



# Mental Capacity Act 2005

A general guide on how the Mental Capacity Act affects you and how you can plan ahead for when you no longer have the mental capacity to make decisions for yourself. Applies to England and Wales.

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# Overview

If you can't make decisions for yourself because you don't have the mental [capacity](#) to make them, the [Mental Capacity Act 2005](#) tells you what you can do to plan ahead, how you can ask someone else to make decisions for you and who can make decisions for you if you haven't planned ahead.

## Quick facts

### The Mental Capacity Act says you have these rights:

- You will be assumed to have capacity, unless [you have had an assessment](#) showing you don't.
- All decisions made for you when you have lost capacity should be made [in your best interests](#).
- Your liberty can only be taken away from you in [very specific situations](#) - this is called a [deprivation of liberty](#), and it should only be used if it is the least restrictive way of keeping you safe or making sure you have the right medical treatment.
- You may have the right to [get support from an advocate](#) in certain circumstances. This is someone who listens to what you want and can speak for you, if you want, but does not have the legal authority to make financial or personal decisions for you.
- A [deputy](#) is a person appointed by the court to make financial or personal decisions for you, once you have lost capacity to make those decisions for yourself.
- If there are any doubts as to what an [advance decision](#) means, or what an [attorney](#) under a [lasting power of attorney](#) or a [deputy](#) is allowed to do, the [Court of Protection](#) can make a decision about these things.

### The Mental Capacity Act also tells you how you can plan ahead:

- You can [appoint an attorney](#). This is a person you appoint, while you have capacity, to make financial or personal decisions for you for a time when you have lost capacity.
- You can [make an advance decision](#). These cover refusals of treatment only and are legally binding. You could also [make an advance statement](#). Advance statements cover a wider range of issues and are not legally binding, but your wishes and feelings should be consulted once you have lost capacity.

## Please note

- The Mental Capacity Act, and the information in this guide, will only apply to you if you live in England or Wales.

- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your individual situation and needs. See [Useful contacts](#) for more information.

# Terms you need to know

Term	Meaning
<b>Advance decision</b>	An advance decision is a statement of instructions about what medical treatment you want to refuse in case you lose the <a href="#">capacity</a> to make these decisions in the future. It is legally binding.
<b>Advance statement</b>	An advance statement is a written document that sets out your preferences (apart from refusals of treatment). It is not legally binding. You can ask a professional to follow this document if you ever lose <a href="#">capacity</a> to make these decisions yourself.
<b>Advocate</b>	An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account. Find out more on our <a href="#">advocacy information page</a> .
<b>Appointee</b>	An appointee is someone appointed by the Department for Work and Pensions (DWP) to help manage your benefits for you if you lose <a href="#">capacity</a> to manage them yourself.
<b>Attorney</b>	<p>An attorney is a person over the age of 18 whom you have appointed to make decisions on your behalf about your welfare and/or your property and financial affairs. You need an attorney if you are unable to make such decisions yourself. If you do not have the <a href="#">capacity</a> to appoint an attorney, the <a href="#">Court of Protection</a> may appoint a <a href="#">deputy</a> to perform this role.</p> <ul style="list-style-type: none"> <li>• A health and welfare attorney makes decisions about things like your daily routine, your medical care, where you live and, if you specially request this, whether you should have life-sustaining treatment.</li> <li>• A property and financial affairs attorney makes decisions about things like paying bills, collecting benefits and selling your home.</li> </ul>
<b>Best interests</b>	<p>Health professionals must act in your best interests before taking certain steps that affect your care and treatment.</p> <p>The <a href="#">Mental Capacity Act</a> has a <a href="#">best interests checklist</a>, which outlines what health professionals need to consider before taking an action or decision for you while you lack <a href="#">capacity</a>.</p>
<b>Capacity</b>	<p>'Capacity' means the ability to understand information and make decisions about your life. Sometimes it can also mean the ability to communicate decisions about your life.</p> <p>If you do not understand the information and are unable to make a decision about your care, for example, you are said to <b>lack capacity</b>.</p>
<b>Certificate of capacity</b>	This is a document, signed by a certificate provider, confirming that you understand why you are making a <a href="#">lasting power of attorney</a> , and that no fraud or undue pressure has been used on you to force you to

	make it. You need to include a certificate of capacity with your forms when naming someone as your <a href="#">attorney</a> .
<b>Clinical Commissioning Groups (CCGs)</b>	Clinical Commissioning Groups are groups of GP practices and other healthcare professionals and bodies that are responsible for commissioning most health and care services for patients. They have replaced Primary Care Trusts (PCTs) in England.
<b>Court of Protection</b>	The Court of Protection makes decisions and appoints <a href="#">deputies</a> to act on your behalf if you are unable to make decisions about your personal health, finance or welfare.
<b>Deprivation of liberty</b>	<p>A deprivation of liberty is where your liberty is taken away from you - that is, you are not free to leave and under continuous supervision and control. The <a href="#">Mental Capacity Act</a> says that the law allows this only in very specific situations.</p> <p>This may happen to you if you need to go into a care home or hospital to get care or treatment, but you don't have the <a href="#">capacity</a> to make decisions about this yourself.</p>
<b>Deprivation of liberty safeguards (DoLS)</b>	If you are in a hospital or care home, your liberty can normally only be taken away if health professionals use the procedures called the Deprivation of Liberty Safeguards. This protects you from having your liberty taken away without good reason.
<b>Deputy</b>	A deputy is a person the <a href="#">Court of Protection</a> appoints to make decisions for you once you have lost <a href="#">capacity</a> to make them yourself. A deputy usually makes decisions about finances and property. The court can appoint a deputy to take healthcare and personal care decisions, though this is relatively rare.
<b>Detained</b>	A person is detained if they are being kept in hospital under <a href="#">section</a> and are not free to leave.
<b>Enduring power of attorney</b>	Enduring powers of attorney have been replaced by <a href="#">lasting powers of attorney</a> in England and Wales. However, they can still be used if they were made and signed before October 2007.
<b>Independent mental capacity advocate (IMCA)</b>	<p>A specially trained <a href="#">advocate</a> who can help you if you do not have the <a href="#">capacity</a> to make particular decisions. NHS bodies or local authorities must take an IMCA's views into account when making decisions that affect you if you have lost capacity.</p> <p>They are normally appointed by the local authority in England, and by local Health Boards or other NHS bodies in Wales. They must be independent people of integrity and good character with appropriate experience and training.</p>
<b>Independent mental health advocate (IMHA)</b>	<p>An IMHA is an <a href="#">advocate</a> specially trained to help you find out your rights under the <a href="#">Mental Health Act 1983</a> and help you while you are <a href="#">detained</a> or under a section of the MHA. They can listen to what you want and speak for you.</p> <p>You have a right to an IMHA if you are:</p>



	<ul style="list-style-type: none"> <li>detained in hospital under a section of the Mental Health Act. But if you are in England, you cannot have an IMHA if you are under sections 4, 5, 135 and 136.</li> <li>under Mental Health Act guardianship, conditional discharge and community treatment orders (CTOs)</li> <li>discussing having certain treatments, such as electroconvulsive therapy (ECT).</li> </ul> <p>In Wales, <a href="#">voluntary patients</a> and people under short-term sections of the Mental Health Act can also have an IMHA.</p>
<b>Informal patient or voluntary patient</b>	These are people who are staying in a psychiatric hospital but are not <a href="#">detained</a> under the <a href="#">Mental Health Act</a> . They should be able to come and go from the hospital within reason and are able to discharge themselves if they decide to go home.
<b>Lasting power of attorney (LPA)</b>	A lasting power of attorney is a legal document that lets you appoint someone, called an <a href="#">attorney</a> , to make decisions for you.
<b>Litigation friend</b>	<p>A litigation friend is someone who can take your place in legal proceedings, if you lack <a href="#">capacity</a> to take part yourself. For example, the litigation friend could instruct solicitors on behalf of you, or the litigation friend could speak to the judge directly on your behalf.</p> <p>A litigation friend could be a family member, a friend, or the <a href="#">Official Solicitor</a>.</p>
<b>Mental Capacity Act 2005 (MCA)</b>	<p>If you can't make decisions for yourself because you don't have the mental <a href="#">capacity</a> to make them, the Mental Capacity Act 2005 tells you:</p> <ul style="list-style-type: none"> <li>what you can do to plan ahead</li> <li>how you can ask someone else to make decisions for you</li> <li>how you can make decisions for someone else</li> </ul>
<b>Mental Capacity Act Code of Practice</b>	An official document that places certain legal duties on health and social care professionals, and offers general guidance and information to anyone caring for someone who may lack <a href="#">capacity</a> . It explains how the <a href="#">Mental Capacity Act</a> should be interpreted.
<b>Mental disorder</b>	<p>When the <a href="#">Mental Health Act</a> talks about someone with mental health problems and whether or not they should be <a href="#">sectioned</a>, it often uses the term "mental disorder". The Act defines this as "any disorder or disability of mind" (section 1).</p> <p>Mental disorder can include:</p> <ul style="list-style-type: none"> <li>any mental health problem normally diagnosed in psychiatry</li> <li>learning disabilities, if the disability makes you act in a way which may seem "abnormally aggressive" or "seriously irresponsible"</li> </ul>
<b>Mental Health Act 1983 (MHA)</b>	This is a law that applies to England and Wales which allows people to be <a href="#">detained</a> in hospital (sectioned) if they have a mental illness and

