



The Law Society

Mental Capacity (Welfare) Accreditation

Application guidance and policies



Mental Capacity (Welfare) Accreditation

Initial application form guidance notes

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Overall guidance

1. These guidance notes are to assist you in applying for the Mental Capacity (Welfare) Accreditation. The application form includes basic instructions to help you complete the form correctly. Additional guidance notes are provided here.
2. **The scheme** covers all types of health and welfare work within mental capacity law. You can choose from one of two accredited statuses:
 - a. **Accredited legal representative:** recognition for expertise in mental capacity law with ALR status. In accordance with rule 6, and **accredited legal representative** can be appointed by the court under the **rule 3A** to represent P
 - b. **Accredited practitioner:** recognition for expertise in mental capacity law without ALR status. Cannot be appointed by the court to represent P as an ALR under **rule 3A**.
3. Accreditation is for three years, after which accredited practitioners will need to apply for re-accreditation.
4. Emboldened words (apart from document headings and advisory notes) are defined in the **glossary of terms**.
5. The application form is designed to be completed electronically in Microsoft Word (1997 and later). Please answer all relevant questions and use the 'tab' key to progress through the form. Questions require a combination of typed answers, choosing an option from a drop-down menu or check box confirmation. You are also required to provide separate supporting documentation, which must be submitted along with your completed application form.
6. References to statutes and regulations include any subsequent statute, legislation or regulation directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute or regulation and to all orders, directions and notices made or served under them.
7. If any development affecting the applicant after submission of the application form would affect the answers given (whether in relation to offenses, complaints, regulatory matters or otherwise), you must notify the Law Society as soon as possible and, in any event, within 14 days of the change or the decision to make the change, whichever is the earlier.

Questions?

We cannot process your application if any relevant information or documentation is missing. If you are unable to resolve your query using information provided in the guidance notes below, please contact the **accreditation office** via the below details:

Tel: 0207 316 5550 **Email:** accreditation@lawsociety.org.uk

Glossary of terms

Term	Definition
Accreditation office	The Law Society's accreditation office , who receive and process accreditation applications.
Accredited legal representative	An accredited practitioner who has met the required competences for accreditation, which includes authorisation by the Court of Protection to represent P before the Court in accordance with Rule 3 of the Rules .
Accredited practitioner	A practitioner who has met the required competences for accreditation and would like their specialist experience and knowledge in mental capacity law recognised, but does not wish to act as an accredited legal representative .
Disclosure and Barring Service (DBS)	The DBS helps make safer recruitment decisions and replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).
EDBS check	Enhanced Disclosures and Barring Service check.
Glossary of terms	The glossary contained within these guidance notes.
P	As defined in Rule 6 of the Court of Protection Rules 2007, "P" means any person (other than a protected party) who lacks or, so far as consistent with the context, is alleged to lack capacity to make a decision or decisions in relation to any matter that is the subject of an application to the court.
Professional Development (PD)	A structured approach to learning and development to help ensure continued competence in law, practice and procedure. Once accredited all members of the scheme will be required to ensure that they complete at least six PD hours of mental capacity law related courses or activities.
Practice	Any law firm regulated by the SRA , including Sole Practitioners, partnerships, companies and LLPs.
Rule 3A	Rule 3A(2)(b) of the Court of Protection Rules 2007, as amended by the Court of Protection (Amendment) Rules 2015, which states: <i>P's participation should be secured by the appointment of an accredited legal representative to represent P in the proceedings and to discharge such other functions as the court may direct.</i>
SRA	Solicitors Regulation Authority.
The Rules	The Court of Protection Rules 2007, as amended by the Court of Protection (Amendment) Rules 2015
The scheme	The Law Society's Mental Capacity (Welfare) Accreditation.

About the accreditation

The scheme is designed for practitioners who specialise in health, welfare and deprivation of liberty matters, although applicants will be expected to demonstrate a working knowledge of all aspects of mental capacity law.

The scheme has been approved by the President of the Court of Protection in accordance with **Rule 3A** and 6 of the Court of Protection Rules 2007, as amended by the Court of Protection (Amendment) Rules 2015. As such, **the scheme** is recognised as the only accreditation providing **accredited legal representatives** in accordance with **rule 3A**.

