive medical treatment** in a hospital, and > treatment is necessary for his **health or safety** or for the **protection of others**, and > the treatment is **only available and possible to provide if he is detained**. An AMHP (or his nearest relative) would make application to the hospital, on the recommendations and statements of two doctors. The *Mental Health Act Code of Practice 1983* (para 14.9) lists the risk of **self-neglect** as one of the factors that should be considered by an AMHP in deciding whether to make an application under section 2 (**admission for assessment**) or section 3 (**admission for treatment**).
Application for guardianship: **section 7**	As an alternative to hospital admission, an AMHP (or the nearest relative) may apply to the local authority to place Tom under **guardianship**. This would be on the grounds that: > he has a **'mental disorder'** of a nature or degree that warrants reception into guardianship, and > it is necessary in the interest of **his welfare** or for the **protection of others**. The guardian has the power to: > determine where he should live > require his attendance for treatment, occupation, education or training, and/or > require that a doctor or AMHP visit him.

See the *Mental Health Act Assessments: Brief Guide* (2018).

5. Collaboration with multi-agency colleagues

If strengths-based approaches have been explored and recorded, but have not resolved the situation, there are legal powers that may be drawn upon. For example, environmental health, housing and anti-social behaviour legislation provides powers to impose measures where Tom's living conditions pose extreme risks to others. Although responsibility lies beyond adult social care, practitioners should be familiar with other agencies' potential roles so that they can work closely with the relevant authorities. Using such powers in relation to Tom, who has unmet care and support needs, would require careful consideration, and would be likely only where:

- a relationship-building approach has failed to secure agreement to make changes
- he continues to refuse assistance
- there is certainty he has mental capacity to make those decisions
- a mental health assessment has ruled out the need for hospital admission or guardianship.

a) Environmental and public health legislation

Public health powers may be used to address uninhabitable home environments and infestation within domestic premises.

Under the ***Public Health Act 1936***, the local authority can require Tom to clean and disinfect the dwelling and destroy vermin, if it believes the 'unwholesome and filthy' state of the premises is prejudicial to health (**section 83**). The local authority can apply for power to enter such premises, using force if necessary (**section 287**), and can carry out the work, with costs recoverable from Tom. In the words of the legislation, he may be 'removed and made clean' either with his consent, or with a court order.

The ***Public Health Act 1961*** provides additional powers in relation to accumulations of rubbish on land in the open air, and to vacating premises to allow fumigation to destroy vermin.

Under the ***Prevention of Damage by Pests Act 1949*** the local authority can require Tom to take steps to keep land (such as his garden/yard) clear of rats and mice (for example, by removing materials that attract vermin).

The ***Environmental Protection Act 1990*** gives the local authority power to require Tom to cease a 'statutory nuisance', that is prejudicial to health; this could apply to the accumulated materials outside his house (**sections 79** and **80**). The local authority has a power of entry to deal with the matter if necessary, and may make a charge to the occupier.

Under the ***Public Health (Control of Disease) Act 1984***, part 2A, the local authority may apply for a court order imposing restrictions or requirements on Tom to protect against infection or contamination where there is a significant risk to human health.

b) Anti-social behaviour legislation and housing legislation

If Tom's situation constitutes a risk to health and safety or a 'nuisance and annoyance' to others, it may be addressed through legal rules relating to anti-social behaviour or housing.

Acceptable Behaviour Contracts

Acceptable Behaviour Contracts and Agreements are sometimes used as a preliminary step in relation to anti-social behaviour or breach of tenancy (Home Office, 2007). Such a contract would seek secure a voluntary agreement between Tom and the police, housing department or registered social landlord, setting expectations of conduct. They are not legally binding but may be effective in preventing the need for injunctions or eviction proceedings.

The Home Office, Communities and Local Government and Social Landlords Crime and Nuisance Group have created a **toolkit** (2010) for working with people with anti-social behaviour.

The ***Anti-Social Behaviour, Crime and Policing Act 2014*** and **statutory guidance 2014** allows a local authority, housing provider, or the police to apply to court for an **injunction to prevent 'nuisance and annoyance'** (IPNA). This could apply if Tom's behaviour causes 'nuisance or annoyance' to others (for example, neighbours) in relation to their occupation of residential premises.

An injunction may contain requirements and prohibitions, and a power of arrest for breach, where risk of harm is significant. Breach of an IPNA is an absolute ground for eviction if the premises are rented. The Act also introduced community protection notices, available to the local authority and police, to address unreasonable conduct that has a persistent or continuing detrimental effect on the quality of life of those in the locality.

