



# A Guide to the **Mental Capacity Act**

**Mental Capacity is if you can make a particular decision at a particular point in time.**

**No-one must judge this because of your age or your appearance, because of the way you behave or a condition you may have.**

## **What is the Mental Capacity Act?**

The Mental Capacity Act 2005 (the Act) introduces a clear test of capacity. It tells people what is best practice when supporting someone who may lack capacity.

The Act is supported by a Code of Practice that tells workers what to do. All professionals such as doctors, social workers, paid carers and other workers must follow the Code of Practice when they are working with someone who lacks capacity.

This applies in all health and social care settings, including GP and hospital appointments, social care assessments and care review meetings.

## **The Principles of the Act**

There are five key principles which underpin the Act.

People must:

1. start by assuming that you can make a decision for yourself
2. support you to make your own decisions  
allow you to make decisions that may seem unwise
4. act in your best interests if it is decided that you lack capacity
5. choose the least restrictive option if it is decided that you lack capacity

## **What does “capacity’ mean?**

It means being able to make a decision for yourself. You must be able to:

- **understand the information given to you**
- **retain that information long enough to make a decision**
- **use the information to make a decision**
- **communicate your decision**

Many types of decisions are covered by the Act. They include simple things like what to have to eat and difficult things like where to live and what medical treatment to have.

Some decisions such as marriage, civil partnership, adoption and voting are not covered by the Mental Capacity Act. This means no-one can make this type of decision for you.

## **Who decides if I lack capacity?**

In some situations a health, social care or other professional might need to decide if you are able to make a particular decision.

Where consent is needed for treatment or examination, the doctor or healthcare professional will decide whether or not you have capacity to make this decision.

## **What happens if I cannot make my own decisions?**

The Act says you should be supported to make your own decision.

If you are unable to make a particular decision and you haven't made plans about this in advance, then someone else such as a carer or professional, will have to decide what should happen in your best interests.

## **How does someone work out what is in my best interests?**

Health and social care staff have to follow this list. They must

- **Not be judgemental or discriminatory**
- **consider all relevant information**
- **involve you as much as possible**
- **consider your wishes, feelings, values and beliefs consult with other relevant people**
- **consider if the decision can be delayed in case you regain the ability to make it yourself**

There are special rules if the decision is about treatment that is needed to keep you alive.

## **Providing care or treatment if you lack capacity**

The Act allows people to carry out tasks to do with care or treatment if they believe that you lack capacity and that the care is in your best interests. Where there are different options, the Act says that carers should aim to choose the one which is the least restrictive.

## **Protecting you from ill-treatment or wilful neglect**

The Act introduces two new criminal offences:

- **ill-treatment of a person without capacity**
- **wilful neglect of a person without capacity**

These offences carry a sentence of up to five years imprisonment and/or a fine.

## Planning ahead

A Lasting Power of Attorney allows you to appoint someone to make decisions for you in the future if you lose the capacity to do this yourself. This could be decisions about:

- **finances or**
- **health and welfare matters**

## Advance decisions to refuse treatment

This allows you to state any treatment that you do not want should you lack the capacity to decide this in the future. Advance decisions are legally binding and must be followed by doctors and other health staff as long as:

- **you are 18 or over and**
- **you have the mental capacity to make the decision**

The decision should say which treatment/s are being refused and the circumstances the refusal refers to.

An advance decision does not need to be in writing but it is helpful if it is.

## Making advance decisions about life-sustaining treatment

'Life-sustaining treatment' is treatment that is needed to keep you alive and without which, you might die. There are some specific rules if you want to make an advance decision to refuse life-sustaining treatment.

This type of advance decision must:

- **be in writing**
- **state that it applies even if your life is at risk**
- **be signed by you (or by someone else that you appoint if you are unable to sign, in your presence)**
- **be signed in front of a witness**
- **be signed by the witness in front of you**

## **Recording your wishes and feelings about treatment and care**

You can also write down or tell people your wishes and preferences about future treatment or care. These must be considered when deciding what is in your best interests but do not have to be followed.

## **Court of Protection**

The Act creates a new Court of Protection (the Court) which will make decisions on:

- **capacity**
- **property and finance**
- **health and welfare and**
- **disagreements about best interests**

## **Deputies**

The Court can appoint a Deputy on your behalf to make ongoing decisions for you. The person must be 18 years or over and can be a relative, friend, or a professional.

## **What if I already have a receiver?**

Existing receivers will continue to act as before but will be known as Deputies for property and affairs.

## Independent Mental Capacity Advocates (IMCA)

An IMCA is an advocate. They **must** be involved if the decision is about:

- serious medical treatment or a change of accommodation (more than 28 days in hospital or eight weeks in a care home)
- and
- you do not have capacity to decide this yourself
  - you do not have anyone who can be spoken to about the decision

An IMCA **may** also be involved in:

- some accommodation reviews
- some adult abuse cases

## What does the Act say about research?

The Act allows research to take place with people who do not have the capacity to agree to it. The Act also has strict rules to protect people and to make sure their current or previous wishes about taking part in research are taken into account.

## Challenging decisions and raising concerns

There may be disagreements about decisions made under the Act, such as the assessment of capacity to make a decision. There are a number of ways that disagreements can be sorted out. It is recommended that you try the following:

- informal meetings (may include advocacy services)
- using the National Health Service complaints procedure
- using the complaints procedure of the Local Authority
- speaking to the Office of the Public Guardian if there are concerns about the way a Lasting Power of Attorney is being used

The Court of Protection has the final say about disagreements.

# A Guide to the Mental Capacity Act

## Where to get more information

The Multi-Agency Mental Capacity Act Guidance can be found at: [www.shropshire.gov.uk/disability.nsf](http://www.shropshire.gov.uk/disability.nsf) or type Mental Capacity Act into the search engine on the council's website. You can also call our customer service number on: **0345 678 9005**.

This leaflet is only a short summary of the Mental Capacity Act. More detailed information and guidance will be found in the Act and Code of Practice.

Booklets and a copy of the Code of Practice can be downloaded from:

[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

All forms guidance and documents relating to making a Lasting Power of Attorney can be found at: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

If you can read this booklet but know someone who can't, please contact us on **0345 678 9000** so we can provide this information in a more suitable format.