Local Government Association

The Care Provider ALLIANCE

NHS England

Mental Capacity Act 2005

An Easy Read Guide

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If people find reading **difficult**, they will need lots of **support** to read and understand this guide.

1. Introduction

The Mental Capacity Act is all about making decisions. It is law.

Some people are able to make every decision about their own lives.

Some people are able to make some decisions.

A small number of people cannot make any decisions.
Being unable to make a decision is called “lacking capacity”.

The Mental Capacity Act is about making sure that people have the support they need to make as many decisions as possible.

The Mental Capacity Act also protects people who need family, friends or paid support staff to make decisions for them.

1. Introduction

The Winterbourne View Joint Improvement Programme

We work with people who make decisions about the services in their local areas.

It is all about making sure that people with learning disabilities or autism, who also have a mental health problem or behaviour that can be challenging, get the support they need to live in their local communities.

The Winterbourne View Joint Improvement Programme has written 2 guides to the Mental Capacity Act:

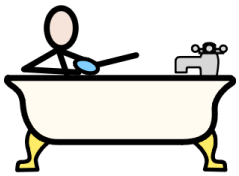
- For providers of Shared Lives and community services
- For members of Care Providers' boards.

This Easy Read document is designed to be used alongside them.

2. Decisions

The Act is about making big *and* **small decisions.**

What to wear

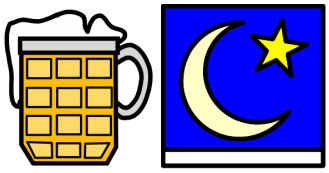


Whether to let staff help you in the bath

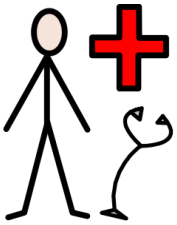
Whether to have a boyfriend or girlfriend

Whether to let someone look after your money

Where to live



Whether to stay at the pub till late



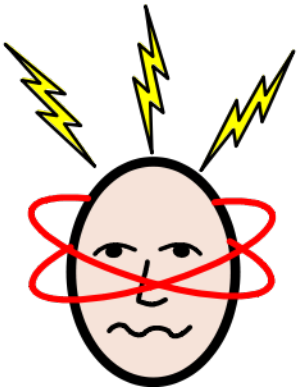
Whether to go to the doctor about a health problem

3. Capacity

To make a decision we need to:

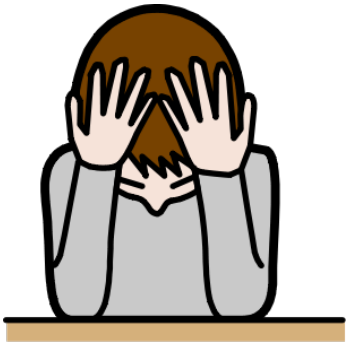
- Understand information
- Remember it for long enough
- Think about the information
- Communicate our decision

A person's ability to do this may be affected by things like learning disability, dementia or a mental health problem.



Ability, or capacity can change:

A person with epilepsy may not be able to make a decision during the day after a seizure.



Someone with a mental health problem may not be able to make a decision now, but in a week's time they may feel much better.

4. Five rules

1) Assume that people are able to make decisions, unless it is shown that they are not.

Everyone is different and every decision is different.

Somebody may **not** be able to decide whether to move house.

They need people to help them make this decision, or to make this decision for them if they can't.

But they may be able to decide what to eat and what to wear. They must be allowed to make those decisions.

2) Give people as much support as they need to make decisions.

If a person finds it hard to understand words, it is not enough to just talk to them about the decision. It is not okay to say that it is too hard to involve people.

They may be able to make the decision. It is just that they need help with communication.

Information about the decision could be given to them using signing, photos or symbols.

People who know them well should be there to help them to understand and communicate their decision.

For example: Some people say ‘yes’ and ‘no’ by pointing their eyes in different directions. They may be able to make their own decisions, so they need people around them who understand.

3) Unwise decisions.

If a person makes unwise decisions, this is ok, as long as they understand what they are doing.

Adults have the right to make decisions that other people disagree with.

Some examples:

- Going for a walk in the pouring rain
- Spending too much money on a new TV

- Staying up until 4am
- Smoking 20 cigarettes a day

If the person is able to decide these things, and to understand the decision, they must be allowed to go ahead.

4) Best Interests

If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests'.

This means that the decision must be what is best for the person, not for anyone else.

They must think about the 'best interests checklist':

- ☐ Can the decision wait, until a time when the person can make it themselves?
- ☐ How can the person be helped to make the decision themselves?
- ☐ What do other people who know the person think?

5) Find the least restrictive way of doing what needs to be done.

When a decision is made for somebody, it must give them as much freedom as possible.

An example:

There is a man who like to be outdoors. He falls over and hurts himself a lot.

Should his staff:

a) Keep him indoors all the time where he is safe?

b) Let him go outside, but wearing protective clothes, to stop him getting hurt?

The answer is b).

It would be wrong to stop him doing the things he enjoys, if there is another way to keep him safe that is 'less restrictive'.

Limits to “Best Interests”

There are limits to what carers can do, even if it is in the person’s best interests.

They must not:

1) Use too much restraint.

Example:
Holding someone still for an injection that they do not want **is restraint**.

Holding someone’s arm still for an injection that they are happy to have is **not** restraint.

2) Carers must not take away people’s freedom without proper approval.

Example:
If a supported living provider needs to control where a person lives or the things they are allowed to do, then they must ask the Court of Protection for permission.

Limits to “Best Interests”

3) Carers must not go against the wishes of someone who is legally allowed to make decisions on the person’s behalf.

For example:
John needs an operation. He cannot decide for himself whether to have it.

A Court said that John’s brother is allowed to take decisions about his health, which John can’t make himself. John’s dad thinks that John should have an operation. John’s brother doesn’t think the operation is in John’s best interests. Because the Court has said John’s brother can decide for him, John does not have the operation.

4) Carers must not go against an ‘advance decision’ to refuse medical treatment.

An advance decision is when the person being cared for has already let people know what they want to happen.

Your life

Think of decisions, big and small, that you make in your life. Write or draw them here:

Does anyone make these decisions for you?

Do you think you are able to make these decisions?

If so, the people who support you could read our guide: **The Mental Health Act for Care Providers**

This will help them to understand the law and support you in better ways.

Independent Mental Capacity Advocate (IMCA)

If you cannot make big decisions, like whether to move house or have medical treatment, you might need an IMCA.

IMCAs do not make decisions about your care. They are there to support you.

Winterbourne View Joint Improvement Programme

This programme is led by the Local Government Association (LGA) and NHS England, and is funded by the Department of Health.

Our vision:

Everyone, with no exception, deserves a place to call home. Person by person, area by area, the number of people with learning disabilities and autism in secure hospitals or assessment and treatment settings will permanently reduce. At the same time local community-based support and early intervention will improve to the point that it will become extremely rare for a person to be excluded from the right to live their life outside of a hospital setting.

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