

# Mental Capacity Act 2005

Carer eBook

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## Introduction

The aim of this e-book is to provide a basic awareness and understanding of the Mental Capacity Act (2005).

### Target audience: Family & Carers

The Mental Capacity Act (2005) came into full effect in England and Wales in October 2007. Any assessment of capacity is time and treatment specific. Where an adult or young individual (aged 16-17) has been assessed as lacking the mental capacity (either temporarily or permanently) to give or withhold consent for themselves, no one else can give consent on their behalf unless they are a registered Lasting Power of Attorney (LPA), a Court Appointed Deputy or the decision is within the zone of parental responsibility.

If a person lacks capacity and does not have a registered LPA or court appointed deputy to make decisions, practitioners can make treatment decisions in the best interest of the person, this decision should follow the principles within the best interest checklist.



## The Five Principles

Below are the 5 principles as written in the Code of Practice:

**1**

An individual must be assumed to have capacity unless it is established that they lack capacity.

**2**

An individual is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success.

**3**

An individual is not to be treated as unable to make a decision merely because he/she makes an unwise decision.

**4**

An act done, or decision made, under the Act for or on behalf of an individual who lacks capacity must be done, or made, in his/her best interests.

**5**

Before the act is done, or the decision made, regard must be had to the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the individual's rights and freedom of action



## What does this mean?

- Health & Social Care professionals as well as family members cannot make any assumptions about an individual's ability to consent to, or refuse treatment based on a diagnosis. E.g. their GP medical history states the individual is on the learning disability register or has a diagnosis of dementia.
- Practical steps to support the individual through the decision making process. This could be through the use of physical or pictorial aids, communication boards or sign language. E.g. show the individual a piece of equipment to assist them in the processing of information
- Any individual with capacity has the right to make an unwise or eccentric decision. This means even if an individual has a learning disability or diagnosis of dementia, for example, there still may be some decisions the individual is able to make. This can include consent to treatment or the right to refuse treatment without interference from family, health or social care professionals.
- Where an individual is assessed as lacking mental capacity for a specific decision the best interest's process should be implemented. When making a best interests decision it is important that all interested parties, eg families, carers, and involved health and social care professionals contribute so that the individuals past and present wishes, feelings, beliefs and values are included in the process.
- Any best interests decision must be considered the least restrictive option for the individual at that time. Some examples of restrictive practice may include one to one support, use of sedative medication, surveillance equipment, lap straps on wheelchairs, locked doors etc. An example of least restrictive practice could be the use of surveillance equipment instead of one to one support.

## What is Mental Capacity?

Mental Capacity is the ability to make a particular decision at the time it needs to be made. Any assessment of capacity is TIME and DECISION specific. If you are involved in an individual's capacity assessment, you need to know WHAT FOR?

*When a capacity assessment is conducted, remember:*

- A loss of mental capacity can be permanent (such as an acquired brain injury)
- A loss of mental capacity can be temporary (such as an infection or implications arising from an infection.)
- Capacity can fluctuate at different times of the day. (for example a individual with dementia may be more lucid as certain times of the day)
- An individual may have capacity to make some decisions, but not others

For example:

- An individual may have capacity to make day to day decisions such as what to wear, or what to eat if given a choice.
- An individual may be able to consent to medical treatment which they have had long term, if they can recall what the treatment is and the risks and benefits
- Whilst having the capacity for the above, they may not have capacity to consent to new medical treatment if for example their medical condition means they can no longer process the new information.

## Who May Lack capacity?

Mental capacity issues can potentially affect everyone at some point in their lives. Examples of when an individual may be affected by capacity issues include:

Dementia	Learning Disabilities	Stroke	Acquired Brain Injuries
Mental Health Conditions	Loss of consciousness	Symptoms of Alcohol and Drug Abuse	
Acute confusion (secondary to infection)		Concussion (following a head injury)	

## Assessing Capacity

- The law sets out an assumption of capacity. This is similar to the 'innocent until proven guilty principle in a court of law.
- The duty to assess mental capacity lies with the decision maker for the specific care or treatment in question
- Where there is doubt around a individuals capacity to make a particular decision, the decision maker must support the individual as much as possible in making their own decision. This includes information presented to an individual in a way that is clear and easy for the individual to understand, and communicated to the individual in a manner that meets their needs. This may include the support from family, carers and friends who know the person well.