The accreditation is open to practitioners who wish to be identified as an **accredited legal representative** (ALR) and authorised by the Court of Protection to represent P before the Court in accordance with **the Rules**. Alternatively, the accreditation also recognises practitioners who would like their specialist experience and knowledge in mental capacity law recognised but not wish to be an **ALR**. These members will be referred to as **accredited practitioners**.

The Law Society will provide the Court of Protection with a list of accredited legal representatives (**ALR's**), from which they may appoint a **rule 3A** accredited legal representative in appropriate proceedings. The accredited status will also be promoted online on the Find a Solicitor profile for practitioners accredited under either option.

Eligibility to apply

Only solicitors, barristers and chartered legal executives may apply for accreditation.

Whilst there is no minimum requirement for time spent in practice in this area of law before applying, applicants to **the scheme** must ensure they have sufficient experience to clearly demonstrate the accreditation competences.

Achieving accreditation is based on three elements:

1. Completing the approved pre-requisite training course provided by City University. For further details on the training course please see www.lawsociety.org.uk/mental-capacity/. To book the training course please visit [City University's website](#). Applications for accreditation will not be considered until the pre-requisite training course has been completed. **Please note that applications must be submitted within six months of attendance on the approved course and a copy of the course certificate must be enclosed with the application.**
2. Demonstrating through the assessment that you have the requisite knowledge, skills and competences.
3. Meeting the fitness and propriety standards by passing vetting checks carried out by the **accreditation office** as well as providing an **Enhanced Disclosure and Barring Service (EDBS)** check results or certificate. (see section 1, part C - suitability for accreditation).

Once the standards and fitness and propriety checks are satisfied, the **accreditation office** will grant membership to the scheme.

Expected standards of competence

The Mental Capacity (Welfare) Accreditation is committed to robustly assessing applicants' competence against defined knowledge and experience in mental capacity law, ensuring quality representation for some the most vulnerable people in society.

There is no minimum entry requirement for time spent practising in this area. You will be asked to demonstrate your experience working in this field over three years prior to application. Those with fewer years' experience can still apply provided that you can evidence your ability to meet the required competences. Each competence is mapped against the **SRA's** Statement of Solicitor Competence to assist members with planning and reflecting on their learning and development within the **SRA's** framework.

Outcome	Indicative content
A. Technical legal practice	
<p>1. An in-depth understanding of Court of Protection practice and procedure, mental capacity law and procedure and the ability to apply knowledge, rules and procedures practically</p> <p>SRA Competence: A4</p>	<p>An understanding of all parts of the Mental Capacity Act 2005 including Schedules A1, 1A and 3; related case law on interpreting the Act; An understanding of the Mental Capacity Act Code of Practice and the Deprivation of Liberty Codes of Practice. An understanding of the Court of Protection Rules 2007, as amended and their application. This includes an understanding of the Transparency Pilot and the Case Management Pilot</p>
<p>2. Broad background knowledge of areas of law relevant to advising and representing clients who may lack capacity under the Mental Capacity Act 2005 including mental health law, community care, human rights law and where different codes or legislation apply in Wales</p> <p>SRA Competence: A4</p>	<p>Relevant parts of the Mental Health Act 1983, the Care Act 2014; the Human Rights Act 1998; the Social Services and Well-being Act 2014; the Administration of Justice Act 1960; and the High Court's inherent jurisdiction</p> <p>An understanding of the relevant parts of the Mental Health Code of Practice and the different codes and legislation that apply in Wales</p> <p>An awareness of the United Nations Convention on the Rights of Persons with Disabilities</p>
<p>3. Ability to undertake appropriate research, recognising when research is needed, and the ability to apply the results of the research</p> <p>SRA Competence: A4; B2</p>	<p>Understand the limitation of knowledge base and recognising when research is needed</p> <p>Identifying and using appropriate methods of researching and using suitable sources; interpreting and applying research results</p>
<p>4. Ability to advise on suitable options, strategies and solutions for progressing the matter; understanding the particular sensitivities and vulnerability of clients and the effects of the decisions on health and welfare matter</p> <p>SRA Competence: B3</p>	<p>Understanding and assessing a client's personal circumstances, vulnerabilities, their needs, constraints and wishes and feelings</p> <p>Ensuring that advice is informed by appropriate legal and factual analysis and identifying the consequences of different options</p>
<p>5. Understanding of relevant legal aid provisions and their application</p> <p>SRA Competence: A4</p>	<p>When legal aid might be available; when means or non-means tests are applicable</p> <p>Recognising there could be a change in legal aid status during the course of the matter</p> <p>Understanding the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)</p>

