

# Mental capacity and mental illness

## The Mental Capacity Act 2005

Mental capacity means you have ability to make your own decisions. If you lose mental capacity the Mental Capacity Act 2005 protects you and your rights. You may lose mental capacity because of your mental illness. This factsheet explains mental capacity and how the Act works. This information is for anyone affected by mental illness.

### Key Points.

- The Mental Capacity Act (MCA) is the law that protects you if you aren't able to make decisions because you lack capacity.
- You may lack mental capacity if you can't:
  - understand information about a decision,
  - remember this information,
  - use this information to make a decision, or
  - communicate your decision.
- You may lack mental capacity for a short or longer period of time.
- Being unwell or having a mental illness doesn't mean you lack mental capacity. Most people with a mental illness don't lack capacity.
- Being detained in hospital under the Mental Health Act doesn't mean in itself that you lack mental capacity.
- Making a bad decision in itself doesn't mean that you lack mental capacity.
- If necessary, a health professional will assess if you have mental capacity to make a particular decision.
- The MCA sets out who can make decisions for you if you lack capacity.
- You can make an advance statement or advance decision. These show your wishes for treatment and care in case you lose capacity in the future.
- If someone makes a decision for you because you lack capacity, it needs to be in your 'best interests'.

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## **1. What is mental capacity?**

Mental capacity means you can make your own decisions by being able to: <sup>1</sup>

- understand all the information you need to make that decision,
- use or think about that information,
- remember that information, and
- communicate your decision to someone else.

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## **2. What is the Mental Capacity Act (MCA)?**

The Mental Capacity Act (MCA) is a law that provides a legal framework for acting and making decisions on behalf of adults who lack capacity.

The Act will cover you if you are:

- 16 or older,<sup>2</sup> and
- live in England and Wales.<sup>3</sup>

The MCA is there to do the following.<sup>4</sup>

- Help you to make decisions for yourself if you lack mental capacity. Your friends, family or carer can help you to make a decision. If you don't have any support, you can get an independent mental capacity advocate to help you.
- Give you the option to make decisions about your future. Such as your care preferences and who will manage your money. But you will have to make these decisions when you have mental capacity.

- Say who can make certain decisions for you. Any decision made for you must be in your best interest.

### **What are the 5 key principles of the Mental Capacity Act?**

The MCA is based on 5 rules called 'key principles'. The key principles are below.<sup>5</sup>

1. You must be treated as if you have capacity unless there's evidence that you don't.
2. You must be supported to make your own decisions before medical professionals decide you don't have capacity. An example might be giving you the information in a different way and trying different ways to explain it. If you have other symptoms which are causing you to lack capacity the medical team should treat those first. They can assess your capacity again after your symptoms are treated.
3. If you have mental capacity, you have a right to make decisions that other people may think are unwise.
4. If you don't have mental capacity, anything done for you must be in your best interests.
5. If you lack mental capacity, anyone making decisions for you must use the least restrictive option available. This means they must choose options that have the least effect on your basic rights and freedoms.

### **What are the Court of Protection and the Office of the Public Guardian?**

#### What is the Court of Protection (CoP)

The Court of Protection (CoP) can protect you if you lack capacity. It can:<sup>6</sup>

- decide if you have the mental capacity to make a certain decision that will affect you,
- decide if a lasting power of attorney (LPA) can be registered,
- pick deputies to make decisions in your best interests,
- make decisions in difficult cases,
- decide if Deprivation of Liberty safeguards (DOLs) should be used, and
- remove deputies or attorneys who have not carried out their role properly.

#### What is the Office of the Public Guardian (OPG)?

The Office of the Public Guardian (OPG) have different jobs including:<sup>7</sup>

- take action where there are concerns about an attorney or deputy,
- register LPA's,
- maintain the public register of deputies and people who have been appointed as a LPA,
- supervise deputies appointed by the Court of Protection, and make sure they follow the Mental Capacity Act, and

- look into reports of abuse against registered attorneys or deputies.

