

## Advanced Planning

### Advance Decision

Any individual can have an advance decision. This is legally binding in the event that in the future you lose capacity and outlines treatment(s) that you are refusing. Whilst it need not be in writing, unless it's a refusal of life sustaining treatment, forms can be obtained from the Trust to assist you.

### Advance Statement

An advance statement allows you to set out in writing how you would like to be treated in the future in the event that lose capacity to decide for yourself. Forms and further guidance can be obtained from the Trust to assist you.

### Lasting Power of Attorney (LPA)

An LPA allows you to nominate an individual to decide what is in your best interest should you lose capacity in the future. You can nominate them with regards:

- Personal Welfare
- Property and Affairs

Further advice about LPA can be found at [www.gov.uk/power-of-attorney/overview](http://www.gov.uk/power-of-attorney/overview)

## Who to contact for advice and information

**Mental Health Law Hub email address**  
MHL.Hub@candi.nhs.uk

**Mental Capacity Act Lead**  
Heston Hassett 020 3317 7387

**Mental Health Law Manager**  
Dominique Merlande 020 3317 7141

Our advice is available to everyone regardless of race, gender, sexuality, age, nationality, disability or religion.

## Volunteering

For information about how to become a Mental Health Law Hub Volunteer please email [Volunteer@candi.nhs.uk](mailto:Volunteer@candi.nhs.uk) or call 020 3317 7146.

## The Friends and Family Test (FFT)

This is our opportunity to hear from our service users, to listen and make changes to C&I Trust policy.

Please visit [www.candi.nhs.uk/service-users-and-carers/friends-and-family-survey](http://www.candi.nhs.uk/service-users-and-carers/friends-and-family-survey)

## Mental Capacity Act 2005

Talk to us



## What is the Mental Capacity Act 2005 (MCA)

The Mental Capacity Act (MCA) is the law created to protect and empower **'individuals who lack capacity'** to make their own decisions about their care and treatment. It applies to individuals aged 16 and over.

### What decisions does it apply to?

The MCA looks at your capacity to make decisions about your personal welfare. This means financial, health and social care decisions such as:

- washing, dressing, help with eating
- nursing care - in hospital/care home/community
- occupational therapy, physiotherapy
- social care
- moving to a care home or other accommodation
- medical and dental treatment, diagnostic tests.

Your capacity in relation to other decisions such as marriage, civil partnership, and how you vote in elections are not covered by the MCA

### Who decides if I lack capacity?

It is up to a health or social care professional to seek your consent before they initiate any of your care or treatment. The law says that you must be assumed to have capacity unless it is proved to be otherwise. If a health or social care professional has any doubts regarding your capacity to make a decision about your care or treatment they have to test it.

***“A diagnosis of a particular condition, behaviour, our age or appearance does not automatically mean you lack capacity”***

### How do you test a person's capacity?

A person will be found to lack capacity if at the time they are making a decision about their care or treatment they are unable to do one of the following:

- Understand the information
- Retain the Information
- Weigh up and use the information
- Communicate a decision

Also, that your lack of capacity to make a decision at that time about a specific matter is as a result of an **'impairment or disturbance in the brain or mind'**.

### What happens if it is found I do not have capacity to make a decision?

The health or social care professional will need to look at all the options available with regards to specific decision in question and decide what is in your 'best interests'. If someone has a Lasting Power of Attorney (LPA) covering this matter the person, or people, appointed by the LPA will decide which of the options will be in your 'best interests'.

### How does someone decide what is in my best interests?

The MCA sets out a checklist that must be followed to ensure that decisions are made in your best interests.

## Best Interests Checklist

All points of this checklist must be considered:

- Encourage your participation in any decision made about you.
- Identify all the relevant circumstance.
- Find out the your views and carers views.
- Avoid discrimination e.g. take into account your religious belief, cultural or political beliefs.
- Assess whether you may regain capacity.
- Your past and present wishes and statements e.g. any written Advanced Decisions that you may have made.
- Take all this into account when making a decision.
- The least restrictive option of treatment must be considered – to ensure your wishes are respected.