

# Mental Capacity Act 2005

What the law says about  
supporting people to make  
decisions about their lives



Easy read booklet

# What this booklet tells you about



Some people need help to make decisions about their lives or they might **lack capacity** to make decisions.



**Lack capacity** means they are not able to make a decision about their lives at the time when the decision needs to be made.



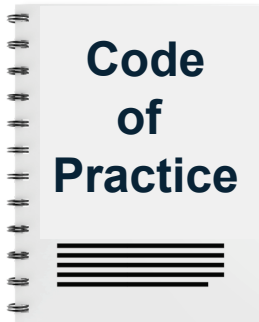
The Mental Capacity Act 2005 is a **law** in England and Wales. It says how people who are 16 years old or more should be

- **assumed** to have capacity to make decisions about their lives. **Assumed** means believe something is true without checking.
- supported to make decisions for themselves whenever possible.
- involved in decisions that other people make for them.
- able to get ready for a time in the future when they might lack capacity to make decisions about their lives.





A **law** is a rule that protects people and makes sure everyone is treated in a good and fair way.



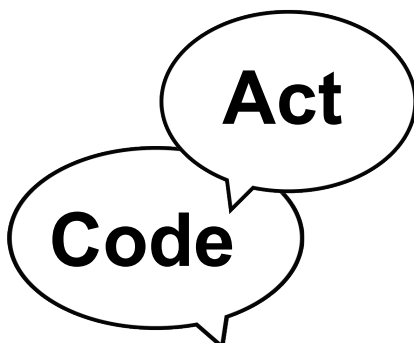
The Mental Capacity Act 2005 says a **Code of Practice** must be written. A **Code of Practice** is a book that has helpful information about a law.



The Mental Capacity Act 2005 Code of Practice is a guide for anyone who works with or cares for people who lack capacity to make decisions about their lives.



This booklet is an Easy Read **summary** of the Mental Capacity Act 2005 Code of Practice. A **summary** means a shorter version.



The Mental Capacity Act 2005 is called the **Act** for short in this booklet. The Code of Practice is called the **Code** for short in this booklet.

# About the Act



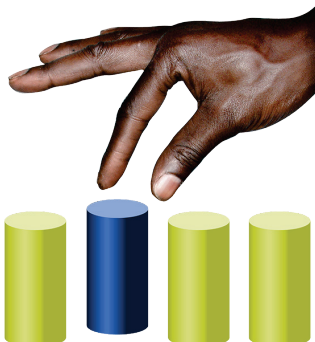
The Act says how people who are 16 years old or more can make decisions about their lives, and how decisions can be made for people who lack capacity.



The Act says people must be given the chance to make their own decisions if they can.



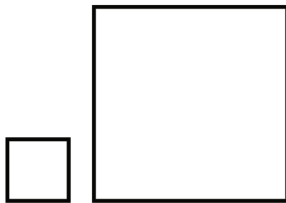
The Act wants to **empower** and protect people who might lack capacity.



**Empower** means give people the right help so they can make good decisions about their lives.



Anyone who works with or cares for a person who lacks capacity must follow what the Act says when making decisions about the person's life.



The Act must be followed for small and big decisions.



Small decisions might be things like choosing what to wear or what to buy at the supermarket.



Big decisions might be things like when to move into a care home or whether to have a serious operation.



There are some decisions that can never be made by someone else. You can read about these decisions in sections 27 to 29 and section 62 of the Act.

# About the statutory principles



The **statutory principles** are the 5 main ideas the Act is about.



1. Every person has the right to make decisions about their life if they can.
2. You must support the person to make the decision if they can.
3. If a person makes a bad decision about their life it does not mean they lack capacity.



4. If you make a decision for a person who lacks capacity it must be the best decision for them.
5. If you make a decision for a person who lacks capacity it must not limit them or take away their **rights and freedoms**.



**Rights and freedoms** are the basic human rights every person should have for their whole life, like fairness and equality.