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### **3. How is mental capacity assessed?**

The Mental Capacity Act (MCA) has a test to see if you have the capacity to make a decision when you need to.

Anyone who thinks that you don't have capacity should be able to prove this. They need to be able to show that you don't have capacity to make a certain decision when the decision needs to be made.<sup>8</sup> For example, if a professional believes that you lack mental capacity to make a decision about your treatment or care, they must do this test with you.

Generally, a capacity assessment should be related to a specific decision that you are making.<sup>9</sup> This is because you might have capacity to make one decision but lack capacity to make another.<sup>10</sup> For example, you might be able to decide what treatment you want but not be able to make one about a financial matter.

The test has 2 stages.<sup>11</sup>

Stage1:

- there must be proof that you have an illness or injury that affects the way your brain or mind works, and

Stage 2:

- if you do, it affects you so much that you are unable to make a specific decision at a certain time.

Stage 2 will only apply if you have been given enough support to try and make the decision for yourself. But you're still unable to.

#### **What is an illness or injury that affects the way my brain works?**

An illness or injury that affects how my brain works could be things like:<sup>12</sup>

- conditions associated with some forms of mental illness,
- dementia,
- significant learning disabilities,
- the long-term effects of brain damage,
- physical or medical conditions that cause confusion, drowsiness or loss of consciousness,
- the symptoms of alcohol or drug use,
- delirium, and
- concussion following a head injury.

## **How am I assessed as unable to make a specific decision at a specific time?**

You will be assessed on the following 4 points to see if you can:<sup>13</sup>

- understand the information you need to make the decision,
- remember and use that information again,
- understand what will happen when you make the decision, or
- communicate your decision in any way, such as talking, sign language or squeezing someone's hand.

Health professionals should only assess your mental capacity using this test. They can't base their decision on your age, appearance or diagnosis alone.<sup>14</sup>

## **How could I lose capacity?**

You may lose mental capacity. It can be because of the things described in the section above called 'What is an illness or injury that affects the way my brain works?'

Losing capacity may be temporary. For example, may live with a mental illness which sometimes gets worse. This may affect your ability to make decisions at certain times.<sup>15</sup> This is called 'fluctuating capacity'.

For example, if you live with bipolar disorder you may lack the capacity to make financial decisions if you have an episode of mania.<sup>16</sup> Even if you can understand and recall information and communicate your decision, you may not be able to understand what will happen when you make that decision.

### **John's story**

John lives with schizophrenia. He believes that his doctors want to harm him. John has a large blood clot that needs to be removed immediately. Without an operation, he may die.

John is given information about his operation and what could happen without treatment. John is also given information about the treatment they want to give him and what to expect. He decides not to have the treatment.

John can understand the information, remember the information and tell his healthcare team his decision. But John believes that his risk of dying is higher if he has the operation because he believes that the doctors are trying to harm him. This belief is not true. So, professionals decide John isn't mentally capable of weighing up risk. They do this after following the capacity test as laid out in the Mental Capacity Act.

John is assessed as lacking mental capacity to make this decision to refuse treatment. A decision is made in his best interest to have the operation. The operation is a success and John recovers well.

## Who will assess my capacity?

If your carer or healthcare professional think you lack the capacity to make a certain decision, they will assess your capacity. They have to check if you can make the decision for yourself with their support.<sup>17</sup>

The person who will assess your capacity depends on the type of decision you need to make.<sup>18</sup> See [Section 5](#) of this factsheet for more information.

Anyone who assesses your mental capacity should have the skills needed to communicate with you. A professional can help the assessor if they need support.<sup>19</sup>

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## 4. I'm worried that I might lose mental capacity in the future. What can I do?

If you are worried that you might lose mental capacity in the future, there are things that you can do.

You can create:

- a Lasting Power of Attorney, and
- an advance statement or advance decision.

