

The Mental Capacity Act

If a close friend or loved one lacks the mental capacity to make choices for themselves, they'll need additional care and support to ensure their best interests are always looked after.

The Mental Capacity Act (MCA) is the law which applies to decision making for people aged 16 and over who don't have the mental capacity to make their own decisions.

Capacity

Sometimes it isn't clear if a person has the mental capacity to make decisions. The Mental Capacity Act states that you have to consider whether a person has the mental capacity to make a particular decision at a particular time.

This means that someone could have the mental capacity to make simple decisions, like what to have for lunch, but not more complex decisions like where to live or whether to have medical treatment.

It also means that someone whose condition changes over time might have the mental capacity to make a decision one day but not the next. Ultimately, a judge in the Court of Protection can decide if a person does or doesn't have capacity when this isn't clear or is disputed by someone.

Best interests

The MCA says that decisions made in relation to someone who lacks capacity must be made in their best interests.

When there's a serious dispute about what's in the person's best interest, the case can be referred to the Court of Protection which exists to settle disputes under the MCA. This includes disputes about where a person should live, who they should have contact with, and what care or medical treatment they should receive.

The MCA sets out how to make this decision and says that the views of the person's friends and family must be taken into account.

Other factors that must be considered include:

- The person's past and present wishes and feelings (including any written statement they made when they had capacity)
- The beliefs and values they'd be likely to have if they had capacity
- Factors they'd consider if they were able to do so
- If appropriate, the views of others including anyone caring for the person or interested in their welfare, and any Attorney or Deputy.

Disputes

When there's a dispute about someone's best interests, it's usually be the responsibility of social services or the NHS to apply to the Court of Protection. But family members and other individuals (including Independent Mental Capacity Advocates) can also apply to the Court of Protection for a judge to make a decision.

Deputies

A Court of Protection judge may either make the decision in relation to someone's best interests, or appoint a Deputy to make decisions on that person's behalf.

The MCA says that a decision by the judge is to be referred to the appointment of a Deputy to make a decision and the powers given to a Deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.

Usually a Deputy will be appointed when decisions are likely to arise repeatedly over an extended period of time. This is one reason why it's more common for deputies to be appointed in relation to someone's finances rather than their welfare.

We can help you in a range of areas, including:
Court of Protection health and welfare disputes
Deprivation of Liberty Safeguards
Appointing a Deputy or acting as a Deputy
Lasting Powers of Attorney or Enduring Powers of Attorney
Statutory Wills and Trusts
Personal Injury Trusts, including those for children.

Our commitment to you

Our primary commitment is to you. Our friendly team will put you at the focus of everything we do to ensure the best possible outcome for you and your family.

Your expert team

Our approachable and highly experienced Court of Protection team have been recognised by the national legal directories, Chambers & Partners, and The Legal 500.



> My solicitor was very prompt and supportive throughout the process. They were aware of what needed to be done and handled all of the legal forms, asking me to check them of course. I was well prepared in advance for my role of Deputy.
>
> **Kate**
> 5* Trustpilot review

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