

Making decisions and your mental capacity

Some people have difficulties making decisions. This could be due to a learning disability, dementia, a mental health problem, a brain injury or a stroke.

What is mental capacity?

Mental capacity is your ability to make decisions. Some people have difficulties making some decisions all or some of the time.

Legal definition of mental capacity

Someone who lacks mental capacity can't do 1 or more of the following:

- understand information given to them to make a particular decision
- retain that information long enough to be able to make the decision
- use or weigh up that information to make the decision
- communicate their decision

A person's mental capacity can be assessed by a relative or carer but a formal assessment by a professional such as, a doctor or solicitor, may need to be made if the decisions are more complex. All professionals and paid carers must 'have regard to' a [Code of Practice](#) when supporting someone who lacks mental capacity.

The information is general guidance on your rights and responsibilities. It is not legal advice. If you need support or advice on your rights or what action to take please contact a qualified adviser or solicitor.

The Mental Capacity Act 2005

The Mental Capacity Act 2005 came into force in England and Wales in 2007. It affects anyone over 16 and applies to all sorts of decisions, for example financial matters, social care or medical treatment. It also covers the legal arrangements to plan ahead for a time when you may lack capacity to make certain decisions for yourself. This was previously referred to as an Enduring Power of Attorney and is now known as a Lasting Power of Attorney (LPA).

The Mental Capacity Act explains what happens when people lack capacity and are unable to make decisions. It sets out that:

- being unable to make a complex decision doesn't mean that you can't make straightforward decisions
- being unable to make a decision at a certain time doesn't necessarily mean that you will be unable to make it at a later time or date
- someone can't decide whether you lack capacity or make assumptions about what is in your best interests, merely on the basis of your age, appearance, condition or behaviour
- if someone has to make a decision on your behalf, they must still involve you as much as possible and that the decision is made in your best interests
- people who lack mental capacity are given as much help as possible to make decisions

For more details read [Making decisions for someone else](#) and [a guide for family, friends and other unpaid carers](#) on GOV.UK.

Deprivation of Liberty Safeguards (DOLS)

The Deprivation of Liberty Safeguards were introduced to the Mental Capacity Act 2005 in April 2009.

When someone lacks mental capacity to consent to care or treatment, it is sometimes necessary to deprive them of their liberty to protect them from harm but only when it is in their best interests. The safeguards are to protect people who lack mental capacity from being detained when it's not in their best interests. To prevent arbitrary detention and to give people the right to challenge a decision.

This legislation sets out a procedure for getting permissions to deprive someone of their liberty. Without that authorisation the deprivation of liberty is unlawful. The safeguards apply to all care home residents, both publicly and privately funded and people in hospitals. For people not in a care home or hospital, deprivation of liberty is only lawful with an order from the Court of Protection.

More information on the Mental Health Act and Deprivation of Liberty Safeguards can be found on [Mind's website](#) and Age UK's factsheet [The Deprivation of Liberty Safeguards](#).

Relevant Person's Representative (RPR) service

The RPR service is for people subject to an authorised deprivation of liberty safeguard (DOLS). This means they are not free to leave and are being supervised by staff. An RPR can be appointed if you do not have a family member or friend who is willing to represent you. The RPR helps you understand and exercise your rights under the DOLS. This includes your right to appeal. ?

If you are eligible for this service your social worker can refer you. [Your Voice Counts](#) is commissioned by Newcastle City Council to provide the RPR service in Newcastle.

Support available if you lack capacity and don't have anyone who can support you

Independent Mental Capacity Advocate (IMCA) Service

The IMCA Service is for people who lack mental capacity and have no one to support them or represent their views. An IMCA is appointed by a professional to support and represent you to make important decisions about:

- serious medical treatment
- long term change of residence. For example moving into a hospital or care home
- deprivation of liberty

You may lack capacity because of dementia, a brain injury, a learning disability or mental health needs. An IMCA can be involved if you've been abused or neglected or is accused of abusing someone else.

What happens when an IMCA is appointed

The IMCA:

- meets you and others involved in your care so you can speak up about your wishes, feelings, beliefs and values
- submits a report to the decision maker highlighting all of the things that are important about the decision
- can challenge the decision maker on your behalf if needed.
- can help with care reviews in certain cases

How to use the IMCA Service

You can be referred to this service by a health professional, a social worker or [Community Health and Social Care Direct](#). Full details of how to make a referral are on [Your Voice Counts website](#).