### What is a Lasting Power of Attorney (LPA)?<sup>20</sup>

A Lasting Power of Attorney (LPA) is a legal document. You can sign a LPA to give one or more people authority over your affairs.

The law that deals with LPAs is The Mental Capacity Act 2005.<sup>21</sup>

If you create a LPA:

- you are known as 'the donor', and
- a person you appoint is known as 'the attorney'.

You must have mental capacity to make a LPA. But it will continue to be valid even if they lose mental capacity later.

You can choose:

- that the LPA comes into force straight away, or
- It only comes into force once you have lost mental capacity.

After LPA's are signed, they need to be registered with the Office of the Public Guardian (OPG).

### Who can be an attorney?

You should trust the person you are making your attorney. The attorney will usually have wide ranging powers.

An attorney under a LPA must:<sup>22</sup>

- be at least 18 years old,
- have the mental capacity to make decisions, and
- not be an undischarged bankrupt or subject to a debt relief order.

### What types of Lasting Power of Attorney are there?<sup>23</sup>

There are two types of LPA:

- health and welfare decisions, and
- financial decisions.

### What powers does an attorney have under a LPA for financial decisions?

Your attorney will usually have wide ranging powers under a LPA for financial decisions.

Your attorney's powers will usually include, but not be limited to, things like:<sup>24</sup>

- running your bank and savings accounts,
- making or selling investments,
- dealing with your benefits,
- paying your bills, and
- buying or selling your house or other property.

You can restrict what powers your attorney has by clearly stating this in the LPA. If you want to do this it's best to get legal advice first.

Attorneys have legal obligations they must meet under The Mental Capacity Act, such as the duty to act in your best interests. You can read more about being an attorney here: [www.gov.uk/lasting-power-attorney-duties/property-financial-affairs](http://www.gov.uk/lasting-power-attorney-duties/property-financial-affairs);

### What powers does an attorney have under a LPA for health and welfare?

Health and welfare decisions can include:<sup>25</sup>

- day-to-day care,
- medical treatment,
- complaints about your care and treatment, or
- where you should live

Your attorney will only be able to make a decision for you if you lose mental capacity.

if you want to know more about LPAs for health and welfare you can read more here: [www.gov.uk/lasting-power-attorney-duties/health-welfare](http://www.gov.uk/lasting-power-attorney-duties/health-welfare).

### Should I see a solicitor?

You can make a Lasting Power of Attorney without seeing a solicitor. But you should consider getting legal advice, for the following reasons.

- To get advice on what signing the LPA means for you. A LPA usually gives your attorney wide ranging powers over your affairs.
- If you want to restrict your attorney's powers or give them specific instructions. The wording that needs to be included in the LPA needs to be carefully drafted and clear.
- To get help filling in the LPA forms and registering the LPA with the Office of the Public Guardian (OPG). The LPA form is long. And other forms might need to be completed too so the LPA can be registered with the OPG.

You can find more information about '**Legal advice – how to get help from a solicitor**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

### How do I make a Lasting Power of Attorney? <sup>26</sup>

To make a LPA the following people must sign the LPA form.

- You as the donor.
- The attorney or attorneys.
- Independent witnesses.
- The donor's certificate provider. They confirm that no-one is forcing the donor to sign the LPA.

The LPA forms and a guide to making an LPA can be found on the Gov.uk website:

[www.justice.gov.uk/forms/opg/lasting-power-of-attorney](http://www.justice.gov.uk/forms/opg/lasting-power-of-attorney)

LPAs must be registered with The Office of the Public Guardian (OPG) after they are signed.

Your attorney can't act under a LPA until it is properly registered with the OPG.

It takes between 8 and 10 weeks to register a LPA if there are no mistakes in the application.

It costs £82 to register a LPA. But you can get a reduction if:

- you earn less than £12,000 a year, or
- you are on certain means tested benefits.

