

The Mental Capacity Act (MCA)

How well is it working?

An EasyRead report from the House of Lords



This is an EasyRead version of:
Report of the Select Committee
on the Mental Capacity Act 2005



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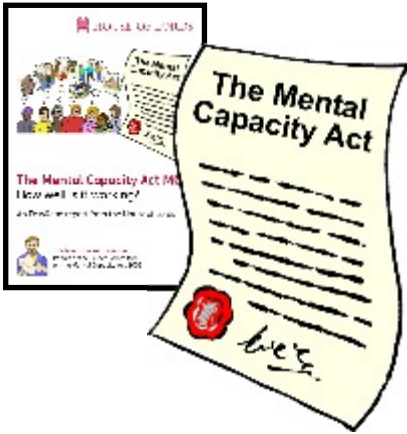
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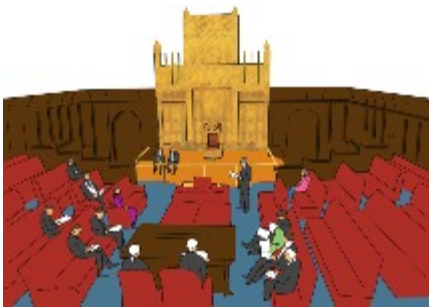


This is an EasyRead report on how the **Mental Capacity Act** is working, called the **MCA** for short.

The MCA is a law passed in 2005 that tells people what to do about decision making, it says:



- how to help people make their own decisions
- what to do if someone can't make their own decision about something.



This report has been written by a House of Lords committee.



The House of Lords is a part of Parliament, the other part is the House of Commons, where MPs sit.



Parliament can set up groups or committees to look at things they want to find out about.



In this committee we asked people to tell us what they thought about how well the MCA was working.



This included people with learning disabilities.



There are difficult words in this report. We have put them in **bold**.



We have tried to explain them as we go along. And we have put a list of them all at the back.



This is the EasyRead report on what we found out. If you need more details, there is a longer version on our website:

www.parliament.uk/mental-capacity-act-2005/publications/

About the MCA



We still think the MCA is a great idea. It says that:

- we should always think someone can make their own decisions unless it has been shown they cannot



- people should have support to make their own decisions



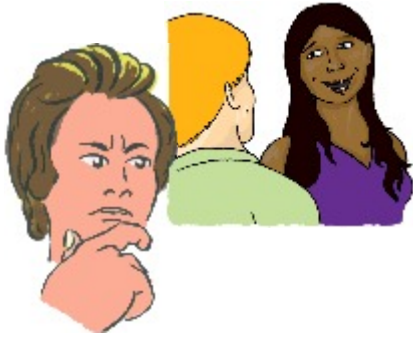
- people who might not be able to make their own decisions have rights



- people have a right to make decisions that others might think are not very sensible



- if a person cannot make a decision for themselves, the people making it for them have to think about what's best for the person



- a person's wishes and feelings should be thought about in any decisions made for them



- people should be kept safe if they can't make a decision.

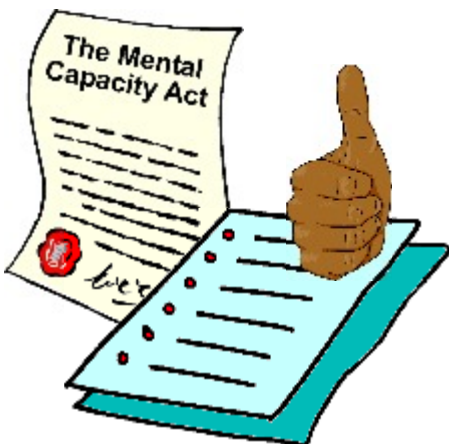


This law was meant to change people's lives.

We heard from lots of people saying this has not happened yet.



We still think these are the right things to try and do, and lots of people said they agreed.



So we looked at the problems and came up with a list of ideas about how to make the law work better.



What people thought about the MCA

We asked people to tell us what they thought about the MCA.



