

## Making decisions and your mental capacity

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

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### 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 one 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.

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### 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.

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## Deprivation of Liberty Safeguards (DoLS)

The Deprivation of Liberty Safeguards (DoLS) are safeguards that protect people who are being cared for in a hospital or care home. They are part of [the Mental Capacity Act \(2005\)](#). Newcastle City Council have a DoLS Team based within the [Safeguarding Unit](#).

A deprivation of liberty is when someone has their freedom limited in some way, to protect them from harm. They are used when someone lacks mental capacity to agree (consent) to care or treatment. Sometimes they may:

- have decisions on their care made for them
- not be free to leave the place where they are being cared for
- be supervised by health or care staff at all times
- have limits on where they can go.

The person **must** lack mental capacity to consent to care or treatment and it must be in the best interest of their health and wellbeing. The DoLS are to protect people who lack mental capacity from getting care when it's not in their best interests. and to give people the right to challenge a decision.

There is a process for getting permission to deprive someone of their liberty. The local DoLS Team will do a series of assessments, once this is done it is called a **DoLS standard authorisation**. Without this depriving someone of their liberty in a care home (publicly funded or privately funded) or hospital is unlawful.

For people not in a care home or hospital, depriving them of their liberty is only lawful with an order from the [Court of Protection](#)

### Relevant Person's Representative (RPR) service

When a person has a DoLS Standard Authorisation, a Relevant Person's Representative (RPR) is appointed. The RPR role is to support and advocate on behalf of that person. This is often family

or a friend involved in the person's care as they know them the best. The RPR will make decisions about their care in hospital or a care home.

A formal RPR can be appointed if you do not have a family member or friend who can represent you. The RPR helps you understand your rights under the DoLS. This includes your right to appeal. If you are eligible for a formal RPR, the DoLS team can refer you. [\*\*Your Voice Counts\*\*](#) is commissioned by Newcastle City Council to provide the RPR service in Newcastle.

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## **Changes to Mental Capacity Act and DoLS**

An amendment to the Mental Capacity Act in 2019 states that DoLS will be replaced by a new system called the Liberty Protection Safeguards (LPS). These changes are still being reviewed by the government as of 2025

You can read more about the [\*\*changes to the MCA Code of Practice and implementation of the LPS\*\*](#) on GOV.UK

Easy read version – [\*\*Liberty Protection Safeguards: what the law says about care or treatment if it takes away people's rights\*\*](#) GOV.UK

Social Care Institute of Excellence has more information for professionals about [\*\*Liberty Protection Safeguards\*\*](#).

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## **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 [Adult Social CarePoint](#). 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.

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## 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 [Adult Social CarePoint](#). 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.

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## 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.

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## 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.

[\*\*Read more on InformationNOW about Planning Ahead\*\*](#)

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## Information and support services

Read more about [\*\*local Mental health support services\*\*](#) on InformationNOW.

[\*\*Mind\*\*](#) have a range of online information and 2 telephone helplines. Info Line for general information and signposting on mental health issues. Legal Line for information and advice on mental health related law

[\*\*Tyneside and Northumberland Mind\*\*](#) runs a Safe Space Service MEA House. It is an informal group that offers essential support to adults who are experiencing problems with their mental health and emotional wellbeing. The aim of the service is to provide a supportive peer group where people can reduce isolation, build confidence, improve their wellbeing and take positive steps towards their recovery. They also have counselling, wellbeing sessions and a telephone helpline open 7 days a week.

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## Abuse

People who lack mental capacity can be more at risk of abuse. There are [different types of abuse and signs to be aware of](#). Types of abuse include: financial, physical, emotional, sexual and neglect. Vulnerable adults can be groomed or targeted by criminals or abusers.

**Contact Adult Social Care at Newcastle City Council** if you are worried about the abuse or neglect of an adult in Newcastle. Read more about [adult abuse](#) and [domestic abuse](#) on InformationNOW.

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## 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@connectedvoice.org.uk](mailto:advocacy@connectedvoice.org.uk)

**Website:** <http://www.connectedvoice.org.uk/services/advocacy>

**Telephone:** 0191 235 7013

**Address:** One Strawberry Lane, NE1 4BX

### Tyneside and Northumberland Mind

**Email:** [admin@tynesidemind.org.uk](mailto:admin@tynesidemind.org.uk)

**Website:** [www.tynesidemind.org.uk](http://www.tynesidemind.org.uk)

**Telephone:** 0191 477 4545

**Address:** Tyneside and Northumberland Mind, NE16UF

### Your Voice Counts

**Email:** [mail@yvc.org.uk](mailto:mail@yvc.org.uk)

**Website:** [www.yvc.org.uk](http://www.yvc.org.uk)

**Telephone:** 0191 478 6472

**Address:** Your Voice Counts, NE3 3PF

## Office of the Public Guardian

**Email:** customerservices@publicguardian.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](http://www.sfe.legal)

**Telephone:** 0844 567 6173

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

## GOV.UK

**Website:** [www.gov.uk](http://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

## Mind UK

**Email:** info@mind.org.uk

**Website:** <https://www.mind.org.uk/>

**Telephone:** 0800 999 2434

## **Adult Social CarePoint at Newcastle City Council**

**Email:** ASCP@newcastle.gov.uk

**Website:** <http://www.newcastle.gov.uk/AdultSocialCare>

**Telephone:** 0191 278 7878

**Address:** Adult Social CarePoint Newcastle City Council, NE4 9LU

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## **Related Articles**

[Mental Health](#)

[Looking after someone](#)

[Mental health emergency or crisis services](#)

[Disability Rights](#)

[Where to get legal advice](#)

[Lasting Power of Attorney and Deputyship](#)

[Getting advice about your finances](#)

[Family and relationship problems](#)

[Learning disability local support services](#)

[Advocacy support to get your voice heard](#)

[Adult abuse](#)

[Planning Ahead: a guide](#)