	<p>need treatment. You can only be kept in hospital if certain conditions are met.</p>
<b>Official solicitor</b>	<p>If you lack <a href="#">capacity</a> to conduct legal proceedings for yourself, and decisions are being made for you in a court, the court may ask the Official Solicitor to take part in the proceedings. The job of the Official Solicitor is to make sure that your interests are protected during the proceedings.</p>
<b>Office of the Public Guardian (OPG)</b>	<p>The Office of the Public Guardian:</p> <ul style="list-style-type: none"> <li>• makes sure decisions made by the <a href="#">Court of Protection</a> are enforced</li> <li>• registers <a href="#">lasting powers of attorney</a></li> <li>• supervises <a href="#">deputies</a> appointed by the Court</li> <li>• helps <a href="#">attorneys</a> and deputies carry out their duties</li> <li>• publishes information and guidance about the <a href="#">Mental Capacity Act</a> for families, carers, healthcare professionals and lawyers</li> <li>• publishes forms for making a lasting power of attorney and applying to the Court of Protection</li> <li>• investigates concerns about the actions of attorneys and deputies</li> </ul>
<b>Relevant person's representative (RPR)</b>	<p>This is someone who can support you in all matters connected to a <a href="#">deprivation of liberty safeguards</a> situation, like requesting a review of the <a href="#">deprivation of liberty</a> and making an application to the <a href="#">Court of Protection</a>. It can be someone like a family member (and often is). You can choose who you want it to be if you have the <a href="#">capacity</a> to do so.</p> <p>An relevant person's representative must be:</p> <ul style="list-style-type: none"> <li>• aged 18 or over</li> <li>• willing to be your RPR</li> <li>• able to keep in touch with you</li> <li>• physically well enough so that they can carry out their role.</li> <li>• an independent person. This means they cannot be your professional or paid carer.</li> </ul>
<b>Responsible clinician (RC)</b>	<p>This is the approved clinician in charge of your care and treatment while you are <a href="#">sectioned</a> under the <a href="#">Mental Health Act</a>.</p> <p>Certain decisions, such as applying for someone who is sectioned to go onto supervised community treatment, can only be taken by the responsible clinician.</p> <p>All responsible clinicians must be approved clinicians. They do not have to be a doctor, but in practice many of them are.</p>
<b>Section</b>	<p>In this guide, being 'sectioned' means that you are kept in hospital under the <a href="#">Mental Health Act</a>. There are different types of sections, each with different rules to keep you in hospital. The length of time</p>

that you can be kept in hospital depends on which section you are [detained](#) under.

[See our information on sectioning](#) to find out more.

# About the Mental Capacity Act

- [What is the Mental Capacity Act?](#)
- [What are my rights under the Mental Capacity Act?](#)
- [What is the difference between the Mental Health Act and the Mental Capacity Act?](#)

## What is the Mental Capacity Act?

If you can't make decisions for yourself because you don't have the mental [capacity](#) to make them, the [Mental Capacity Act 2005](#) tells you:

- what you can do to plan ahead
- how you can ask someone else to make decisions for you
- who can make decisions for you if you haven't planned ahead

The Mental Capacity Act will be important to you if you think that your ability to make certain decisions will be affected in the future because of your mental health problem, an illness, an injury, or outside reasons like the effect of medication you are prescribed.

## What are my rights under the Mental Capacity Act?

- **You have the right to make your own decisions** if you have [capacity](#) and are aged 18 or over. There are a few exceptions, such as decisions about treatment for mental health problems if you are detained under the [Mental Health Act 1983](#).
- **You will be assumed to have capacity**, unless you have had an assessment showing you don't.
- **You should receive support to make your own decisions** before anyone assumes you don't have capacity, especially from health and social care professionals. You shouldn't be labelled as lacking capacity just because you've made a decision that others don't agree with.
- **Any decisions made for you must in your [best interests](#)** and restrict your freedom as little as possible.

## What is the difference between the Mental Health Act and the Mental Capacity Act?

- The [Mental Health Act 1983](#) applies if you have a mental health problem, and sets out your rights if you are [sectioned](#) under this Act.
- The [Mental Capacity Act](#) applies if you have a mental health problem and you do not have the mental [capacity](#) to make certain decisions.

This table compares the differences between the Acts:

<b>Mental Health Act 1983</b>	<b>Mental Capacity Act 2005</b>
<ul style="list-style-type: none"> <li>• Applies if you have a <a href="#">mental disorder</a>, such as depression or bipolar disorder.</li> <li>• You cannot be <a href="#">detained</a> under this Act unless you meet the conditions for sectioning under the Mental Health Act 1983 (<a href="#">see our information on the Mental Health Act</a>).</li> <li>• If you are detained under this Act, the health professionals must follow this Act when making decisions for you. They do not need to follow the <a href="#">best interests checklist</a> in the Mental Capacity Act.</li> <li>• Applies to treatment you are given for your mental health problems, such as antipsychotic medication. This means you can be given the treatment regardless of whether you agree to it, and regardless of whether you have the mental capacity to agree to it.</li> </ul>	<ul style="list-style-type: none"> <li>• Applies if you do not have the mental capacity to make a decision that needs to be made, for example about healthcare or residential care.</li> </ul> <p>Usually the health professionals should carry out a mental capacity assessment of you before an important decision can be made on your behalf, although in an emergency, this might happen before the assessment is done.</p> <ul style="list-style-type: none"> <li>• Any decisions made about you must follow the <a href="#">best interests checklist</a> in the Act.</li> <li>• If you cannot be sectioned under the Mental Health Act, you can still be detained and stopped from leaving a place using the <a href="#">Deprivation of Liberty Safeguards</a> procedure under this Act or by a court order.</li> <li>• Can be used to give you treatment for physical health problems that have nothing to do with your mental health problem if you don't have capacity to decide whether to have the treatment. If you are not sectioned, treatment for your mental health problem could also be given, if you are in hospital and do not object or have not refused in the past or via an <a href="#">advance decision</a>, <a href="#">attorney</a> or <a href="#">deputy</a>.</li> </ul>

# Capacity

- [What does 'lacking capacity' mean?](#)
- [How is my mental capacity assessed?](#)
- [What happens if I am found to lack capacity?](#)
- [If I have a mental health diagnosis or have been detained under the Mental Health Act, will I always lack capacity to make my own decisions?](#)

## What does 'lacking capacity' mean?

Section 2 of the [Mental Capacity Act 2005](#) says that “a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”

This means that you lack capacity where your mental health problem makes it difficult for you to make a certain decision, or a type of decision, at a particular time.

You will be [assessed by health professionals](#) before you are said to lack capacity.

Lacking capacity includes where your ability to make decisions is affected:

- **permanently:** this is where your ability to make decisions is always affected. This might be because, for example, you have a form of dementia, a learning disability or brain injury. Or,
- **in the short term:** this means your ability to make decisions changes from day to day. This might be because, for example, you are confused because you're on medication or because of some mental health conditions, or you are unconscious.



### Example 1

Ava has a mild form of dementia which affects her short-term memory. After she spends money, she will often forget how much she has spent, and whether or not she has even bought anything. Her condition is unlikely to improve in the future.

Ava's capacity to make important financial decisions has been **permanently** affected because of her mental health condition.

## Example 2

Paul sometimes hears distressing voices. He is generally able to do day-to-day activities, such as washing, cleaning, and cooking for himself. However, when the voices are at their most distressing, he is not able to do these activities.

Paul's capacity to do day-to-day activities is affected in the **short term** because of his mental health condition.

## Different types of decisions

Whether or not you lack capacity will also depend on the type of decision that you need to make.

- You will probably need a **lower level of mental capacity** to make decisions about everyday matters, such as what to eat or where to go.
- You will probably need a **higher level of mental capacity** when you are deciding whether to buy a new home or get married.

Section 3 of the Mental Capacity Act says that when health professionals look at your capacity to make a decision, they have to ask these questions:

- Can you understand the information related to the decision?
- Can you remember the information for long enough to make a decision?
- Can you weigh up or use the information to reach a decision?
- Can you communicate the decision in any way at all, such as talking, using sign language or hand signals, or squeezing someone's hand?

The test can be applied to someone who lacks mental capacity for example because of an illness or the effects of medication, or because they are unconscious, have a brain injury or are in a long term coma.

