

Mental Capacity Act

Adults' Services

Quick Reference

If **you** were involved in an accident that left you with a brain injury, who would look after your welfare or your finances? Who would make decisions on your behalf, and what legal authority would they have?

If **you** became confused as a result of the onset of dementia, who would look after your finances or make decisions about your care needs? Who would make decisions on your behalf, and what legal authority would they have?

This guide provides information about your rights as a person, aged 16+ and with mental capacity. The guide also highlights what needs to happen and by whom when specific decisions need to be made on your behalf because you no longer have the mental capacity to make the decision for yourself.

The guidance has been updated to take account of the Judgment of the UK Supreme Court in March 2014.

➤ **Five key starting points**

1. Since October 2007, the Mental Capacity Act has provided a statutory framework to empower and protect vulnerable people, aged 16+, who may not be able to make their own decisions. It also enables people to plan ahead for a time when they may lose capacity.
2. A statutory Independent Mental Capacity Advocacy (IMCA) Service exists to represent people who lack mental capacity to make some types of decisions for themselves. POhWER provides the IMCA Service across Sussex. For more information, telephone 0300 456 2370 or visit: pohwer.net
3. Adults who hold the legal role of a Lasting Power of Attorney are able to act where health and welfare decisions are needed or where financial matters need management. The application forms, with accompanying information guides, for the two different types of Lasting Power of Attorney are available on the gov.uk/power-of-attorney website. Alternatively, for more information, contact the Office of the Public Guardian by telephone on 0300 456 0300 (Monday-Friday 0900-1700 hours; Wednesday 1000-1700 hours).
4. The Court of Protection appoints deputies to act on its behalf and also acts as the final arbiter in matters relating to mental capacity; it is a court of law. For more information, use the search engine on the gov.uk website to find '**Court of Protection**' or contact the Court on telephone 0300 456 4600 (Monday-Friday 0900-1700 hours only).
5. Staff who work for Adults' Services are required by law to have regard to the two Codes of Practice to the Mental Capacity Act. This means what it says. To access the Codes of Practice, use the search engine on the gov.uk website.

➤ **The statutory principles – a reminder**

- ✓ Any person, aged 16+, must be assumed to have the mental capacity to make his or her own decisions - unless it is established otherwise.
- ✓ All practicable steps must first be taken to assist the person to make such decisions.
- ✓ Any person who has mental capacity has the right to make an unwise decision.
- ✓ Any actions done or decisions made for a person who lacks mental capacity must be done in that person's best interests.
- ✓ Any such actions or decisions must be achieved, wherever possible, in a way that does not restrict the person's rights.

➤ **Assessments of mental capacity**

Where assessments of mental capacity relate to day-to-day decisions and caring actions **no** formal capacity assessment record is needed. The Act provides protection from liability for actions taken in a person's best interests.

A formal assessment of capacity may however be required in relation to:

- ✓ decisions about where to live;
- ✓ what care services support to receive at home;
- ✓ whether to report a criminal or abusive act;
- ✓ where there is a dispute with the person, the family and/or the care team as to the capacity or views of a person;
- ✓ where the capacity of a person could be open to a legal challenge, such as in relation to a claim for personal injury.

The statutory Independent Mental Capacity Advocacy (IMCA) Service will only become involved where a person who meets the legal criteria for the involvement of an IMCA has been assessed as lacking mental capacity.

Message from Lyn Romeo, Chief Social Worker for Adults (England)

'Social workers' knowledge and confidence in working within the Mental Capacity Act is of increasing importance as they have a leading role to play in ensuring that appropriate care and protection is provided under the Act.'

November 1st 2013

➤ **Acting in a person's best interests**

Where a person aged 16+ is unable to make specific decisions for him/herself it is possible to act in that person's best interests. Making (and recording) a decision in a person's best interests means:

- ✓ not rushing into making a decision;
- ✓ taking into consideration all relevant circumstances, including the person's beliefs and values, past and present wishes, and any written statements or advance decisions made when the person had mental capacity;
- ✓ deciding whether the decision can be delayed until the person regains capacity to make the decision for him or herself, if this is a possibility;
- ✓ making sure that every effort has been made to enable the person to be involved in the decision-making process;
- ✓ considering other factors which might have influenced the person's decision such as altruistic motives, consideration for others and duties and obligations towards future beneficiaries and/or dependents;
- ✓ consulting with others such as partners, carers, family members, persons holding one or more Powers of Attorney, any deputy who has been appointed by the Court of Protection, and other relevant people where it is practicable to do so; and
- ✓ not being motivated by a desire to bring about the person's death when the decision relates to life-sustaining treatment.

➤ **Advance decisions**

An advance decision can be made by any adult, aged 18+ and with mental capacity, to refuse specific medical treatment at a later point when they may lack the mental capacity to consent to or refuse that treatment. There is no requirement for the advance decision to be in writing - unless it relates to life-sustaining treatment (in which case specific rules also apply). For further information, read chapter 9 in the Mental Capacity Act Code of Practice.

➤ **Deprivation of Liberty Safeguards (DOLS) – West Sussex**

Additional Deprivation of Liberty Safeguards were introduced across England and Wales in April 2009. They apply to any adult, lacking mental capacity, who is staying in a hospital or a care home and who may need to be formally and legally deprived of their liberty in that place.

The West Sussex DOLS Team, comprising skilled practitioners who have undertaken specific training, will formally assess the person's circumstances. Following the Judgment issued by the Supreme Court in March 2014, the following are indicators that a deprivation of liberty is occurring: 1) the person lacks mental capacity to make decisions about the place of residence; 2) the person is subject to continuous supervision and control within the care home or hospital for more than a short period of time*; and 3), would not be free to leave if he/she decided to leave the premises. [*As little as 30 minutes.]

People who live in supported living arrangements may also now be covered by the Deprivation of Liberty Safeguards, in which case an application will need to be made to the Court of Protection for any legal deprivations to be authorised.

For more information, the West Sussex DOLS Team can be contacted by telephone on 0330 22 23691 (Monday-Friday 0900-1700 hours only).

➤ **Financial Adult Safeguarding (FAS) Team – West Sussex**

The FAS Team makes financial decisions on behalf of people who lack the mental capacity to make those decisions for themselves and who have no one else willing, able and appropriate to do this. The team provides deputyship on behalf of the Court of Protection.

For more information, the FAS Team can be contacted by telephone on 0330 22 22078 (Monday-Friday 0900-1700 hours only). Note: only staff working for Adults' Services can refer to the FAS Team.

➤ **Further information**

Information about mental capacity matters and links to the websites of national and other organisations can be found on the county council's website (westsussex.gov.uk/mentalcapacity). The West Sussex Connect to Support website (westsussexconnecttosupport.org) may also be useful.