Outcome	Indicative content
B. Working with clients and other people	
<p>6. Commitment to and ability in representing clients effectively in Court of Protection proceedings</p> <p>SRA Competence: A4</p>	<p>Requisite legal and procedural knowledge to represent clients effectively</p> <p>Ability to use a range of different communication methods to communicate with P and/or other distressed clients</p>
<p>7. A basic understanding of relevant psychiatric terminology, basic psychiatric concepts and diagnoses; common conditions and injuries leading to a lack of capacity</p> <p>SRA Competence: A4</p>	<p>An ability to recognise the impact of psychiatric disorders and conditions and the way in which these may impact upon a person's capacity to make decisions and on their behaviour</p>
<p>8. Facilitate best interest meetings transparently and fairly, managing the discussion of matter in a way that facilitates effective progress</p> <p>SRA Competence: B6; C1; C2; C3</p>	<p>Chairing and participating in best interest meetings and the facilitating the arrangement of these meetings e.g. agreeing the issues for the agenda in advance, establishing the principle of balanced participation and agreeing how this will be maintained throughout the meeting, using different skills such as questioning, acknowledging, active listening, summarising, responding to non-verbal behaviour/body language and manage strong emotions and conflict to enhance communication, aid mutual understanding and rapport and help the parties to move forward/narrow the issues</p> <p>Understanding and using appropriate techniques for dealing with conflict, power imbalance and impasse to avoid detriment to parties, especially litigants in person</p>
<p>9. Taking instructions from vulnerable and/or distressed clients, litigation friends or court appointed deputies</p> <p>SRA Competence: C1; C2</p>	<p>Treating clients with courtesy and respect</p> <p>Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability</p> <p>Ensuring that communication achieves its intended objective</p>
<p>10. Ability to understand and, where appropriate, challenge medical and other expert evidence</p> <p>SRA Competence: A4; C3</p>	<p>An ability to recognise the impact of psychiatric disorders and conditions and the way in which these may impact upon a person's capacity to make decisions and or their behaviour</p>
<p>11. An understanding of the role and responsibilities when representing a party other than P, such as a family member, local authority, Trust or other statutory body</p> <p>SRA Competence: A4; C1; C2</p>	<p>Ability to prepare and represent the instructions of the client; managing the expectations of client's in regards outcome</p> <p>Recognising the duty to the Court and recognising best interest requirement</p>
<p>12. Awareness and understanding of issues around culture, gender, age and ethnicity in relation to representing clients who may lack capacity</p> <p>SRA Competence: A4; C1; C2; C3</p>	<p>An appreciation of the effect cultural, gender, age and ethnicity differences have on a person's decisions</p>
C. Managing yourself and your work	
<p>13. Taking responsibility for personal learning and development, including identifying areas for development, acting to meet learning objectives and learning from practice</p> <p>SRA Competence: A3</p>	<p>Keeping abreast of legal developments</p> <p>Maintaining and refreshing legal and practical knowledge</p>

Outcome	Indicative content
D. Additional ALR competences	
<p>14. A good understanding of the role of an 'accredited legal representative' and their associated responsibilities to the client and the court as set out in the Court of Protection Rules and relevant case law interpreting the rules</p> <p>SRA Competence: A4</p>	<p>A thorough understanding of the Court of Protection Rules and duty to the Court</p>
<p>15. An understanding of the importance of enhancing Ps participation and the communication skills needed to take instructions from, and communicate effectively with, individuals who may lack capacity</p> <p>SRA Competence: A4; C1; C2</p>	<p>Ability to demonstrate an awareness of the difficulties communicating and taking instruction from a client who may lack capacity</p> <p>Ability to use a range of different communication techniques, both oral and through body language, in order to be able to communicate with P. This might involve building rapport to ensure P feels comfortable talking to a legal representative</p>
<p>16. Understanding of the difference in case preparation when acting as an 'accredited legal representative'</p> <p>SRA Competence: A4</p>	<p>A good understanding of the role of litigation friend and their duty to the court</p> <p>Understanding a solicitors duty to their client as distinct from the role of a litigation friend/ALR</p>
<p>17. Sensitivity to and awareness of clients' needs, with particular reference to a client's vulnerability as a consequence of an impairment or disturbance of their mind or brain</p> <p>SRA Competence: A4; C1; C2; C3</p>	<p>Basic understanding of psychiatric concepts and diagnoses; the impact that will have on an individual and their ability to communicate their needs</p> <p>Recognition of clients' vulnerability and the influence family members or friends might have on the clients or your understanding of the issues and P's wishes; particular sensitivity to the influence of others were P's estate might be large</p>