**The code of practice sets out clear guidelines that a individuals should not be deemed as lacking capacity to make a decision based on age, appearance, medical condition or behaviour.**

Factors to consider when assessing an individual's mental capacity to make a specific decision:

Attention and concentration	General intellectual ability	Memory
Reasoning	Interpretation	Ability to communicate
Verbal communication and comprehension	Cultural influences· Social Context	

## Who Should Assess Capacity?

- The basic principle is that the individual responsible for assessing capacity (the decision maker) is the decision maker who is responsible for carrying out the act of care or treatment. Examples may include:
- Care Task E.g. individual care / assistance with meals: The carer carrying out the task would be deemed as the decision maker
- Procedure E.g. Blood Tests: The phlebotomist, nurse or doctor undertaking the procedure would be deemed the decision maker.
- Nursing Intervention E.g. Administration of medication: The nurse who has been designated the duty to complete the intervention would be deemed the decision maker
- Medical or Surgical Treatment E.g. Examination or Operation: The doctor who is undertaking the treatment would be deemed the decision maker.

*As you can see, assessing capacity is everyone's responsibility, not only that of the General Practitioner or Hospital Consultant. The only assessment of capacity to be used is the two stage test.*

## The Two Stage Test for Assessing Capacity (The legal Process)

### *Stage 1 (Diagnostic assessment):*

Does the individual have an impairment or disturbance in the functioning of their mind or brain?  
(Examples of an impairment or disturbance in the functioning of the mind or brain were given from page 3.)

- If **YES**, proceed to stage 2
- If **NO**, the individual has capacity, therefore you do not proceed with the capacity assessment. If they are refusing treatment refer to principle 3, the right to make an unwise decision.

### *Stage 2 (The 4 part functional assessment):*

Does the identified impairment or disturbance in the functioning of the mind or brain mean the individual is unable to make a specific decision at the time the decision needs to be made?

To answer stage 2, the decision maker needs to complete the 4 part functional test:

- Does the individual understand the relevant information about the decision to be made? e.g. A tooth extraction which will involve a local anaesthetic and a short period of aftercare
- Can the individual retain the relevant information long enough to make the decision?



(This length of time will vary depending on the decision being made).

- Can the individual use and weigh up the information as part of the decision making process? (Understand the risks and benefits of making a decision). E.G The toothache will be gone but there will be some pain for a short period after treatment
- Can the individual communicate the decision they have made, by any means possible? (Verbally, pictorial, sign language, muscle movement).

**If the answer to any of the 4 functional test questions is no, the individual would be deemed as lacking capacity to consent to or refuse the specific decision they have been asked to make. The decision maker would then be required to complete a best interest assessment to ensure the most appropriate course of treatment is chosen on behalf of the person.**

## The Best Interest Decision

Best interest is the key principle that governs all decisions for people who lack mental capacity. It places the individual at the centre of the decision making process, and prioritises their past and present wishes, feelings, beliefs and values over and above the views and convenience of other parties.

*The Mental Capacity Act Code of Practice does not define what best interest is, but it does give a check list to consider*

- Enable the individual to participate in the decision making process.
- Is the individual likely to regain capacity? If so can the decision wait? (e.g. the person may have a urine infection and is likely to recover in the near future)
- What would the individual be likely to do if they had capacity to decide? (Family, carers and friends are key in providing this information)
- What are the individual's past and present wishes and feelings in relation to this decision? (Family, carers and friends are key in providing this information)
- Does the individual have religious beliefs or values that may affect the decision? (is there a spiritual leader that needs to be approached)
- Has the individual made any Advance Decisions to Refuse Treatment (ADRT) that is applicable to this situation? (See page 11)
- Does the individual have a registered Lasting Power of Attorney or a court appointed deputy for welfare who can make the decision (See page 10)
- Has the individual requested the decision is discussed with a particular individual?
- What are the views of anyone interested in the welfare of the individual (Family, carers and friends are key in providing this information)?

- 
- What is the least restrictive option?

**The act requires all health and social care professionals to consult with other people when it is appropriate to do so. They should be asked their view and what they would consider to be the best interest of the individual relating to the specific decision. They should also be asked, if the individual had made any specific statements relating to treatment decisions.**

## Restraint

According to the Mental Capacity Act restraint is:

- Using force or the threat of force to make someone do something they are resisting.

*Or*

- Restricting someone's freedom of movement, whether they are resisting or not.
- Within healthcare we use restraint on a regular basis with many person, examples of this include:
  - The use of bed rails.
  - Lap straps on wheel chairs
  - Holding an individual's arm to safely administer an injection or obtain a blood sample.

