

Mental Capacity Act 2005

The Mental Capacity Act 2005 is a law that protects and supports people who do not have the ability to make decisions for themselves. This could be due to a learning disability, or a mental health problem or condition such as [dementia](#). The act applies to people aged 16 and over in England and Wales. It also provides guidance to support people who need to make decisions on behalf of someone else. This factsheet explains what mental capacity is, outlines the key principles (rules) of the act, and looks at how it can be applied when planning for the future.

Northern Ireland has different laws around capacity. People in Northern Ireland should contact Alzheimer's Society's Northern Ireland office and ask for factsheet 472NI Enduring power of attorney and controllership (see 'Useful organisations' for contact details).

The Mental Capacity Act covers important decisions relating to an individual's [property](#), [financial affairs](#), and [health and social care](#). It also applies to everyday decisions, such as personal care, [what to wear](#) and [what to eat](#). It can help support people with dementia, their carers and professionals to make decisions, both now and in the future.

What is mental capacity?

Mental capacity is the ability to make decisions for yourself. People who cannot do this are said to 'lack capacity'. This might be due to illness, injury, a learning disability, or mental health problems that affect the way their brain works.

To have capacity a person must be able to:

- understand the information that is relevant to the decision they want to make
- retain the information long enough to be able to make the decision
- weigh up the information available to make the decision
- [communicate](#) their decision by any possible means, including talking, using sign language, or through simple muscle movements such as blinking an eye or squeezing a hand.

People should be assessed on whether they have the ability to make a particular decision at a particular time. The mental capacity of a person with dementia will fluctuate. As an example, there might be times of the day when they are able to think more clearly.

The five main principles of the act

People who support or make decisions on behalf of someone who may lack mental capacity must follow five main principles:

1. Every adult has the right to make decisions for themselves. It must be assumed that they are able to make their own decisions, unless it has been shown otherwise.
2. Every adult has the right to be supported to make their own decisions ? all reasonable help and support should be provided to assist a person to make their own decisions and to communicate those decisions, before it can be assumed that they have lost capacity.
3. Every adult has the right to make decisions that may appear to be unwise or strange to others.
4. If a person lacks capacity, any decisions taken on their behalf must be in their best interests. (The act provides a checklist that all decision makers must work through when deciding what is in the best interests of the person who lacks capacity ? see below.)
5. If a person lacks capacity, any decisions taken on their behalf must be the option least restrictive to the person's rights and freedoms.

Making decisions in a person's 'best interests'

Anyone making a decision on behalf of a person they believe to lack mental capacity must do so in that person's best interests. To work out what is in the person's best interests, the decision maker must:

- not assume the decision should be based on the person's age, appearance, condition or behaviour
- consider if the decision can be postponed until the person has sufficient mental capacity to make the decision themselves
- involve the person who lacks mental capacity in the decision as much as possible
- find out the person's views (current or past), if possible, and take these into account
- consider the views of others, such as carers and people interested in the person's welfare, where appropriate, and take these into account
- not be motivated by a wish to bring about the person's death if the decision relates to life-sustaining treatment.

Once the decision maker has considered the relevant information, they should weigh up all the points and make a decision they believe to be in the person's best interests.

Planning for the future

Lasting Power of Attorney

The Mental Capacity Act introduced a new type of power of attorney that replaced the Enduring Power of Attorney (EPA). It is known as a Lasting Power of Attorney (LPA). An LPA is a legal document. This allows people to choose someone who can make decisions about their health and welfare, as well as their finances and property, if they become unable to do so for themselves. The 'attorney' is the person chosen to make decisions on their behalf.

There are two types of LPA:

- **Property and affairs LPA** ? this gives the attorney(s) the power to make decisions about the

person's financial and property matters, such as selling a house or managing a bank account.

- **Personal welfare LPA** ? this gives the attorney(s) the power to make decisions about the person's health and personal welfare, such as day-to-day care, medical treatment, or where they should live.

For more information, see [factsheet 472, Enduring power of attorney and lasting powers of attorney](#).

Advance decisions

An advance decision allows someone to specify the types of treatment that they do not want, should they lack the mental capacity to decide this for themselves in the future. This may include refusal of life-sustaining treatment. Valid advance decisions are legally binding and must be followed by health professionals, provided the treatment and circumstances set out by the advance decision apply to the situation.

Before the implementation of the Mental Capacity Act 2005, people could already make advance decisions (more commonly known as advance directives or living wills). However, the Act introduced a number of conditions that must be followed when making an advance decision in order for it to be valid. If someone has an advance directive from before 1 October 2007, they should check that it meets these more recent conditions if they want it to remain legally binding ? particularly if it relates to refusing life-sustaining treatment.

For more information, see [factsheet 463, Advance decision](#) (which provides both explanatory information and a form).

Deputies and the Court of Protection

Deputies are appointed to make decisions for people who lack the capacity to do so themselves. This applies particularly in situations where formal arrangements have not been made ? for example, if a person loses capacity and has not set up a Lasting Power of Attorney or an advance decision. A deputy is usually a friend or relative of the person who lacks capacity, but could also be a professional. To become a deputy you must apply to the Court of Protection. Deputies must make decisions in the best interests of the person lacking capacity. These might be about [property](#) or [financial affairs](#), such as redeeming an insurance policy or selling a house.

