



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 1

PROTECTION FROM LIABILITY, AND GENERAL SAFEGUARDS

Protection from liability for acts in best interests of person lacking capacity

9.—(1) This section applies where—

- (a) a person (“P”) is 16 or over;
- (b) another person (“D”) does an act in connection with the care, treatment or personal welfare of P;
- (c) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter;
- (d) when doing the act, D reasonably believes—
 - (i) that P lacks capacity in relation to the matter; and
 - (ii) that it will be in P’s best interests for the act to be done; and
- (e) D would have been liable in relation to the act if P had had capacity in relation to the matter and D had done the act without P’s consent.

(2) D does not incur any liability in relation to the act, apart from such liability, if any, as D would have incurred in relation to it even if P—

- (a) had had capacity to consent in relation to the matter; and
- (b) had consented to D’s doing the act.

(3) But subsection (2) has effect subject to the additional safeguard provisions (each of which imposes a safeguard, additional to those in subsection (1)(c) and (d), and more than one of which may apply in a given case).

(4) The additional safeguard provisions are—

- (a) section 12 (conditions for any act of restraint);
- (b) sections 13 and 15 (formal assessment of capacity, and consultation of nominated person, required for serious interventions);
- (c) sections 16 and 17 (second opinion required for certain treatment);
- (d) sections 19, 20, 24, 26, 28 and 30 (authorisation required for serious treatment where there is objection from P's nominated person or compulsion, and for deprivations of liberty and certain other measures);
- (e) section 35 (independent mental capacity advocate required for certain serious interventions).

(5) The principles in sections 1(3) to (5) and 5 (P not to be treated as lacking capacity on irrelevant grounds, or where practicable help and support not given) and section 7 (best interests) apply in particular for the purposes of determining whether a belief mentioned in subsection (1)(d) is reasonable.

(6) Where P is under 18, in subsection (1)(e) “without P’s consent” is to be read as “without P’s consent and without any consent that could be given by a parent or guardian of P”.