## The Mental Capacity Act Code of Practice

The [Mental Capacity Act Code of Practice](#) says that people should not assume that you lack capacity because of:

- your age
- your appearance
- any mental health diagnosis you may have
- any other disability or medical condition you may have

## How is my mental capacity assessed?

Before someone can make a decision for you, they have to have a **reasonable belief** that you no longer have the [capacity](#) to make that decision yourself. This means asking questions like:

- Do you have a general understanding of what decisions need to be made?
- Do you have a general understanding of the consequences of the decision?
- Do you show this general understanding in the way you behave and make decisions?

If the decisions are for straightforward day-to-day actions, your friends and family can assess whether or not you have capacity.

If the decisions are more difficult, such as giving consent to medical treatment, a health professional like a doctor may have to assess you.

When health professionals are assessing your capacity, they must remember the following:

- Anyone assessing you must begin by assuming that you have capacity.
- They must help you make a decision for yourself.
- They must let you make a decision they might consider to be unwise.
- If they make a decision for you because you lack capacity to make it yourself, it must be in your best interests and restrict your freedom as little as possible.
- [What the Mental Capacity Act says about lacking capacity.](#)

The same principles apply to life-changing decisions as they do to routine decisions.

## What happens if I am found to lack capacity?

The [Mental Capacity Act](#) sets out ways for you to plan for what should happen if you ever lost [capacity](#) to make a particular decision.

If you do not plan ahead, and at some point you lose your capacity to make a particular decision, the Mental Capacity Act says that someone else can make that decision for you. Exactly who this would be depends on the circumstances at the time, but it could be a:

- friend
- relative
- unpaid carer
- paid carer
- doctor
- social worker
- nurse
- other health care professional
- court (in some unusual cases)



Even if someone else is making decisions for you, you should still be involved as much as possible when decisions are being made.

If you want to make important decisions for someone because they lack capacity to do so themselves, you may have to arrange for an assessment of that person's capacity. If the decision you want to make has long-term or irreversible effects, you may need to get legal advice about whether the law allows you to make it, or whether you need permission from a [Court of Protection](#).

Some everyday actions that are part of a person's care and treatment, such as a carer helping someone to dress, wash or eat, can be taken without a formal capacity assessment having to be made.

### **If I have a mental health diagnosis or have been detained under the Mental Health Act, will I always lack capacity to make my own decisions?**

No, not always. The [Mental Capacity Act](#) may apply to you if you have a mental health problem that affects your ability to make a particular decision. However:

- you may still be able to make some of your own decisions
- you may get back your capacity to make decisions after a time, or
- your capacity to make some decisions may be affected only occasionally and for short periods

# Best interests

- [What are my best interests?](#)
- [What can health professionals do in my best interests?](#)
- [Can force ever be used against me in my best interests?](#)

## What are my best interests?

Health professionals and others must act in your [best interests](#) before taking certain steps that affect your care and treatment.

Section 4 of the [Mental Capacity Act](#) has a **best interests checklist**, which outlines what someone needs to consider before taking an action or decision for you while you lack [capacity](#).

### Best interests checklist

- Considering all the circumstances relevant to you, like: the type of mental health problem or physical illness you have, how long it is going to last, your age, whether you would normally take this decision yourself, whether you are likely to recover capacity in the near future and who has cared or is caring for you.
- Considering whether you will have capacity to make the decision in future and whether the decision can be put off in the short-term. If you are experiencing severe mental distress, for example, will your distress ease in the near future enough to let you make your own decisions?
- Supporting your involvement in acts done for you and decisions affecting you.
- Considering all the wishes, feelings or instructions you expressed before losing capacity to make the decision, as well as any beliefs and values that are important to you.
- Considering the views of your carers, family, or people who may have an interest in your welfare, or people you have appointed to act for you.

There may be other relevant questions depending on your situation.

## What can health professionals do in my best interests?

The [Mental Capacity Act](#) gives health professionals the legal right to take certain steps relevant to your care and treatment. This includes for example deciding if you should have a serious operation.

To use these rights they must first make sure that:

- you do not have the [capacity](#) to consent for yourself
- they follow the [best interests checklist](#)

In cases of very serious treatment, such as an operation where the effects will be permanent, they may need to ask the [Court of Protection](#) for permission to give it to you.

If there is a disagreement about whether a decision is in your [best interests](#), you or someone helping you can go to the Court of Protection to settle the disagreement.

## **Can force ever be used against me in my best interests?**

The [Mental Capacity Act](#) says that if you do not have the [capacity](#) to make a particular decision, you can be physically restrained to stop you from being harmed.

- What amount of restraint is reasonable depends on how likely you are to suffer harm, and how serious the harm might be (section 6 of the Mental Capacity Act).
- Usually, the restraint must not be so great that it would take away your liberty. If you do not have capacity, you can only have your liberty taken away under special procedures called the [deprivation of liberty safeguards](#), or, less usually, by a court order. If these procedures are not followed, the deprivation of your liberty could be unlawful.



### **Example**

Amir has a learning disability which makes it difficult for him to recognise risk and danger. He has, on several occasions, wandered out of his house and walked across the road without being aware of the passing traffic.

One day, Amir's sister Sarah saw that he was about to walk onto a busy road, so she quickly grabbed his arm to stop him.

Because Amir does not have the mental capacity to be aware of road safety, Sarah was allowed to use some force to stop him from walking into the road.

However, if Sarah tied him to his chair and refused to let him leave, this would be an example of an **unreasonable amount of restraint**.

It is likely she would have to find a less restrictive way of restraining him and maybe get legal advice as she may have to ask for legal permission to restrain him on a regular basis.

# Deprivation of liberty

- [What is a deprivation of liberty?](#)
- [Is a deprivation of liberty the same as being detained under the Mental Health Act?](#)
- [What are the deprivation of liberty safeguards \(DoLS\)?](#)
- [How does the authorisation process work?](#)
- [Is a deprivation of liberty authorisation always granted?](#)
- [Can I challenge the authorisation in court?](#)
- [Where can I get support?](#)

## What is a deprivation of liberty?

Your liberty can only be taken away from you in very specific situations. The [Mental Capacity Act](#) calls this a [deprivation of liberty](#). It should only be used if it is the least restrictive way of keeping you safe or making sure you have the right medical treatment.

- Being deprived of liberty means that you are kept on a locked ward or in a locked room, or you are not free to go anywhere without permission or close supervision, and you are usually under continuous control and supervision. This is against the law unless it is done under the rules set out in the Mental Capacity Act.
- This may happen if you need to go into a care home or hospital to get care or treatment, but you don't have the [capacity](#) to make decisions about this yourself.
- If you are living at home, you can also be deprived of your liberty lawfully if the [Court of Protection](#) makes an order allowing it.

Your liberty can only be taken away under the Mental Capacity Act if:

- you are 16 or over
- you lack capacity to make personal care or healthcare decisions
- the care home or hospital where you are staying has successfully [applied for an authorisation](#) from the local authority
- the [deprivation of liberty safeguards](#) have been followed
- or where the [Court of Protection](#) grants permission

- Deprivations of liberty are monitored by the [Care Quality Commission](#) (England) and the [Healthcare Inspectorate Wales](#) (Wales). They write regular reports on the use of deprivations of liberty, but they would not be able to investigate individual cases on your behalf.



### **Example**

Jon has memory problems that have got worse over time, and lives in a care home. Because of his condition, he is less aware of danger than a person without the condition. He is unable to cross a busy road on his own and does not understand that it is dangerous to cross a nearby railway line.

Jon needs constant supervision and also has to be stopped from going out on his own. This usually involves keeping him in a locked room and physically stopping him if he tries to go out on his own. To keep him safe, this has to be done on a regular basis.

It would be unlawful for the staff to do this without using the deprivation of liberty safeguards, so they should apply to the local authority for permission, called a 'standard authorisation', as soon as they realise it is necessary.

### **Is a deprivation of liberty the same as being detained under the Mental Health Act?**

No, it is not the same as being detained under the [Mental Health Act 1983](#) – you do not need to have treatment for a mental health problem in order to be deprived of your liberty.

- You can be deprived of your liberty to keep you safe, or for treatment of other health problems.
- If you need to be detained mainly for treatment for a mental health problem, this will normally be done under the Mental Health Act 1983. If you are already detained under the Mental Health Act, the health professionals cannot at the same time apply the deprivation of liberty procedure under the Mental Capacity Act.

### **What are the deprivation of liberty safeguards (DoLS)?**

The [Mental Capacity Act](#) says that your liberty can only be taken away by health professionals if they use the procedures called the [Deprivation of Liberty Safeguards](#) (DoLS), or if the [Court of Protection](#) has granted permission. This protects you from having your liberty taken away without good reason.

## Key elements of the Deprivation of Liberty Safeguards

- It is in your [best interests](#) to take away your liberty. This means it is necessary to prevent harm to you, and the detention is proportionate, looking at how likely you are to suffer harm, and how serious the harm might be.
- It has become an unavoidable necessity to take away your liberty. Every effort should be made to prevent it from becoming a necessity.

