



Understanding Mental Capacity

Deputyship, Power of Attorney and best interest decisions.

Information for Parent Carers and Family Carers

“read more” icons, or pink boxes are click linked through to further reading

DON'T FORGET

*Capacity is **decision-specific** and **time-specific** – people may be able to decide some things, but not others, at different times.*

Mental capacity means a person's ability to make their **own decisions** at the **time** a decision needs to be made.

Under the **Mental Capacity Act** (2005), a person has capacity if they can:

- **understand** the information
- **remember** it long enough
- weigh up their **options**
- **communicate** their decision

The Mental Capacity Act says:

- **assume** a person has the capacity to make a decision themselves, unless it's proved otherwise
- wherever possible, **help** people to make their **own** decisions
- do not treat a person as **lacking** the capacity to make a decision just because they make an unwise decision
- if you make a decision for someone who does not have capacity, it must be in their **best interests**
- treatment and care provided to someone who lacks capacity should be the **least restrictive** of their basic rights and freedoms

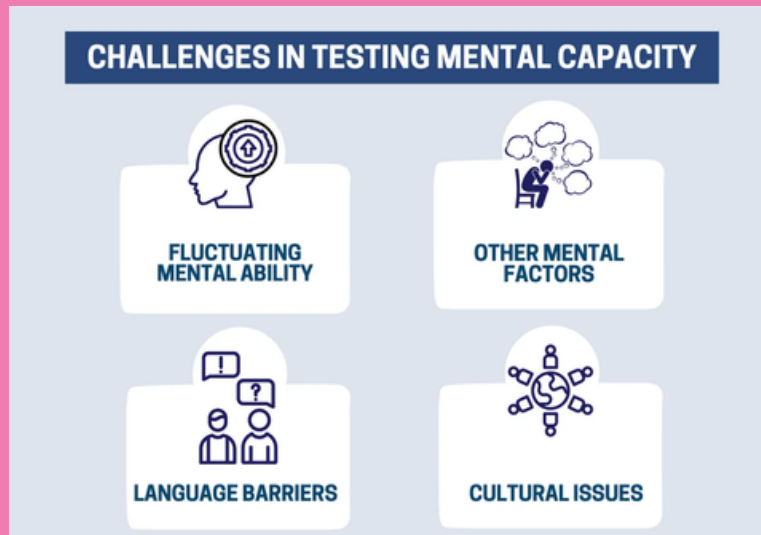
The test of capacity

- Is there an **impairment**? (e.g. learning disability, dementia, mental illness, brain injury)
- Because of that impairment, can the person do all of the following for the specific **decision**? Can the person:
 - **Understand** information?
 - **Retain** it long enough?
 - **Weigh** it up?
 - **Communicate** a decision (any method)?



A mental capacity **assessment** must be carried out if:

- There is reason to believe the person **may not** understand or weigh up the decision
- The move involves **significant changes** to their care, freedom, or living arrangements
- The decision could lead to **restrictions** on liberty (e.g. supervision, limited freedom to leave)



Complex and fluctuating mental capacity

A person has complex and fluctuating mental capacity when their ability to make decisions:

- is **not consistent**, and
- **changes** over time, and
- may **vary** depending on the **type** or **complexity** of the decision

Capacity can fluctuate, for example:

- better in the morning, worse in the evening
- affected by pain, fatigue, stress, medication, or illness
- changes during flare-ups of a condition

So someone may be able to decide at one time, but not another.

Some decisions are:

easier (e.g., what to eat)

harder (e.g., finances, medical treatment, accommodation)

Capacity is:

decision-specific (not all-or-nothing)

time-specific (assessed at the time of the decision)

Professionals must assess capacity for each decision, at the right time, with appropriate support.

MENTAL CAPACITY, POWER OF ATTORNEY & DEPUTYSHIP: A GUIDE



1. DOES THE PERSON HAVE MENTAL CAPACITY?

Mental capacity is decision-specific and time-specific.

The person must be able to:

- ✓ Understand the information
- ✓ Use or weigh the information
- ✓ Retain the information
- ✓ Communicate their decision



YES – HAS CAPACITY

The person can make their own decisions.



No one else can make decisions for them, even family or friends.



NO – LACKS CAPACITY

Decisions must be made in their best interests.



Follow the 5 Principles of the Mental Capacity Act 2005.



