

# The Mental Capacity Act

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Helping and supporting people who are unable to make some decisions for themselves





# **The Mental Capacity Act**

Helping and supporting people who are unable to make some decisions for themselves

## **Easyread**

This booklet gives information on a new law called the Mental Capacity Act 2005. This booklet is not a Code of Practice under the Act and is not a guide to how the new law will apply to people in different situations.



## Credits & thank yous

The Mental Capacity Implementation Programme (MCIP) published this booklet. MCIP is a Government project that has been set up to get everything ready for when the Mental Capacity Act comes in.

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- APASENTH
- The Sharing Caring Project

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The photographs used in this booklet cannot be used anywhere else without the written permission of Inspired Services and the Mental Capacity Implementation Programme.



Having **mental capacity** means being able to make your own decision about something.



This booklet is about a new law on decision making called the **Mental Capacity Act**.



It has stories in it about people and making some decisions.

| What the words mean    |  |
|------------------------|--|
| <b>Decision</b>        | A decision is what you choose to do. It is a choice that you make. It is a choice that you make about something. It is a choice that you make about something. It is a choice that you make about something.       |
| <b>Decision maker</b>  | Someone who has been chosen to make a decision for someone else. It is a choice that you make about something. It is a choice that you make about something. It is a choice that you make about something.         |
| <b>Decision making</b> | Why things happen for a person who cannot make decisions for themselves. It is a choice that you make about something. It is a choice that you make about something. It is a choice that you make about something. |

At the end of this booklet there is a list of words and what they mean. The words are in **red** in this booklet.



There is also a CD you can listen to whilst looking at the stories.



There is a lot of information about the new law in this booklet.



- You might like to have someone support you when you look at the booklet.



- You might like to look at just one bit at a time.





# What is in this booklet?



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# About the new law called the Mental Capacity Act



Having **mental capacity** means being able to make your own decision about something.



The **Mental Capacity Act** is a new law about decision making.



- It will help you to make decisions for yourself.



- It will help you to plan for the future when you might not be able to make your own decisions.



- It will also help to protect you if you can't make some decisions for yourself.

| October 2007 |     |     |     |     |     |     |
|--------------|-----|-----|-----|-----|-----|-----|
| Mon          | Tue | Wed | Thu | Fri | Sat | Sun |
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Most of the new law starts in October 2007.

# Tony's Story



## Helping and supporting Tony to make his own decisions



Tony is in his 30s and has a learning disability. He lives at home with his parents but plans to move out one day.

He has a girlfriend called Mary and he has been left a lot of money by an uncle.



Sometimes Tony finds it hard to tell people what he wants but this does not mean that he can't make decisions for himself.

At school he learnt how to use picture cards to help him tell people what he wants.



Tony can make some decisions for himself about things like what to eat and wear, but he might not be able to make some bigger decisions (this is called **lacking capacity**).



Under the new law, Tony's parents know that they must support Tony to try to make his own decisions.



Depending on the type of decisions that Tony needs to make, there are different things that can be done. The stories below show us some of these different decisions.

## Deciding to go on a trip



Tony likes going to a social group. He has made some good friends there, especially Mary.



The group is planning to go on a day trip to the seaside. Tony likes the sea and is looking forward to this.



The night before the trip Tony tells his parents that he does not want to go anymore.





His parents are surprised.  
The sea is one of Tony's favourite places and he has never missed a trip to the seaside.

They talk to him about his decision and remind him of all the things he likes doing at the seaside.



Using words and his picture cards Tony is able to tell his parents that his friend Mary is ill and is not going on the day trip.



Tony does not want to go without Mary. He has decided not to go on the day trip. His parents respect his decision.

## Deciding about a lot of money



Tony's uncle left him a lot of money.

His Dad knows that with support Tony can make money decisions about day to day things like what clothes to buy and what to buy when he goes out for lunch.



But his Dad thinks Tony might not be able to make big decisions about his money like keeping it safe and making sure he has enough for the rest of his life.



His Dad knows that he can't just decide that Tony is unable to make decisions about his own money.

Under the new law he knows that he must support Tony to try to make his own decisions first.



Tony's Dad talks to him a few times about keeping his money safe and planning what to do with it.

He tries to help and support Tony to make a decision about his money.



He gives Tony all the information he needs using words that Tony understands and his picture cards.



His Dad realises that Tony can't remember how much money he has and he can't remember how much things cost.

His Dad decides that at this time:



- Tony can make everyday decisions about his money like what clothes to buy and what to buy when he goes out for lunch.

But

- Tony is unable to make some of the big decisions about his money, like keeping it safe and making sure he has enough for the rest of his life.



This does not mean that Tony can never make a big decision about his money. Tony's Dad knows that over time Tony might learn new skills and be able to make a big decision about his money.