You must complete form LPA120 to get a reduction. You can find the form here:

[www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600966/LPA120-Lasting-power-of-attorney-and-enduring-power-of-attorney-fees.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600966/LPA120-Lasting-power-of-attorney-and-enduring-power-of-attorney-fees.pdf)



If you want to know more about a reduction in fees you can read the LPA120 form or contact the OPG. You can find their details in the '[Useful Contacts](#)' section below.

If you have any questions about making a LPA you can:

- contact the OPG. Their details are in the '[Useful contacts](#)' section at the end of this factsheet. But the OPG can't give legal advice, or
- see a solicitor. They can give legal advice.

### How do I end a Lasting Power of Attorney?<sup>27</sup>

You can end a LPA any time you want to, as long as you have the mental capacity to do this. You can read more about ending a LPA here: <https://www.gov.uk/power-of-attorney/end>; or you can contact the OPG.

If you end a LPA you should tell any organisations that your attorney has dealt with or might deal with. Like your bank or the DWP.

A LPA ends automatically if you die.

### What is an Enduring Power of Attorney?

LPAs have replaced Enduring Powers of Attorney (EPAs).

You can no longer make an EPA. But EPAs properly made before 1<sup>st</sup> October 2007 are still valid. You can read more about EPAs here: <https://www.gov.uk/enduring-power-attorney-duties>;

You can contact the Office of the Public Guardian about EPAs if you want further information. Their details are in the '[Useful contacts](#)' section at the end of this factsheet.

### **Can I make an advance statement?**

You can make an advance statement if you have mental capacity at the time. An advance statement is a general preference about your treatment and care.<sup>28</sup> It is free to do.

It isn't legally binding, but medical professionals should still make a practical effort to follow your wishes.

### **Can I make an advance decision?**

An advance decision is legally binding. You can use it to legally refuse specific medical treatment when you lack the mental capacity to decide for yourself. But Health professionals don't legally have to follow an advance decision if you are in hospital under the Mental Health Act.

An advanced decision can't be used for anything else.<sup>29</sup> It is free to do.

You can find out more about '**Planning your care. Advance statements and advance decisions**' at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy of the information to be sent to you.

## 5. How are decisions made for me if I lack mental capacity?

Anyone who makes a decision for you must follow the 5 key principles of the Mental Capacity Act.<sup>30</sup> You can read about these in [Section 2](#) of this factsheet.

They must also follow the Mental Capacity Act Code of Practice and only make decisions that are in your best interests.<sup>31</sup>

### What sort of decisions can be made for me?

Most decisions can be made for you. Common decisions made are:

- financial decisions,
- medical treatment, and
- day-to-day support

But there are some decisions or actions that can never be decided for you. These include:<sup>32</sup>

- voting,
- placing a child for adoption, and
- getting married or having a civil partnership.

### Who will make the decision for me?

Different people may need to make decisions for you at different times.

There should be more than one person involved with certain decisions. Your main decision maker is most likely to be the following people.<sup>33</sup>

- Your carer or someone who is involved with your life for day-to-day decisions.
- Your doctor or healthcare professional responsible for medical treatment will make decisions about your treatment.
- Your solicitor for legal decisions such as making a will.<sup>34</sup>
- Your attorney under a Lasting Power of Attorney (LPA).
- Your court appointed deputy.

Your decision maker has a duty to consult with other people before a decision is made. These people are:<sup>35</sup>

- anyone who you have said that you want involved with your care,
- anyone involved with your care,
- anyone interested in your welfare such as your close relatives,
- your attorney under a Last Power of Attorney, and
- your court appointed deputy.

They will make a 'best interest' decision for you.

## **What is a court appointed deputy?<sup>36</sup>**

You might lack capacity to make financial or welfare decisions. But you might not have created a Lasting Power of Attorney.

Someone can apply to the Court of Protection to become your deputy. This would give them the power to manage your financial affairs or to make a welfare decision.