[Your Voice Counts](#) is commissioned by Newcastle City Council to provide the IMCA service in Newcastle.

Independent Mental Health Advocate (IMHA)

IMHA help people who have no one to support them or represent their views.who are:

- detained or 'sectioned' under the Mental Health Act also known as 'subject to the Mental Health Act'
- on supervised community treatment or guardianship orders
- conditionally discharged from hospital

IMHAs can help you to:

- understand the information you are given about your care or treatment
- talk to the medical or social work team about your care or treatment
- access information about how the Mental Health Act applies to them
- attend meetings with you or stand in for you if you prefer
- help with applications to Tribunals and Managers reviews
- support you to participate in decisions

How to use the IMHA Service

You can self refer to this service if you are eligible or you can be referred to this service by a health professional, a social worker or [Community Health and Social Care Direct](#). Full details of how to make a referral are on [Your Voice Counts website](#).

[Your Voice Counts](#) is commissioned by Newcastle City Council to provide the IMHA service in Newcastle.

Advocacy under the Care Act

Care Act advocacy is for people who have difficulty in understanding or taking part in:

- carers assessments
- safeguarding enquiries or processes
- social care: assessments, reviews or support plans.

The council makes referrals for this service when needed if you have no one who can support you or represent your views.. [Your Voice Counts](#) is commissioned by Newcastle City Council to provide this service in Newcastle.

Planning ahead

The Mental Capacity Act 2005 also explains how you can plan ahead for a time when you may lack mental capacity. This is done by creating a Lasting Power of Attorney (LPA). LPAs came into force on 1 October 2007 and have replaced the existing Enduring Power of Attorney (EPA), although EPAs made before this time can still be used.

An LPA allows you to appoint someone to make decisions on your behalf should you ever need them to. This includes decisions about finances, property, health and personal welfare. You can read more about this in our section on [Power of Attorney](#).

[Office of the Public Guardian](#) register can be searched to find out if someone has an attorney or deputy acting on their behalf.

The Act will also enable you to make an advance decision (previously known as an advance directive) or a 'living will'. This means that you can make the decision to refuse certain types of medical treatment should you lack the capacity to decide this in the future. For further information, see our section on [Advance decisions \(living wills\)](#).

Gentle Dusk is an organisation that aims to raise awareness of the importance of end of life care planning through their training programmes and their futurematters volunteer-led project.

Other Useful Information

- [Banking for people who lack capacity to make decisions](#) from British Bankers' Association

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Useful Organisations

Connected Voice Advocacy

Email: advocacy@cvsnewcastle.org.uk

Website: www.advocacycentrenorth.org.uk

Telephone: 0191 235 7013

Address: Newcastle Council for Voluntary Service, NE1 8AF

MIND

Email: admin@tynesidemind.org.uk

Website: www.tynesidemind.org.uk

Telephone: 0191 477 4545

Address: Tyneside MIND, NE8 4QL

Your Voice Counts

Email: mail@yvc.org.uk

Website: www.yvc.org.uk

Telephone: 0191 478 6472

Address: Your Voice Counts , NE8 1BH

Office of the Public Guardian

Email: customerservices@publicguardian.gsi.gov.uk

Website: <https://www.gov.uk/browse/births-deaths-marriages/lasting-power-attorney>

Telephone: 0300 456 0300

Address: PO Box 16185, B2 2WH

Solicitors for the Elderly

Email: admin@sfe.legal

Website: www.sfe.legal

Telephone: 0844 567 6173

Address: Studio 209, MillStudio Business Centre, SG12 9PY

GOV.UK

Website: www.gov.uk

Telephone: 0844 567 6173

My Living Will

Email: hello@mylivingwill.org.uk

Website: <https://www.mylivingwill.org.uk/>

Telephone: 0844 567 6173

My Decisions

Website: <https://mydecisions.org.uk/>

Telephone: 0800 999 2434

Community Health and Social Care Direct – Newcastle City Council

Email: scd@newcastle.gov.uk

Website: <http://www.newcastle.gov.uk/health-and-social-care/adult-social-care>

Telephone: 0191 278 8377

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