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7-Minute Briefing – Inherent Jurisdiction

August 2026

01. Background and links

Inherent Jurisdiction applies in circumstances where there are concerns that an adult's decision-making is being coerced or unduly influenced and some form of action needs to be authorised, to protect them in some way.

Guidance notes 39 Essex Chambers Inherent Jurisdiction

Mental Capacity Law short video webinar

02. What is "Inherent Jurisdiction" (IJ)?

This describes a specific power that the High Court has, to make orders and grant injunctions in particular circumstances. Any person or body (typically local authority, health trust or ICB) with a legal interest can bring an application to the court. **It applies only where there is no power to intervene under any other law**. (For more detail see also: Research in Practice resource on Inherent Jurisdiction)

For example: if a person lacks capacity under the Mental Capacity Act (MCA), then some decisions can be made in their best interests using the Act, some require authorisation from the Court of Protection. However, a person may not lack mental capacity, or the remedy may not be available under that Act, and so an IJ may be applied for if there are no other legal options.

03. Mental Capacity Act (MCA) 2005

To lack capacity under the MCA a person must be assessed as unable to make a decision for themselves.

Crucially, to be within the scope of the MCA, that inability must be caused by **an impairment or disturbance of the brain or mind**.

That impairment or disturbance need not be the only cause for the Mental Capacity Act to apply, but it must be the main /substantial causal link to their inability to make the decision

04. To whom does Inherent Jurisdiction apply?

It can be applied to adults who do not lack mental capacity, but who are considered, legally, to be 'vulnerable' because of some sort of abuse, neglect, undue influence, or coercion.

Because the MCA cannot be used in those circumstances, these vulnerable people are potentially left unprotected, and that is where the inherent jurisdiction of the High Court may be able to assist.

It is only concerned with individuals who are vulnerable to influences that render them unable to make their own free choice. It is this coercion, or abuse, that makes the person vulnerable. A good example can be read here: Safeguarding Adults and the Inherent Jurisdiction

05. What is the aim of Inherent Jurisdiction?

The aim of the jurisdiction is to ensure that the person being coerced or abused has the space to make their decisions more freely.

It is a legal 'safety net' that looks to restore a person's autonomy, to offer proportionate protection in the **absence of any other legal frameworks** – as it potentially overrides the wishes of a capacitous person, it is an intervention of last resort.

06. Challenges obtaining Inherent Jurisdiction

The type of external control and influence on which this jurisdiction generally applies can be difficult to pin down with any real certainty.

Each incident of concern should be clearly documented in your evidence. There isn't always an element of malice, or even a deliberate intention by a third person to control. E.g. the third party may think they are doing what is best and cannot see why their behaviour is a cause for any concern.

Recording evidence carefully, thoroughly and methodically will help to support any application to the High Court. You must also show how all other possible legal options have been explored (e.g. MCA, Mental Health Act, s42 Care Act).

07. Key things to be aware of

The powers of the Inherent Jurisdiction can only be invoked by getting a court order from the high court. The order (what action is being proposed) must be necessary and proportionate. It must not go beyond the minimum necessary to safeguard the person being abused.

Before an order under Inherent Jurisdiction is sought, **all other legal routes / less restrictive alternative measures must be considered** with the person being abused or coerced.