If Tom does not own his property but is a tenant, he may be in breach of his tenancy agreement. The ***Housing Act 1985*** (amended 1996) and ***Housing Act 1988*** provide grounds for eviction where:

- he has been guilty of conduct that is a 'nuisance or annoyance' to anyone residing, visiting or otherwise engaged in lawful activity in the locality, or
- he has broken an obligation of his tenancy (for example state of the building and repairs).

If Tom's premises are in a state that is prejudicial to health or a 'nuisance', and using the ***Environmental Protection Act 1990*** would entail unreasonable delay, the local authority may, under the ***Building Act 1984***, issue a **notice of intention** to remedy the defects, carry out the work and recover the costs (section 76).

In the case of a dangerous building (section 77), the local authority may apply for a court order requiring the owner to carry out the work and, if Tom does not comply, may carry out the work and recover the costs.

The ***Housing Act 2004*** introduced a housing, health and safety rating system for properties, and duties and powers for local authorities to address hazards that pose a risk of harm to health or safety. The local authority has **a power of entry to carry out an inspection**, and if refused may apply to a magistrate for a warrant that can include forced entry. If the local authority identifies a Category 1 (serious) hazard, it is under a **duty to act**. (It has a power to act in relation to less serious deficiencies.) The local authority can serve a hazard **awareness notice** (noting that remedial action is desirable), an **improvement notice** (requiring the owner to remove the hazard) or a **prohibition notice** (limiting or prohibiting use of the premises), or in extreme circumstances can take **emergency action** itself. If the owner of the property does not comply with required remedial action, the local authority may carry out the action itself.

The ***Town Country Planning Act 1990*** may be used to address harm arising from material accumulated outside a property, if it is adversely affecting the amenity of an area. **Section 215** enables the local authority to require the owner or occupier of the land to return it to an appropriate condition.

c) Fire safety

The ***Regulatory Reform (Fire Safety) Order 2005*** enables the Fire & Rescue Service to serve a **prohibition or restriction notice** to an owner or person responsible for commercial premises. As Tom's house is a private dwelling, the power does not apply here, but it could be applicable in the shared areas of properties in which several households live, as these common areas in shared properties are subject to regulation.

6. Animal welfare

If Tom's self-neglect extends to neglect of his dog, animal welfare legislation may apply. Cruelty to animals is a criminal offence under the *Animal Welfare Act 2006*. Section 9 requires Tom to meet his dog's welfare needs:

- provide a suitable environment and diet, and
- protection from pain, suffering, injury and disease.

Advice and education may be followed by formal warnings and prosecution.

7. Court jurisdiction

Practitioners and managers need not grapple alone with the dilemmas of difficult decisions. The courts provide an avenue for resolution of uncertainty and dilemmas. Complex situations such as Tom's may become the subject of an application to a court.

(a) If the local authority, having undertaken a capacity assessment, remains uncertain whether Tom has **mental capacity** to make relevant decisions, or (if he has been assessed as lacking capacity) the actions necessary to secure his **best interests** are unclear or disputed, it may ask the **Court of Protection** to consider the matter.

(b) If the Court of Protection finds that Tom has capacity in relation to a **specific decision**, it has no further jurisdiction over that matter. If it finds he lacks capacity, then it may determine what is in his best interests in relation to the matter in question.

The **High Court**, exercising its **inherent jurisdiction**, can order **protective measures** in relation to Tom if, **having mental capacity**, he cannot exercise that capacity freely because he is **under constraint, subject to coercion or undue influence**, or for some other reason **deprived of the capacity to make the relevant decision** (*DL v A Local Authority and Others* [2012] EWCA Civ 253).

In *Southend-on-Sea Borough Council v Meyers* [2019] EWHC 399), a case involving both self-neglect and neglect, the High Court exercised its inherent jurisdiction to safeguard an older man with capacity who had what the court described as a relationship of co-dependency with his adult son. The judgment also made it clear that the local authority cannot deem its safeguarding obligations discharged merely because an individual makes an 'unwise decision'.

The inherent jurisdiction route usually requires some form of abuse or neglect by a third party. In Tom's circumstances this is unlikely given his lack of social and family networks. However, in situations where a person is at risk as a result of their own decision, as Tom may well be, the local authority must:

- explicitly consider whether any other influence might be operating on their decision
- ensure they have all relevant information and knowledge of all available options, and
- consider whether to ask the court to exercise its inherent jurisdiction.

It is also important to recognise that criminal law may be engaged in situations in which a third party is involved. The *Serious Crime Act 2015* (section 76) created the criminal offence of **controlling or coercive behaviour** in an intimate or family relationship.

References

Home Office (2007). *Acceptable Behaviour Contracts and Agreements*. London: HMSO.

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