

## Independent Mental Capacity Advocates - known as IMCAs

An IMCA is someone appointed to support a person who lacks capacity but has no one to speak for him or her. They are appointed for decisions relating to serious medical treatment, a change of living situation and some adult protection cases.

## Lasting Power of Attorney (LPA)

The Act allows a person (aged 18 and over) to appoint an attorney to act on their behalf if they should lose capacity in the future. This can be for health and personal welfare as well as property and affairs. It must be made whilst the person still has capacity.

## Advanced decisions

This allows the person the right to refuse treatment and is legal and binding. It can be oral or written, but must be written if it relates to life sustaining treatment. It must be made whilst the person still has capacity and is aged 18 or over.

## Advanced statements

This is an expression of a person's wishes and preferences for treatment but is NOT binding. This also must be made whilst the person still has capacity.

## Deputy of the Court

This is a person appointed by the Court to act on behalf of a person who already lacks capacity. The Court gives clear instructions on what the Deputy can act on and for what time scale.

## Court of Protection

This is equal to the High Court and will rule on case law. It can make decisions about capacity and serious decisions on health care, treatment, welfare, property and finances. It can appoint and remove Deputies and make decisions on LPAs.

## Public Guardian

Acts for the Court, by registering LPAs, writing reports, keeping a register of Court appointed Deputies and supervises them. It directs Court of Protection visitors and receives reports from LPA's. It also provides general information on the Act and deals with enquiries and complaints.

## Criminal offence of ill treatment and neglect

The Act states that anyone caring for a person who lacks capacity, who is found to be ill treating or neglecting that person will be subject to a fine/and or a prison sentence of up to five years.

## For additional information see:

[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

**Tel: 0845 330 2900**

[www.doh.gov.uk](http://www.doh.gov.uk)

[www.dca.gov.uk](http://www.dca.gov.uk)

[www.westmidlands.csip.org.uk/mental.health](http://www.westmidlands.csip.org.uk/mental.health)

If you would like this information in another language, large print, Braille or on CD, then contact Five Star on [0121-446-5197](tel:0121-446-5197) or email: [mail@5starbit.co.uk](mailto:mail@5starbit.co.uk)

# Mental Capacity Act 2005

## What is this?

It is a legal framework to empower and protect vulnerable people who are not able to make their own decisions.

It makes it clear who can make decisions for someone who lacks capacity (known as the decision-maker), in which situations and how they should go about this.

It provides a checklist of factors that decision-makers must work through in deciding what is in a person's best interests.

It enables people to plan ahead for a time when they may lose mental capacity.

## It creates new powers/bodies and roles:

- Independent Mental Capacity Advocates
- Lasting Power of Attorney (LPA)
- Advanced Decisions and Statements
- Court of Protection and Deputies
- Public Guardian
- New criminal offence of ill treatment or neglect.

## Who does it affect?

The Mental Capacity Act applies to people aged 16 and over who lack the capacity to make decisions for themselves.

## Core principles

The Act gives five Core Principles that all carer's most follow:

1. A person must be assumed to have capacity unless it is shown that they lack capacity.
2. All practicable and reasonable steps must be taken to help and encourage people to make decisions.
3. A person is not to be treated as unable to make a decision just because they make an unwise decision.
4. Decisions made for a person without capacity must be in their best interests.
5. Anything done for the person who lacks capacity must be the least restrictive option.

## Assessing capacity

The Act states that capacity relates to the particular decision being asked and that capacity can vary. It also states that capacity can be temporary or permanent.

Anyone assessing someone's mental capacity to make a particular decision should use the two-stage test of capacity.

## Two-stage test of capacity

**Stage 1:** Does the person have an impairment of, or a disturbance in the functioning of their mind or brain? If so

**Stage 2:** Does the impairment or disturbance mean that the person is unable to make the particular decision being asked?

The person will be unable to make the particular decision if after all appropriate help and support they cannot do one of the following:

1. **Understand the information given.**
2. **Retain the information long enough to be able to make the decision.**
3. **Weigh up and use the information.**
4. **Communicate their decision - in any way.**

If it is shown that the person lacks capacity to make a particular decision then someone must act in the person's best interests to make the decision for them. This person is called the decision-maker.

## Who can be a decision-maker?

Many different people may be required to make decisions or act on behalf of someone who lacks capacity - carers (both paid and unpaid), family, nurses, doctors, social care staff, Lasting Power of Attorneys (or Enduring Power of Attorneys) and Deputies appointed by the Court.

## Best interests

The Mental Capacity Act gives a checklist of things to take into account when making a decision for someone who lacks capacity or for carrying out an act on their behalf.

### Checklist:

- a) Encourage the person to take part as much as possible.
- b) Identify all relevant circumstances.
- c) Find out the person's past and present wishes, feelings, beliefs, values and any other factors they would be likely to consider if they had capacity, including any advanced statements.
- d) Do not make assumptions based on the person's age, appearance, condition or behaviour.
- e) Assess whether the person might regain capacity.
- f) If the decision concerns life-sustaining treatment then the best interests decision should not be motivated by the desire to bring about the person's death.
- g) Consult with others where it is practical and appropriate to do so. This includes anyone previously named as someone to be consulted; anyone engaged in caring for the person; close friends, relatives or others with an interest in the person's welfare; any attorney and any Deputy appointed by the Court.
- h) Avoid restricting the person's rights by using the least restrictive option.
- i) Abide by any valid advanced decision.