If the Court of Protection agree to appoint a deputy, they will issue a court order. The court order says what powers the deputy has.

The law that deals with deputy orders is The Mental Capacity Act 2005.<sup>37</sup>

There are 2 types of deputy order:

- property and financial affairs deputy, and
- personal welfare deputy.

The court only normally issues personal welfare deputy orders in extreme circumstances.<sup>38</sup> If you want to know more about them you can contact the Office of the Public Guardian (OPG). Their details are in the '[Useful contacts](#)' section at the end of this factsheet.

You can read more about deputy orders here: [www.gov.uk/become-deputy](http://www.gov.uk/become-deputy)

## **Who can be a deputy?<sup>39</sup>**

A deputy must be:

- at least 18 years of age, and
- have the skills to make decisions for you.

There is no automatic right to become a deputy. The court will decide if the person applying to become a deputy is suitable.

A deputy is normally a close relative or friend of yours. But if no relative or friend is willing or able to act the court might appoint a professional person such as:

- a solicitor, or
- someone who works for the local authority.

When making decisions, deputies must also follow the guidance within the Mental Capacity Act 2005 Code of Practice. You can find this here: [www.gov.uk/government/collections/mental-capacity-act-making-decisions#mental-capacity-act-code-of-practice](http://www.gov.uk/government/collections/mental-capacity-act-making-decisions#mental-capacity-act-code-of-practice)

## **What powers does a deputy have?**

The court order will say in a court order what powers your deputy has. The court can give your deputy:

- general powers over your finances, or
- specific powers over your finances or welfare.

When someone applies to become a deputy, they can tell the court what powers they want.<sup>40</sup> But it is up to the court to decide what powers they grant to the deputy.

### How does someone become a deputy?

To apply to your deputy a person must complete:

- an application form,
- a form about your capacity – this also must be completed by a medical professional,
- a deputy's declaration, and
- an information form.

These forms can be found on the Gov.uk website:

[www.gov.uk/become-deputy/apply-deputy](http://www.gov.uk/become-deputy/apply-deputy)

The Court of Protection will review the application and make a decision. Their decision partly depends on whether the application was completed correctly and whether anyone objected to the person becoming your deputy.<sup>41</sup>

There is a useful guide to making an application to the Court of Protection called COP42. This can be found on the Government Court Services website:

<https://formfinder.hmctsformfinder.justice.gov.uk/cop42-eng.pdf>;

If the person who wants to be your deputy needs to take urgent action they should contact the Office of the Public Guardian.<sup>42</sup> Their contact details are in the '[Useful contacts](#)' section at the end of this factsheet.

You can find out more about urgent applications on the Gov.uk website:

[www.gov.uk/emergency-court-of-protection](http://www.gov.uk/emergency-court-of-protection);

### Do you have to pay to become a deputy?<sup>43</sup>

Your deputy must pay:

- an application fee,
- a fee for a hearing, if the court decide this is needed,
- an annual supervision fee,
- an assessment fee, if the person is a new deputy,
- a security bond, which is a type of insurance that protects your finances.

Your deputy may be able to claim a refund for fees if they are on a low income or on certain benefits.

You can find out more about fees here: [www.gov.uk/become-deputy/fees](http://www.gov.uk/become-deputy/fees).

### When does a deputy order come to an end?<sup>44</sup>

You might regain the capacity to deal with your affairs again. If you do, a deputy must inform the Court of Protection. The Court might decide to end the deputy order.

A deputy order ends automatically if you die.

### **What are my best interests?**

Your best interests are individual to you. They are based on different things. To decide what your 'best interests' are the person making the decision needs to think about: <sup>45</sup>

- your views and beliefs. Such as your religious, political and moral,
- what is written on your advance statement,
- what is written on your advance decision,
- if you will ever be able to make the decision for yourself,
- if so, when are you likely to be able to make the decision, and
- any other important factors that are specific to the situation.

