



## Mental Capacity Act

The **Mental Capacity Act 2005 (MCA)** is a key piece of legislation designed to protect and empower individuals who may lack the mental capacity to make specific decisions for themselves. It ensures that individuals who are unable to make decisions on their own are treated with respect, their best interests are considered, and they are supported in decision-making as far as possible.

### Informed Consent

Informed consent requires that individuals have a clear understanding of the facts, implications, and consequences of a decision before giving consent. Under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, specifically Regulation 11, services must ensure that people give consent before receiving any care or treatment.

The manager and staff are responsible for obtaining consent lawfully, ensuring the individual fully understands the care and treatment being provided. We prioritise the person's best interests when obtaining consent.

### Independent Advocacy Service

Under the Mental Capacity Act 2005, if an individual lacks capacity to make decisions and has no one to support them, we will refer them to the local authority for an Independent Mental Capacity Advocate (IMCA). IMCAs support individuals in making critical decisions, including care reviews, accommodation reviews, and safeguarding procedures. Their input must be considered when making decisions on behalf of the individual.



## **Best Interest Process**

If a person is assessed as lacking capacity, any decision made on their behalf must always be in their best interests. A decision-maker, typically a healthcare professional such as a doctor, nurse, or social worker, will make decisions regarding care or treatment. The decision-maker must consider the person's past and present wishes, feelings, values, and consult others involved in their care, such as family members or legal representatives.

Day-to-day care decisions may be made by carers, but major decisions about medical treatment or accommodation will require careful consideration and may involve consultation with an IMCA.

## **Encouraging Participation**

Staff should support the individual as much as possible to participate in decision-making. This includes:

- Identifying relevant circumstances and ensuring the person's views, wishes, beliefs, and values are considered.
- Consulting family, friends, or appointed attorneys if appropriate.

The goal is to avoid discrimination based on assumptions about a person's abilities due to their age, appearance, or condition. Additionally, staff should assess whether the person might regain capacity over time and whether decisions can be delayed if necessary.



## All Individuals Who Use Our Services

Our service ensures that all individuals have the support they need to make their own decisions. We respect the legal capacity of individuals unless proven otherwise. The MCA 2005 does not cover certain decisions, such as those related to family relationships, voting rights, or mental health treatment decisions under the Mental Health Act 1983.

## Power of Attorney

Individuals who lack the capacity to make decisions may need a Power of Attorney appointed. There are several types:

- **Ordinary Power of Attorney:** For financial decisions, valid when the person has mental capacity.
- **Lasting Power of Attorney (LPA):** Covers both financial and health decisions and takes effect if the person loses capacity.
- **Enduring Power of Attorney (EPA):** Covers property and financial affairs, valid for decisions made before October 2007.
- **Court-Appointed Deputy:** A relative or friend can apply to the Court of Protection to become a deputy if the individual lacks capacity.

Our service Manager will liaise with the appointed Power of Attorney to ensure that the person's best interests are protected.

## Access to Information

We are committed to managing personal information in compliance with legal frameworks such as:



- **Data Protection Act 2018**
- **GDPR UK 2021**
- **Freedom of Information Act 2000**

We will adhere to the Common Law Duty of Confidentiality and the Human Rights Act 1998, ensuring the responsible handling of all personal data and maintaining confidentiality at all times.

### **Staff Responsibilities**

All staff must be fully trained in the Mental Capacity Act 2005 and understand the legal implications of the Act. Staff must be aware that neglect or mistreatment of individuals lacking capacity is a criminal offence, punishable by fines or imprisonment of up to five years.

Staff guidance on the MCA 2005 will be available in the staff handbook and as part of the ongoing training programme.