Application form guidance notes

Section 1 - General information

All applicants should complete sections one and two. Please note that some questions (where indicated) are only relevant for solicitors and other (non-solicitor) applicants.

A - Your details

Question	Guidance
2	Please provide the daytime telephone number for the practice or organisation at which you work. This will be the telephone number we will use in the event that we need to contact you to discuss your application.
3	Please provide your professional email address for the practice or organisation at which you work. This will be the email address we will use in the event that we need to contact you to discuss your application.
4	Applicants wishing to obtain the status of accredited legal representative will need access to CJSM as the Court of Protection will use this system to disseminate cases.
5	To be completed by <u>solicitor applicants</u> only. The SRA ID is the practice's reference number which identifies the practice and appears on the Law Society's public register. Each branch office of the practice will have its own individual SRA ID. The SRA ID being asked for here is the SRA ID for the main office.
6	To be completed by <u>solicitor applicants</u> only. Please indicate whether you currently hold a practising certificate.
7	To be completed by <u>solicitor applicants</u> only. Please indicate whether you have held an unconditional practising certificate at all times. If your answer is 'no', please provide further details.
8	To be completed by <u>other (non-solicitor) applicants</u> only. Please indicate your job title from the list of available options. If your title is not in the list, please select 'Other' and specify the title separately.
9	To be completed by <u>other (non-solicitor) applicants</u> only. Where professional qualifications are held, please confirm the full name of the qualification held, along with the professional body it was awarded by, your membership number and the date the qualification was attained.

B - Organisation information

Question	Guidance
10	To be completed by applicants who are <u>employed in an SRA regulated organisation</u> . Please provide the full registered name of your organisation, including a trading name, if appropriate.
11	To be completed by applicants who are <u>employed in an SRA regulated organisation</u> . The SRA ID is the practice's reference number which identifies the practice and appears on the Law Society's public register. Each branch office of the practice will have its own individual SRA ID . The SRA ID being asked for here is the SRA ID for the main office.
12	To be completed by applicants who are <u>employed in a non SRA regulated organisation</u> . Please provide the full registered name of your organisation, including a trading name, if appropriate.
13	To be completed by applicants who are <u>employed in a non SRA regulated organisation</u> .

Question	Guidance
	Please provide the full postal address for your organisation. This will be the address that we use to send you any post communications in connection with your application.

C - Suitability for scheme membership

Applications for membership of **the scheme** may be accepted from solicitors, barristers and chartered legal executives, subject to approval by the Law Society.

Applicants will be expected to meet a set of minimum requirements before their application can proceed for assessment. We will refuse applications on initial assessment, if applicants are unable to demonstrate that they meet the minimum requirements.

We also carry out checks to ascertain whether an applicant is a fit and proper person to be accredited by **the scheme**. Further details can be found below and in the [general application criteria and guidance](#) on the website.

Disclosure and Barring Service (DBS)

Please note we cannot process applications unless we receive your **Enhanced Disclosure and Barring Service (EDBS)** check results or certificate. Whilst we can accept a previously issued enhanced disclosure, it must be no more than three months old at the date the **accreditation office** receives your application.