The decision shouldn't be based only on your appearance, age, mental health diagnosis or your behaviour.<sup>46</sup>

The decision maker must allow and encourage you to be involved with the decision that affects you.<sup>47</sup>

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### **6. I don't agree that I lack capacity to make a decision. What can I do?**

You must be treated as if you have capacity unless there's evidence that you don't.<sup>48</sup>

Your capacity might be assessed, and it might be decided that you lack capacity to make a particular decision. You might disagree with this.

To try and solve this disagreement you could try the following.

#### Talk to your assessor

Speak to the person who has decided that you lack mental capacity to make a decision. Ask them to explain why they think you lack capacity. They must give you evidence to show how they have made their decision in line with the Mental Capacity Act. You could ask for a meeting.<sup>49</sup>

#### Ask for a second opinion

Ask for a second opinion from an independent professional or someone else who is an expert in assessing capacity.<sup>50</sup>

### Use a mediation service

A mediator helps people to come to an agreement that is acceptable to everyone involved. They are helpful when people aren't communicating well or don't understand each other's point of view.

Mediation can help solve a problem at an early stage. A mediator is independent from the situation.<sup>51</sup>

The Ministry of Justice provide an online directory of mediators. The service is provided on a fixed-fee basis. You can find the list at: <https://civilmediation.org/for-the-public/about-mediation/>

### Apply to the Court of Protection

The Court of Protection can decide if you have the capacity to make a decision. They also have other powers such as deciding if an advance decision is valid.<sup>52</sup>

You can find their contact details in the [Useful contacts](#) section of this factsheet.

### **Who can help me to challenge the decision?**

You can get help from your family or friends to help you do this. Or you may be able to get help from an independent mental capacity advocate.

### **What is an Independent Mental Capacity Advocate?**

Independent mental capacity advocates (IMCAs) support people who have capacity issues to make or be involved in important decisions. They will.<sup>53</sup>

- Gather relevant information about you.
- Understand what your wishes and feelings are likely to be.
- Think about your beliefs and values.
- Think about different ways to help you in your situation.
- Get a second medical opinion if necessary.
- Challenge a decision if they disagree with it.

An IMCA will only help you if:<sup>54</sup>

- you lack capacity to make a specific decision about serious medical treatment or accommodation,
- you don't have any family or friends to help you
- have no family or friends who are available and appropriate to support you, apart from professionals providing care or treatment,
- you haven't previously named someone who could help with a decision, and
- haven't made a Lasting Power of Attorney or Enduring Power of Attorney.

## What is an NHS complaints advocate?

You can use NHS complaints advocacy if you are making a complaint about an NHS service. They are free to use and independent from the NHS.

You can find out more about:

- Second opinions
- Advocacy
- Complaints about the NHS and social care.

at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy of the information to be sent to you.

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## 7. I don't agree with a decision that is being made about the person I care for. What can I do?

Often more than one person is involved with decisions that affect someone who lacks mental capacity. This means that disagreements can happen.

See [Section 6](#) for information about how to challenge a decision.

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## 8. What else should I know about the Mental Capacity Act?

### Can I be restrained under the Mental Capacity Act?

You should only be restrained if you need to be stopped from harming yourself. The amount or type of restraint used, and time that it is used for, needs to be appropriate to the level of risk.<sup>55</sup>

Restrained means that someone is:<sup>56</sup>

- using force, or threatening to use force, to make you do something that you don't want to do, or
- stopping you from leaving somewhere, such as not allowing you to leave a room or hospital.

### What are Deprivation of Liberty Safeguards (DoLS)?

DoLS can sometimes be used if you are in a hospital or care home and lack mental capacity. <sup>57</sup>'Deprivation of liberty' means loss of freedom.

The care home or hospital must get permission from a 'supervisory body' before they can lawfully deprive you of your liberty. The supervisory body will usually be a primary care trust or a local authority. <sup>58</sup>

DoLS can only be used when:<sup>59</sup>

- it is in your own best interests to protect you from harm,
- it is needed because of the likelihood and seriousness of harm, and

- if there is no other way to keep you safe.

