

The Mental Capacity Act

The Mental Capacity Act 2005 is a law that protects and supports people who may have difficulty in making some of their own decisions. It ensures that they are given all necessary support to make every decision they are able to make, and to contribute towards any decisions made about their lives that they are unable to make themselves.

What is mental capacity?

Mental capacity is the ability to make a particular decision when it needs to be made.

Why is the Mental Capacity Act vitally important?

The Mental Capacity Act empowers and protects by:

- Supporting people to make their own decisions, and promoting their right to do so wherever possible.
- Providing a framework for assessing a person's capacity to make a decision and for making a decision in their best interests if they lack the capacity to make it themselves
- Providing ways of planning for the future

Who does the Mental Capacity Act affect?

The Mental Capacity Act affects anyone aged 16 or over who may have difficulty making a decision because of a problem with the way their mind is working, whether that problem is temporary or permanent. It also affects anyone who provides support to someone who may have difficulty making a decision, including family, friends, volunteers and professionals. Anyone can use the Mental Capacity Act to plan for a time in the future when they may struggle to make particular decisions for themselves.

The principles of the Mental Capacity Act

Assumption of capacity

No matter who the person is, or what decision they are making, the starting point is the assumption that the person has capacity to take the decision.

Maximising decision-making capacity

The fact that someone needs a lot of support to take a decision does not mean that they lack capacity to take it. That support should be made available to them.

Unwise decisions

If someone has capacity to make a decision, they have the right to decide to do something that others view as unwise.

Best interests

If someone lacks capacity to make a decision, the person in a position to make the decision must follow the best interests checklist - see below for more details.

Less restrictive alternative

How can the person's best interests be achieved in a way that restricts them as little as possible?

When will someone lack capacity to make a decision?

If someone has a problem with the way their mind is working, they will lack capacity to make a decision if that problem means that they cannot do one or more of the following four things:

- understand the information which is relevant to the decision
- remember that information long enough to be able to make the decision
- use / weigh up that information in order to make a decision based on what is important to them
- communicate their decision (by any possible means, such as talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand).

What does 'best interests' mean?

The checklist in the Mental Capacity Act means the decision-maker must:

- not make assumptions about what is in the person's best interests or about their quality of life
- consider whether the decision can be delayed to give time for the person to regain capacity to make the decision themselves
- consider all aspects of the situation
- help the person to be as involved as possible in the decision about them
- take the person's past and present views, wishes, feelings, beliefs and values into account
- consult the person's family and friends and others working with the person.

Independent Mental Capacity Advocates (IMCAs)

If a person lacks capacity to make the decision and they have no family or friends whom it is appropriate to consult, the NHS or council must appoint an Independent Mental Capacity Advocate to support the person if a decision is being made about:-

- a move to accommodation (for 8 weeks or more)
- a hospital stay (for 4 weeks or more)
- serious medical treatment

IMCA involvement can also be considered in:

- safeguarding adults
- accommodation reviews

The Social Care Institute for Excellence provides a lot of information for individuals, their families and carers, professionals and others about the IMCA process.

Planning for the future

Written statements

A person can also write down or tell people about their wishes and preferences about their future treatment or care. These must be taken into account when determining what is in their best interests.

These statements can be about anything, including personal preferences such as having a shower rather than a bath, or not wanting to eat meat.

Naming someone to be consulted

A person can name someone who should always be consulted during the best interests decision-making process if the person lacks capacity to make the decision themselves.

Advance decisions

Patients have a right to refuse medical treatment if they have capacity to do so. If someone is sure they do not want certain medical treatment if the need arises they can make an advance decision to refuse it. This will apply if they lack capacity to make the decision at the time the treatment is offered. Advance decisions about life-sustaining treatment have to be in writing, signed and witnessed.

Lasting Powers of Attorney

Anyone over the age of 18 who has capacity to do so may choose to give one or more people the power to make decisions over their property and affairs or their personal welfare. A personal welfare attorney can only make a decision if the person lacks capacity to make it themselves. To appoint an attorney, a standard form needs to be completed and registered with the Office of the Public Guardian.

The Court of Protection

The Court of Protection can make declarations as to whether or not a person lacks capacity to make a particular decision, or whether an action proposed or taken by someone else is in the person's best interests. Some very big decisions can only be taken on behalf of someone by the Court of Protection. In addition decisions where there has been a major disagreement will also be decided by the Court. If the person has not appointed an attorney, the Court of Protection can be asked to appoint a deputy to take those financial decisions the person cannot make themselves. The government's website provides details on how to apply to the Court of Protection.

Other information and advice

- *The Office of the Public Guardian* have provided an easy-read leaflet called Making Decisions - The Mental Capacity Act.
- For people with smart phones or tablet devices there is a handy app which helps to explain the Mental Capacity Act, and how an assessment of someone's capacity should be conducted. Although the app is designed for professionals who carry out assessments, it also acts as a useful guide for member of the public.
- *The Alzheimers Society* provides a fact sheet on the Mental Capacity Act, including an audio version. The Society has also produced a Dementia-friendly Financial Services Charter which promotes the rights of people with dementia, and aims to ensure that providers of independent financial services do not take advantage of them.
- *Mencap* provide information on the right to make a decision for people with learning disabilities and their carers.
- *Mind* provide an independent summary of everything related to the Mental Capacity Act for people with mental health problems.
- The *Independent Age* website have produced a fact-sheet called 'Managing my affairs if I become ill' which includes information on mental capacity.
- *Carers UK* provide information on mental capacity for carers.