# About helping people to make their own decisions

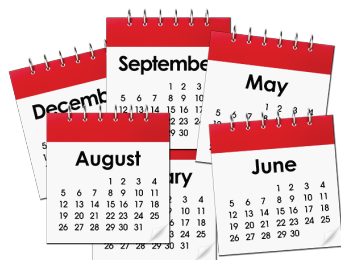


The Act says people must be given the chance to make their own decisions if they can.



To help someone make their own decision the Act says you must check if

- they have all the information.
- they have information about different choices.
- anyone else like their family could help them understand.
- the information could be given in a different way like in pictures.
- they would be more comfortable in a different place or at a different time.
- you could wait until a later time when it might be easier.



# About capacity



In the Code, having capacity means a person is able to make a decision about their life at the time the decision needs to be made.



You should always think a person has capacity to make a decision about their life, unless it is shown they don't.



If you think a person lacks capacity to make a decision about their life at the time the decision needs to be made you must **assess** their capacity.



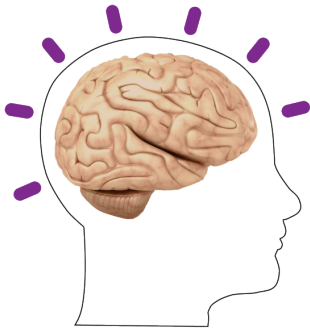
**Assess** means do checks.





To assess a person's capacity the Act says

- you must check if they are able to make the decision.
- if they are not able to make the decision, you must find out if there is a problem with how their brain works.
- you must check if they are unable to make the decision because of the problem with how their brain works.



A person is unable to make a decision if

- they cannot **understand** the information about the decision.
- they cannot **remember** the information about the decision.
- they cannot think about the information and **use** it to help them make the decision.
- they cannot tell other people what their decision is.



# About best interests



The Act says anything you do or any decision you make for a person who lacks capacity must be in their **best interests**.

**Best interests** means the best choices for their life.

To work out a person's best interests the Act says you must



- think if they might be able to make the decision on their own if you wait a while.
- include them in the decision.
- not make the decision because of how old they are, how they look or how they behave.
- not make the decision because it helps you.
- talk to people who know them to find out about their life.
- try to make sure the decision is what they would want by thinking about what the person wants, how they feel and what they believe.
- make sure the decision does not take away their rights and freedoms.
- decide if you should make a report about the decision so people can see why you made it.



# About protection for carers, health workers and social care workers



The Act has rules to protect carers, health workers and social care workers when they make decisions for people who lack capacity. The decisions could be about things like personal care, healthcare or treatments.



The rules make sure carers, health workers and social care workers are not **liable** when they have to do things which might normally be against the law if they are following the rules in the Act.



**Liable** means it would be their fault if a bad thing happened because of a decision they made.



For example spending someone else's money would normally be against the law, but can be allowed for someone who lacks capacity if the rules in the Act are followed.



To be protected by the Act carers, health workers and social care workers must

- assess the person's capacity.
- think about their best interests.
- make sure the right person gives the right care or treatment at the right time.
- think about how serious the care or treatment is.
- write a report about the decision if the care or treatment is serious or takes away the person's rights.
- decide if a **Court** should help make the decision if the care or treatment is very serious.

A **Court** is an official place where decisions can be made by a judge for people who lack capacity.

- think about the need to **restrain** the person and decide if this is fair to them.

**Restrain** means stop a person from moving in a free way.

- use money that belongs to a person who lacks capacity for their best interests.

# About the Court of Protection



The **Court of Protection** is an official place where decisions can be made by a judge for people who lack capacity.



The Court of Protection can

- decide if a person has the capacity to make a decision about their life.
- make decisions about money or personal matters for people who lack capacity, or choose someone else to make those decisions.
- make decisions about the rights and freedoms of people who lack capacity.
- decide if an **LPA** or an **EPA** is **valid**.



**Valid** means proper and legal.

**LPA** is the short name for a **Lasting Power of Attorney**.

**EPA** is the short name for an **Enduring Power of Attorney**. EPAs are the old version of LPAs.



- stop an attorney being allowed to make decisions for a person who lacks capacity.