2. IS THERE A POWER OF ATTORNEY (LPA)?

An LPA is a legal document allowing someone (the attorney) to make decisions for the person.



YES – THERE IS AN LPA

The attorney(s) named in the LPA can make decisions (within the scope of the LPA and in the person's best interests).



Types of LPA:

- Property & Financial Affairs
- Health & Welfare

Attorneys must act in the person's best interests and keep records.



NO – NO LPA

No one has automatic legal authority to make decisions.
A Deputyship may be needed.



3. DEPUTYSHIP

An application is made to the Court of Protection to appoint a Deputy to make decisions for the person.

The court will decide if a deputyship is needed and who is suitable.



DEPUTY'S ROLE

The Deputy makes decisions in the person's best interests, within the authority given by the court order.

They must follow the law and report to the Office of the Public Guardian.



KEY POINTS



Capacity can change and may fluctuate over time.



LPAs must be registered with the Office of the Public Guardian to be used.



Always act, or ensure decisions are made, in the person's best interests.



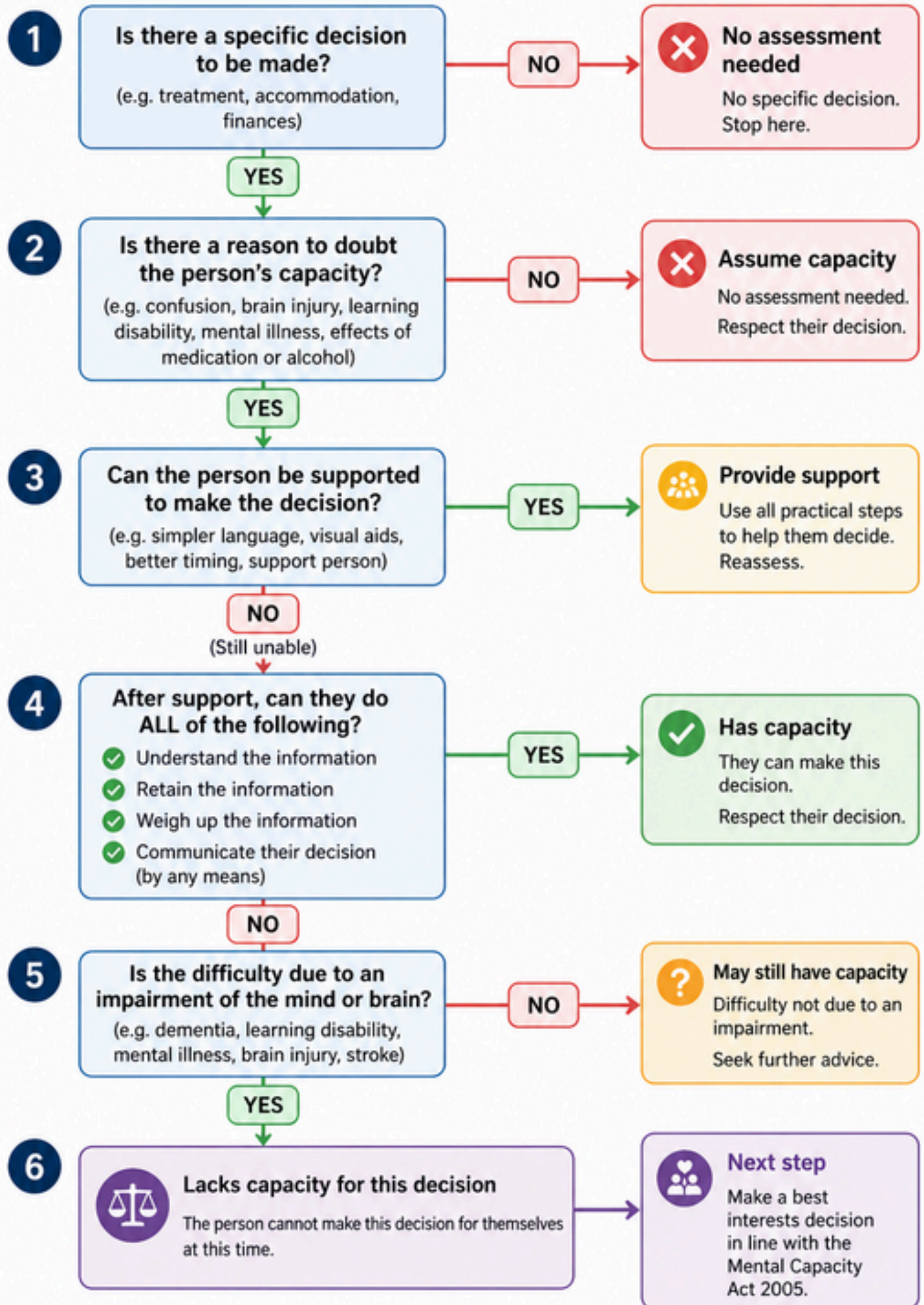
Seek legal advice if unsure.



