

Advocacy Services in Essex

The following services can help people who lack or may come to lack mental capacity.

- **Together**
- **AGE CONCERN**
- **THURROCK MIND**
- **SPEAKING UP**
- **RETHINK**

These organisations are commissioned to provide **Independent Mental Capacity Advocates** for adults . We have a statutory responsibility to provide advocates for adults who may not have capacity who may have no-one else who can advocate on their behalf and are making significant decisions—such as those involving medical treatment or a change of accommodation.

Where can I find further information?

The following websites will provide you with more information on the Mental Capacity Act.

- ◆ www.direct.gov.uk
- ◆ www.essex.gov.uk
- ◆ www.ageconcern.org.uk
- ◆ www.together-uk.org
- ◆ www.mind.org.uk
- ◆ www.alzheimers.org.uk
- ◆ www.mind.org.uk



Mental Capacity Act 2005

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A Guide for Service Users & Carers.



The Mental Capacity Act provides a statutory framework for assessing whether people aged 16 and over have the capacity to make decisions for themselves. It also sets out how others can make decisions on behalf of people who lack such capacity.

Assessing Capacity

The Act establishes a single clear test for assessing whether someone lacks capacity to take a particular decision at a particular time. No one can assume that a person lacks capacity just because, for example, they

- ◆ Have a disability
- ◆ Cannot make more complicated decisions
- ◆ Haven't been able to make similar decisions in the past.

The test is both decision-specific and time-specific.

Best Interests

Where someone has to make a decision for someone else, they must decide what is in the person's best interests. To do that they must listen to what the person wants, ask the people who know them and involve any carers. The Code of Practice provides a "**Best Interests**" checklist for decision-makers to use.

Care or Treatment

Decision-makers are protected from liability if they decide that a person lacking capacity should have particular care or treatment. Again the best interests checklist needs to be followed. There are however limitations around what restraint can be used in these circumstances; it is only allowed if the person using it reasonably believes it to be necessary to prevent harm to the person lacking capacity. The restraint must also be proportionate to any likelihood of harm being suffered.

Lasting Power of Attorney (LPA)

From October 2007 a person can appoint an attorney to act on their behalf should they lose capacity in the future. The powers are similar to those of the previous Enduring Power of Attorney but cover health and welfare decisions as well as property and finance. LPAs must be registered with the Office of the Public Guardian (see below).

Deputies

Court-appointed Deputies replace the previous system of receivership in the Court of Protection. Deputies can be appointed to take decisions on welfare, healthcare and finance issues for people lacking capacity and where an LPA is not in place.

The Court of Protection

The new Court starts in October 2007. It oversees the Act and has its own procedures and nominated judges. It will be especially important in resolving complex or disputed cases where lack of capacity or best interests are an issue. The Court also appoints Deputies.

Public Guardian

From October 2007 the Public Guardian and their staff will be the registering authority for LPAs. They supervise Deputies and provide information to help the Court with decisions. They work with other agencies to consider any concerns about how an Attorney or Deputy is operating.

Advance Decisions

From October 2007, adults who have capacity can make an advance decision to refuse specific treatment. Advance Decisions are the only type of living will that is legally binding.