# About Lasting Powers of Attorney



**Lasting Powers of Attorney** (called **LPAs** for short) let a person who has capacity choose someone they trust to make decisions about their life.



The person chosen to make the decisions is called the **attorney**.



The Act says attorneys must

- follow the statutory principles.
- check the person's capacity.
- make sure what they do is in the person's best interests.
- follow the Code when making a decision.
- only make decisions about things allowed in the LPA.



LPAs must be **registered** with the **Office of the Public Guardian** before they can be used. **Registered** means put on an official list.

# About court appointed deputies



The Court of Protection can **appoint** people called **deputies** to make decisions for people who might lack capacity. **Appoint** means choose them for the job.



The Court of Protection can remove deputies if they are not doing a good job.



The Act has information for deputies. It tells them what they need to do, how their work should be checked and what will happen if they don't do their job properly.



Deputies must

- follow the statutory principles.
- make sure what they do is in the person's best interests.
- only make decisions the Court says they are allowed to make.
- write a report about what they do.

# About Independent Mental Capacity Advocates



**Independent Mental Capacity Advocates** (called **IMCAs** for short) can be chosen to give **independent** support to people who lack capacity and have no one else to help them.



**Independent** means IMCAs are not connected to any person or organisation involved in the life or care of the person who lacks capacity.



It means they only think about the needs of the person who lacks capacity.



IMCAs make sure the wishes, thoughts and feelings of people who lack capacity are heard when best interests decisions are being made about their lives.





The NHS or a local authority will choose an IMCA to support a person who lacks capacity if a decision needs to be made about

- where they will live.
- serious medical treatment.
- keeping them in hospital for more than 28 days.
- keeping them in a care home or other home for more than 8 weeks.
- changing where they have already lived for more than 12 weeks.



IMCAs are allowed to see health and social care information about a person who lacks capacity.



IMCAs must have the right training and experience needed by law.

# About advance decisions to refuse treatment



An **advance decision to refuse treatment** is when a person with capacity says they want to refuse some types of care or treatment they might need in the future.



They do this because they might lack capacity to make a decision in the future when they need the care or treatment.



Advance decisions to refuse treatment can be made by people who are 18 years old or more.



A valid advance decision to refuse treatment must be followed.

# About children and young people



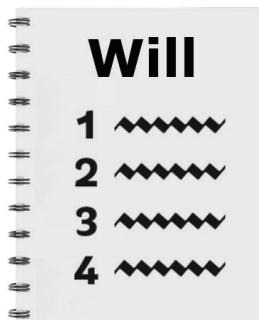
In the Code

- **children** means people who are less than 16 years old.
- **young people** means people who are 16 or 17 years old.



The Act can be used for young people, apart from

- young people cannot make a Lasting Power of Attorney (LPA).
- young people cannot make an advance decision to refuse treatment.
- The Court of Protection cannot make a **will** for a young person.



A **will** is an official plan of what happens to a person's things after they die.



The Act is not always used to make decisions about young people who lack capacity. Sometimes a **person with parental responsibility** is asked to make the decisions.



A **person with parental responsibility** means anyone who is a parent or acts as a parent to a child.



The Act cannot be used for children who lack capacity, apart from

- when a child is treated badly or **wilfully neglected**.

**Wilfully neglected** means not cared for properly.



- the Court of Protection can make decisions about the **property** or **finances** of a child who lacks capacity and is likely to lack capacity when they are 18 years old.



**Property** means the things a person owns, like buildings or cars. **Finances** mean the money a person has.

# About The Mental Health Act 1983



In this booklet we have talked about the **Act** which is the Mental Capacity Act 2005. The Act is a law that says what happens when people lack capacity to make decisions about their lives.



There is another law called the **Mental Health Act 1983** (called **MHA** for short).



The MHA says what happens to people who have mental health problems. It says when they can be **detained** in a place they don't want to be.