- However, a deprivation of liberty will not be used every time someone is admitted to a hospital or care home if they lack [capacity](#) to decide whether to be admitted.
- It should only be used if it is the least restrictive way of keeping you safe or making sure you have the right medical treatment. For example, you may need to be kept away from places or situations where your safety could be at risk, such as railway lines or busy roads. Or you may be given medical treatment in your best interests and without being able to consent to it.

## How does the authorisation process work?

Before you can be lawfully deprived of your liberty, the care home or hospital where you are staying must get permission from the relevant authority (which would be a local authority, or if you are in hospital in Wales it can also be a local Health Board or the National Assembly). This is called applying for an authorisation.

Before the deprivation of liberty is authorised, you will have six assessments, which may take place at the same time. You cannot have your liberty taken away unless all the six assessments are met.

### Six assessments

**1. An age assessment**, to make sure that you are aged 18 or over.

**2. A mental health assessment** to confirm that you have been diagnosed with a '[mental disorder](#)' within the meaning of the Mental Health Act.

**3. A mental capacity assessment** to see whether you have capacity to decide where your accommodation should be. If you have, you should not be deprived of your liberty and the authorisation procedure should not go ahead.

**4. A best interests assessment** to see whether you are being, or are going to be, deprived of your liberty and whether it is in your [best interests](#). This should take account of your values and any views you have expressed in the past, and the views of your friends, family, informal carers and any professionals involved in your care.

**5. An eligibility assessment** to confirm that you are not detained under the Mental Health Act 1983 or subject to a requirement that would conflict with the

Deprivation of Liberty Safeguards. This includes being required to live somewhere else under Mental Health Act guardianship.

**6. A 'no refusals' assessment** to make sure that the deprivation of liberty does not conflict with any [advance decision](#) you have made, or the decision of an attorney under a lasting power of attorney or a [deputy](#) appointed by the [Court of Protection](#).

- **Length of the authorisation:** this depends on your personal circumstances and how likely it is these circumstances might change, though the maximum time allowed is 12 months. The assessor will make a recommendation based on your [best interests](#).
- **Renewing the authorisation:** your hospital or care home can request a new authorisation to begin as soon as your existing authorisation has run out.
- **Urgent authorisations:** these can be granted where the need for your deprivation of liberty is urgent. They can be granted for a maximum of 7 days, and it can be extended once for a further 7 days by the supervisory body.

### Flowchart: How does the authorisation process work?



### Is a deprivation of liberty authorisation always granted?

Your [deprivation of liberty](#) authorisation will not be granted unless all the conditions in the [six assessments](#) are met.

The authorisation must also:



- be in writing
- include the purpose of depriving you of liberty
- state why the supervisory body considers that you meet the legal conditions for using a deprivation of liberty
- contain any conditions attached to the authorisation, such as steps to maintain contact with your family or meet your cultural needs

The care home or hospital where you are must do what it can to make sure that you and your [relevant person's representative](#) understand:

- the effect of the authorisation
- your right to request a review
- your right to apply to the [Court of Protection](#)

If your deprivation of liberty authorisation is not granted, the supervisory body must inform:

- you
- the hospital or care home that made the request
- any [independent mental capacity advocate](#) involved
- every interested person consulted by the best interests assessor

Your care plan may need changing to avoid a deprivation of liberty.

## **Can I challenge the authorisation in court?**

If you think you shouldn't have your liberty deprived, you can challenge it by:

- asking for a review of the authorisation, or
- appealing to the Court of Protection

## **Reviewing the authorisation**

- The supervisory body must review the [deprivation of liberty](#) authorisation if requested to do so by you, the hospital or care home where you are staying, or your [relevant person's representative](#).
- You may have to go through the [six assessments](#) again if your circumstances have changed.
- The outcome may be that: the deprivation of liberty authorisation is ended, the conditions attached to it are changed, or you still meet the conditions for deprivation of liberty, possibly for a different reason.
- The supervisory body may also carry out a review at other times.
- You can ask the local authority for an [independent mental capacity advocate](#) to help you with this, if you need someone's help.

## **Appealing to the Court of Protection**

- You or your [relevant person's representative](#) have a right to appeal to the Court of Protection against a decision of the supervisory body. Any other person can appeal to the court, but they will need the court's permission first.

- Legal aid is available for you or your relevant person's representative to have legal representation at the appeal.
- The Court may tell the hospital or care home where you are being deprived of your liberty that the authorisation (standard or urgent) is at an end, or it may tell the body that granted the authorisation to change it or end it.

[Read more about the Court of Protection.](#)

### Flowchart: How can I challenge the authorisation?



### Where can I get support?

You can get support from:

- an [independent mental capacity advocate](#), and/or
- a [relevant person's representative](#) (RPR)

### Relevant person's representative

- This is someone, like a family member, who can keep in touch with you, represent you and support you in all matters connected with the deprivation of liberty authorisation. You can choose who you want to be your relevant person's representative if you have the [capacity](#) to do so.
- If you do not have capacity to choose your relevant person's representative, they may be chosen by your attorney acting under an [lasting power of attorney](#), a [deputy](#) appointed by the [Court of Protection](#), or the best interests assessor – who will try to identify a suitable person.
- The identity of the relevant person's representative will be considered during your [best interests assessment](#). If you have nominated someone you think will be willing

to act as your relevant person's representative, the best interests assessor must recommend them.

- The supervisory body can remove a person from acting as your relevant person's representative if it considers that they may not be keeping in touch with you, although it should contact the relevant person's representative to clarify the situation before removing them.

# Health and welfare decisions

- [What types of decisions can be made on my behalf?](#)
- [What are healthcare and medical treatment decisions?](#)
- [What if I've made an advance decision or a power of attorney?](#)
- [What are welfare and personal care decisions?](#)
- [When can't someone make a day-to-day decision for me?](#)
- [How can I plan ahead for when I can't make decisions for myself?](#)
- [What happens if I don't plan ahead?](#)

## What types of decisions can be made on my behalf?

Under the [Mental Capacity Act](#), someone could make decisions on your behalf relating to your:

- healthcare and medical treatment, and/or
- welfare and personal care

## What are healthcare and medical treatment decisions?

These could include decisions on whether to have:

- examinations and tests done by doctors and healthcare professionals to reach a diagnosis
- treatment from a doctor or dentist, including medical operations or surgery
- cardiac resuscitation
- breathing, feeding and drinking by artificial methods, such as tubes and machines
- blood transfusions
- having samples of blood or other substances taken from the body
- chiropody, physiotherapy and nursing care

These are not the only types of healthcare decisions, but are just examples of what might be included.

## Routine actions

If you lack capacity, there are many other 'routine actions' that carers or professionals can make for you without needing any legal authority or permission from a court.

These routine actions include:

- giving you routine medication
- taking you to hospital for treatment or assessment
- giving you nursing care or emergency first aid or medical treatment

Section 5 of the [Mental Capacity Act](#) says that whatever decision they make must be in your [best interests](#).

## What if I've made an advance decision or a power of attorney?

A carer or professional should not make any healthcare decisions on your behalf if:

- they know that you have made an [advance decision](#) and these decisions would go against what you have put down
- they know that you have named an attorney in a [lasting power of attorney](#) and this would go against what they have decided, or
- it would go against a decision made by a [deputy](#) appointed by a court or a decision made by the [Court of Protection](#)

## What are welfare and personal care decisions?

These are day-to-day actions generally necessary for your welfare.

These include:

- where you are going to live and/or who you will have contact with
- washing, dressing or feeding
- shopping, buying essential goods and arranging personal care services
- tidying or clearing up your home if you are in hospital or residential accommodation
- help with communication
- arranging community care services or a community care assessment

If you have lost the capacity to decide about these actions, they can usually be taken for you by carers, family members and health and care professionals without the need for permission from a court as long as they are in your [best interests](#).

## When can't someone make a day-to-day decision for me?

Your carers, family members and health and care professionals cannot make decisions related to the following day-to-day actions:

- **Accommodation-related decisions.** Decisions about your long term accommodation or changing your accommodation will need to involve an [independent mental capacity advocate](#).
- **If you have named an attorney under a [lasting power of attorney](#)** to make personal and welfare decisions for you. No decisions can be made that go against what your attorney has decided for you, except for certain decisions made by your [responsible clinician](#) under the Mental Health Act, such as how to treat your mental health problem.
- **If you have had a deputy appointed for you.** If there are decisions that a [deputy](#) appointed by the court has decided, or what the [Court of Protection](#) has decided for you, no one can make any decisions that go against that, except your responsible clinician if you are sectioned under the Mental Health Act.

