

Fact sheet

Last Review Date: 5 January 2022

Next Review Date: January 2023

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Mental Capacity Act 2005

The Mental Capacity Act aims to protect people, over the age of 16 years, who for any reason cannot make decisions for themselves. It provides clear guidelines for carers and professionals about who can take decisions in which situations. This applies whether decisions are life changing events or more every day matters.

The act presumes capacity and states that everyone should be treated as being able to make their own decisions until it is shown that they cannot. The underlying philosophy of the Mental Capacity Act is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests.

A person's capacity to make a decision must be established at the time that a decision needs to be made. A lack of capacity could be because of mental health problems, dementia, a learning disability, a brain injury, a stroke or unconsciousness' or a sudden accident.

Anyone who works with or cares for an adult who lacks capacity must comply with the Mental Capacity Act when making decisions or acting for that person. The act introduces a criminal offence of neglect or ill-treatment of a person who lacks capacity.

The Mental Capacity Act creates important safeguards - these are:

The Court of Protection

This has the power to make declarations about whether someone lacks capacity, make orders, or appoint Deputies to act and make decisions on behalf of someone who lacks capacity.

For further information, please visit: <https://www.gov.uk/courts-tribunals/court-of-protection>

The Office of the Public Guardian

The Act has created a new public official called the Public Guardian. The Public Guardian has several duties under the Act including registering Lasting Power of Attorney's (LPAs) and Deputies. The Public Guardian is supported in his role by a new office called the Office of the Public Guardian.

For further information, please visit: <http://www.gov.uk/government/organisations/office-of-the-public-guardian>

Independent Mental Capacity Advocate (IMCA)

An IMCA is someone appointed to support a person who lacks capacity. They have to be involved when decisions about serious medical treatment or a change in the person's accommodation is being made by the NHS or a local authority and when the person who lacks capacity has no appropriate relative or friend to speak on their behalf.

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Mental Capacity Act Code of Practice

The Code of Practice supports the Mental Capacity Act and provides guidance to all those who care for and/or make decisions on behalf of adults who lack capacity. The Code of Practice includes case studies and clearly explains in more detail the key features of the Mental Capacity Act including the five key principles of the act.

These five statutory principles are:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be effectively achieved.

To find out more, visit: www.gov.uk/government/collections/mental-capacity-act-making-decisions

Further resources can be viewed by visiting: www.scie.org.uk/mca-directory/



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