**Detained** means kept somewhere like a hospital or police station.



The Act can be used for people who are **subject to the MHA**, apart from

- the Act cannot be used to make decisions about treatment for people who have been detained because of the MHA.
- advance decisions to refuse treatment do not always have to be followed if people have been detained because of the MHA.
- when a person has a guardian because of the MHA, the guardian is allowed to make some decisions for them, like where they will live.
- Independent Mental Capacity Advocates (IMCAs) do not have to help make decisions about medical treatment or where a person will live if those decisions are made using the MHA.

**Subject to the MHA** means the MHA is used to help you with your mental health problems.

Health workers are never allowed to give a treatment called **psychosurgery** to a person who lacks capacity, even if they are subject to the MHA.

# About protection for people who lack capacity



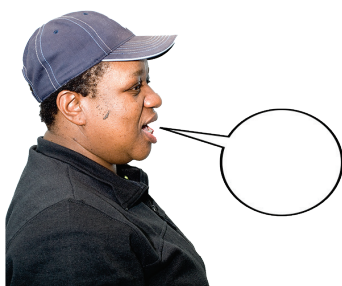
There are **agencies** who protect people who lack capacity to make decisions about their lives.



**Agencies** means businesses or organisations or services.



The agencies make sure people who lack capacity are treated in a good and fair way.



If you think a person who lacks capacity is not being treated in a good or fair way you must tell the right agency straight away.



- If you think a **crime** has been done to a person who lacks capacity tell the police and social care services.

**Crimes** are things that are against the law like stealing or being violent.



- If you think a person who lacks capacity is not being looked after properly tell social care services.



- If you think an attorney or a deputy is not doing their job properly tell the Office of the Public Guardian.



- If you think an **appointee** is not doing their job properly tell the **Department for Work and Pensions**.

An **appointee** is a person who is allowed to collect benefits or pensions for a person who lacks capacity.

They can use the money to buy what the person who lacks capacity needs.





# About disagreements



Sometimes people will disagree about what should happen to a person who lacks capacity and what is the best decision for their life.



- Try to sort out the disagreement as quickly as possible so the problem doesn't get worse.

- Make sure someone speaks up for the person who lacks capacity.

- Use **mediation** if this will help. **Mediation** is when an independent person helps to sort out a disagreement.



- If you are worried about the health or social care a person who lacks capacity is getting find out the right way to complain.

- If the disagreement cannot be sorted easily you can ask the Court of Protection to look at it.



There are some decisions the Court of Protection always needs to make.

# About personal information



**Personal information** is anything that tells other people who you are, like your name or email address.

The Code says what personal information you are allowed to see or give out if you work with or care for a person who lacks capacity.



- If you are an attorney or a deputy you can ask to see personal information about the person as long as it will help you make the best decision for their life.



- If you are not an attorney or a deputy you might be able to see or give out personal information about a person but it will depend on what the decision is.



- If you are a health worker or a social care worker you can give out personal information about a person if it is in their best interests.

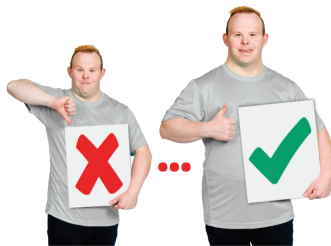
# About research projects and capacity



**Research** is work done to find out new information about a subject. **Researchers** are the people who do the work.



It is important to do research with people who lack capacity.



It teaches us important information and helps us understand their lives better.



Researchers must have **consent** from people they work with. **Consent** is when you officially agree to do something.



The Act has information for researchers who want to work with people who cannot give consent because they lack capacity.



The Act has rules to protect people who lack capacity or might lack capacity to consent to take part in research.



To be protected by the Act researchers must

- have official approval.
- know when the research will be done.
- do good research.
- think about the feelings of people who lack capacity.
- think about other ways to protect people who lack capacity.
- learn how to **communicate** with people who lack capacity.
- Learn how to **communicate** with carers and other people who are important to people who lack capacity.



**Communicate** means talk to in a good and clear way.