



BEDFORD
BOROUGH COUNCIL

Mental Capacity Act 2005



Adults and Community Services

Mental Capacity Act 2005

The Mental Capacity Act 2005 provides a framework to empower and protect people who may lack the mental capacity to make some decisions for themselves. The purpose of this leaflet is to make it clear who can take decisions in which situations and how they should go about this. It also allows people to plan ahead for a time when they may lack capacity.

The Mental Capacity Act 2005 covers major decisions about someone's property and affairs, healthcare treatment and where the person lives, as well as everyday decisions about personal care (such as what the person eats), where the person lacks capacity to make those decisions themselves.

The Principles of the Mental Capacity Act 2005

There are five key principles in the Act:

- Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

What is mental capacity?

Every day we make decisions about lots of things in our lives. The ability to make decisions is called mental capacity. People may have difficulties making some decisions either all or some of the time. This could be

because they have a learning disability, dementia, a mental health issue, a brain injury or a stroke.

The Mental Capacity Act 2005 provides important safeguards to protect families, carers, health and social care staff, and other people who act and make decisions on behalf of people who lack the mental capacity to make the decision for themselves.

The Act could cover all sorts of major decisions where a person may lack capacity about things like social care, medical treatment and research arrangements, financial matters as well as everyday decisions like what to eat and what to wear.

What to do if you are concerned about somebody's capacity

If you know a family member, friend, neighbour or anyone who you think is having difficulties in making decisions about their finance and property, or personal welfare, you should contact your local Adult Services on **(01234) 267422**.

If you know a family member, friend, neighbour or anyone who you think is having difficulties in making decisions about medical treatment, you should contact their General Practitioner or Doctor responsible for the treatment.

What Bedford Borough Adults and Community Services will do

If all steps have been taken to help and support a person to make a decision and this has not resulted in the person being able to make that particular decision, then the person will need an assessment of capacity. When an assessment of capacity is made, it is vital to remember that the assessment of a person's capacity is in relation to the particular decision, at the time the decision needs to be made. Any assessment undertaken on a person's capacity must start with the key principle that the person has the capacity to make the decision in question.

The Assessor of Mental Capacity is known as the Decision Maker

A care worker or care manager will be the Decision Maker around choices such as what they eat or wear.

A social worker will be the Decision Maker around change of accommodation or personal welfare.

A Doctor or General Practitioner will be the Decision Maker around medical treatment.

Making Decisions in the Best Interests of the person

One of the key principles of the Act is that any act done, or decision made, for or on behalf of a person who lacks capacity must be done in that person's best interests.

The Act does not define the term 'best interests', instead it provides a non-exhaustive checklist of common factors that decision makers must always take into account in a situation where a decision is being made for a person lacking capacity.

Planning ahead

The Mental Capacity Act 2005 makes provision for people with capacity now to plan for a future time when they may lose capacity.

The Act makes it possible for the person to refuse stated specific medical treatment through an Advance decision. An Advance Decision has the same effect as a decision that is made by a person with capacity and can be enacted should the person lose the capacity in the future. The act provides clear safeguards for recording an Advance Decision.

These are:

- It must be recorded when the person has capacity in the particular area.
- It must be in writing (it can be written by someone else)

- It must be signed and witnessed
- It must state clearly that the decision applies even if life is at risk.
- If you wish to refuse certain types of treatment, you may wish to give this document to somebody you trust to be used in the event of a future loss of capacity.

Lasting Power of Attorney

The Act allows you to appoint someone as a lasting Power of Attorney for your finance or welfare. A Power of Attorney is a legal document that allows the nominated person to consult with you, and act on your behalf regarding any decisions around finance and/or personal welfare. Should you lose Mental Capacity in the future the act requires that the Power of Attorney document is registered with the Office of Public Guardian who monitor how the Power of Attorney is being exercised.

Guidance on how to apply for a **Lasting Power of Attorney** is available from the Office of Public Guardian Website (see below for details) or alternatively you may wish to contact your solicitor.

Court of Protection

A new court of protection has been established to make orders, appoint Deputies to act and make decisions on behalf of someone who lacks capacity, and where there are disputes to make a final ruling on capacity.

Details on how to apply to the **Court of Protection** are available on the Office of Public Guardian Website on



www.publicguardian.gov.uk/



0300 456 0300



customerservices@publicguardian.gsi.gov.uk

Department of Justice, Office of Public Guardian,
PO Box 16185, Birmingham, B22 WH

Independent Mental Capacity Act Advocates

An Independent Mental Capacity Advocate (IMCA) is a role created to support a person who lacks the Mental Capacity but has no one to speak for them, such as family or friends. IMCA's will only become involved when decisions about serious medical treatment or a change of accommodation is required.

The IMCA service is currently provided by POhWER. For further details contact POhWER.



0300 456 2362



pohwer@pohwer.net

The Mental Capacity Act creates the following safeguards

The act introduces two new criminal offences of ill treatment and wilful neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to a fine or imprisonment for up to 5 years.

If you know a vulnerable person that you believe is at risk or you feel that they might be being abused then it is very important to let someone know. A vulnerable person without the Mental Capacity may not be able to report the abuse they are experiencing and may rely upon you to voice your concerns and ensure that someone with the necessary experience and responsibility investigates the alleged abuse and takes steps to stop it happening.

Abuse is mistreatment by any other person that violates your human and civil rights. Bedford Borough Council is committed to safeguarding vulnerable adults from abuse (SOVA). If you are being abused or suspect that someone you know may be the victim of abuse contact Adults and Community Services on 01234 267422. Your concerns will be taken seriously and will receive prompt attention.

Deprivation of Liberty Safeguards

An addition to the Mental Capacity Act is the Deprivation of Liberty Safeguards. These safeguards offer a framework to assess, review and monitor care and treatment practices that deprive a person, who lacks the Mental Capacity to decide, of their liberty.

For further information on the Deprivation of Liberty Safeguards please contact the Mental Capacity Act Coordinator for Bedford Borough Council on **(01234) 267422**.

Have Your Say

We would like you to tell us how you think Bedford Borough Council's Adults and Community Services have worked for you and what you think of our services. Our staff will ask for your views throughout your contact with us.

To give us feedback on the service you have received, please speak to the manager or staff in your relevant social work team or write to us at the address on the back page.

Bedford Borough Council's Adults and Community Services are independently regulated by the Care Quality Commission (CQC). If you want to discuss our service(s) with them they can be contacted at:



 **03000 616161**

 **enquiries@cqc.org.uk**

 **Care Quality Commission**
National Customer Service Centre
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Finding out more

If you would like further copies, a large-print copy or information about us and our services, please telephone or write to us at our address below.

Për Informacion

المعلومات

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برای اطلاع

Per Informazione

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Informacja

Za Informacije

তথ্যের জন্য

General Enquiries



01234 267422



Adults and Community Services

Bedford Borough Council

Borough Hall

Cauldwell Street

Bedford

MK42 9AP



care@bedford.gov.uk

**Ask for leaflet
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