All applicants are required to apply for an enhanced disclosure check from the **DBS**, whether pursuing an initial or re-accreditation application. Our preferred provider is Atlantic Data, who can be contacted via the following link: <https://accreditation.disclosures.co.uk/LawSociety/>

You can however, use any other provider of your choice, but must ensure that we are provided with a copy of the **DBS** check certificate in support of your application, regardless of which organisation that certificate is obtained through. As **DBS** checks can take up to six weeks, we strongly encourage you to start the process as soon as possible, as failure to provide the **DBS** certificate within 21 days of submitting your application to **the scheme** may result in your application being refused.

If a disclosure check reveals information that raises doubt about your suitability to be a member of **the scheme**, your application may be rejected by the **accreditation office** after initial assessment. For further details, regarding our initial eligibility checks, please refer to the individual accreditations [General Application Criteria and Guidance](#) on the website.

Question	Guidance
14 - 17	Please ensure that you provide full details of any issues that may affect your application and the reputation of the Mental Capacity (Welfare) Accreditation. This information will be cross checked against information we hold. Please ensure you answer all questions, we will not accept a blank answer or an answer of 'N/A'.

Section 2 - Accreditation specific requirements

D - Type of membership

Question	Guidance
18	<p>You can choose from one of two accredited statuses. Please indicate which accreditation option you are applying for. You will not be able to change this once you have progressed to the assessment stage:</p> <p>a. Accredited legal representative: recognition for expertise in mental capacity law with ALR status. In accordance with rule 6, and accredited legal representative can be appointed by the court under the rule 3A to represent P</p> <p>or</p> <p>b. Accredited practitioner: recognition for expertise in mental capacity law without ALR status. Cannot be appointed by the court to represent P as an ALR under rule 3A.</p> <p>Each accreditation option follows a different assessment process. Full information on these assessments can be found below under the section entitled 'About the assessment process'</p> <p>It is your responsibility to check that you apply for the correct status. If you wish to change your accreditation option, you will need to complete initial application process again.</p>

E - Case management volumes

Question	Guidance
19 - 23	Please provide the requested detail regarding your previous experience. If you are not able to demonstrate the experience over the full period requested please answer '0'.

F - Requirements for initial accreditation

Question	Guidance
24	<p>Applicants must attend an approved training course prior to applying for membership of the scheme.</p> <p>Applications must be submitted within six months of attendance on the approved course and a copy of the course certificate must be enclosed with the application.</p> <p>The compulsory training course is provided by approved training organisations and will be of two days' duration. For further information on how to book, visit www.lawsociety.org.uk/mental-capacity/</p>

Section 3: Professional development statement

We require all initial Mental Capacity (Welfare) Accreditation applicants to provide full **PD** records for the last three complete **PD** years preceding submission of the application. In addition to the two-day mandatory course, applicants should also have gained at least six **PD** hours in the last complete **PD** year in the subject area of mental capacity law, or related areas such as mental health.

Please complete the professional development training record for each year:

- **Date** - the month and year the professional development was completed.
- **Description of the development** - summarise the development undertaken.
- **Course provider** - where applicable, state the name of the organisation/provider that provided the development.
- **Learning outcomes** - explain what you learnt from the development undertaken; clearly outline how it was delivered, the learning outcomes and how it has benefitted you in your ongoing professional development in mental capacity law.
- **Category of learning and relevant competence** - select the appropriate category of learning and the relevant SRA competence that your development meets. Where the development undertaken was prior to the implementation of the [SRA's new approach to continuing competence](#), you only need to select the relevant category of learning.
- **Number of hours** - state the duration of the development undertaken, in hours.

At least four of the required **PD** hours must consist of structured activities/courses (see table). Activities such as observations, discussions, team meetings and reading journals will not be accepted as structured activities/courses for the purposes of accreditation. Any in-house training must consist of an organised program of learning with clearly defined learning objectives and outcomes to be considered structured and you may be asked to provide copies of the related learning materials.

Category of learning	Structured / Unstructured
Reading and self-reflection	Unstructured
Attending a course/training	Structured
In-house training	Structured, subject to conditions above
Team meetings/discussions	Unstructured
Online webinar/similar	Structured

All applicants are expected to complete six **PD** hours in each complete **PD** year. If you have not completed the required hours for any reason, you must specify a reason. If the reason for non-completion is due to maternity or long-term sick leave, please tick the appropriate box and state the period of leave. You must also provide supporting documentation to confirm the reason for this period of leave (e.g. a maternity certificate (MAT B1) or a doctor's fit note). If you have been unable to complete the required hours for any other reason, please explain why in 'Other'. Reasons for non-completion will be considered by the **accreditation office** in order to determine whether your application can proceed.