Tony's Dad wants to make sure that Tony's money is kept safe and that he has enough money for the rest of his life.



Tony's Dad thinks it would be best for Tony, if he looked after Tony's money. Under the new law he must get permission from the **Court of Protection** to do this.

This is a new court that makes decisions about what is best for people who can't make some decisions for themselves. It also helps to make sure that they are protected.



The **Court of Protection** thinks carefully about what Tony's Dad is asking. They look at if Tony really needs someone to look after his money for him and if his Dad is the best person to do this.



The court decides that it would be in Tony's **best interests** if his Dad looks after his money for him. **Best interests** is about making a decision that is best for Tony, not about what anyone else wants.



The Court gives Tony's Dad the power to make decisions about Tony's money. They make him a **deputy** for Tony's property and affairs (his money).



Under the new law, when Tony's Dad makes big decisions about Tony's money, he has to think about what is in Tony's **best interests**. This means thinking about what is best for Tony and not about what he or anyone else wants.



Under the new law, working out **best interests** is very important and there is a book called the **Code of Practice** or **Code** for short, which gives information on how Tony's Dad should do this. Some people, including **deputies** must pay attention to what the **Code** says.



Under the new law the **Public Guardian** keeps an eye on **deputies** like Tony's Dad making sure that they are doing their job properly. This is an extra check to help to make sure that people like Tony and their money are protected.



The **Court of Protection** has only given Tony's Dad the power to make big decisions about Tony's money.



This does not mean that he has powers to make other decisions for Tony.

Also, the new law says that no one, not even Tony's Dad, can make a decision for Tony about things like getting married, voting or having sex.



Only Tony can make these kinds of decisions and the new law does not change this.



# Supporting Tony to plan ahead for the future



Tony is happy living at home with his parents but he is thinking about moving into his own house one day.



Tony wants to make sure that if he does move out that the people who support him know about the things that are important to him.



Under the new law Tony can write down these things or just tell someone.

Tony thinks it is better to write these down so that there is a clear record of his wishes and feelings about what is important to him.



Tony finds it hard to write, so he tells his Mum to write down:



- I am vegetarian and I do not like meat.



- I like having a shower not a bath.



- I like to sleep with the light on so that I can see easily if I have to get up in the night.



- When I go to the doctor or dentist I want someone I know well to be with me.



He then signs the list.



His Mum puts the list with Tony's papers.

She also gives a copy to his social worker who puts it on his care record.



Under the new law anyone who makes decisions or does things for Tony must think about his list of wishes and feelings about what is important to him.

They must use it to help them decide what is in Tony's **best interests** if they have to make decisions for him.

# Mrs. Smith's Story





Mrs. Smith has just moved into Garden Park Care Home.



She is very close to her daughter Linda who helped her to choose the home. Linda heard that Garden Park is a good care home and that the staff will look after her mum.



She knows that under the new law if any of the staff treated her mum badly, they could be doing something against the law.

They could go to court and maybe even to jail. This helps to protect people like Mrs. Smith.

## Planning for the future



If Mrs. Smith cannot make a decision on one day, this does not mean that she won't be able to make this kind of decision tomorrow or next week.

Mrs. Smith is still able to make all decisions for herself but she is getting ready for the future when she might not be able to make decisions for herself.



Mrs. Smith is pleased the new law says she can choose someone else to make these decisions for her in the future. This is called making a **Lasting Power of Attorney** and the person she chooses is called an **attorney**.



Under the new law a person can only make a **Lasting Power of Attorney** if they understand what it means and they are still able to make decisions for themselves.



Mrs. Smith wants her daughter, Linda, to be her **attorney** and to make decisions about her property and money and also about her health and welfare. This means making 2 different types of **Lasting Power of Attorney**.



# 1. Deciding about money and property



Mrs. Smith trusts Linda and knows she will make decisions that are best for her.

She wants Linda to make decisions for her about things like selling her house, paying bills and looking after her money (her property and affairs).



With this type of **Lasting Power of Attorney**, Linda can start making these decisions for her Mum as soon as it is registered.

Linda will be able to make these kinds of decisions even though her mum is still able to make the decisions for herself.

## 2. Deciding about care and treatment



Mrs Smith also wants Linda to be able to make decisions about things like her health, having an operation or the kind of place Mrs. Smith should live in (her personal welfare).



With this type of **Lasting Power of Attorney**, Linda can only make these kinds of decisions if her mum cannot make them for herself.

## Setting up a Lasting Power of Attorney



Mrs. Smith needs to fill in a special form to set up a **Lasting Power of Attorney**.

She also needs to get someone to sign the form to say that she understands what she is doing and that no one has forced her into setting it up. Her solicitor signs this bit.



