



Mental Capacity

This leaflet gives a simple explanation of mental capacity. It is not intended as a reference for advocates or professionals, but we hope it will help people who are being assessed for mental capacity, and their family and friends.

What do we mean when we say someone has mental capacity?

We say someone has mental capacity when we believe they are able to decide what they want to do and how they want to live their life.

Being able to make these decisions is important to all of us. There are daily, small but important decisions like what we want to wear and eat, or whether or not we want to go out to see friends. We also make bigger decisions, for example

where we want to live, how we spend our money, or whether or not to go to the doctor about a health problem.

In practice, having the mental capacity to make decisions means that you are able to:

- Understand information
- Remember the information for long enough to make a decision based on that information
- Use or weigh the information as part of the process of making the decision
- Tell other people what you have decided

Why is it important to recognise whether or not someone has the mental capacity to make decisions?

It is important because we all want to be independent and make our own decisions about what we do. However, we don't want people to be abused or taken advantage of, which can happen if they are left to make decisions when they are not able to do so.

Why might someone not have mental capacity?

Examples of people who may lack capacity include those with:

- dementia
- a severe learning disability
- a brain injury
- a mental health illness
- a stroke
- unconsciousness caused by an anaesthetic or sudden accident

However, just because a person has one of these health conditions it doesn't necessarily mean they lack the capacity to make a specific decision. Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop).

Does this mean that not everyone has the same level of mental capacity?

Yes, some people have the mental capacity to make decisions about some things but not other things. For example, a person may be able to choose what to wear or eat and drink but may not be

able to decide how to protect themselves from harm.

Other people can make decisions at certain times but not others — for example, they may have a mental health problem that affects them differently at different times. People can also regain capacity, for example someone who has had a stroke may not have had capacity to make a significant financial decision straight afterwards, but may regain it quickly as they recover.

It is therefore important to always remember that assessment of mental capacity is of a person's capacity to make a specific decision at a specific point in time.

What does the law say?

The law says that:

- We must assume that people have mental capacity and can make their own decisions — unless it is proved that they can't.
- We all have the right to make our own decisions even if other people don't agree with us.

- We should have as much support as we need to make decisions.

If someone cannot make their own decisions, the law says that people helping them must only make decisions in their 'best interests'. This means that the decision made by other people on their behalf must be what is best for them, not for anyone else. The decision must also always give that person as much freedom as possible.

Who decides if you have mental capacity?

A doctor or social worker might decide that, in their opinion, someone does not have mental capacity if they cannot understand, remember, and think about the information necessary to make a decision - or if they cannot communicate their decision.

Can your 'Next of Kin' make decisions for you if you are unable to do so yourself?

The term 'Next of Kin' is commonly used, and many people presume that the person they identify as their 'Next of Kin' has certain rights and duties. However, in

reality the term does not have any legal decision-making authority.

Making a Lasting Power of Attorney (LPA) is the best way to give someone you trust the legal authority to make decisions for you if you lose mental capacity. There are two types: one for property and finance and one for health and welfare decisions. You can find out more about a Lasting Power of Attorney from:

www.gov.uk/power-of-attorney

Further information:

Please use the following link to view other leaflets on our website: bit.ly/SSABLeaflets