## **How can I plan ahead for when I can't make decisions for myself?**

If you want to plan ahead for when you will no longer have [capacity](#) to make decisions for yourself, you could consider making:

- an [advance decision](#), and/or
- a [lasting power of attorney](#)

## **What happens if I don't plan ahead?**

If you lose capacity and you haven't made an advance decision or appointed an attorney, the [Court of Protection](#) can:

- make a one-off decision
- make more than one decision, or
- appoint a [deputy](#) to make decisions on your behalf

[Read more about the Court of Protection.](#)

# Financial decisions

- [What are financial decisions?](#)
- [What happens if I borrowed money while I lacked capacity?](#)
- [Who can make a will for me if I lose capacity?](#)
- [Who can manage my finances for me if I lose capacity?](#)
- [How can I plan ahead for when I can't make decisions for myself?](#)

## What are financial decisions?

Financial decisions cover your financial affairs and business matters including:

- agreements or contracts
- making a will
- buying, selling or renting a room, house or flat

They can also cover:

- using a bank account and credit cards
- getting a loan
- insurance or mortgage from a bank or finance company
- paying bills and household expenses

## What happens if I borrowed money while I lacked capacity?

If you borrowed money when you did not have the [capacity](#) to fully understand what you were doing, the law sees this as a contract.

You have to follow the terms of the contract unless you can show that the person or organisation you borrowed money from **knew or should have known** that you did not have capacity at the time to make the contract with them.

If you can show this, then the contract can be cancelled and will no longer have any effect.

If you can't show this, you should still get advice from a money advice organisation such as [National Debtline](#) or [Citizens Advice Bureau](#) to see if your repayments can be reduced or renegotiated.

- **Contract for necessary goods and services:** If the contract was to supply you with necessary goods and services, such as food or domestic heating and lighting, you will still have to pay a reasonable price for these goods and services – even if they knew that you lacked capacity at the time.
- **Contract for loans:** If you think you were misold a loan, or you were placed under undue pressure to take out a loan or buy goods, you can complain to the lender or supplier. It is important to seek legal advice to see whether you have to pay back the money. You can also contact the [Financial Ombudsman](#).

- **Mortgage payments or rent:** If you get behind with your mortgage payments or rent, your home could be at risk. You should get advice as quickly as you can from a housing organisation such as [Shelter](#).

## **Who can make a will for me if I lose capacity?**

If you lose capacity before making a will, you cannot name a person to write a will for you. Even an [attorney](#) you have named in a [lasting power of attorney](#) would be unable to do this. Only the [Court of Protection](#) can do this in certain circumstances.

So you should try to make a will while you still have the capacity to do so. If you can, get advice from a solicitor who specialises in wills or from a professional who has a licence to write wills professionally for other people.

## **Who can manage my finances for me if I lose capacity?**

If you haven't made a [lasting power of attorney](#), the [Court of Protection](#) can:

- make a one-off decision
- make more than one decision, or
- appoint a [deputy](#) to make decisions on your behalf

If you are on benefits, an [appointee](#) appointed by the [Department for Work and Pensions](#) could also help manage your welfare benefits, rent payments or mortgage payments. However, the risk is that this may be someone you would not choose yourself.

## **How can I plan ahead for when I can't make decisions for myself?**

If you want to plan ahead for when you will no longer have [capacity](#) to make decisions for yourself, you could consider making:

- a [lasting power of attorney](#), and/or
- a [will](#)



# Advance decisions

- [What is an advance decision?](#)
- [Do health professionals have to follow my advance decision?](#)
- [How do I make an advance decision?](#)
- [Can I refuse treatment that saves or prolongs my life?](#)
- [Can I refuse future treatment that I could be made to have if I am sectioned?](#)
- [Can I make an advance decision if I am sectioned?](#)
- [Can I use an advance decision to appoint a healthcare attorney?](#)
- [Can I change my advance decision?](#)
- [What happens if there is disagreement over the meaning of my advance decision?](#)
- [Can I set out my preferences for the future in any other way?](#)

## What is an advance decision?

An [advance decision](#) is a statement of instructions about what medical and healthcare treatment you want to refuse in the future, in case you lose the [capacity](#) to make these decisions. For example, you could use it to say you do not wish to be resuscitated if you develop certain medical conditions in the future.

You can only make an advance decision if:

- you have the capacity to make those decisions now
- you are an adult (at least 18 years old)

## Do health professionals have to follow my advance decision?

Generally, yes. An [advance decision](#) will be legally binding, and must be followed by health professionals, if you have made a clear and valid advance decision and you have followed the procedures set out in the [Mental Capacity Act](#).

If you are an [informal patient](#), health professionals should follow your advance decision, even if you are being treated in hospital. However, treatment may be given to you in an emergency, especially if it is not clear if your advance decision covers the particular treatment the professionals want to give you to deal with the immediate situation.



## Example

Ravi has a serious brain injury which has affected his ability to make decisions. While he still had [capacity](#), he made an advance decision saying that if he ever lost the ability to look after himself because of his memory problems, and could not communicate his decisions, he would not wish to be resuscitated if he had a heart attack.

One day, Ravi is involved in a car accident. He is seriously injured and unconscious because of his injuries. The accident and emergency staff resuscitate him when his heart stops beating.

It is unlikely a court will say they have acted unlawfully because they were not sure whether his advance decision applied to this particular situation.

## What are the exceptions?

There are some situations where a doctor or healthcare professional would not need to follow your advance decision:

- **If you have asked for a certain type of medical treatment.** When you ask for a certain type of medical treatment, as opposed to refusing one, you can put these preferences down in a document, and it should be taken into account. However, it will not be legally binding so a doctor or professional does not have to follow it.
- **If it is not clear** what type of treatment you wish to refuse in your advance decision.
- **If you have cancelled your advance decision** since making it.
- **If you have named an [attorney](#) under a [lasting power of attorney](#)** and given them the power to make the same decisions or refusals you have mentioned in your advance decision, since making it.
- **If you have become capable of making the decisions** yourself that you mention in your advance decision, at the time that treatment is offered to you.
- **If there has been a change of circumstances** since you made your advance decision, so that it is doubtful whether you would make the same decision now. This might include recent advances in medical treatment and improvements in medication.



## Example 1

Kemma made an advance decision some years ago with a list of antipsychotics that she did not wish to be given if she ever became ill and lost the capacity to refuse treatment. She also stated some forms of medication that she would not mind having.

The health professionals realise that Kemma's decision mentions medication that is no longer used to treat her condition. As circumstances have changed since she made her advance decision, and there have been recent advances in medical treatment and improvements in medication, her advance decision does not have to be followed.

Also, they do not have to follow her treatment preferences in the same way as they would follow her refusals, because the law says that only refusals of treatment are legally binding.

## Example 2

Steve is very clear in his advance decision that if he ever loses capacity in the future, he does not want to be given [electroconvulsive therapy](#) (ECT) in any circumstances, even if this is for life saving treatment.

Steve has made his advance decision in writing, has signed it and had it witnessed and signed by the witness.

Steve's advance decision must be followed because he has followed all the requirements for refusing life saving treatment, and also because ECT refusals are binding even if the person is then sectioned under the Mental Health Act.

See: [Can I refuse treatment that saves or prolongs my life?](#) and [Can I refuse future treatment that I could be made to have if I am sectioned?](#)

## How do I make an advance decision?

You can make an [advance decision](#) in writing, by telling a health professional, or by having a note made in your hospital or GP medical notes.

If you can, you should try to make your advance decision in writing because:

- your instructions will be clearer and easier to understand - this is especially important if your instructions are complex
- it will be easier to get advice about your instructions
- if your instructions include a [refusal of future possible life-saving treatment](#) you must set them down in writing and include the information listed below

If you can't make an advance decision in writing, you can:

- tell your advance decision to someone like a doctor, nurse, or other health professional, or
- have a note of your advance decision made in your hospital or GP medical notes

If you want to tell someone your advance decision instead of writing it down, you should:

- mention the circumstances where you want your advance decision to apply, including a time when you would not have the capacity to make the treatment decisions yourself in the future
- also tell your decision to your family, close friends and anyone who is caring for you

## **Can I refuse treatment that saves or prolongs my life?**

Yes, but certain treatment can still be given to you if it is necessary to save or prolong your life. Health professionals can give you this treatment lawfully without your consent if you lack the capacity to make this kind of decision.

If you would like to use an [advance decision](#) to refuse life-saving treatment, you should:

- make your advance decision in writing
- make it clear that you understand you are refusing life-saving treatment and that you understand the consequences
- include a statement confirming that your advance decision applies to life-saving treatment
- sign your advance decision in front of a witness, and get them to sign it too
- include all relevant personal details, including your name and address

Even if you do these things, there are times when professionals and others may go against your advance decision without breaking the law. For example, you can't use an advance decision to:

- refuse all healthcare under any circumstances, such as basic nursing care and being kept clean
- ask a professional or anyone else to do an act which is against the law.