*The use of restraint to undertake an intervention or treatment can only be used in the following circumstances:*

- The health professional believes that the use of restraint is necessary to prevent harm to the individual.
- The use of the proposed restraint is fully documented within the best interest decision process.
- The proposed restraint is the least restrictive option for the individual, and it ensures safe delivery of treatment.
- It is a proportionate response to the likelihood and seriousness of the harm.

*Key principles when using restraint are:*

- Always use the least intrusive, least restrictive option.
- Always use the minimum amount of restraint to achieve the specific outcome in the individual's best interest.
- Any use of restraint must be part of a care plan, and documented within the best interest decision process.

- The use of restraint must be risk assessed.
- Any use of restraint must be reviewed on a regular basis to ensure circumstances have not changed. The frequency of review should be agreed at the time of the care plan being completed and can vary dependent on need, risk and decision being made.

Any restraint that leads to complete control of the individual's movement and freedoms may amount to a deprivation of liberty and requires specific authorisation.

## Advance Statements

To assist with best interest decision making, the individual may have made an advance statement of preferences. There is no formal process for making an advance statement or wish, but any written statements by a individual at a time when they had capacity should be considered within the best interest decision making process.

An example of an advanced statement is the completion of the Preferred Priorities of Care (PPC) document. This gives the individual an opportunity to write down what is important to them, and what they would like family, carers and health professionals to consider when making decisions.

## Independent Mental Capacity Advocate (IMCA)

As we have discussed, if an individual lacks capacity to make a specific decision the decision maker must discuss the proposed best interest decision with anyone named by the individual, or any friends, family or unpaid carers to help determine what would be best at that time for the individual.

If the individual had no one to consult with other than paid carers, they may meet the criteria to be referred to an Independent Mental Capacity Advocate. The term used within the act is un-befriended because there is no person who knows them well enough to help make this decision.

The Mental Capacity Act places a statutory duty on health and social care professionals to refer to the Independent Mental Capacity Advocacy service if the individual has met the criteria of lacking capacity to make the decision, they are un-befriended and the decision relates to:

- **Providing, withholding or stopping serious medical treatment.**
- **Planned hospital admission for longer than 28 days.**
- **Planned care home placement for longer than 8 weeks.**
- **Transfer to a different long term care placement, this could be hospital to care home, care home to care home or home to care home.**
- **A person should also be referred to the IMCA service with safeguarding concerns or when having a care review even when they are befriended**

The term serious medical treatment is defined as, -

- A single treatment that has a fine balance between the likely benefits and the burdens to



the individual and the risk involved.

- A decision between a choice of treatment that is finely balanced,

Or

- What is proposed is likely to have serious consequences for the person.

Serious consequences are those which could have a serious impact on the person, either from the effects of the treatment itself or its wider implications. This may include:

- Treatment that can cause serious and prolonged pain, distress or side effects.
- Treatment that has potentially major consequences for the person. E.g. stopping life sustaining treatment or having major surgery.
- Treatment that could have a serious impact on the individual's future life choices. E.g. treatment for ovarian cancer.

Independent Mental Capacity Advocates are not alternative decision makers. They represent the individual who lacks capacity, and compile a report for the decision maker to assist them when making the best interest decision.

Within Lancashire the Independent Mental Capacity Advocacy service is provided by **Advocacy Focus**:

**Address:** Advocacy Focus  
1st Floor  
The Old Tannery  
Eastgate  
Accrington  
Lancashire  
BB5 6PW

**Phone:** 0300 323 0965

**Fax:** 01254 898898

**Email:** [admin@advocacyfocus.org.uk](mailto:admin@advocacyfocus.org.uk)

## Legal Powers With in the Mental Capacity Act

There were several legal powers introduced with the Mental Capacity Act in October 2007. Lasting Powers of Attorney (LPA), Court Appointed Deputies, Advanced Decisions to Refuse Treatment (ADRT) and two new criminal offences were introduced.