Mrs. Smith fills in the names of up to 5 people that she wants to know about her **Lasting Power of Attorney**. Mrs. Smith wants these people to be told about her **Lasting Power of Attorney**.



Next, Mrs. Smith sends the form to the **Office of the Public Guardian** along with a cheque for the fee she has to pay.



When the **Office of the Public Guardian** get Mrs. Smith's forms they tell the people that she wanted to know about her **Lasting Power of Attorney**.

If these people think there is a problem with the **Lasting Power of Attorney** or the **attorney**, they can tell the **Office of the Public Guardian**. This helps to protect people like Mrs. Smith.



The **Public Guardian** keeps an eye on **attorneys** like Linda making sure that they are doing their job properly. This is an extra check to help make sure that people like Mrs. Smith and their money are protected.



As an **attorney**, Linda has to pay attention to the **Code of Practice** and she has to think about what is best for her mum and not what anyone else thinks or wants.

Mrs. Smith is pleased that she can choose Linda to be her **attorney**. She thinks Linda knows her better than anyone else and will make decisions that are best for her and that are not about what Linda or anyone else wants.



# Mrs. Anand's Story





Mrs. Anand lives in Garden Park Care Home with Mrs. Smith. She has no family and is alone.

Mrs. Anand had a stroke a few months ago. The stroke has affected her memory and how well she makes decisions.

## Making a decision for the future

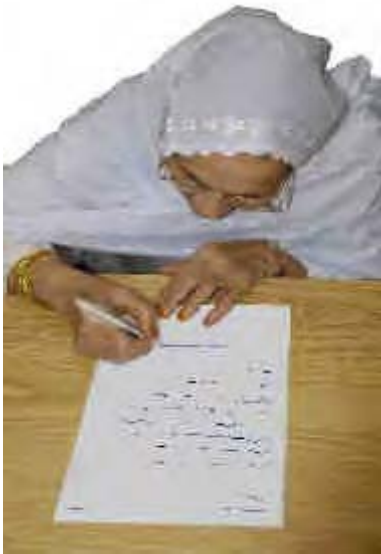


Before Mrs. Anand had a stroke she was once given medicine, which made her very sleepy and confused. She wanted the doctor to give her a different medicine even though it took her longer to get better.



Mrs. Anand knew that she could make a decision about treatment or medicine that she did not want to be given in the future (this is called an **advance decision**).





Mrs. Anand thought carefully about making an **advance decision**. She knew there were some strict rules for making an **advance decision** so she spoke to her doctor about this.

Mrs. Anand could write down her **advance decision** or just tell someone about it but she thought it would be better to write it down.

Mrs. Anand told the care home manager about her decision and asked him to put a copy in her file.

That way she felt that if one day she got ill and could not make a decision about treatment for herself, she would not be given the medicine that made her feel sleepy and confused.

Mrs. Anand knows that the doctor has to respect her decision but to protect her there are strict rules the doctor has to follow.



## Making a decision for Mrs. Anand



The staff know that they can't make decisions for Mrs. Anand just because she is old or ill. They can only make a decision for Mrs. Anand if she cannot make the decision herself.

The staff also must pay attention to the **Code of Practice** which gives them information on how to do their job properly.



For the last week Mrs. Anand has had a very bad cough. The cough is getting worse but Mrs. Anand keeps on saying she does not want to see a doctor.

The care home staff talk to her about this but she does not understand why it is important for her to see a doctor.



The staff decide that she **lacks capacity** to make her own decision about what to do so they need to make a decision for her.

They know that under the new law anything they do for Mrs. Anand must be in her **best interests**.



The new law has a checklist of things that people must think about when deciding on **best interests**.

The checklist includes talking to Mrs. Anand about what she wants and speaking to people who know her well, like friends and other members of staff.



The staff agree that it is in Mrs Anand's **best interests** to see a doctor.



The new law allows staff to ask a doctor to see Mrs. Anand but they have to be very careful when they do this. They can only do so if Mrs. Anand is not able to decide this for herself and they think it is in her **best interests**.



The staff also know that under the new law just because Mrs. Anand can't make this decision does not mean that she cannot make other decisions for herself.

# Getting help and support from an Independent Mental Capacity Advocate (IMCA)



Mrs. Anand's **care review** is coming up soon. She is getting weaker. The care home manager thinks it might be better for Mrs. Anand if she moved to a different home which can give her more support.



As Mrs. Anand has no close family or friends to help her, the care home manager knows Mrs. Anand should have someone independent speaking up for her. This is called an **Independent Mental Capacity Advocate**, or an **IMCA**.



An **IMCA** is a special type of advocate under the new law. People like Mrs. Anand who have no family or friends to help and support them make decisions can get an **IMCA**.