If your advance decision is likely to be complicated or involve refusing life-saving treatment, you should [get legal advice](#) on what to say or get someone else to help you with it, such as an [advocate](#) or healthcare professional.

## **Can I refuse future treatment that I could be made to have if I am sectioned?**

You cannot generally use an [advance decision](#) to refuse treatment that might be given in the future for your mental health problems if you are [sectioned](#) under the [Mental Health Act 1983](#) at that time. For example, you cannot refuse mental health medication in this way for when you are sectioned in the future.

The exception is with [electroconvulsive therapy](#) (ECT). You can use an advance decision to refuse ECT in the future, even if you are sectioned at the time when it could be given.

The only situation where your advance decision can be not followed is in an emergency, and emergencies that need treatment with ECT are unlikely to happen.

### **Can I make an advance decision if I am sectioned?**

Yes, you can make an advance decision even if you are [sectioned](#) and in hospital under the [Mental Health Act](#).

Remember that you still need the [capacity](#) to make decisions about your treatment at the time you are writing your [advance decision](#) - that is, you should try to make sure your capacity to make decisions about your treatment is not affected by:

- your mental health condition, or
- any medication you may be taking

### **Can I use an advance decision to appoint a healthcare attorney?**

No, there is a [standard way of appointing a healthcare attorney](#) , and official forms that you must use.

If you have made an advance decision, you should be careful about appointing an attorney afterwards.

If you give your healthcare attorney power to make the same type of decisions you have made in your advance decision, this could make your advance decision invalid or partly invalid. This is because the law says that you have acted inconsistently with your advance decision and presumes that you want your attorney to take over the power to make these decisions instead.

However, there is no reason why you cannot make an advance decision and a lasting power of attorney covering [financial and property decisions](#) at the same time, because an advance decision will not cover financial and property matters.

### **Can I change my advance decision?**

Yes - you can change your [advance decision](#) at any time, and the [Mental Capacity Act](#) does not have a particular way for you to do it.

You may need to change your advance decision because your circumstances have changed since you made it. For example, you may have:

- got married or entered a civil partnership
- become a parent
- changed your family relationships in other ways

You need to look at your advance decision regularly to make sure it still represents what you want.

If you want to change your advance decision, you should do the following:

- **Do it in writing.**
- **Cancel and destroy your old advance decision** and make a new one if you can. This helps to avoid any confusion as to which advance decision applies.
- **Tell other people** such as your family or close friends, GP, carer or relevant healthcare professionals that you have made a new advance decision and that you wish to destroy the old one.
- **If your advance decision includes a refusal of life-saving treatment**, you must change your advance decision in writing. If you want to cancel your refusal of life-saving treatment, and are unable to do it in writing at the time, you should tell healthcare professionals who are treating you and anyone close to you as soon as possible, and try to get it put in your medical notes. Then change your advance decision in writing or make a new one as soon as you can.

It is important to make any changes to your advance decision as clear as possible because:

- by the time you have lost capacity and health professionals are trying to follow your advance decision, you will probably not be able to answer questions about it
- it will be difficult to follow your advance decision if there is confusion around it or if it is not clear whether you have altered it

## **What happens if there is disagreement over the meaning of my advance decision?**

If there is any doubt about the meaning of your [advance decision](#), the [Court of Protection](#) can decide what it means.

This might happen, for example, if health professionals think your advance decision says one thing, but your family or close friends think it says another.

## **Can I set out my preferences for the future in any other way?**

Yes, you can make an [advance statement](#).

An advance statement:

- **is a written document that sets out your preferences** - and not refusals of treatment. You can ask a professional to follow this document if you ever lose capacity to make these decisions yourself.

- **is not legally binding.** This means that professionals and others who may be carrying out your instructions in the future will not normally be acting unlawfully if they do not follow your instructions.
- **should be looked at when thinking about your best interests.** If you lose [capacity](#) to make decisions, any decisions made on your behalf should be made in your [best interests](#). So, whoever is looking after your affairs after you have lost capacity should refer to your advance statement if you have left one.

### Differences between an advance decision and advance statement

There are some important differences between an advance decision and an advance statement:

An advance decision...	An advance statement...
<ul style="list-style-type: none"> <li>• is a written document or spoken statement that sets out your <b>refusals of treatment</b></li> <li>• <b>is legally binding</b> as long as you follow the procedures in the Mental Capacity Act and could be enforced in a court if necessary</li> <li>• <b>must be followed by professionals</b> whenever decisions are made about your healthcare treatment after you have lost capacity</li> </ul>	<ul style="list-style-type: none"> <li>• is a statement of your <b>general wishes and care preferences</b>. For example your wishes on where you would like to live, or the type of care and support you want to receive</li> <li>• is <b>not legally binding</b>, though it should be referred to when decisions are being made in your <a href="#">best interests</a>.</li> </ul>

You can make both an advance decision and an advance statement if you want to.

# Lasting power of attorney (LPA)

- [What is a lasting power of attorney?](#)
- [What decisions can my healthcare attorney make for me?](#)
- [What decisions can my property and financial affairs attorney make for me?](#)
- [What are the disadvantages of creating a lasting power of attorney?](#)
- [Are there any decisions I could not give an attorney the power to decide?](#)
- [How do I make a lasting power of attorney?](#)
- [What can I do if my attorney does not follow my instructions?](#)
- [What might happen if I decide not to make a lasting power of attorney?](#)

## What is a lasting power of attorney?

A [lasting power of attorney](#) is a legal document that lets you appoint someone to make decisions for you.

You can use a lasting power of attorney to plan for when you no longer have [capacity](#) to make your own decisions, and to make sure that these decisions are handled by someone you trust.

This includes decisions about your:

- finances
- property
- future healthcare
- future personal care and welfare

## Attorney

The [Mental Capacity Act](#) allows you to appoint someone called an [attorney](#) under a lasting power of attorney. This attorney does not have to be a lawyer or someone with specialist knowledge. So you could name someone like your partner, a family member, a friend or a professional.

This attorney has the legal power to:

- make certain decisions for you
- continue to make decisions for you after you have lost capacity to make the decisions for yourself

## What decisions can my healthcare attorney make for me?

A healthcare attorney can only make decisions for you when you're unable to make these decisions for yourself.

They can also decide about:

- your daily routine (for example, eating and what to wear)



- routine medical care – when and where this should happen
- moving into a care home
- life-saving or life-sustaining treatment

The exact decisions they can take for you depends on what you put in your lasting power of attorney.

### **Refusing medical treatment decisions**

You can give your healthcare attorney power to refuse certain treatments for you.

For example:

- cardiac resuscitation after a heart attack
- blood transfusions
- medication
- [electroconvulsive therapy](#) (even if you are [sectioned](#) and your [responsible clinician](#) or approved clinician prescribes this treatment)

But your healthcare attorney will not be able to refuse treatment for you if:

- you are sectioned under the [Mental Health Act](#) in the future, and your treatment is prescribed by the responsible clinician or approved clinician in charge of your treatment at that time. Your attorney will have no legal power to refuse the treatment, unless it is electroconvulsive therapy.
- it is life-saving in an emergency situation (unless you have stated very clearly on your lasting power of attorney form that they can refuse life-saving treatment for you)
- you have the capacity to refuse the treatment for yourself

### **What decisions can my property and financial affairs attorney make for me?**

This list is not complete, but some examples are:

- paying bills
- claiming or collecting benefits
- selling your home or flat
- spending money on your home or flat

This type of lasting power can be used as soon as it's registered, with your permission, if you have [capacity](#) to give it.

### **What are the disadvantages of creating a lasting power of attorney?**

The disadvantage is that you are giving someone a lot of your personal information, and giving them power to make decisions about your life. That is why it is important to choose someone you can trust to be your attorney.

<p><b>An attorney under a financial lasting power of attorney...</b></p>	<p><b>An attorney under a healthcare and personal care lasting power of attorney...</b></p>
<p>would have access to a lot of information about your bank account and finances.</p> <p>However it might be possible to get your money back if the court decides they have been dishonest or spent your money unwisely.</p>	<p>has wide-ranging authority to make decisions for you.</p> <p>They would have access to your personal correspondence and papers such as your medical notes.</p> <p>They might even be able to decide where you live and who you live with.</p>

### **Should I have a healthcare and personal care attorney?**

It is more usual for people to have an [attorney](#) to manage their finances than to have a healthcare and personal care attorney. You need to think about whether having a healthcare and personal care attorney is the best way of planning for your long term future.

Some questions to think about might be:

- **Could you make an [advance decision](#) or [advance statement](#),** to try to make sure your views and preferences are followed?
- **Are there other people you would want to have a say in your future healthcare or personal care?** What happens if they disagree? Remember, the attorney is the one who would be making the decisions and would have the final say.
- **What if your capacity to make decisions changes from day to day?** If you lost [capacity](#) to make important healthcare and personal care decisions, would you get it back in the short term so that you could start making your own decisions again? Would you be happy to let the health and care professionals make important decisions for you in the short term?
- **Is there a person you would trust to make important decisions about medical treatment in the future on your behalf?** Would they listen to what the doctors and healthcare professionals would have to say at the time? Would they have your [best interests](#) at heart?