### Lasting Power of Attorney:

- To appoint an attorney the individual must be over the age of 18 years and must be deemed as having capacity to make the specific decision.
- Two types of LPA,
- Welfare for all health decisions including change of accommodation.
- Property and finance, previously known as Enduring Power of Attorney (EPA). Although no further EPA's can be made, those made prior to October 2007 remain valid.
- For either type of LPA to be valid they must be registered with Office of the Public Guardian (OPG). To be someone's attorney there will be an expectation a copy of this documentation should be produced to clarify authenticity.
- For a welfare attorney to use the powers granted to them, the individual must be deemed as lacking capacity to make the specific welfare decision required.
- A property and finance attorney can use the powers granted to them as soon as the LPA has been registered with the OPG. The powers can be used alongside the individual with capacity making finance decisions.
- Although the individual has appointed the attorney to make decisions, the attorney must still act and make decisions in best interest.
- If there is concern that an attorney is not acting in the best interest of an individual, or to check an LPA has been registered, please refer to the OPG; [click here for more information](#).

### Court Appointed Deputy:

- If the individual lacks capacity to appoint a LPA, all decisions need to be made in best interest unless they have a court appointed deputy. A court appointed deputy can have similar power to a registered LPA, but the Court of Protection Judge would decide the level of decision making ability given.
- Court appointed deputies are usually a member of family or friend of the individual, but





can be independent such as applications made by the local council to ensure legality of tenancy agreements.

- As the individual involved is vulnerable due to having a lack of capacity, all court appointed deputies are monitored by the OPG, please refer to the website for further information. [Click here for more information about](#) becoming a deputy.

### **Advance Decisions to Refuse Treatment:**

The Mental Capacity Act introduced a statutory duty to follow an Advance Decision to Refuse Treatment (ADRT) if it is both valid and applicable.

- The individual must be over the age of 18 years.
- The individual making the ADRT must have capacity to make that specific decision.
- The individual must specify the specific treatment that they wish to refuse (a general wish in not sufficient)
- The individual must state the specific circumstances the refusal is to apply to.

An ADRT does not have to be in writing, a individual can verbalise an ADRT, but it is the individual's responsibility to inform health professionals of the decision they have made and circumstances it relates to. If the ADRT relates to Life Sustaining Treatment the Mental Capacity Act states:

- It must be in writing.
- It must be dated.
- It must be signed by the individual.
- It must be witnessed.
- It must clearly state it is to apply even if life is at risk.
- If the individual is unable to write it, someone else can write it on their behalf, but this must be in the presence of the individual and witnessed by someone else.

*e.g. "I Doris Smith do not want to receive artificial nutrition or hydration via tubes put into my stomach if I suffer from a stroke. This applies even if it puts my life at risk."*

- Therefore if Doris were to have a stroke and required artificial nutrition or hydration the health professionals would have to make a best interest decision to provide this by alternative means.
- If the health professionals were concerned that the ADRT was not valid or applicable a best interest decision can be made to provide treatment.

*e.g. Doris were to suffer an acquired brain injury following a road traffic accident, if she*

*required artificial nutrition or hydration due to swallowing difficulty the ADRT is not applicable.*

It is the individual's responsibility to ensure all health professionals involved in their care and treatment are informed of the advance decision. The individual can amend or withdraw the advance decision at any time while they have capacity to do so. If they amend or withdraw the advance decision it is their responsibility to inform all the health practitioners of the change or withdrawal.

For further examples of ADRT please follow the link below

<http://pub.lucidpress.com/MCABLBNetwork/#mfPTAeH.yCNb>

**At all times try to avoid the use of the terms 'living wills' or 'advance directives'. These were both commonly used pre Mental Capacity Act. They do not constitute appropriate legal terminology, and can cause confusion.**

## Criminal Offences

Following the introduction of the Mental Capacity Act two new criminal offences were introduced aimed at protecting vulnerable adults who lack capacity. The offences are aimed at those who are in a position of trust, care or power over those who are vulnerable. They are therefore applicable to all health professionals, paid or unpaid carers and member of the family.

### *Wilful Neglect:*

- The meaning of wilful neglect varies depending on the circumstances, but it is when an individual has failed to carry out a task they knew they had a duty to do. E.G administering someone's medication

### *Ill Treatment:*

- This is when someone has deliberately ill-treated the individual, or they have been reckless in the way they were treating the individual. The code of practice states that it does not matter whether the behaviour was likely to or actually cause harm or damage to the victims' health e.g. Not providing someone with their medication for a prolonged period when there is a reliance to do so.

If an individual is found guilty of either offence they can receive a fine and/or up to 5 years in prison.





## Deprivation of Liberty Safeguards

**Deprivation of Liberty Safeguards** was an amendment to the **Mental Capacity Act** in **April 2009**. It aims to protect vulnerable people who lack capacity to consent to or refuse admission to hospital or a registered care home.