An **IMCA** will speak up for people when there are decisions about serious medical treatment or about where they are going to live.

**IMCAs** must also pay attention to the **Code of Practice**.



The **IMCA** talks to Mrs. Anand and the doctor and also looks at Mrs. Anand's healthcare records.

Mrs. Anand tells the **IMCA** about her time at Garden Park Care Home.



She talks about the people she has met and talks about what she does everyday and how happy she is.



The **IMCA** tells the care home manager about Mrs. Anand's feelings.

The care home manager did not know that Mrs. Anand was so happy at Garden Park.



The care home manager is still worried that she might fall and hurt herself if she stays.



But because of what the **IMCA** found out, the care home manager looks into other options for Mrs. Anand so that she can stay at Garden Park but still get the care she needs.

# What the words mean

## Advance decision

a decision about medical treatment that a person does not want to be given in the future if they cannot make their own decision about the treatment. There are rules for making an **advance decision** so it is a good idea to talk to someone like a doctor, nurse or support worker if you want to make one.

## Attorney

someone who has been chosen by a person to make choices and decisions for them. The person does this by making a **Lasting Power of Attorney**.

## Best interests

anything done for a person who cannot make decisions for themselves must be in their **best interests**. This means thinking about what is best for the person and not about what anyone else wants. The new law has a checklist of things that people must think about when deciding on someone's **best interests**.



## Care review

a meeting where all those involved in a person's care meet with the person to talk about whether they are getting the help and support they need.

## Code of Practice (Code)

guidance and information that explains how the **Mental Capacity Act** works. It tells people how to make sure they are following the new law. Some people – like doctors, nurses, lawyers, **attorneys** and **deputies** must pay attention to the **Code of Practice**.

## Court of Protection

the new court which deals with everything to do with the **Mental Capacity Act**. The court decides what is best for people who cannot decide for themselves.

## **Deputy**

a person chosen by the **Court of Protection** to make some decisions for a person who cannot make these decisions for themselves.

## **Independent Mental Capacity Advocate (IMCA)**

someone who speaks up for people who have no family or friends. They help when important decisions have to be made by the NHS or local authorities. Decisions can be about things like serious medical treatment or moving to a hospital or care home.

They may become involved in other types of decisions as well.

## **Lacking capacity**

is when a person cannot make their own decision about something at a particular time.

This could be because of a stroke or brain injury, a learning disability, mental health problems or things like Alzheimer's.

**Lasting Power of Attorney** is a power a person can give to another person (the **attorney**) to make decisions for them about certain things in the future. A person can only do this if they understand what it means. They can also put limits on the power they give to their **attorney**.

**Mental capacity** is when a person is able to make their own decision about something at a particular time.

**Mental Capacity Act** a new law about how to support and protect people who cannot make their own decisions because of a problem with the way their mind or brain works. It lets people plan ahead for a time when they may be unable to make their own decisions about some things.

## Office of the Public Guardian

supports the **Public Guardian** by:

- Doing the paperwork and keeping a register of **Lasting Powers of Attorney** and **deputies**.
- Keeping an eye on **deputies** and **attorneys** to make sure they are doing their job properly.
- Working with the police and social services when they think that someone may have been abused.

## Public Guardian

the head of the **Office of the Public Guardian**.

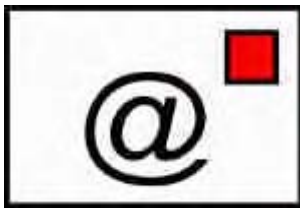
## How to find out more about the new law

To get more copies of this booklet:



Telephone:

**023 80 878036/38**



Email:

**reorder@inprintlitho.com**

and ask for the Easyread story  
booklet on the **Mental Capacity Act.**



To find out more about the **Mental Capacity Act**:



Telephone:

**0845 330 2900**



Text phone:

**020 7664 7755**



Web address:

**[www.guardianship.gov.uk](http://www.guardianship.gov.uk)**



Write to:

**Public Guardianship Office  
Archway Tower  
2 Junction Road  
London  
N19 5SZ**

# This is booklet 5

## Other booklets on the new law



### **Booklet 1**

Making decisions about your health, welfare or finance. Who decides when you can't?



### **Booklet 2**

Making decisions. A guide for family, friends and other unpaid carers.



### **Booklet 3**

Making decisions. A guide for people who work in health and social care.



### **Booklet 4**

Making decisions. A guide for advice workers.



### **Booklet 6**

Making decisions. The Independent Mental Capacity Advocate (IMCA) service.

**This booklet is also available online at:**

**[www.dca.gov.uk/legal-policy/mental-capacity/publications.htm](http://www.dca.gov.uk/legal-policy/mental-capacity/publications.htm)**

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