### **Are there any decisions I could not give an attorney power to decide?**

You cannot give an attorney the power to:

- act in a way or make a decision that you cannot normally do yourself – for example, anything outside the law
- consent to a [deprivation of liberty](#) being imposed on you, without a court order

- make a decision that conflicts with a decision of your guardian, which they have the power to make, such as where you will live, if you are under [guardianship](#)
- (if you make an [advance decision](#) after appointing your attorney that covers the same medical treatment refusals as you have given your attorney power to make) make a decision that goes against the treatment refusals you have set out in your advance decision

<b>An attorney under a finance and property lasting power of attorney cannot...</b>	<b>An attorney under a healthcare and welfare lasting power of attorney cannot...</b>
<ul style="list-style-type: none"> <li>• make decisions about your future healthcare or any personal matters – the only exception is if you have named the same person to be your finance and property attorney, and your healthcare and welfare attorney, on separate forms</li> </ul>	<ul style="list-style-type: none"> <li>• make decisions about your finances, business affairs or property matters in the future – again the only exception is if you have named the same person to be your finance and property attorney, and your healthcare and welfare attorney, on separate forms</li> <li>• demand specific forms of treatment on your behalf</li> <li>• refuse basic nursing care for you, such as keeping you clean or refusing food and drink that is given to you in a natural way</li> <li>• refuse life-saving treatment on your behalf, unless this is a power you have clearly given them in your lasting power of attorney</li> </ul>

## How do I make a lasting power of attorney?

To make a [lasting power of attorney](#), you (the donor of the power) need to:

- be aged at least 18 or over, and
- have the [capacity](#) to make the same decisions that you want to authorise someone else to make

You need to decide whether you want the [attorney](#) to make decisions that are:

- financial and property, or
- healthcare and personal

You can name the same person as attorney in both cases, but you will need to fill in two forms, one for the financial and property lasting power of attorney, and another for the healthcare and personal one.

There is a form provided by the [Mental Capacity Act](#) which you must use. You can get the form:

- from the [Office of the Public Guardian](#) (OPG)
- by going on the [government website of the OPG](#), or
- by [seeing a solicitor](#) and asking them to help you fill out the form

## **Naming a person as your attorney**

When you're deciding who to name as your attorney:

- make sure the person is 18 or over
- speak with this person before you name them

You can name more than one person to act together as attorneys, but you may need to get legal advice to make sure it is valid.

## **Completing the form**

When you get the form you will need to do the following:

- Name the person or persons you are authorising to act as your attorney(s).
- Fill out the relevant sections in writing.
- Have the form witnessed by someone else who is not going to be the attorney.
- Have the form stamped and executed as a deed (you may need to go to a solicitor for this).
- Make sure you have included information about the purpose of the lasting power of attorney. This includes what types of decisions you give the attorney authority to make, and what decisions you do not wish them to make.
- Get the attorney to sign a statement that they have read the information and understand their duties under the lasting power of attorney, including acting in your [best interests](#).
- Name the people (if any) you would like to be notified when the lasting power of attorney is registered with the Office of the Public Guardian.
- Include a [certificate of capacity](#) from one of the professionals and other people listed on the form.

## **Financial lasting power of attorney**

If you are making a financial lasting power of attorney, you can say that you want the attorney to:

- only make specific decisions about your property or finance, or
- have a general power to make decisions about your property and finance

An attorney under a financial lasting power of attorney cannot make any decisions about healthcare or personal matters on your behalf.

## **What can I do if my attorney does not follow my instructions?**

If your [attorney](#) acts dishonestly or doesn't follow your instructions, you or someone who looks after your interests can:

- **complain** to the [Office of the Public Guardian](#) about the way the attorney is using their powers, or
- **ask for them to be removed** from being attorney, if the [Court of Protection](#) decides that it is in your best interests

The Court of Protection can remove the powers of an attorney for:

- fraud
- dishonesty
- failing to act in your best interests
- not being able to act as attorney through illness or other reasons

The Court of Protection can also:

- decide what your lasting power of attorney means and what it gives your attorney power to do, if there is any disagreement about its meaning
- give instructions on how the attorney should carry out your instructions in your lasting power of attorney

However, the Court cannot change any of the instructions you put in your lasting power attorney.

## **What might happen if I decide not to make a lasting power of attorney?**

### **For healthcare and personal decisions:**

- If you have made an advance decision, the healthcare professionals should follow your advance decision and respect any medical treatment refusals you have set out in it.
- If you have not made an advance decision, or a decision has to be made that is not covered in your advance decision, healthcare professionals will make the decision in your [best interests](#) and should consult your partner, close family or anyone else they know plays an important part in your life; they should also consult your [advance statement](#), if you have made one.
- The court could appoint a [deputy](#) although it does not often appoint one to take healthcare or welfare decisions.
- The court itself could make a one-off decisions or more than one decision.

### **For finance and property decisions:**

- Someone who is already supporting you to manage your finances and property and affairs could apply to the [Court of Protection](#) to be appointed as your deputy.
- If you have complicated affairs that would be better handled by a single person, a professional acting on behalf of the local authority could apply to the court and the court will appoint as deputy the person they consider to be the most suitable
- If you are in a care home and do not have any property such as a house or flat to manage, and your income is mainly from benefits, an [appointee](#) may be appointed by the [Department for Work and Pensions](#) (DWP) to manage your benefits.

There is no law saying that you have to make a lasting power of attorney, so you should think carefully about whether or not you want to make one.

You could choose to make an [advance decision](#) and/or an [advance statement](#) instead.

# Deputies

- [What is a deputy?](#)
- [Who could be my deputy?](#)
- [Are there any decisions a deputy is not allowed to make?](#)
- [What happens if a deputy does not act in my best interests?](#)

## What is a deputy?

A [deputy](#) is a person the [Court of Protection](#) appoints to make decisions for you once you have lost [capacity](#) to make them yourself. This is different to an attorney, because an attorney is someone you appoint yourself, while you still have capacity.

- A deputy usually makes decisions about finances and property. For example if you have a large sum of money that needs to be invested and managed or you have property which needs some work to be done on it before it can be sold.
- The Court will usually appoint a deputy if you have not appointed an [attorney](#) under a [lasting power of attorney](#) and a series of decisions has to be made.

The Court can decide:

- the length of the appointment
- what level of supervision you need from a deputy
- what fees you will have to pay the Court - there is [government guidance](#) on this
- whether the deputy should be paid for their work from your income or savings. However, the Court may ask your deputy to pay a security deposit before they spend any of your money, and to keep regular accounts of any of your money that they spend. If your finances are complex, it is more likely that a professional deputy would be appointed, and that they would be paid with your money.

The Court can also make a one-off decision without appointing a deputy.

## Who could be my deputy?

A deputy can be someone like a friend, family member or professional with the right skills, as long as they:

- are 18 years old or above
- have the mental capacity to be your deputy

Anyone applying to the [Court of Protection](#) to act as your deputy would need to show that:

- **it is in your [best interests](#)**. This means considering your values, views and preferences, and consulting people who play an important part in your life. They should also learn about their duties by reading chapter 8 of the Code of Practice to the Mental Capacity Act and [contacting the Office of the Public Guardian](#).
- **they have the skills and ability** to carry out the duties of a deputy
- **they will be trustworthy and reliable**

You can get more information on how to apply from the [Gov.uk website](#).

## **Are there any decisions a deputy is not allowed to make?**

A [deputy](#) cannot normally make a decision that:

- they are not authorised to make by the Court of Protection
- you have the [capacity](#) to make yourself
- restrains you or your freedom of movement (unless this has been authorised by the Court)
- uses force to prevent you from doing something or going somewhere
- goes against a decision made by your [attorney](#) acting under a [lasting power of attorney](#)
- refuses any treatment that would help you to stay alive for longer, should you develop a life-threatening medical condition in the future
- you have already covered in an [advance decision](#) you have made – these will be refusals of treatment

However, a deputy appointed to make healthcare or personal care decisions on your behalf will very likely be able to decide matters such as:

- where you will live
- who you will be able to have contact with
- whether or not you should have medical treatment that the doctors consider is in your [best interests](#), except for life sustaining treatment and certain other unusual or complex medical procedures

## **What happens if a deputy does not act in my best interests?**

If the [Court of Protection](#) decides the [deputy](#) has not acted in your [best interests](#), has become incapable of acting as your deputy or has acted outside of their powers it can:

- remove them, or
- change the type of authority they have to make decisions for you

The [Office of the Public Guardian](#) supervises deputies so you or anyone supporting you can complain to them if you have concerns about the way a deputy is acting, and you feel they are not acting in your best interests.



