

Understanding the Mental Capacity Act



The Mental Capacity Act 2005 for England and Wales supports and protects people who may be unable to make some decisions. Find out what the Mental Capacity Act covers and how it can help people.

What is mental capacity?

Every day we make decisions about lots of things in our lives. The ability to make these decisions is called mental capacity. People may have difficulties making decisions some or all of the time. This could be because they have:

- a learning disability
- dementia
- a mental health problem
- a brain injury
- had a stroke

The Mental Capacity Act Code Of Practice has more information and guidance on how to assess someone's ability to make decisions.

- [Download 'Mental Capacity Act 2005 Code of Practice' \(PDF, 1131K\)](#)[Opens new window](#)
- [Help with PDF files](#)

What the Mental Capacity Act covers

The Mental Capacity Act covers major decisions about someone's property and financial affairs, health and welfare and where they live. It also covers everyday decisions about personal care (such as what the person eats), when the person can't make those decisions for themselves.

This means if you are unable to make some decisions, the Mental Capacity Act says:

- you should have as much help as possible to make your own decisions
- people should assess if you can make a particular decision
- even if you cannot make a complicated decision for yourself, this does not mean that you cannot make more straightforward decisions
- even if someone has to make a decision on your behalf you must still be involved in this as much as possible
- anyone making a decision on your behalf must do so in your best interests
- [How to decide if a person lacks mental capacity](#)

The main values of the Mental Capacity Act

The Mental Capacity Act sets out five principles - the values that are the basis of the legal requirements in the act.

Every adult has the right to make his or her own decisions and it must be assumed they can unless it is proved otherwise. Also, a person must be given all reasonable help before anyone treats them as though they are unable to make their own decisions.

Just because someone makes what might be seen as a poor decision, it should not be assumed that they are unable to make any decisions.

Any decision made for a person who is unable to do so for themselves must be done in their best interests. Any decisions made for someone else should not restrict their basic rights and freedoms.

Organisations that protect vulnerable people

The Mental Capacity Act 2005 provides protection and support for people who lack capacity to make their own decisions. This is done through three main organisations:

- the Court of Protection
- the Public Guardian
- the Independent Mental Capacity Advocate

The Court of Protection

The Court of Protection has the power to make decisions about whether someone lacks mental capacity. It can also appoint deputies to act and make decisions on behalf of someone who is unable to do so on their own.

The Public Guardian

The Public Guardian is an individual whose role it is to protect people who lack mental capacity from abuse. The Public Guardian has several duties:

- registering Lasting Powers of Attorneys
- registering Enduring Powers of Attorney
- supervising deputies appointed by the Court of Protection

Independent Mental Capacity Advocates

An Independent Mental Capacity Advocate is someone appointed to support a person who lacks capacity and has no one to speak for them. Independent Mental Capacity Advocates only become involved when certain decisions need to be made involving serious medical treatment. Independent Mental Capacity Advocates are also involved in a change in the person's accommodation where it is provided by the NHS or a local authority.

- [Concerns about a vulnerable person](#)
 - [The Court of Protection and how it appoints deputies](#)
 - [The Office of the Public Guardian and the registers of attorneys and deputies](#)
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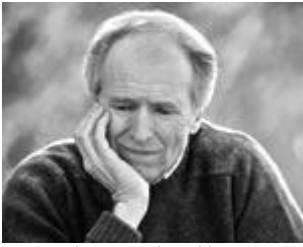
Three Stories - a film about the Mental Capacity Act

'Three Stories' is a documentary about three real-life stories. It shows how the Mental Capacity Act helps and protects people who lack capacity to make some decisions.

The 15-minute-long film is available in three formats:

- Windows Media video - the WMV file
- QuickTime - the MOV file
- Real Player video - the RMVB file
- [Download Mental Capacity Act video \(WMV, 27342K\)](#)

Concerns about a vulnerable person



You may know a vulnerable person or someone who has difficulty making decisions. It could be a family member, friend or neighbour. Find out what to do if you're concerned about how they're being treated and who you can talk to.

Concerns about someone who finds it difficult to make decisions

You may know someone who is having difficulty making decisions for themselves about:

- their finances or property

- their personal health and welfare

Some people make legal agreements called Enduring or Lasting Powers of Attorney so other people can make decisions for them. If someone you're concerned about has not made an Enduring or Lasting Power of Attorney, the Court of Protection can make decisions for them. The Court of Protection can also appoint a deputy to make these decisions.

- [Becoming a deputy and your responsibilities](#)
- [The Court of Protection and how it appoints deputies](#)
- [What is a Lasting Power of Attorney?](#)

Helping someone make a decision

If someone is having difficulty making decisions, with help and support they may still be able to make the decision themselves. When helping someone to make a decision, you should encourage and support them and consider:

- if they have all the information they need to make the decision
- if the information can be explained or presented in a way that is easier for them to understand
- if there is a particular time of the day when their understanding is better

- if they find it easier to make a decision in a particular place, for example their own home

If they make a decision that you do not agree with, it does not mean that they are unable to make decisions for themselves. They must always be given the choice to make their own decisions, whether you agree with them or not.

Everyone's circumstances are different and you will need to make an assessment of the person's capacity before making a decision on their behalf. See 'understanding the Mental Capacity Act' for additional guidance.

- [How to decide if a person lacks mental capacity](#)
- [Understanding the Mental Capacity Act](#)

Concerns about someone being abused

If you know a vulnerable person that you believe is at risk of abuse or is being abused, it is very important to let someone know. Abuse can be:

- physical
- sexual
- psychological (such as threats, harassment or forcing someone to live somewhere they don't want to)
- financial (such as pressuring people to part with money, benefits or property)
- neglect (such as withholding medication or not getting regular food)

A person being abused may not be able to report the abuse they are experiencing. They may need your help to tell someone in a position of authority to investigate the alleged abuse and stop it from happening.

You may be worried that you are wrong or concerned about what may happen if you report it. But it's important that you tell someone what you think is happening.

If you think someone is being abused, you should act straight away. Don't assume someone else will do it.

Who to contact if you think someone is in immediate danger

If you think someone is in immediate danger and could be hurt you should ring 999 and tell the operator what is happening.

Who to contact if you think someone is in less immediate danger

If someone is at risk of abuse but is in less immediate danger you should contact the relevant agency. For different people and different concerns, there are different organisations you should contact.

Vulnerable adults, children or young people

You should contact either the adult or children services department of the local authority where the vulnerable person lives. You can find contact details for local authorities using the link below.

- [Find your local council](#)[Opens new window](#)

Criminal offences

If you have good reason to suspect someone has committed a crime against a vulnerable person you should contact the police.

You should also contact adult services or children services of the local council so they can support the victim.

- [Find a police force, neighbourhood policing team or police authority](#)

Care standards

You may be concerned about the standard of care in a care home, or about the care provided by a carer.

In these cases you should contact the adult or children services department of your local authority.

You can also contact the Care Quality Commission (in England) by calling 03000 616161. If you live in Wales you can contact the Care and Social Services Inspectorate by calling 01443 848450.

- [Find your local council](#)Opens new window

Healthcare or medical treatment

You may be concerned about the care or treatment given to the person by the NHS, such as in an NHS hospital or clinic. In these cases you should contact the managers of the service.

- [Find your local health services on NHS Choices](#)Opens new window

Concerns about an attorney or deputy

Attorneys and deputies are people responsible for making decisions for people who lack the mental capacity to do so for themselves. They are meant to act with the other person's best interests in mind. They can be removed from their position if they are not doing so.

- [Concerns about an attorney, deputy or a decision made for someone else](#)