Please note that should you fail to provide a complete training record and you are unable to provide a valid reason, your application may be returned to you.

Declaration

The applicant and a supervising partner or manager must each complete a declaration to confirm that:

- The information provided by the applicant is accurate and true
- The applicant has provided their mandatory training certificate and learning and development record
- The applicant understands how the information provided by them will be used by the Law Society

About the assessment process

What happens to the completed application form

When an application form is received, we will send an acknowledgment email. We will then check the application to confirm that you are eligible to apply for accreditation – for example, that you have attended the approved pre-requisite training course and undertaken the required amount of **PD** hours.

If at this stage you appear not to be eligible, we will contact you and ask for further information in support of your application. If you are eligible, we will follow the processes set out below for initial accreditation.

Initial accreditation process

We will send you an email with a proposed time and date for interview.

The interview - both application routes

All interviews take place at our office on chancery Lane, London. The interview will be conducted by two of **the scheme's** assessors.

It is essential that applicants arrive one hour before the scheduled time of the interview.

On arrival, applicants will be given a case study to read, which will be based upon a mental capacity law scenario. Applicants will have an hour to read and consider the case study and prepare for the interview.

The task, on the basis of the information provided in the case study, is to consider the relevant and applicable statute, principles, case law and practice and procedure, with a view to advising and representing the client.

Applicants will have to consider how best to prepare and present their client's case, what further information, documents or reports they may request and how to deal with the issues of law, procedure and evidence which arise in the case study. These matters will be tested by questions asked during the interview.

Applicants may make use of books and other reference materials when preparing the case study and may take these, and any notes, into the interview. Please note that applicants are not permitted to speak to anyone about the case study before the interview and will be required to return all documents provided to them at interview before they leave.

The total time allowed for the interview is one hour.

Additional interview requirements – accredited legal representative status only

In addition to the above, there is a further element for applicants applying for the **accredited legal representative** status.

Applicants will be shown a series of short clips of an **accredited legal representative** interviewing a client. The applicant will be asked a series of questions in which they will have to consider the information they have seen and discuss with **the scheme's** assessors whether the scenario they have viewed is conducive of good practice.

This will be included in the interview which will should not exceed one hour in total.

How decisions will be made

The assessors conducting the interview will consider and mark the answers provided and make a recommendation on the basis of the score achieved, as to whether the accreditation should be awarded or refused. Applicants will be informed of the Law Society's decision on their application by email within two weeks of the interview.

In making their recommendations, assessors may exercise their discretion in those instances where an applicant has narrowly missed achieving accreditation.

If the assessors consider that there were any special factors which may have affected the applicant adversely during the interview they may record their views in writing and what they say will be taken into consideration, should the applicant wish to appeal the decision.

Term of accreditation

Membership is for an initial term of three years, after which time an accredited member will be required to demonstrate their continued suitability to remain on **the scheme** by successfully completing a process of re-accreditation.

Re-accreditation

Re-accreditation occurs every three years. A reminder will be sent to members three months prior to the due date.

Under the re-accreditation process you will be asked to demonstrate your continued competence by:

- Providing relevant information on the application form
- Providing a portfolio of case work
- Providing details of the **PD** undertaken in each year
- Having a satisfactory professional record and satisfactory **EDBS check**.

We will also carry out checks against internal records and other sources as appropriate.

Accredited members must continue to familiarise themselves with changes in law, practice and procedure, by completing at least six hours of mental capacity law related **PD** hours per year throughout their period of membership and recording this on a learning and development record.

Re-accreditation will usually be via the submission of an application form and portfolio. However, if the chief assessor or an assessor considers it necessary, you may additionally be invited to attend an interview at our office on Chancery Lane, London.

Appeals

Applicants can appeal to the **accreditation office** against a refusal or revocation of accreditation

Appeals will be determined by **the scheme's** chief assessor on the basis of the application form, the interview documentation and any written representations made by the appellant. Please refer to our [general application criteria and guidance](#) for further information on our appeals process.