

Mental Capacity Act (MCA) 2005

The Act is designed to protect people who are unable to make decisions for themselves or lack the mental capacity to do so. Although most commonly enforced when a person has a brain injury, mental health difficulty, learning difficulty, brain damage from a stroke or other accident, it can also be enforced when a person is approaching the end of their life and their illness or disease effects their mental capacity.

Legal provisions

The implications of the Act establish the following for a service user's provision of care in relation to their lack of capacity to make decisions:

- allow service users to make as many decisions as they can for themselves
- enable service users to make advance decisions about whether they would like future medical treatment
- allow service users to appoint, in advance of losing mental capacity, another person to make decisions about personal welfare or property on their behalf at a future date
- allow decisions concerning personal welfare or property and affairs to be made in the best interests of service users when they have not made any future plans and cannot make a decision at the time
- ensure an NHS body or local authority will appoint an independent mental capacity advocate (IMCA) to support service users who cannot make a decision about serious medical treatment, or about hospital, care home or residential accommodation, when there are no family or friends to be consulted
- provide protection against legal liability for carers who have honestly and reasonably sought to act in the service user's best interests
- provide clarity and safeguards around research in relation to those service users who lack capacity

Section 4: Understanding mental health legislation

A service user will be protected by the following departments, who will enforce the regulations and actions under the Mental Capacity Act 2005:

The **Office of the Public Guardian** protects service users who lack mental capacity to make decisions for.

The **Court of Protection** deals with issues relating to service users who lack the capacity to make specific decisions for themselves (financial decisions or healthcare matters).

In determining capacity, **a service user is deemed unable to make their own decision** if they cannot:

- understand information relevant to a decision
- retain information
- use or weigh up the information required to make a decision
- communicate a decision made

A service user can request that a person they trust make important decisions on their behalf if necessary. This is called **Lasting Powers of Attorney** and enables vulnerable service users to have greater choice and control over their future and care planning.

IMCAs are a legal safeguard for service users who lack the capacity to make important decisions and do not have family or friends who can represent them.

Advocates tend to work with an individual service user as a supportive measure but cannot make decisions with regard to medical care and treatment. They can simply discuss issues and suggestions so that everyone is aware of the individual service user's wishes, needs and preferences and ensure that they are heard.



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request

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IMCAs will:

- meet and interview the service users (in private if possible)
- examine relevant health and social care records
- get the views of professionals and paid workers
- get the views of anybody else who can give information about the wishes and feelings, beliefs or values of the person
- find out other information that may be relevant to the decision
- evaluate information and check that the service user has been involved with it
- work out what the service user's wishes and feelings would be if they had capacity to make the decision and what values and beliefs would influence this
- make sure that different options have been considered
- decide whether to ask for a second medical opinion where it is a serious medical treatment decision
- challenge inappropriate decisions

Important note:

There is sometimes an overlap between the Mental Health Act and the Mental Capacity Act if people with a mental disorder are also lacking in capacity as defined in the Mental Capacity Act. In general, if someone needs treatment for a mental disorder and is not compliant, it is best practice to implement the Mental Health Act if the grounds are met, even in cases where it might be possible to enforce such treatments under the mental Capacity Act.

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Knowledge Activity 19: If you were unable to make your own care planning decisions, who would you choose (if anyone) to be your trusted person with Lasting Powers of Attorney.

Describe why you feel confident in this person and list examples of the types of decision-making you would expect them to undertake.



A series of horizontal lines for writing, consisting of 18 lines in total, providing space for the user to describe their trusted person and list examples of decision-making.