THE GOAL IS ALWAYS TO SUPPORT THE PERSON TO MAKE THEIR OWN DECISIONS
and only step in when they are unable to decide for themselves.

Mental Capacity Assessment

Decision Flowchart



Best interest decisions

A best interests decision is **not** about what professionals **think** is “best” in general – it is about what is best for that specific individual, in their situation, and in line with their rights and preferences as far as possible.

When is a Best Interests Decision used?

Under the **Mental Capacity Act** (2005), a best interest decision is used when someone:

- **Cannot understand** information about a decision
- **Cannot retain** that information long enough
- **Cannot weigh up** options
- **Cannot communicate** their choice (This does not need to be verbally)

Who makes the decision?

It depends on the situation:

- **Parents Carers**
- **Professionals** (e.g. social workers, doctors, teachers)
- A legal **deputy** (if appointed by the Court of Protection)
- A multi-agency **team** (for complex cases)

A best interests decision might be **used for**:

- Choosing a school placement or residential setting
- Agreeing to medical treatment
- Deciding on care plans or support arrangements
- Moving into supported living (for young adults)

What must be considered?

- Put the **person at the centre**
- Consider the person’s **wishes, feelings, beliefs, and values**
- **Involve** family and carers where appropriate
- Choose the **least restrictive** option (the option that limits rights and freedom the least)

Deputyship

Deputyship is a **legal arrangement** used when a young person or adult **cannot** make certain decisions for themselves because they **lack** mental capacity.

A deputy is someone appointed by the Court of Protection to make decisions on behalf of another person. It is used when:

- The person does not have mental capacity to make ongoing decisions
- There is no valid Lasting Power of Attorney (LPA) already in place

What deputies can do

Depending on what the court agrees, a deputy may make decisions about:

- Property & finances
- Managing benefits or bank accounts
- Paying bills
- Handling savings or inheritance
- Sometimes health or welfare (less common)
- Decisions about care arrangements
- Support services or living arrangements

Types of Deputyship

Property & Financial Affairs Deputy

looks after money, benefits,
property

Personal Welfare Deputy

makes decisions about care, health, and
living arrangements. (less common and only
granted when necessary)

Who can apply for Deputyship?

You can apply to become someone's deputy if they '**lack mental capacity**'. This means they **cannot** make a decision for themselves at the **time** it needs to be made. They may still be able to make decisions for **themselves** at **certain times**. As a deputy, you'll be authorised by the Court of Protection to make decisions on their behalf.

How do you apply for Deputyship

You'll usually need:

- COP1 – Application form
- COP3 – Capacity assessment (completed by a professional like a doctor or social worker)
- COP4 – Your declaration (about your suitability)

Send forms to the Court of Protection with:

- Application fee (around £371, may be reduced/exempt depending on income)

The court will:

- Review the application, ask for more information if needed and decide whether to appoint you as deputy

Typically 3–6 months (longer if complex)



Power Of Attorney

Power of Attorney is a legal document that lets someone (the ‘donor’) appoint one or more people (known as ‘attorneys’) to **help** them make **decisions** or to make decisions on your behalf. You must be 18 or over and have mental capacity (the ability to make your own decisions) when you make your Lasting Power of Attorney.

Types of Power of Attorney

Lasting Power of Attorney
(LPA) for Health and Care

Lasting Power of Attorney for
Property and Finance

Some young people with SEND may find it **difficult** to manage certain **decisions** independently, especially around:

- **Money** and benefits
- **Education** or training decisions
- **Health** or care arrangements
- **Housing** or daily living **support**

A POA can help ensure these things are handled safely and in the young person’s **best interests**.

Even with a Power of Attorney, the goal is always:

- To **support** the young person’s **voice and choices**
- Not to remove their **rights** unnecessarily
- To step in only where they need **help**

How do you apply for Power of Attorney?