**The Court of Protection** can be used to protect vulnerable people who are being deprived of their liberty in their own home. To determine whether a deprivation is taking place all of the following criteria must be met:

- The individual lacks capacity to consent to their living arrangements, care and treatment
- The individual is under continuous control and supervision
- The individual is not free to leave

[Click here](#) to find more information on the Deprivation of Liberty Safeguards.

## Quiz

<b>1. What is Mental Capacity?</b> (multiple choice, select one answer)	
1. The ability to refuse treatment	<input type="checkbox"/>
2. The ability to make a specific decision at the time it needs to be made	<input type="checkbox"/>
3. The ability to communicate with others.	<input type="checkbox"/>
4. The ability to show understanding	<input type="checkbox"/>

<b>2. Which of the following statements is not one of the five principles?</b> (multiple choice, select one answer)	
1. An individual must be assumed to have capacity unless it is established that they lack capacity	<input type="checkbox"/>
2. An individual is not to be treated as unable to make a decision merely because he makes an unwise decision.	<input type="checkbox"/>
3. A decision should not be based on age, appearance, diagnosis or disability	<input type="checkbox"/>
4. An act done, or decision made, under the act for or on behalf of a individual who lacks capacity must be done, or made in his best interest.	<input type="checkbox"/>

<b>3. Individuals with Dementia lack capacity?</b> (multiple choice, select one answer)	
True	<input type="checkbox"/>
False	<input type="checkbox"/>

<b>4. An individual can have mental capacity for some decisions but not others?</b> (multiple choice, select one answer)	
True	<input type="checkbox"/>
False	<input type="checkbox"/>

<b>5. Which conditions may trigger a mental capacity assessment?</b> (multiple choice, select one answer)	
1. Learning disability	<input type="checkbox"/>
2. Stroke	<input type="checkbox"/>
3. Dementia	<input type="checkbox"/>
4. All of the above	<input type="checkbox"/>

**6. Who has the responsibility for completing a decision specific capacity assessment?**

(multiple choice, select one answer)

1. Care assistant	<input type="checkbox"/>
2. Nurse	<input type="checkbox"/>
3. General Practitioner	<input type="checkbox"/>
4. All of the above	<input type="checkbox"/>

**7. Which statements are taken from the 4 part functional test for assessing capacity?**

(multiple choice, multiple answers)

1. Does the individual understand the relevant information about the decision to be made?	<input type="checkbox"/>
2. Can the individual retain the relevant information long enough to make the decision?	<input type="checkbox"/>
3. Can the individual use and weigh up the information as part of the decision making process?	<input type="checkbox"/>
4. Can the individual communicate the decision they have made, by any means possible?	<input type="checkbox"/>
5. All of the above	<input type="checkbox"/>

**8. Who should health and social care professionals consult with when making a best interest decision?**

(Multiple choice, multiple answers)

1. Anyone named by the individual	<input type="checkbox"/>
2. Health professionals that are involved in the care of the person	<input type="checkbox"/>
3. Those that have direct involvement with the care of the individual	<input type="checkbox"/>
4. All of the above	<input type="checkbox"/>

**9. Who has the authority to consent to treatment on behalf of a individual who lacks the capacity to make a decision?**

(Multiple choice, one answer)

1. The individuals next of kin	<input type="checkbox"/>
2. A Lasting Power of Attorney	<input type="checkbox"/>
3. The individuals friend	<input type="checkbox"/>
4. The individuals carer	<input type="checkbox"/>

**10. What should you consider when making a best interest decision? Tick all that apply**

(Multiple choice, tick all that apply)

1. The individual's financial status	<input type="checkbox"/>
2. Will capacity return	<input type="checkbox"/>
3. Known wishes and feelings towards the treatment	<input type="checkbox"/>
4. All of the above	<input type="checkbox"/>

**11. The Mental Capacity Act does not allow the use of restraint**

(Multiple choice, one answer)

1. True	<input type="checkbox"/>
2. False	<input type="checkbox"/>

**12. Which statement about restraint is incorrect?**

(Multiple choice, one answer)

1. The health and social care professional can use restraint if they believe it is necessary to prevent harm	<input type="checkbox"/>
2. The health and social care professional can use restraint when another colleague tells them it has always been used	<input type="checkbox"/>
3. The health and social care professional can use restraint if it is thought to be the least restrictive option for the person	<input type="checkbox"/>

