

## Helping others to make decisions

You may be concerned about someone, perhaps a family member or close friend who is struggling to cope. Perhaps they are confused and forgetful and not always able to make their own decisions.

**The Mental Capacity Act 2005, England and Wales provides a legal framework and guidance for anyone who is helping a person who cannot make all their own decisions and who may therefore need some decisions to be made on their behalf.**

The Act also provides protection for people who lack the mental capacity to make their own decisions, some or all of the time. The Act says that anyone making decisions on behalf of another person must first consider whether they may be able to make their own decision with help.

For example, they may need something explained to them in very simple language, or at a different time of day. Most people will be able to make some of their decisions themselves, so each decision should be considered individually.

Many people may not be able to manage all their financial affairs, but will know what they want to eat or whether or not they wish to go out for a walk. The Act says that when considering if someone

can make a particular decision you will need to think about whether:

- they have a general understanding of what decision needs to be made?
- they have a general understanding of the consequences of this decision?
- they can weigh up this information and use it to make a decision?
- there is any way you could help them to make the decision for themselves?
- there is any way you can help them communicate their decision or their wishes and feelings?

The Act makes it clear that people have a right to make decisions which others may consider to be unwise. This means that your relative or friend may still be able to make their own decision, although you disagree with it.

**If the person you are helping cannot make the particular decision themselves the Act says that you must make the decision in their 'best interests'. This may not always be what you think is best for them, because in deciding what is in their best interests the act says you must consider whether:**

- they might be able to make the decision themselves at a later time and, if so, could the decision be delayed until then?

- there is a way of involving them in making the decision, as far as this is practicable.
- you are taking into consideration their past and present wishes and feelings. You must take into account any written statement they may have made when they had mental capacity.
- you are taking into account their beliefs and values that would be likely to influence their decision if they still had mental capacity.
- anything else the person would be likely to consider if they were able to do so.

The Act also states that decisions about life-sustaining treatment must not be motivated by a desire to bring about the person's death, and you must consider any other matters you believe may be relevant in the particular circumstances, because the above list is not intended to be exhaustive.

If you are caring for someone who cannot make all their own decisions, you will probably be able to work out what everyday decisions they can make for themselves, or with your help, and when you need to decide for them. In considering some big decisions however, such as moving home or going into a care home, you should consider seeking professional help and advice, perhaps from the person's GP, hospital staff and / or social services.

If you need to help a person with their financial affairs you must ensure this is done legally. **Age UK** has published a factsheet, 'Arranging for others to make

**decisions about your finances or welfare'**, which can be downloaded from the internet at [www.ageuk.org.uk/publications/age-uk-information-guides-and-factsheets/](http://www.ageuk.org.uk/publications/age-uk-information-guides-and-factsheets/) or by telephoning Age UK Advice on 0800 00 99 66.

Caring for someone who may be confused and forgetful or unable to communicate easily can be extremely difficult and stressful. The Act says that you will not be liable for an action you take in caring for the person, as long as you have first considered whether the person could make their own decision and have a 'reasonable belief' that they could not and that the action is necessary and in their 'best interests' (as best interests are explained above).

Please note that this is an extremely brief introduction to some of the issues involved when decisions need to be made with, or for someone who lacks the mental capacity to make them on their own. Much fuller information is available in '**Making decisions: A guide for family, friends and other unpaid carers**' published by The Mental Capacity Implementation Programme, which can be downloaded from the internet at

[www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet02.pdf](http://www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet02.pdf)

or ordered by phoning 023 80 878038 or 023 80 878036.

If you need legal advice a good place to start is your local Citizens Advice Bureau

(CAB). Citizens Advice website can be found at

[www.citizensadvice.org.uk/](http://www.citizensadvice.org.uk/)

Details of solicitors can also be obtained from **Community Legal Direct (CLS Direct)** at

[www.clsdirect.org.uk](http://www.clsdirect.org.uk) or by telephoning 0845 345 4 345.

**Solicitors for the Elderly** are a group of solicitors with a special interest in and knowledge of issues affecting older people. Their website is [www.solicitorsfortheelderly.com](http://www.solicitorsfortheelderly.com) and the telephone number is 0844 567 6173

Revised July 2010