

# Information for parents and carers regarding the Mental Capacity Act

## What is the Mental Capacity Act and what does it do?

The Mental Capacity Act is a legal framework around people over 16 years of age making decisions for themselves and what to do if they are unable to make the decision themselves.

The Act sets out 5 key 'principles' that must be followed and it explains how to assess if someone is able to make a decision for themselves or if someone else will have to do this and if so, how they do this.

## How does it affect me/ my child?

The Mental Capacity Act applies to all people over 16 years of age. It does not apply to children younger than this. If you/ your child has never been able to make a decision or is not likely to ever be able to make a decision then the Mental Capacity Act will apply once they turn 16 years old.

When you turn 16 the Mental Capacity Act should be used for any decisions that need to be made. As a parent with parental responsibility you can give consent until your child turns 18. After this time you will no longer be able to make decisions for your child.

## What kind of decisions?

The Mental Capacity Act refers to the ability to make decisions. This can mean everyday decisions (what to wear) or more serious decisions (where to live/ what medical treatment to have).

The 5 Key principles:

- An assumption that you have capacity.
- You should be supported to make decisions
- You can make an unwise decision
- Anything that is done or any decision that is made should be in your best interests.
- Anything done should be the least restrictive of their basic rights and freedoms.

When assessing capacity there is a 2 stage test -

1. Is there an impairment of or a disturbance in the functioning of the mind or brain?
2. In order to make the decision the person should be able to;  
understand the information provided,  
remember that information,  
use that information in the process of making the decision; and  
communicate their decision.

If you are unable to make a decision then any decisions should be made in your best interests. To do this your clinical practitioner should consider the following:

- Are you likely to regain capacity and can the decision wait until then?
- Can you participate in some way in the decision making?
- What are your past and present wishes and feelings
- Is this for life sustaining treatment
- Decisions should be made with equal consideration and no discrimination
- All relevant circumstances should be considered – including, beliefs and values, emotional bonds, family obligations
- They will consult with any carers, family members (including parents) or anyone interested in the you..

Capacity will be assessed every time a decision needs to be made.

If you do not feel you are being involved in your child's care and able to contribute to best interest decision please contact the Patient Advice and Liaison Service –

**Julie Mather at PALS** 0114 271 7594 [scn-tr.pals@nhs.net](mailto:scn-tr.pals@nhs.net)

## Ways in which parents can formally act and make decisions

Lasting Powers of Attorney –

These can only be made after a person has turned 18. In order to make a Lasting Power of Attorney the individual must have capacity at the time of writing.

Court of Protection – Deputies

You can apply to be a deputy if your child 'lacks capacity'. Becoming a deputy means that you will be authorised to make decisions on the persons behalf. There are 2 types property and financial affairs and personal welfare.

## For further information:

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

<https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/mental-capacity-act/>

<https://www.gov.uk/lasting-power-attorney-duties>