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Social Care **Wales**

# The Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS)

What you need to understand about the Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS) and how they apply to you.

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What you need to understand about the Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS) and how they apply to you.

## **What is the Mental Capacity Act?**

[The Mental Capacity Act 2005](#) (MCA) has been in force since 2007 and applies to England and Wales.

The main purpose of the MCA is to promote and safeguard decision-making within a legal framework.

It does this in two ways:

- by empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process
- by allowing people to plan ahead for a time in the future when they might lack the capacity.

It sets five principles in law:

1. Assume a person has capacity unless proved otherwise
2. Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them
3. A person should not be treated as incapable of making a decision because their decision may seem unwise
4. Always do things or take decisions for people without capacity in their best interests
5. Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way

## **What does mental capacity mean?**

Imagine if your consultant had advised you to have a total knee replacement.

- do you have to have it?
- if not, why not?

The answer is no, you don't have to have the operation, if you have capacity to make that decision.

To demonstrate our mental capacity we must:

- understand information relevant to the decision
- retain that information for the length of time needed to make that decision
- weigh up that information
- communicate the decision.

So, if you explained your reasons for refusing the operation to the doctor, showing that you have understood his advice and used that information to make your decision, he can't force you to have it.

Where there's doubt as to a person's ability to make their own decisions, whether that be around what to wear, or where to live, the Mental Capacity Act (2005) might apply.

## **Best interests decision**

Decisions made on behalf of a person without capacity should be made in their best interests, considering the person's known wishes, beliefs and their general well-being.

To decide what's in the best interests of a person who lacks capacity, consider:

- their likely future capacity
- their past and present wishes and feelings
- beliefs and values likely to influence their decision
- other factors that the person would likely consider

Best interest meetings bring together people to make difficult decisions.

You may be invited to best interest meetings to help in the decision-making process.

It's vital to remember that capacity is not a one-off decision but decision-specific.

For example, a person may be able to make choices about their daily life activities but lack capacity in financial areas.

Capacity is also time specific, as people can have fluctuating capacity meaning that although they may be incapacitated currently, they may not be in the future.

Properly engaging the person in the decision-making process, listening to and taking account of their views, wishes and feelings is central to a best interest assessment.

It's important that someone is present who can represent the person's interests. This could be an [advocate](#), or trusted family member who is able to express the individual's and not their personal view about what is best.

You must be familiar with the Mental Capacity Act and should access appropriate training.

The Mental Capacity Act Code of Practice supports the legal framework provided by the Mental Capacity Act and provides guidance and information about how the Act works in practice:

[Mental Capacity Act 2005 Code of Practice](#)

## **Deprivation of Liberty Safeguards (DoLS)**

There are times when a person's freedom may be restricted to prevent them from coming to harm.

For example, we may prevent someone leaving a care home by locking the front door, for fear they may get injured on a busy road.

The MCA allows us to do this in the person's best interests, but we must be authorised to do so.

Deprivation of Liberty Safeguards (DoLS) are an amendment to the MCA and are the current safeguards which protect a person who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

The Court of Protection may authorise depriving a person of their liberty in their own home, a care home or a hospital.