



## The Mental Capacity Act 2005

If you're aged 16 or over, and people supporting you feel that you can't make your own choices, they may ask a judge in the Court of Protection (CoP) to make some decisions for you.

If an important decision has been made for you, and you, or someone close to you, isn't happy with it, your case can be referred to the CoP. A judge will listen to the issues and make a decision under the [Mental Capacity Act 2005](#) (MCA). Cases can look at where you live, who you have contact with, and decisions about your care or medical treatment.

### Capacity

Sometimes it's not clear whether or not you have the mental capacity to make decisions. The MCA says that your capacity has to be considered in relation to a particular decision at a particular time.

This means that you could have the capacity to make simple decisions like what to have for lunch, but not more complex decisions like where you live, or whether or not you should have medical treatment.

It also means that if your condition changes over time, you might have the mental capacity to make a decision one day but not the next.

If your ability to make decisions isn't clear, a judge in the CoP can decide whether or not you have capacity and settle any disputes.

Disputes can arise over your capacity to make different types of decisions, for example:

- Where you should live (e.g. at home or in residential care, or choice of residential care)
- What care you should receive
- Your contact with others (for example whether contact should be restricted, supervised or stopped altogether)
- Whether you can engage in sexual relations or consent to marriage
- Your access to the internet and social media (including whether access should be supervised or restricted)
- Serious medical treatment (including whether to continue or end 'life support' and disputes about sterilisation)
- Whether or not you have capacity to make another particular decision.

Before someone else can decide for you, they need to assess your ability to make the decision yourself. This is called a capacity assessment.

### Best interests

The MCA says that any decisions made for you must be made in your best interests if you can't make them for yourself.

There are rules that cover how someone else should make decisions and the views of your friends and family must be taken into account.

Other factors that must be considered are:

- Your wishes and feelings, past and present, including anything you wrote down when you had capacity
- Your beliefs and values, based on when you had capacity
- Factors you'd consider if you could
- The views of others. This includes anyone who cares for you or who has an interest in your welfare, including an Attorney or Deputy acting on your behalf.

It's usually the responsibility of social services or the NHS to apply to the CoP if there's a dispute about your best interests. Family members and other individuals (including Independent Mental Capacity Advocates) can also ask a judge to make a decision.

### Deputies

A judge in the CoP can make a decision based on your best interests, or they can appoint a Deputy to make decisions on your behalf.

If a Deputy is appointed, their powers are limited in scope and duration, which means they can only make decisions for you in a particular set of circumstances.

Deputies are usually appointed when decisions arise more than once over time, for example, in relation to your finances.

### Why choose us?

It's helpful to have an experienced solicitor by your side if you have a case in the CoP. We're one of the UK's most successful and well respected law firms, and our CoP team has many years of experience.

We can support you in a range of areas including:

- CoP health and welfare disputes
- Deprivation of Liberty Safeguards
- Appointing a Deputy or acting as a Deputy
- Lasting Powers of Attorney or Enduring Powers of Attorney
- Statutory Wills and trusts
- Personal injury trusts, including those for children.

### Who do we help?

Our first commitment is to you as our client. We'll always put your first to achieve the best possible outcome.

### Mental Capacity Act in action

Our Public Law & Human Rights solicitors helped Peter (not his real name) who wanted to move back home after he was placed in local authority care.

Peter was in his early 50s. He didn't have the mental capacity to make certain decisions but he lived independently in his community for most of his life.

Social services were worried about Peter. He was struggling with alcohol consumption, which caused him to develop a form of dementia. They considered Peter's care needs and decided that it was in his best interests to move into a care home, which he couldn't leave without carers.

Peter was appointed an advocate to help him express his views on the move. He wanted to return home to his flat.

Peter's advocate contacted our Public Law & Human Rights team to see if we could help. Our solicitor spoke to Peter's family and friends to gather evidence and find out their views about his ability to live independently.

We applied to the CoP to challenge social services' decision to move Peter into a care home.

Early in the proceedings, social services accepted the evidence we had gathered. They agreed that it was in Peter's best interests to move back home and they put a plan in place to support him with his return.

Over the following months, Peter stopped drinking. With the help of his carers, social worker and advocate, his independent living skills improved. He started to eat well and manage his medicine. He also had his flat renovated. Peter now lives in his flat full-time, with the help of a support worker.

Peter's case shows the importance of gathering proper evidence before welfare decisions are made. All Peter needed was support and guidance to help him live comfortably at home. We were really pleased to help make this happen for him.