



HM Government

# Mental Capacity Act

## Rights Under the Act

This Act protects and empowers people who may not be able to make their own decisions.

## More information is available from the following organisations:

Department of Health

Office of the Public Guardian

NHS Choices

Ministry of Justice

Social Care Institute for Excellence (SCIE)

Your Local Authority

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## Presumption of Capacity

**Unless proved otherwise it must be assumed that a person has capacity to make a decision.**

A person can lack capacity if they have:

- an impairment/disturbance affecting the mind or brain **and**
- that impairment/disturbance means that the person is unable to make a decision at the appropriate time.

A person is unable to make a decision if they cannot understand, retain or weigh up the information or communicate the decision.

**Capacity can vary over time and depending on the decision, so capacity should be reassessed appropriately.**

## Support to Make Decisions

**Every effort must be made to help people make their own decisions.**

The fact that a decision may seem unwise does not mean that a person does not have capacity to make that decision.

Steps should be taken to help the person engage, communicate, and understand before any judgement about their capacity to make a decision is made.

**If it is not possible to help a person to make their own decision then a decision can be made in their best interests.**

## Best Interests Decisions

**Every effort should be made to find out the person's wishes, feelings, beliefs and values before reaching a decision.**

When making a best interests decision every effort should be made to consult with the person's friends, family, carers and anyone with a positive interest in the individual's well-being.

A best interests decision should take into account the person's wishes and feelings as well as any less restrictive alternatives.

**The desire to protect a person must be balanced against the benefits of empowering them.**

## Maximising Freedoms

**A person who lacks capacity has the same human rights as everyone else.**

Care and treatment should be provided in the least restrictive way possible to achieve the intended purpose.

There are safeguards to protect those who lack capacity whose freedom is significantly restricted by their care package. Any such restrictions must be independently reviewed to check they are in the person's best interests and there are no less restrictive options.

**Decisions made on behalf of another should always seek to maximise freedom of movement and choice.**

## Advance Decisions

**People have the right to make decisions in advance about their care.**

A person with capacity can make an advance decision to refuse treatment which they know they don't want to have. This can include life-sustaining treatment decisions.

A statement of wishes allows a person to make their views on their future care known. Any statement of wishes should be taken into account when best interests decisions are made.

**Before acting on an advance decision or statement of wishes, check that it still reflects the person's views.**

## Representation and Support

**A person can nominate someone to act on their behalf should they lose capacity in the future.**

Anything done under a lasting power of attorney must be done in the person's best interests and must follow the principles of the Mental Capacity Act.

If a person has no one to support or represent them, an Independent Mental Capacity Advocate (IMCA) can be appointed.

**A lasting power of attorney can be made for financial and/or health and welfare decisions.**

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