There are safeguards in place to make sure:<sup>60, 61</sup>

- you get a representative to support you with all things to do with DoLS. Such as your right to challenge your DoLS through the Court of Protection,
- you and your representative are supported by an independent mental capacity advocate if you want more support, and that the DoLS is reviewed.

DoLS can't be used if you are detained in hospital under the Mental Health Act.<sup>62</sup>

You can learn more about DoLS by following this link:

[www.scie.org.uk/mca/dols/at-a-glance](http://www.scie.org.uk/mca/dols/at-a-glance).

#### Are DoLS changing and what are Liberty Protection Safeguards (LPSs)?

The Mental Capacity (Amendment) Act 2019 says that the Liberty Protection Safeguards (LPSs) will replace the Deprivation of Liberty Safeguards (DoLS) in the future. The government have yet to provide a date when this will happen. We will update this factsheet when LPSs replace DoLS. For further information on the key changes under LPSs, please see the Government website link here:

[www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are](http://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are)

#### **Is it a criminal offence to harm or neglect someone who lacks capacity?**

The MCA has made it a criminal offence to harm or neglect someone who lacks capacity. If someone gets convicted of this offence, they could get a fine or go to prison.<sup>63</sup>

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#### **9. I am a carer. Am I legally protected if I make a best interest decision for someone?**

The Mental Capacity Act (MCA) protects carers and healthcare professionals. If the person you care for is assessed as lacking mental capacity, you may be asked to make a best interest decision for them.

You aren't legally responsible for the outcome of that decision as long as it was made in the person's best interest.<sup>64</sup>

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#### **10. What is the difference between the Mental Capacity Act 2005 (MCA) and the Mental Health Act 1983 (MHA)?**

The MHA and the MCA are different laws.



The MHA is usually used to detain people who have a mental disorder in hospital for assessment and treatment.

Detention in hospital is used as a last resort when someone is a serious risk to themselves or others because of their mental disorder.

Under the MHA you can be forced to have treatment whether you agree to it or not. So even if you have mental capacity, you can still be given most treatment for your mental disorder against your will.

If you are detained under the MHA it doesn't mean that you automatically lack mental capacity to make decisions.

You can find more information about the '**Mental Health Act**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## Useful Contacts

### **Office of the Public Guardian (OPG)**

The Office of the Public Guardian (OPG) protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance.

**Telephone:** 0300 456 0300. Lines are open Monday, Tuesday, Thursday, and Friday 9am-5pm, and Wednesday 10am-5pm.

**Address:** PO Box 16185, Birmingham, B2 2WH

**Email:** [customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)

**Website:** [www.gov.uk/government/organisations/office-of-the-public-guardian](http://www.gov.uk/government/organisations/office-of-the-public-guardian)

### **Court of Protection**

Make decisions on financial or welfare matters for people who lack mental capacity.

**Telephone:** 0300 456 4600

**Address:** PO Box 70185, First Avenue House, 42-49 High Holborn, London, WC1A 9JA

**Email:** [courtprotectionenquiries@hmcts.gsi.gov.uk](mailto:courtprotectionenquiries@hmcts.gsi.gov.uk)

**Website:** [www.gov.uk/courts-tribunals/court-of-protection](http://www.gov.uk/courts-tribunals/court-of-protection)

### **The British Institute of Human Rights**

Their guide shows how the rights and duties in the Human Rights Act can help strengthen support for people with mental health problems, including those that lack mental capacity.

**Website:** [www.bihr.org.uk/mental-health-advocacy-and-human-rights-your-guide](http://www.bihr.org.uk/mental-health-advocacy-and-human-rights-your-guide)

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## Rethink Mental Illness Advice Service

**Phone 0808 801 0525**  
**Monday to Friday, 9:30am to 4pm**  
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