**Mental Capacity Act Policy**

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# Introduction

## Policy statement

The [Mental Capacity Act 2005 (MCA](https://www.legislation.gov.uk/ukpga/2005/9/contents)) provides a framework for making decisions on behalf of individuals who lack the capacity to make those decisions themselves. This policy explains the MCA and the [Deprivation of Liberty Safeguards (DoLS](https://www.ageuk.org.uk/globalassets/age-uk/documents/factsheets/fs62_deprivation_of_liberty_safeguards_fcs.pdf#:~:text=The%20Deprivation%20of%20Liberty%20Safeguards%20%28DoLS%29%20procedure%20is,lack%20mental%20capacity%20to%20consent%20to%20being%20there.)) and how they apply to daily practice at Sheerwater Health Centre.

**This policy should be read in conjunction with the CQC’s** [About the Mental Capacity Act](https://www.cqc.org.uk/help-advice/mental-health-capacity/about-mental-capacity-act) **guidance.**

## Status

The organisation aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the [Equality Act 2010](https://www.legislation.gov.uk/ukpga/2010/15/contents). Consideration has been given to the impact this policy might have regarding the individual protected characteristics of those to whom it applies.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment. Furthermore, this document applies to all employees of the organisation and other individuals performing functions in relation to the organisation such as agency workers, locums and contractors.

# Assessment

## Overview

The ability of individuals 16 years of age and older to make their own decisions is protected under the MCA and the [MCA Code of Practice](https://assets.publishing.service.gov.uk/media/5f6cc6138fa8f541f6763295/Mental-capacity-act-code-of-practice.pdf). The Act enables people aged 16 and over, who have capacity, to plan in advance for a time in the future when they may lack capacity.

For children aged under 16, the Act does not apply. However, there are two exceptions:

1. The Court of Protection can make decisions about a child’s property or finances if the child lacks capacity to make such decisions and is still likely to lack capacity when they reach the age of 18.
2. Offences of ill treatment or wilful neglect of a person who lacks capacity can also apply to victims younger than 16.

## Principles

The principles of the Act are as detailed at Chapter 2 of the [Mental Capacity Act Code of Practice](https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice).

## Best interests

The MCA [Code of Practice](https://assets.publishing.service.gov.uk/media/5f6cc6138fa8f541f6763295/Mental-capacity-act-code-of-practice.pdf) explains that the term ‘best interests’ is not actually defined in the Act. This is because so many different types of decisions and actions are covered by the Act and so many people and circumstances are affected by it.

[Section 4](https://www.legislation.gov.uk/ukpga/2005/9/section/4) of the Act explains how to work out the best interests of a person who lacks capacity to make a decision at the time it needs to be made. Additional information can be found in the Age UK [Arranging for someone to make decisions on your behalf](https://www.ageuk.org.uk/globalassets/age-uk/documents/factsheets/fs22_arranging_for_someone_to_make_decisions_on_your_behalf_fcs.pdf) factsheet.

## Deprivation of Liberty Safeguards

[Age UK](https://www.ageuk.org.uk/globalassets/age-uk/documents/factsheets/fs62_deprivation_of_liberty_safeguards_fcs.pdf) explains that the DoLS procedure is designed to protect an individual’s rights if they are deprived of their liberty in a hospital or care home in England or Wales and they lack mental capacity to consent to being there. If it is assessed that an individual does not have capacity to consent to care or treatment it may be necessary, in their best interest, for other people to decide to place the individual somewhere to receive the required level of care.

A deprivation of liberty has three elements that healthcare professionals must consider:

1. Whether it is in a patient’s best interest to take away their liberty
2. Whether it has become necessary and unavoidable to take away liberty
3. Whether the patient is in a care home, hospital or somewhere else noting that a Court of Protection is needed to remove a patient from their home

[Mind](https://www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/deprivation-of-liberty/#.WzC_9C2ZOi5) provides addition guidance on DoLS.

## Assessing capacity

Clinicians at this organisation are to conduct an assessment of mental capacity in accordance with [NICE guideline [NG108]](https://www.nice.org.uk/guidance/ng108/chapter/Recommendations#assessment-of-mental-capacity) and the MCA 2005.

## Fluctuating capacity

Staff are to be aware that some patients may have fluctuating capacity; that is, they have a problem or condition that gets worse occasionally and affects their ability to make decisions. For example, a patient with a psychotic illness may have delusions that affect their capacity to make decisions at certain times but that disappear at others.

Temporary factors affecting capacity can include but are not limited to acute illness, severe pain, medication effects, distress and shock.

## Lack of capacity

[NICE guideline [NG108]](https://www.nice.org.uk/guidance/ng108/chapter/Recommendations#assessment-of-mental-capacity) explains that clinicians involved in making decisions regarding individuals who lack capacity or who support decision-making in individuals who have capacity must follow the five key principles set out in [Section 1 of the MCA 2005](https://www.legislation.gov.uk/ukpga/2005/9/section/1).

Clinicians must assume capacity unless there is evidence to suggest an assessment is required. A person is not to be treated as unable to make a decision (lacks capacity) unless all practicable steps to help them do so have been taken without success.

All clinicians at this organisation must adhere to the above linked guidance.

## Independent Mental Capacity Advocates (IMCA)

[GOV.UK](https://www.gov.uk/government/publications/independent-mental-capacity-advocates) explains that the Independent Mental Capacity Advocate (IMCA) service supports people who cannot make or understand decisions by stating their views and wishes or securing their rights.

An IMCA must be instructed and subsequently consulted for those patients who lack capacity and have no support network in the circumstances as detailed in Chapter 10 of the [Code of Practice](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf).

An IMCA may also be instructed to support someone who lacks capacity to make decisions concerning care reviews (when no-one else is available to be consulted) and adult protection cases (whether or not family, friends or others are involved).

As the IMCA’s role is to support and represent the individual lacking capacity, they have the right to see the relevant healthcare and social care records.

[Mind](https://www.mind.org.uk/information-support/guides-to-support-and-services/advocacy/finding-an-advocate/) provides links to IMCAs and advocacy groups and organisations.

# Useful terminology

## Advance decisions

An [advanced decision](https://www.nhs.uk/conditions/end-of-life-care/advance-decision-to-refuse-treatment/) (sometimes known as an advance decision to refuse treatment, an ADRT or living will) is a decision made by the patient to refuse certain treatment types in the future should they lose the capacity to make such decisions at a later date. The patient must specify which treatments they are refusing in the advance decision.

## Advance statement

An [advance statement](https://www.nhs.uk/conditions/end-of-life-care/advance-statement/) is a written statement that sets down the preferences, wishes, beliefs and values regarding the future care of the patient, the purpose of which is to provide a guide to those who may have to make decisions on behalf of the patient (in their best interest) if the patient has lost the capacity to make or communicate said decisions.

## Power of attorney

The following are types of [power of attorney](https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/giving-someone-power-of-attorney/):

* Lasting power of attorney
* Enduring power of attorney

The lasting power of attorney covers personal welfare, property and financial affairs whereas the enduring power of attorney only deals with property and financial affairs.

## Court of Protection

The court has the power to make a declaration about whether an adult (or a child in some cases) has or lacks capacity, and to appoint a deputy to make a decision on behalf of a person lacking capacity.