Choose attorneys

- The person (the “donor”) chooses who will act for them
- Must be trusted and over 18
- You can appoint more than one

Complete the forms

Get it signed in the correct order

Register the LPA

Send it to the Office of the Public Guardian

- Fee: £82 per LPA (reductions available)
- Registration takes about 8–10 weeks



Deprivation of liberty

Deprivation of liberty (DoL) means **restricting** someone's **freedom** so much that they are not free to leave and are under continuous **control** or supervision—and they **lack** the mental capacity to **consent** to those arrangements.

Examples of deprivation of liberty

It can happen in settings like care homes, hospitals, or supported living:

- Doors are locked and the person can't leave when they want
- Staff monitor and control most aspects of daily life
- The person would be stopped if they tried to leave
- Use of restraint, medication, or close supervision to manage behaviour



When is it lawful?

A deprivation of liberty must be **authorised** and follow legal **safeguards** under the Mental Capacity Act 2005

Process: Care providers must apply to a local authority (supervisory body) for authorisation.

Assessment: Six assessments are required (age, mental health, capacity, best interests, eligibility, and no-refusals) to authorise the deprivation.

The Court of Protection

The Court of Protection is there to **protect** people who **cannot** make decisions for themselves, making sure those decisions are **fair, legal**, and in their **best interests**.

The Court of Protection is a specialist court in England and Wales that makes decisions for people who lack mental capacity to make certain decisions for themselves. It exists to ensure decisions are made lawfully and in the person's best interests under the Mental Capacity Act 2005.

The court is usually needed when:

- There is no Power of Attorney in place
- A person has lost capacity
- Decisions are complex, high-risk, or disputed

Everything the court does must follow:

- Best interests
- Least restrictive option
- Respect for the person's rights and wishes



How does this look in practice? Responsibility of Professionals involved

Professionals **must**:

Empower first, assess **if needed**, **protect** if necessary—always using the **least** restrictive option

1. Assume capacity first

Always start by assuming the person can make their own decisions

Don't judge based on age, diagnosis, or appearance

2. Support the person to decide

Before assessing capacity, professionals must:

Explain information clearly (simple language, visuals)

Choose the right time and environment

Involve communication aids or trusted people

An assessment should only happen if support isn't enough

3. Assess capacity properly (when needed)

If there's doubt:

Assess decision-specific and time-specific capacity

Check if the person can:

Understand

Retain

Weigh up

Communicate

Keep clear records of:

Why capacity was questioned

What support was given

Outcome of any assessment

How best interests decisions were made



4. Respect unwise decisions

People have the right to make decisions others think are unwise or risky

This alone is not evidence of lack of capacity

5. Act in best interests (if capacity is lacking)

If the person cannot decide:

Make decisions in their best interests

Consider:

Their wishes, feelings, values

Input from family or carers

Choose the least restrictive option

6. Use the least restrictive approach

Any action taken must limit freedom as little as possible

Avoid unnecessary restrictions or control

7. Follow legal safeguards

Professionals must:

Seek proper authorisation for deprivation of liberty if needed

Involve the Court of Protection for complex or disputed decisions

Work with the Office of the Public Guardian where deputies or attorneys are involved

Legislation

Mental Capacity Act 2005 → main framework
DoLS → protects people when liberty is restricted
Human Rights Act 1998 → protects fundamental rights
Care Act 2014 → links to safeguarding and care
Children Act 1989 → applies to under 18s

Mental Capacity Act 2005

The law that protects and empowers individuals aged 16+ who may lack the mental capacity to make their own decisions.



Deprivation of Liberty Safeguards

A legal framework under the MCA protecting people aged 18+ who lack the mental capacity to consent to care arrangements in hospitals or care homes.



Children Act 1989

primary legislation covering child welfare, protecting children from harm, and regulating services provided by local authorities.



Human Rights Act 1998

The Human Rights Act gives effect to the human rights set out in the European Convention on Human Rights.



Care Act 2014

Sets out the framework for adult social care in England



Further Reading



Make decisions on behalf of someone



Mental capacity



Mental capacity and mental illness



Shropshire Independent Mental Capacity Advocate Service

The Independent Mental Capacity Advocate Service (IMCA) can represent and support a person who lacks capacity, primarily in two situations:

- Where a permanent change of accommodation is proposed
- Where serious medical treatment is proposed

The IMCA will only become involved if the person lacks capacity to give their own views and when there's no-one else appropriate to consult, such as a relative or friend.

