

# The Mental Capacity Act

- **The Mental Capacity Act** is a law. It started working in April 2007.

### What is the law for?

- It protect the rights of people who **lack capacity** to make decisions by themselves because they have a **mental disability**.

**If you lack capacity, it means you are not able to make choices about your care and treatment.**

People who lack capacity might have:

- dementia
- learning disabilities
- stroke and head injuries.

The Act is also important to:

- Carers
- Care professionals and providers

### Key ideas

All carers, care professionals and providers must stick to the key ideas in the law. These are:

- Do all they can to help a person **make their own choices**
- Give the person information that is **easy for them to understand**
- Understand that someone **can** make a wrong choice **without** lacking capacity.
- People must **prove** that a person cannot make their own choices.
- Do things for the person that are in their **best interests**



**The Mental Capacity Act is a law made by the Government**



## Best interest

If a person lacks capacity to make a decision, there needs to be **another decision maker**. They should use the **Best Interest** idea to:

- help the person **take part** in making choices
- think about the person's **wishes, feelings and values**
- ask **other people** who help care for the person
- make sure the person is always treated **fairly**



Supporting the person to make choices

## Who makes the decisions?

- **The person**
- Someone they have **chosen** - their Attorney
- **Another decision maker** - like a family member, care staff or care professional.
- Some people have no family or friends to support them. They need someone **independent** to support them when choices need to be made about **medical treatment** or their **care**. This can be got through the **Independent Mental Capacity Advocacy (IMCA)** Service.
- A person appointed by the **Court of Protection**
- The **High Court** - for when people **disagree** about what needs to be done



## Safeguards for people

### Introduction

- In **Our Health, Our Care, Our Say** the Government says that people should get care which helps their **independence, well-being and choice**.

But

- **Sometimes** people need to have freedom taken away.



Our Health, Our Care, Our Say

- This is to give them the care or treatment they need to protect them from harm.
- The government is bringing in **safeguards** in 2009 to protect their rights.

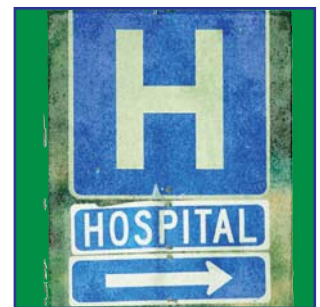


## The Bournemouth case

- This case was about a man with severe learning disabilities in Bournemouth Hospital. **The European Court of Human Rights** found that the way his freedom had been taken away was **against the law**.
- There were not enough safeguards to protect his freedom.
- The Government did a consultation. After listening to what people said they changed the law to **stop** this problem and brought in **safeguards**.

## What are the safeguards for?

- They give **stronger rights** to hospital patients and people in care homes.
- They are for people who **lack capacity** to decide about their care or treatment, and who may have their freedom taken away to protect them from harm.
- They will be mainly those with **learning disabilities** or older people with **dementia**, and others who have had a **physical injury**.



## What do the safeguards do?

- They give **protection** for people at risk of having their freedom taken away.
- They give the **right to challenge** when a person's freedom has been taken away.
- They will bring down the numbers of people who have their freedom taken away.

## Who will be safeguards for?

People in hospitals and registered care homes.

They are for adults who:

- suffer from a disorder or disability of mind **and**
- do not have the **capacity** to agree to their care or treatment **and**
- need care to protect them from harm.



## What are the safeguards?

- A hospital or care home must ask for **authorisation** to take away the freedom of a person who lacks capacity.
- They have to ask the **Primary Care Trust** for this if the person is in hospital.
- They have to ask the **Local Authority** for this if the person is in a care home.
- They must think **first** about other choices which **don't** mean the person having their freedom taken away.
- In an **emergency**, the hospital or care home may issue an **urgent authorisation**. This can be for up to **7 days**. It can be made to last for up to **another 7 days**. After this they **must** ask for an ordinary authorisation.
- Anyone who is worried, like a family member, can ask for an **assessment** of whether a person has had their freedom taken away.



In an authorisation there must be **6 assessments**:

- 1 Age** – they are aged 18 or over.
- 2 Mental health** – they have a **mental disorder**.
- 3 Mental capacity** - they **lack capacity** to decide whether to go into, or stay in the hospital or care home.
- 4 Eligibility** - a person should not be subject to the Mental Health Act
- 5 Best interests** - the action is:
  - the **best thing** for the person

- needed to **stop harm** to them and
- a good choice compared with the harm that might happen if they **don't** have their freedom taken away

**6 No refusals assessment** - the authorisation does not go against a decision of lasting power of attorney, or by a deputy appointed by the **Court of Protection**.

- There will be rules to say what skills and qualifications assessors need.
- The best interests assessor must listen to the views of:
  - anyone the person names as someone to be asked
  - anyone caring for the person
  - any attorney or deputy.
- The assessor can add extra things - like keeping in touch with the person's family or making sure the person has their cultural needs met.
- They must take account of the person's **needs assessment** and **care plans**.
- Some people do not have family or friends who can be asked. They will have an **Independent Mental Capacity Advocate (IMCA)**. The IMCA will be their rep in the assessment.



**Court of Protection**



### Turning down the authorisation

- If **any** of the six assessments say that the person is not suitable, the authorisation **must be turned down**. Everyone involved must be told about the decision. A **different** way of providing the person's care will have to be found.



## Saying yes to taking away the person's freedom

- If the best interests assessor decides that a person **should** have their freedom taken away, they will have to say how **long** this should last. The longest period would be **12 months**.
- Authorisations must say **why** the person's freedom is being taken away.
- The person will choose their own rep if they can. If not, the best interests assessor must say who would be the best person to **represent** the person.
- The rep's will keep in touch with the person, support them, ask for a review or to make an application to the **Court of Protection** if it is needed.



## Hospital and care home managers must:

- make sure that the person and their rep understand what the authorisation means and that they can apply to the **Court of Protection** or ask for a **review**
- make sure that conditions of the authorisation are met
- keep a check on the person's situation. If it changes, the authorisation may need to be looked at again.

The hospital or care home can ask for another authorisation when the last one runs out.

The person, their rep or an attorney or deputy, can ask that an authorisation is looked at. They can apply to the **Court of Protection** to challenge the person's freedom being taken away.

It is **against the law** to take away a person's freedom where there is no authorisation **nor** a decision by the Court of Protection.

Most people lacking capacity who have their freedom taken away will be in hospitals or care homes. The Government will pay for the **extra money** to the NHS and Councils for the assessments needed for the safeguards.



Making sure people know what the authorisation means



# Greenwich Council Adult and Older People's Services

All carers, professionals and providers need to take on the ideas in the law. They should build on the good way that they are already working by:

- recording properly how decisions are agreed
- having good **care plans** to look at capacity around big decisions - like in a person's care, medical treatment or money situation.
- knowing who has control over a person's money, welfare and medical treatment

Care providers must follow the law. The law protects decision makers in social and health care.



Recording how decisions are agreed



## Next steps

It is important that in **all** care and treatment settings:

- there are better ways of working to make sure the right issues are thought about and then recorded in the best way and at the best time.
- staff get training and know about the **Mental Capacity Act**. Getting this wrong is serious, because if the law is not followed it can lead to criminal charges.

You can get information on this website:

[www.justice.gov.uk/guidance/mca-info-booklets.htm](http://www.justice.gov.uk/guidance/mca-info-booklets.htm)



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