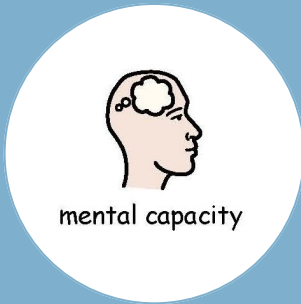


# Mental capacity and money



Mental capacity means being able to make a decision . It affects someone's ability to claim benefits, open a bank account, spend money, pay their bills and many other things.

This is an overview of how mental capacity relates to money. It does not cover everything so do read other things too.



### What is mental capacity?

- Mental capacity means being able to make a decision.
- It is defined in the Mental Capacity Act 2005 (MCA) in England and Wales. This factsheet will focus on this law.
- Scotland has a different law called the Adults with Incapacity Act 2000 – have a look at the links at the bottom for more information on this.



### How do you know if someone has capacity?

- The MCA says that someone does not have capacity if:
  - they have an impairment or disturbance of the mind or brain;
  - this impairment means they cannot make the decision. You assess this by asking the questions on the next page.



- Questions to ask to check capacity:
  - Can they understand what decision they need to make and why?
  - Do they understand the consequences of making this decision?
  - Can they understand and use the information relevant to the decision? (if it is accessible and they are given support)
  - Can they communicate their decision? (This doesn't have to be verbally)
- Mental capacity is specific to the decision and the time – so people may have capacity for some decisions but not others, or they may have capacity only some of the time.



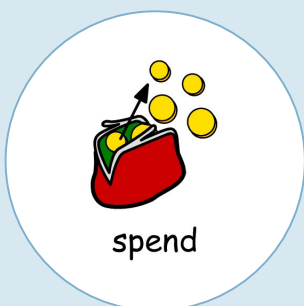
### **How is mental capacity relevant to money?**

- We make lots of decisions about money every day, from buying milk from the local shop, to getting a new phone contract, paying bills, opening a bank account or moving house. People may have capacity to make some of these decisions, but not all.
- If there is a doubt about someone's capacity to make a decision, the person closest to that decision (for example a family member or support worker) should assess their capacity using the questions above.
- For more complex decisions, such as entering into a contract or making a larger purchase, a more formal assessment may be necessary.
- For a legal transaction (for example making a will) a solicitor or legal practitioner must assess the person's capacity (with input from a doctor or others if necessary).



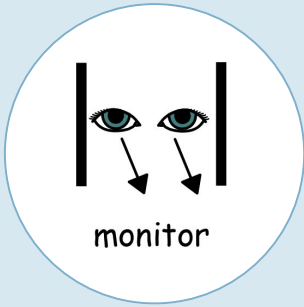
### **Making a best interest decision around money**

- If someone lacks capacity to make a decision, a best interest decision should be made on their behalf.
- They should still be involved in this decision as much as possible and their past and present wishes and feelings must be considered.
- The person's circle of support, including close family members and support staff should generally be consulted, but one person cannot just decide and does not have a veto.



### **Spending money on behalf of someone who lacks capacity**

- If someone does not have capacity to decide to pay for something, a best interest decision should be made about the purchase.
- A carer (paid or unpaid) can use the person's money to pay for necessary goods and services in the person's best interests, for example by using their cash. (This doesn't mean they can access the person's bank account, they need formal authority for this).
- If someone needs access to a person's bank account or other assets, they will need formal authority. This could be a Power of Attorney (if the person has capacity to grant this), Deputyship or a Court of Protection one-off decision.
- An appointee can only make payments from benefit money. They are required to spend benefit money in the person's best interests.



### How can I check spending and decisions made on someone's behalf?

- If someone receives paid support, ask the person or organisation for their policy or procedure on mental capacity and best interest decisions.
- Ask for evidence of a capacity assessment and best interest decision and ask to be involved in them.
- Ask how they record spending and check records.
- Contact your Local Authority if you have concerns about financial mismanagement, capacity assessments or best interest decisions.



### Where can I get more information?

- [www.gov.uk/make-decisions-for-someone](http://www.gov.uk/make-decisions-for-someone)
- Different ways to manage someone's money and make decisions [www.gov.uk/browse/births-deaths-marriages/lasting-power-attorney](http://www.gov.uk/browse/births-deaths-marriages/lasting-power-attorney)
- Mental Capacity Act Code of Practice [www.gov.uk/government/publications/mental-capacity-act-code-of-practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)
- Carers UK video – [Carers talk about the Mental Capacity Act](#)
- Adults with Incapacity (Scotland) Act [www.mwscot.org.uk/the-law/adults-with-incapacity-act/principles-of-the-act/](http://www.mwscot.org.uk/the-law/adults-with-incapacity-act/principles-of-the-act/)
- HFT guide [www.hft.org.uk/Supporting-people/Family-carers/Resources/Using-the-Mental-Capacity-Act/](http://www.hft.org.uk/Supporting-people/Family-carers/Resources/Using-the-Mental-Capacity-Act/)