

Preparing for adulthood: making decisions

This leaflet is for the parents and carers of young people who lack capacity and who are approaching the age of 16. It explains about the Mental Capacity Act and how decisions are made in a person's 'best interest'.

What is the Mental Capacity Act?

You need to know about the Mental Capacity Act 2005 (MCA) if you are the family carer of someone who is approaching the age of 16 and who is unable to make some decisions.

The Mental Capacity Act is a law that says that every adult, whatever their disability, has the right to make their own decisions wherever possible. When a person cannot make their own decision, other people will need to decide what is in their best interests. One of the main principles of the MCA is that capacity should be assumed until proven otherwise. The law applies to all people who are 16 years of age and over in England and Wales.

The act provides a legal way for people to make decisions for adults who are not able to and it provides guidance to make sure that decisions are taken in the person's 'best interests'.

Often the person's family will make these decisions but sometimes other people, for instance doctors, are the legal decision makers.

What does the Mental Capacity Act mean for family carers?

If your relative cannot make their own decisions as an adult, you can continue to make some decisions for them in their best interests. However, you cannot automatically do this for them in all aspects of their life after they turn 16. Other people may need to be involved in the decision making process. If it is a medical decision, this will be a doctor. Anybody making 'best interests' decisions on behalf of a person who does not have capacity, must consult with the person's family and take their views into account.

What can you do to plan ahead?

As a family carer, you do not have to wait until your relative turns 16 before you think about this. There are things you can do to plan for decision making in their adult life. The Mental Capacity Act provides some ways in which people can formally act for those unable to make their own decisions:

Deputies (appointed by the Court of Protection)

For some decisions, you, as their parent / carer, can apply to be given the legal power to make decisions, by becoming their deputy. Deputies are appointed by the Court of Protection to make decisions where a person does not have the capacity to appoint a Lasting Power of Attorney themselves.

A deputy can be appointed to make decisions related to property and affairs, and decisions about health and welfare. The court will agree what powers the deputy can have, according to the circumstances of the individual.

A deputy may be necessary if:

- Complex financial matters exist (e.g. handling saving, inheritance, tenancy agreements).
- A series of medical decisions are needed over time.
- If there is a disagreement between a family members and a service provider.

There is a cost to applying to become a legal deputy. You can find out more about this and get further information on how to become a deputy by visiting www.gov.uk/become-deputy/overview.

Lasting Power of Attorney (LPA)

Attorneys are chosen by the person themselves, if they have the capacity to do so, to look after their health, welfare and/or financial decisions. An appointed attorney can then make decisions on behalf of the person when they no longer have the capacity to do so. You have to be over 18 to both appoint and be an attorney. There are two types of LPA:

- Property and financial affairs (can be used while the person still has capacity).
- Health and personal welfare (can only come into effect when the person is assessed as no longer having capacity).

An LPA must be registered in order to be used. There is a cost to applying to become an LPA. You can find out more about this and get further information on how to become an LPA by visiting www.gov.uk/power-of-attorney/overview.

What other ways does the MCA protect adults who lack capacity?

There are other ways in which the Mental Capacity Act protects adults who lack the capacity to make important decisions in their life.

- **The Court of Protection:** The court can take important decisions affecting an adult where there is no agreement on what is in their best interests. The court expects to be used as a last resort where a local agreement cannot be reached, or where the decision is so serious it can only be taken by the court.
- **Independent Mental Capacity Advocate (IMCA):** IMCAs are advocates who are available by right to some people who lack capacity to make important decisions. This includes decisions about serious medical treatment and where to live. IMCAs are available when the adult does not have family or friends who can represent them.
- **Advance Decisions to Refuse Treatment (ADRT):** The act allows adults to decide in advance about refusing a specific medical treatment should they lack capacity in the future. This can only be done by people who are 18 or above and cannot be done on their behalf by somebody else. An individual who lacks capacity cannot make an Advance Decision.
- **Deprivation of Liberty Safeguards (DOLS):** This is an additional safeguard which may be applied for people aged 18 and over, who lack capacity and who are in hospitals and care homes.

Where can I get more information?

Mencap have produced a practical resource to ensure that parents and carers of young people with profound and multiple learning difficulties are involved in best-interests decision making regarding their health.

To access this resource and for more information on the MCA and what it means for young people and their carers, please visit the Mencap website: www.mencap.org.uk/about-learning-disability/health/mental-capacity-act-resource.

What is the test for capacity?

The test for capacity is a decision and time specific test, introduced by the MCA and consists of two parts (figure 1, below).

This test will need to be carried out when a person's capacity is in doubt.

As a family carer, you will normally be fairly sure about whether your relative can make a decision themselves or not. You will use your knowledge of your relative to make a 'reasonable belief' judgement about their capacity for any given decision. For those more everyday decisions, there is not usually a need to record it formally. However, if the decision to be taken is complex or important, the two-stage test will be used by professionals. The results of this assessment must be clearly documented and justified.

Two-stage test of capacity

- **Stage 1:** is there an impairment or disturbance in the functioning of their mind or brain? If the answer is 'Yes' (as it will be for people with profound and multiple learning disabilities) you can move to the second stage.
- **Stage 2:** Does the impairment or disturbance result in the adult lacking the capacity to make a particular decision? You can answer this by asking 4 further questions:
 - Can they understand the information that is being given to them about the decision?
 - Can they retain that information long enough to be able to make the decision?
 - Can they weigh up the information available to make the decision?
 - Can they communicate their decision (by any method)?

If after making every effort to help and support the adult to make a decision, the answer to any of these 4 questions in 'no' then you can conclude that the person does not have capacity for that decision.

Figure 1 Updated by the Safeguarding Team (July 2015)

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Please ask if you need this information in another language or format.

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