# Court of Protection

- [What is the Court of Protection?](#)
- [How much does it cost to apply?](#)
- [Who can apply to the Court of Protection?](#)
- [What if I do not agree with the Court's decision?](#)

## What is the Court of Protection?

The [Court of Protection](#) is a court that deals with decisions or actions taken under the [Mental Capacity Act](#).

You or someone helping you would need to apply to the Court if someone needs permission from the Court to make decisions about your health, welfare, financial affairs or property.

The Court can make decisions about:

- whether an action to be taken on your behalf is appropriate, when you lack capacity to take it for yourself – the Court can decide whether they think you have capacity to make a particular decision or whether something is in your [best interests](#)
- disagreements that cannot be settled in any other way, such as by using an [independent mental capacity advocate](#)
- situations where a series of decisions rather than a single decision will need to be made for you
- challenges to an authorisation for the [deprivation of liberty safeguards](#) or disputes about their use
- removing an [attorney](#) under your [lasting power of attorney](#) or removing a [deputy](#)
- your healthcare or personal care, where there is no attorney or deputy to make it
- whether an [advance decision](#) or Lasting Power of Attorney is valid, or about their meaning if there is a disagreement
- whether a [deprivation of liberty safeguards](#) authorisation has been granted lawfully, or about settling a dispute about the use of the safeguards against you

The Court must always act in your [best interests](#) when it makes these decisions for you.

## How much does it cost to apply?

You normally have to pay a fee to apply to the Court. In certain circumstances, depending on how much money you have, you can be excused from paying fees and get a [fee exemption](#).

## Legal aid

Legal aid may be available for you to pay for a solicitor to act for you in the [Court of Protection](#).

- If you are challenging a decision about [deprivation of liberty](#), you have the right to get legal aid without having a means test.
- Otherwise, whether or not you can get legal aid depends on how much money you have coming in and what property you own. A solicitor specialising in Court of Protection work will be able to advise you on whether legal aid will be available in your particular case.

## Who can apply to the Court of Protection?

Anyone can apply:

- **You can apply** if you have a question that the Court has the authority to decide. You don't need permission to do this if you are the person the Court is going to make a decision about and you are over 18.
- **Your legal guardian** would apply if you are under 18, and they could apply without permission.
- **Your attorney, deputy or anyone named in a court order** relating to the matter could also apply, without needing permission.
- **Family members, healthcare trusts, Clinical Commissioning Groups and local authorities** can also apply, but they would need permission from the Court.

If someone brings a legal action to the [Court of Protection](#) on your behalf because you lack [capacity](#), you should still be included in this. You will need to get a solicitor, but if you do not have the capacity for this, the court will appoint a [litigation friend](#) for you.

## What if I do not agree with the Court's decision?

You may be able to challenge a decision from the [Court of Protection](#) by applying to the Court of Appeal - however, you may need permission for this.

If you want to challenge a decision, you should [get legal advice](#) from a solicitor specialising in Court of Protection matters to help you work out:

- whether you are likely to get legal aid for your challenge
- how likely you are to win your case

You should not go ahead with a legal challenge if your solicitor does not think you are very likely to win, because it can be stressful and expensive. You should ask for advice about legal aid, as you may be entitled to it if your challenge is about you being [deprived of your liberty](#).

# Advocacy

- [Where can I get advocacy help?](#)
- [When do I have the right to an independent mental capacity advocate?](#)
- [How can an independent mental capacity advocate help me?](#)

## Where can I get advocacy help?

You can get advocacy help from an [independent mental capacity advocate](#). This is an [advocate](#) appointed to act on your behalf if you lack [capacity](#) to make certain decisions.

An independent mental capacity advocate should help you:

- when an NHS body wants to provide **serious medical treatment** to you
- when there are plans to give you **long-term accommodation** in hospital (more than 28 days) or in a care home (more than 8 weeks). However, if the arrangements are urgent, the NHS body does not have to appoint an independent mental capacity advocate.
- in some cases, if the professionals apply for a **standard or urgent authorisation** to deprive you of your liberty under the [deprivation of liberty safeguards](#). You have the right to help from an independent mental capacity advocate with challenging an authorisation even if you have a [relevant person's representative](#) helping and supporting you to do this. Both you and your relevant person's representative would be entitled to get help and support from an independent mental capacity advocate.

In England, independent mental capacity advocates are appointed by a local authority, and in Wales they are appointed by a local Health Board or other NHS body in Wales.

## When do I have the right to an independent mental capacity advocate?

You have the right to an independent mental capacity advocate in these situations:

- If you are 16 or over, lack capacity to make certain decisions for yourself and do not have a close family member or a person who cares for you to support you.
- If you have no one to represent your views and an NHS body or local authority is reviewing or planning to review your accommodation, or it would be helpful to you when there is an allegation that you have been abused.
- Even if you do have someone support you, an independent mental capacity advocate should also normally be appointed if you are receiving serious medical treatment, in long term accommodation, and/or challenging deprivation of liberty authorisations.

You will usually not be given an independent mental capacity advocate if:

- you have appointed someone to make your decisions for you, such as an [attorney](#) under a [lasting power of attorney](#)
- the court has appointed a [deputy](#) to make your decisions for you
- you have nominated someone to be consulted about matters that affect you
- you have a close family member or unpaid carer who can support you in the process of making decisions
- you are [detained](#) under the [Mental Health Act 1983](#). However, you may have the right to get help from an [independent mental health advocate](#).

## How can an independent mental capacity advocate help me?

An [independent mental capacity advocate](#) can:

- **visit you in a care home, hospital or other place.** If they have been appointed to help you, they should be able to speak to you in private, unless you want someone else there to support you.
- **help collect relevant information** about the decision that needs to be made about you – for example your health records.
- **consult with health professionals** providing your care and treatment, if you agree. If appropriate, they can consult other people who may be able to comment on your wishes, feelings, beliefs and values, if you are unable to comment yourself at the time.
- **support you so that you can make decisions for yourself.** This includes support like:
  - identifying your wishes, feelings, beliefs and values, or what these would be if you had the capacity to make the decision
  - telling you what your options are
  - if your decision is about medical treatment, they can suggest whether it would be useful to get another medical opinion about the treatment
  - making sure that the [best interests](#) checklist has been followed, the least restrictive options for your care and treatment have been considered, and that the [Mental Capacity Act Code of Practice](#) has been followed
  - writing a short report with their findings, giving their opinion on how the decision should be made in your best interests
- **help you complain.** If the independent mental capacity advocate believes that their opinion has not been taken into account by the health professionals, or if there is a disagreement between the professionals about what is in your best interests, they can:
  - make a complaint to the NHS body (the hospital or trust) or the local authority, or
  - take the matter to the [Court of Protection](#) for a decision

# Useful contacts

## Mind Legal Line

PO Box 277  
Manchester  
M60 3XN  
0300 466 6463 (Monday to Friday, 9.00 am to 5.00 pm)  
[legal@mind.org.uk](mailto:legal@mind.org.uk)

The Mind Legal Line can provide you with legal information and general advice.

## Civil Legal Advice

0845 345 4345  
[gov.uk/civil-legal-advice](http://gov.uk/civil-legal-advice)

The Civil Legal Advice can tell you if you're eligible for legal aid and can give you free and confidential legal advice in England and Wales.

## The Law Society

020 7242 1222 (England)  
029 2064 5254 (Wales)  
[lawsociety.org.uk](http://lawsociety.org.uk)

The Law Society provides details of solicitors you can get in touch with for specialist legal advice

## Office of the Public Guardian

PO Box 16185  
Birmingham  
B2 2WH  
Tel: 0300 456 0300 (Monday – Friday, 9am - 5pm, except Wednesday 10am - 5pm)  
Fax: 0870 739 5780  
[customerservices@publicguardian.gsi.gov.uk](mailto:customerservices@publicguardian.gsi.gov.uk)  
[justice.gov.uk/about/opg](http://justice.gov.uk/about/opg)

Contact the Office of the Public Guardian if you want to appoint someone to make decisions for you, or to get guidance if you're an attorney or deputy acting on behalf of someone else.

## Revolving Doors Agency

4th Floor  
291-299 Borough High Street

London  
SE1 1JG  
020 7407 0747  
[revolving-doors.org.uk](http://revolving-doors.org.uk)

For people with mental health problems in contact with the criminal justice system.

## **Where can I get support?**

### **Local Mind**

Local Minds support over 280,000 people across England and Wales. Their services include supported housing, crisis helplines, drop-in centres, employment and training schemes, counselling and befriending. They may be able to help you find advocacy services in your area.

Find your local Mind [here](#).

### **Find an advocate**

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting the [Mind Legal Line](#) and your [local Mind](#). You can also contact the [Patient Advice Liaison Service \(PALS\)](#) in England, or the [Community Health Council](#) in Wales.

Read more about how [advocacy](#) might help you.

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