**13. Health and social care professionals only have to refer to an independent mental capacity advocate when the individual objects to the proposed treatment**

(Multiple choice, one answer)

1. True	<input type="checkbox"/>
2. False	<input type="checkbox"/>

**14. If an individual meets the criteria for referral to an independent mental capacity advocate, they become the decision maker?**

(Multiple choice, one answer)

1. True	<input type="checkbox"/>
2. False	<input type="checkbox"/>

**15. What age can an individual appoint a lasting power of attorney or record an advance decision to refuse treatment?**

(Multiple choice, one answer)

1. 16

2. 18

3. 21

4. 25

**16. What type of lasting power of attorney can only be used when the individual has lost capacity?**

(Multiple choice, one answer)

1. Lasting power of attorney for Health & Welfare

2. Lasting power of attorney for property & finance

3. Both

**17. What statement applies to Advance decision to refuse treatment which relates to life sustaining treatment?**

(Multiple choice, multiple answers)

1. It must be witnessed

2. It must be dated

3. It must state it is to apply even if life is at risk

4. All of the above

**18. The 2 criminal offences within the mental capacity act only affect those who provide care and treatment for individuals who are over 65 and lack capacity to consent to treatment?**

(Multiple choice, one answer)

1. True

2. False

**19. Deprivation of Liberty Safeguards should be considered when an individual who lacks capacity. Which of the following criteria needs to be met?**

(Multiple choice, one answer)

1. Continuous control and supervision

2. Not free to leave

3. All of the above

**20. You can expect to be involved in the best interest's assessment of a Deprivation of Liberty Safeguards**

(Multiple choice, one answer)

1. True

2. False

## Quiz Answers:

Question	Answer	Question	Answer
1	2	11	2
2	3	12	2
3	2	13	2
4	1	14	2
5	4	15	2
6	4	16	1
7	5	17	4
8	4	18	2
9	2	19	3
10	2, 3	20	1

## Glossary of Terms

### Mental Capacity

Within the MCA (2005) the term capacity relates to the person's ability to consent to or refuse care or treatment. The Act provides a two stage test for assessing a person's capacity and this must be used for each individual decision to be made and guided by the key principles of the MCA (2005)

### Best Interests

Everything that is done to, or on behalf of a person who lacks mental capacity must be done in that person's best interests. The MCA (2005) defines how best interests' decisions should be made.

### Lasting Power of Attorney (LPA)

The MCA (2005) allows a person aged 18 and over, who has capacity to make this decision, to appoint attorneys to act on their behalf should they lose mental capacity in the future. The provision replaces the previous Enduring Power of Attorney (EPA)

### Court Appointed Deputies

The MCA (2005) provides for a system of court appointed deputies to replace the previous system of receivership in the court of protection. Deputies are able to make decisions on welfare, healthcare, and financial matters as authorised by the court of protection. They are not able to refuse consent to life sustaining treatment.



## Court of Protection

The court of protection has jurisdiction relating to the whole MCA (2005) and is the final arbiter for capacity matters. It has its own procedures and nominated judges.

## Advance Decision to Refuse Treatment (ADRT)

The MCA (2005) creates ways for people 18 and over, and able to make a decision in advance to refuse treatment if they should lack capacity in the future. An advance decision to refuse treatment that is not life sustaining does not need to be in writing but the person must ensure the relevant professionals know what treatment is being refused. A decision refusing advance life sustaining treatment must be in writing, signed and witnessed with a clear statement of which treatments are being refused.

## Independent Mental Capacity Advocate (IMCA)

An IMCA is an advocate appointed by the local authority or NHS body, in certain circumstances, to support a person who lacks capacity in the decision making process. The decision maker must consider the views of the IMCA but is not bound by them

## Mental Capacity and young people

Many aspects of the Mental Capacity Act apply to people aged 16 and over who may lack capacity to make a specific decision (for more information see chapter 12 MCA Code of Practice). However the legislative framework for those cared for under The Children's Act (1989) will continue to apply until they are discharged from such care proceedings.

There are two elements of the act than can be applied to young people under the age of 16:

- Decisions about property or finance made by the Court of Protection
- Offences of ill treatment and wilful neglect

For young people aged 16 and 17 the capacity assessment must be used to determine whether the healthcare decision should be subject to the processes and provisions outlined within the Act. Depending upon the decision staff may then use the Children Act 1989 or the Mental Capacity Act to proceed with making a decision for the young person lacking capacity.