The Court of Protection also has authority to make official decisions (called orders) about any healthcare, welfare or financial matters.

For complex or ongoing [financial decisions](#) ? or where a series of steps may be needed over a long period ? the court can appoint a deputy to make decisions. Again, the deputy must always act in the best interests of the person who lacks capacity.

The Court of Protection does not usually appoint deputies to make ongoing decisions about someone's health and welfare. These decisions can usually be made in the person's best interests by those providing care and/or treatment. If there is a disagreement as to what is in the person's best interests or the decision relates to specified serious medical treatment, it may be necessary to ask the court to intervene. You do this by applying for what is known as a court order.

Safety measures

The Mental Capacity Act established some significant safety measures:

- **Court of Protection** ? (as mentioned above) a court that can make declarations about whether someone lacks capacity, and can make orders or appoint deputies who can act on behalf of someone who lacks capacity. The court has the final say on most decisions.
- **Public Guardian** ? a public official whose duties include registering Lasting and Enduring Powers of Attorney (LPAs/EPAs), supervising deputies appointed by the Court of Protection and investigating concerns about the operation of a registered power or deputy. The Public Guardian is supported by the Office of the Public Guardian (OPG).
- **Independent mental capacity advocates (IMCAs)** ? individuals who help people without capacity to express their views and wishes and, if needed, speak for them about the decisions that are being taken on their behalf. IMCAs mainly become involved in decisions about serious medical treatment or the person's long-term accommodation where it is provided by the NHS or a local authority. Local authorities and the NHS can also ask IMCAs to be appointed to help represent the person's views and wishes on decisions that are based on safeguarding the person without capacity, if it would benefit them and be in their best interests.
- **Clear guidelines for research** ? designed for any research involving people who lack capacity. The research must be approved by an appropriate body. This body must also ensure that the research is safe and relates to the person's condition. It must also ensure that the research would be less effective if it involved people who had mental capacity.
- **Criminal offence of ill treatment or wilful neglect of a person who lacks capacity** ? a person found guilty of this offence may be liable for up to five years in prison.

The code of practice for the Mental Capacity Act 2005

The code of practice for the Mental Capacity Act gives guidance on how the act should work on a day-to-day basis. It provides case studies and explains in detail the key features of the law.

The following people have a formal duty to follow the code of practice:

- those working in a professional capacity
- people receiving payment for work dealing with people who lack capacity
- anyone appointed as an attorney under an LPA
- a deputy appointed by the Court of Protection
- someone doing research covered by the act.

Family, friends and other unpaid carers will find it helpful to use the code for guidance when making significant decisions for a person, eg about where they live.

For details of Alzheimer's Society services in your area, visit [alzheimers.org.uk/localinfo](https://www.alzheimers.org.uk/localinfo)

For information about a wide range of dementia-related topics, visit [alzheimers.org.uk/factsheets](https://www.alzheimers.org.uk/factsheets)

Useful organisations

Alzheimer's Society

Devon House
58 St Katharine's Way

London E1W 1LB

T 0300 222 1122 (helpline 9am-5pm weekdays, 10am-4pm Saturdays and Sundays)

E info@alzheimers.org.uk

W alzheimers.org.uk

Alzheimer's Society Northern Ireland

Unit 4 Balmoral Business Park

Boucher Crescent

Belfast BT12 6HU

T 028 9066 4100

E info@alzheimers.org.uk

W alzheimers.org.uk

Office of the Public Guardian (OPG)

PO Box 16185

Birmingham B2 2WH

T 0300 456 0300 (customer services)

E customerservices@publicguardian.gsi.gov.uk

W www.gov.uk/office-of-public-guardian

The OPG supports and promotes decision making for those who lack capacity or would like to plan for their future, within the framework of the Mental Capacity Act 2005. The Office of the Public Guardian provides a range of useful information online on the Directgov website, including the Mental Capacity Act Code of Practice.

Court of Protection

Royal Courts of Justice

Thomas More Building

Strand

London WC2A 2LL

T 0300 456 4600 (Textphone 020 7664 7755)

W www.gov.uk/court-of-protection

The Court of Protection helps people who have difficulty making their own decisions. They do this by making the decisions for the person or appointing someone else to do so.

Factsheet 460

Last reviewed: March 2012

Next review due: March 2014

Reviewed by: Caroline Bielanska, Chief Executive, Solicitors for the Elderly and Natalie Melling, Best Interests Assessor, (Mental Capacity Act), Registered social worker and Approved Mental Health Professional (Mental Health Act)

This factsheet has also been reviewed by people affected by dementia.

A list of sources is available on request.

Alzheimer's Society National Dementia Helpline

England, Wales and Northern Ireland: 0300 222 11 22

9.00am-5.00pm Monday-Friday

10.00am-4.00pm Saturday-Sunday

Registered charity no. 296645. A company limited by guarantee and registered in England no. 2115499.