

Adult Social Care Mental Capacity Act 2005

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By Adult and Community Services

Mental Capacity Act 2005

In 2007 the Mental Capacity Act (MCA) 2005 became law. The Act states that everyone aged 16 and over must be treated as able to make their own decisions until it is shown that they are not. 'Mental capacity' is the term used for a person's ability to make decisions.

Some people may have difficulty making decisions because of a health condition that affects their thinking, or because of a condition they were born with, such as a learning disability. The MCA 2005 puts in to law the steps that professionals and carers alike must take if they think someone needs a decision taking for them, but most importantly it protects the right of people whose capacity may be questioned to make their own decisions as much as possible. It also enables people to plan ahead for a time when they may lose capacity.

What does the act do?

The Mental Capacity Act 2005 sets out **five key principles**, which underpin the legislation and apply to all:

- **A presumption of capacity** - it must be assumed that a person has capacity to make decisions unless it is proved otherwise;
- The right for individuals to be **supported to make their own decisions** - before anyone concludes that they cannot;
- Individuals retain the right to make what appear **unwise decisions**;
- Any decision made or action taken on behalf of people without capacity must be in their **best interests**;
- Anything done for or on behalf of people without capacity should be the **least restrictive** of their rights and freedoms.

The Act introduced a **Code of Practice**, which was written by the Department of Health. This sets out how professionals, carers and others should work with people who are thought to lack capacity. Carers and staff acting for someone who is thought to lack capacity must always follow this guidance.

If you are family member, friend or other unpaid carer:

The Act says any one person does not have an automatic right to decide for another who lacks capacity, though family members may have done just that for many years. When it is necessary to make significant decisions on someone else's behalf, the Act specifies steps that must be taken following the principles set out above. This is to ensure that everyone is treated fairly and in the same way.

Carers and family members are expected to make decisions following the principles of the Act, and many decisions are made on a daily basis without any degree of formality. The Act recognises this and protects carers who are acting in a belief that the person lacks capacity and where the action is in the person's best interests.

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If a professional such as a Social Worker or Doctor needs to make a decision about care or treatment for a family member who lacks capacity, the Act says that you must be consulted wherever possible and your views must be taken in to account.

Making decisions: A guide for family, friends and other unpaid carers

If you work in health and social care:

The Act and the Code of Practice provides a framework for assessing a person's mental capacity and determining their best interests if they lack capacity to make a decision. It prevents paid carers and others making decisions without following the guidance and principles.

The Act has safeguards and limitations for when you are working with someone who lacks the capacity to consent to receiving care or treatment. For example, if a person who lacks capacity needs to move to a care home, the views of family must be taken in to account.

If you want to plan ahead for the future:

The Act allows you to make a Lasting Power of Attorney (LPA) enabling you to appoint someone to make decisions about your finances and property or your health care and welfare should you ever lack the capacity to make these decisions yourself. For more information, please go to the website of the Office of the Public Guardian (www.publicguardian.gov.uk)

The Act also enables you to make an 'advance decision to refuse treatment' if there is a particular medical treatment you would not wish to receive at a time in the future when you may lack capacity to refuse it. The Government has produced guidance on this at www.direct.gov.uk

Safeguarding vulnerable adults

The Act creates important safeguards:

The Independent Mental Capacity Advocate (IMCA) service was created to represent you if you lack capacity to make certain important decisions and there is no one else who can be consulted. They can also become involved where there may be a dispute over assessments or decisions about a person who may lack capacity.

A new criminal offence of ill treatment or wilful neglect of a person who lacks capacity has been created.

For more information contact:

For more information about assessments, please contact our Access Centre.

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