

# When residents lose mental capacity

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# Agenda

What is mental capacity?

When does someone lack mental capacity?

Mental Capacity Act (MCA) 2005 and the 5 Principles - what does this mean to you?

Decision maker - Attorney or deputy?

Your obligations as a Trustee

# What is mental capacity?



Mental capacity is about being able to make your own decisions – autonomy is the capacity to make an informed, uncoerced decision



Its decision and time specific



Everyday you make decisions, getting dressed, eating breakfast, buying clothes/shoes



More high end decisions the process may be different, mortgage, selling property, investments, tax returns

## When does someone lack mental capacity?

‘a person lacks capacity in relation to a matter if at the material time he is unable to make a decisions for himself in relation to the matter because of an impairment of, or disturbance in the functioning of, the brain or mind’

(s2(1) MCA 2005)

# When does someone lack mental capacity?

1. Capacity is both time and decision/issue specific
2. Two limbs of the capacity test: (1) diagnostic and (2) functional

## When does someone lack mental capacity?

A person is unable to make a decision if they are unable to:

1. Understand the information relevant to the decision
2. Retain that information
3. Use or weigh that information as part of the process of making the decision
4. Communicate their decision (talking or other means)

## MCA 2005 – 5 Principles

1. A presumption of capacity
2. Individuals being supported to make their own decisions
3. Unwise decisions – everyone can make them!
4. Best Interest
5. Less restrictive option

Who can make best interest decisions?

# Attorney or deputy?

- Enduring Power of Attorney – created before 1 October 2007 only property and financial affair decisions, registered at the point the donor lacks mental capacity
- Lasting Power of Attorney – property and financial affairs and health and welfare (separate documents), replacement attorney, registered at anytime
- Deputyship Order – Court of Protection Application, property and financial affairs and health and welfare (rarely appointed – separate orders) application to Court when P lacks capacity



## Who makes the decision?

### You and your resident

- Does your resident have mental capacity to make the decision?
- Is your resident represented by an attorney or deputy?
- Does the attorney or deputy have authority to make the decision?

# Office of the Public Guardian (OPG)

- Register all Lasting Power of Attorneys and Enduring Power of Attorneys
- Supervise all Court of Protection appointed Deputies
- Can investigate any attorney or deputy acting in breach of their authority or not in P's best interest – anyone can raise a concern
- Free search of the OPG Register (OPG100) by email [Find out if someone has a registered attorney or deputy - GOV.UK \(www.gov.uk\)](#)

# Your obligations as a Trustee

- A Trustee owes a duty of honesty, integrity, loyalty and good faith to the beneficiaries of the trust
- All charities have a responsibility to ensure they don't cause harm to anyone who has contact with them
- As a Trustee you must make sure your charity fulfils their responsibility:
  1. Identify and manage risks
  2. Have suitable policies and practices in place
  3. Carry out necessary checks
  4. Protect your volunteers and staff
  5. Handle and report incidents appropriately

# Your obligations - Policies and Practices

- Your charity's policies must make it clear how you will:
  1. Protect people from harm
  2. Make sure people can raise safeguarding concerns
  3. Handle allegations or incidents
  4. Respond, including reporting to the relevant authorities
- Use guidance available to you [Safeguarding and protecting people for charities and trustees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/safeguarding-and-protecting-people-for-charities-and-trustees)
- Take expert or professional advice

# Signposting and Whistleblowing

Adult Social  
Services

Office of the  
Public Guardian  
(OPG) – attorney  
or deputy

Police

Other charities?

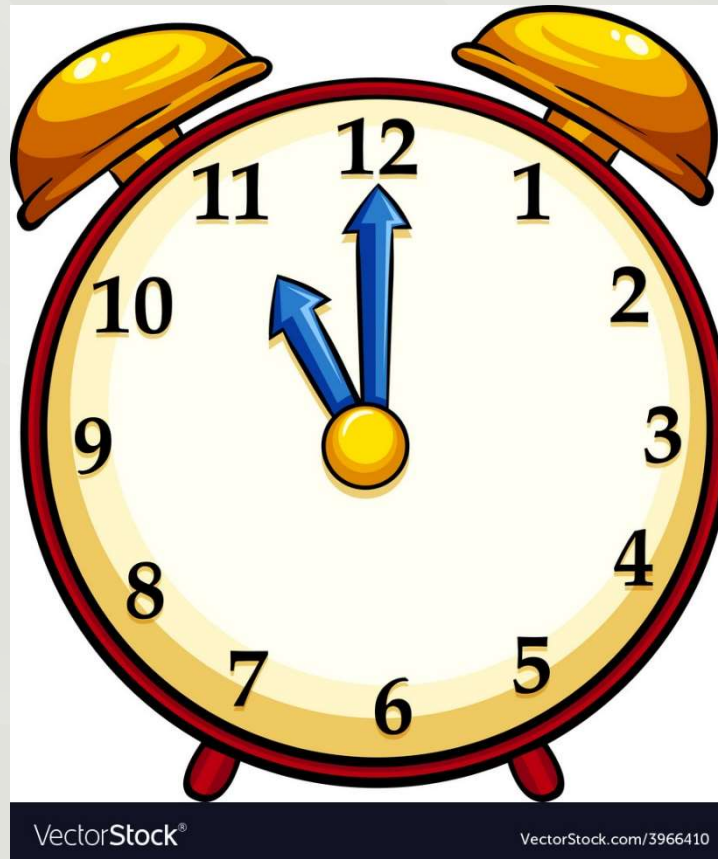
Legal or financial  
support?

DWP

# Summary

- What is mental capacity?
- When does someone lack mental capacity?
- Mental Capacity Act (MCA) 2005 and the 5 Principles - what does this mean to you?
- Decision maker - Attorney or deputy?
- Your obligations as a Trustee

## Time for questions?



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