

Caring for people who can't make decisions for themselves

A brief guide to the Mental Capacity Act 2005 and
Deprivation of Liberty Safeguards



South Tyneside Council

What is the Mental Capacity Act 2005?

The Mental Capacity Act 2005 provides a framework for people who:

- Lack capacity to make decisions for themselves, or
- Have capacity and want to make preparations for a time when they may lack capacity in the future.

The Act is in place to make sure that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves is made in their best interests. The same rules apply whether the decisions are life-changing events or everyday matters.

What is the process?

The person requiring the consent, usually the person who is directly concerned with the individual at the time the decision needs to be made, identifies if a test needs to be done.

A single clear test is then used to assess whether a person lacks capacity to take a particular decision at a particular time.

- Is there an impairment or disturbance in the functioning of a person's mind or brain?
- If so, is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The Act says that a person is unable to make their own decisions if they are unable to do one or more of the following four things:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information
- communicate their decision

Who makes the decisions if someone is unable to?

The person who has to make the decision is known as the 'decision maker'. This is usually the carer responsible for the person's day to day care, or a professional who makes decisions about treatment, care arrangements or accommodation needs. A Code of Practice is available to all carers to help them - you can find this on www.publicguardian.gov.uk

Deprivation of Liberty Safeguards (DOLS)

Some people are not able to understand their own care or treatment needs, which may include a need to stay in a hospital or care home. It can be necessary to stop them from leaving the care home or hospital for their own safety.

For this to be lawful, care homes and hospitals must make an application to the local authority for formal assessments to take place to ensure the care provided is in the person's best interests. The general principles outlined in this leaflet also apply to hospital settings.

What is the process?

Care home managers must identify those people at risk of being deprived of their liberty and request deprivation of liberty authorisation from the local authority.

An assessment is then carried out and only if all six qualifying requirements are met will the authorisation be approved. Family members and other people who are important to the person concerned will be consulted when these assessments are being carried out. An authorisation will only be granted if it is necessary and in the best interests of the individual.

Any deprivation that is authorised by the local authority will be for as short a time as possible - certainly not more than a year and usually less than this.

A Relevant Persons Representative (RPR) is appointed to ensure the rights of a person being deprived of their liberty are protected. This could be a family member, friend or someone they know to act on their behalf to ensure they are cared for appropriately. In cases where no friend or family member is willing or available, a paid representative can be appointed. Reviews take place as requested to ensure the authorisation is still necessary.

All unpaid Relevant Person's Representatives and people being deprived of their liberty have a statutory right to be supported by a specialist Independent Mental Capacity Advocate (IMCA).

For further information:

**[www.southtyneside.info/article/13988/
when-someone-cant-make-decisions-for-
themselves](http://www.southtyneside.info/article/13988/when-someone-cant-make-decisions-for-themselves)**

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If you know someone who would like this information in a different format
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