



The Mental Capacity Act

Expert hand, human touch

The Mental Capacity Act is the law which applies to decision making for people aged 16 and over who do not have the mental capacity to make choices for themselves.

Cases where there is a serious dispute about what is in the person's best interests can be referred to the Court of Protection, which exists to settle disputes under the Mental Capacity Act (MCA). This includes disputes about where a person should live, who they should have contact with and what care or medical treatment they should receive.

Capacity

Sometimes it is not clear if a person has the mental capacity to make decisions. The MCA clearly states that you have to consider whether a person has the mental capacity to make a particular decision at a particular time.

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

It also means that someone whose condition changes over time might have the mental capacity to make a decision one day but not the next. Ultimately, a judge in the Court of Protection can decide if a person does or does not have capacity when this is not clear or is disputed by someone.

Best interests

The MCA says that decisions made in relation to someone who lacks capacity must be made in their best interests.

The MCA sets out how to make this decision and says that the views of the person's friends and family must be taken into account.

Other factors that must be considered, include:

- The person's past and present wishes and feelings (including any written statement they made when they had capacity)
- The beliefs and values they would be likely to have if they had capacity
- Factors they would consider if they were able to do so
- The views of others, including, if appropriate, anyone caring for the person or interested in their welfare and any Attorney or Deputy.

It will usually be the responsibility of social services or the NHS to apply to the Court of Protection where there is a dispute about someone's best interests, but family members and other individuals (including Independent Mental Capacity Advocates) can also apply to the Court of Protection for a judge to make a decision.

Deputies

A judge in the Court of Protection may either make the decision in relation to someone's best interests, or appoint a Deputy to make decisions on that person's behalf.

The MCA says that a decision by the judge is to be referred to the appointment of a Deputy to make a decision, and the powers given to a Deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.

The most likely scenario, in which a Deputy will be appointed, as opposed to the court making a one off order, is when decisions are likely to arise repeatedly over an extended period of time. This is one reason why Deputies are appointed in relation to someone's finances much more frequently than their welfare.

Why use us?

Experienced solicitors count when dealing with Court of Protection matters. We are one of the UK’s most successful and well respected national law firms and our Court of Protection team is the largest in the country, with many years of experience.

We are a top tier legal team for Court of Protection law according to the national legal directories, Chambers and Partners and The Legal 500, and we can help you in a range of areas, including:

- Court of Protection 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. We want to achieve the best outcome for your claim and will put you first at all times.

Mental Capacity Act in action

Mathieu Culverhouse, Senior Associate Solicitor in our Public Law department, represented a disabled teenager in the fight to prevent the Council from removing him from his home, where he lived with his foster mother.

The 19-year-old has severe physical disabilities and was described as having the cognitive function of a two-year-old. He had lived with his foster mother since 1995 but was removed from her care by his local City Council which cannot be named for legal reasons. He was moved to a residential home for several months with no arrangements in place to allow the teenager and his foster mother to have contact.

During his stay, his behaviour deteriorated and showed signs of missing his foster mother. The Council said that they were investigating claims against the foster mother and believed they were doing the right thing in removing him from her care.

Mathieu helped prove that the Council’s decision not only failed to consider the relationship between the teenager and his foster mother, and how the decision would affect him, but also that it was unlawful.

The allegations against the foster mother were later decided to be unfounded. The case also uncovered a series of managerial failings and poor decisions by the City Council which the High Court judge in the case, Mr Justice Baker, labelled “deplorable”.

In his judgement, Mr Justice Baker ruled that the Council had breached the teenager’s human rights and also failed to abide by safeguards required by The Mental Capacity Act 2005. The teenager has since been returned home and shown significant improvement in his behaviour and mood.



"As a result of our case the Council has had to put new procedures in place to prevent this happening to other vulnerable people."

Mathieu Culverhouse, Senior Associate Solicitor



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The Legal 500

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