

The Mental Capacity Act

Our Services

Overview

The Mental Capacity Act was introduced to protect people who are unable to make decisions for themselves. This may arise, for example, if they have suffered a brain injury, a stroke or are unconscious due to an accident. The Act provides guidance on who can take decisions in such situations and how they should go about this. It also enables people to plan ahead for a time in the future when they may lack capacity.

When does someone lack the capacity to make a decision?

The Mental Capacity Act is based on the idea that all adults should be treated as being capable of making their own decisions until it is established that they cannot. It also aims to support people to make their own decisions for as long as possible. The Act states that a person lacks capacity if they are unable to do one or more of the following:

- Understand information given to them
- Retain that information for a sufficient length of time to be able to make a decision
- Weigh up the available information to make a decision
- Communicate that decision.

Who assesses whether a person has capacity?

A family member or carer can assess a person's capacity to make certain decisions for most straightforward, everyday activities – such as washing and dressing. However if the decision is of a more complex nature – such as selling a home – a formal assessment may be required involving a doctor or other professionals.

When is a person's capacity assessed?

A person's mental capacity is assessed at the time when they would need to make the decisions in question.

What happens if the person does not have capacity?

If a person lacks capacity to make decisions and they have not planned ahead, other people will be required to make the necessary decisions or take actions on their behalf.

Any decision or action must be taken in the person's best interests and the Act contains a checklist which must be consulted by the decision maker. Friends and family members or carers should be consulted and their views taken into account if appropriate.

An Independent Mental Capacity Advocate (IMCA) is an advocate who can provide extra help and support regarding major, serious decisions if the person has no family, friends or other appropriate person to consult. The IMCA will only become involved in specific situations.



What is the Court of Protection?

The Court of Protection makes final decisions on capacity where there is uncertainty. It deals with decisions regarding a person's finances and property as well as serious issues relating to health and welfare.

If a decision relates to property and financial affairs, then an application may be made to the Court of Protection to ensure that the person's best interests are protected.

Sometimes a Deputy will be appointed by the Court to make a series of ongoing, long-term decisions on a person's behalf regarding property, financial affairs and personal welfare. The Deputy must be aged 18 years or over and is often a relative, friend or professional.

“

They were very helpful and very efficient, I would recommend them

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How do you plan ahead in case you lack capacity in the future?

The Act enables you to appoint someone else to make decisions for you in the future in the event that you lack capacity. You can do this in a number of ways:

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1. Lasting Power of Attorney

You can appoint a friend, relative or professional as an Attorney under a Lasting Power of Attorney (LPA) to manage your affairs on your behalf.

There are two types:

- Property and Affairs LPA – for decisions regarding financial and property matters
- Personal Welfare LPA – for decisions regarding health and personal welfare

2. Advance decision to refuse treatment

This allows you to specify particular types of treatment that you do not want should you lack capacity in the future. The advance decision is legally binding provided certain conditions are met.

3. Advance decision regarding lifesustaining treatment

You can choose to refuse lifesustaining treatment which may result in your life being shortened. Again, specific rules must be followed for this to be legally binding.

4. Recording of wishes and feelings regarding treatment and care

You can specify your wishes and preferences regarding future treatment and/or care, and this must then be taken into account by a person who is determining your best interests.

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker Office on:

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