

7-minute Learning Summary

Inherent Jurisdiction

1. Background and links:

Inherent Jurisdiction applies in circumstances where there are concerns that an adult's decision-making is being coerced or unduly influenced.

<https://www.mentalcapacitylawandpolicy.org.uk/the-inherent-jurisdiction-of-the-high-court/>

2. What is Inherent Jurisdiction?

The term 'Inherent Jurisdiction' describes a power that the High Court has, to make orders and grant injunctions in particular circumstances. Any person or body with legal standing can bring an application to the court. It applies where there is no power to intervene in a statute. For example, if a person lacks capacity under the Mental Capacity Act (MCA), then a decision can be made in their best interests using that Act. However, a person may not lack mental capacity under the MCA, or the remedy may not be available under that Act.



3. Mental Capacity Act 2005

To lack capacity under the Mental Capacity Act 2005 a person must be unable to make a decision for themselves. Crucially, to be within the scope of the Mental Capacity Act 2005, 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 Act to apply, but it must be the main or substantial cause

7. Key things to be aware of

- Inherent Jurisdiction cannot be used without a court order from the high court.
- The order sought must be necessary and proportionate, and not go beyond the minimum necessary in order to safeguard the person being abused.
- Before an order under Inherent Jurisdiction is sought, other less restrictive alternative measures should be considered with the person being abused or coerced



6. Possible difficulties obtaining Inherent Jurisdiction

The type of external control and influence on which this jurisdiction generally applies is, by its definition, difficult to pin down with any real certainty. Each incident of concern should be clearly documented, and the evidence required, built.

There isn't always an element of malice, or even a deliberate intention by a third person to control. The third party may think they are doing what is best and cannot see why their behaviour is a cause for any concern. Building the evidence in this instance is a lot more difficult.

5. 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.



4. 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.

If a person is unable to make a decision but not because of an impairment or disturbance of the brain or mind, then the MCA doesn't provide the answer. But this has the potential to leave vulnerable people unprotected, and that is where the inherent jurisdiction of the High Court may be able to assist.

Inherent Jurisdiction 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 renders a person vulnerable.