Lots of people told us what they thought. We visited some groups, including self-advocacy groups.



We also asked a lot of people to come and talk to us some more.

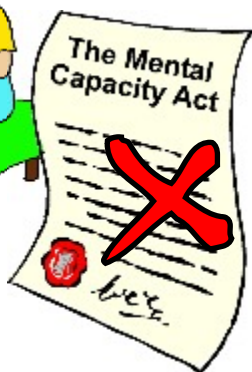


People said a lot of the same things.



People said that:

- they liked the things the MCA wants to do



- lots of people and services do not follow it



- many services think people can't make decisions when they can



- they do not check to see if someone can make a decision



- the checks that are done are not very good



- people do not get support to make their own decisions



- health services still think they know best for people they think cannot make their own decisions



- care services want to be safe, they do not let people take risks or do things differently



- sometimes services say people can make decisions as an excuse to leave them without support or with bad care



- some professionals don't know about the MCA or how to work in this way



- the **Deprivation of Liberty Safeguards** or **DoLS** for short, are rules about keeping people who can't make a decision in a hospital or care home. These are not working at all well



- too many people don't know enough about the MCA.

What needs to change?



We have made a list of 39 things that need to change to help make the MCA work better.

The 2 main points are:



1. there needs to be an independent organisation in charge of making things better



2. the DoLS rules need to be done again.



In this list we have joined together some of our 39 points.

Information



1.

Telling people about the MCA

Everyone needs to be told more about the MCA, including staff, people who use services, carers and families. (See point 12 as well)

Checking



2.

Checking the MCA is used

The Government needs to check how much the MCA is used in health and social care and other areas, from banks to the police.

Making sure the MCA happens



3.

A single organisation in charge

There are lots of organisations that should make sure the MCA happens. But it's not working.



We want a single organisation to be in charge of making sure the MCA happens.



It should be separate from government.
They should write a report each year on what they are doing.



It should include people who might be seen as unable to make decisions as well as their families and carers.



4.

How the organisation should work

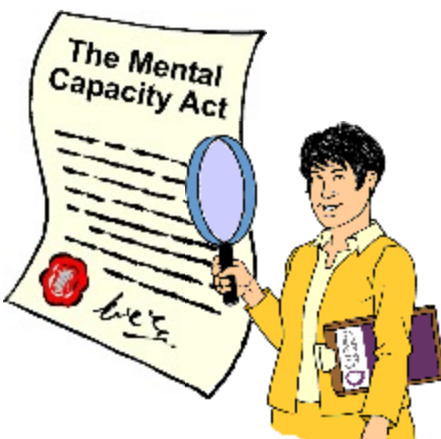
A government group, called the MCA Steering Group, should be asked to look at how the organisation should do its work and who should be in the organisation.

CQC

5.

Checks by CQC

CQC should check health and social care services are using the MCA in the right way and people are getting their rights.





Professionals

6. 7. 8. 9. 10. 11.

Getting professionals to use the MCA

Professionals must get more training about using the MCA.



The people who buy services must be made to use the MCA.



All the organisations in charge of professionals should be told to help make the MCA happen.



More Information

12.

Information about the MCA

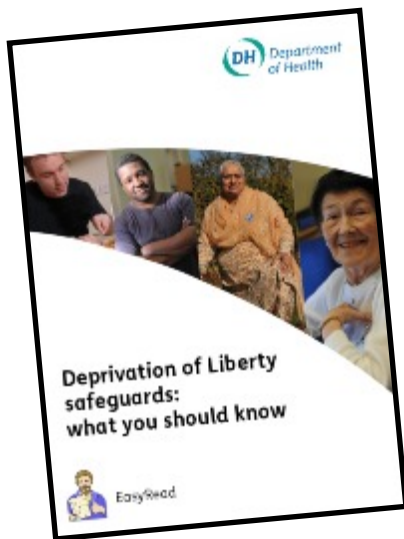
Different people need different information about the MCA.



All the people who need to know about the MCA, from people who use services to lawyers, must have the information they need about the MCA. In the ways they need it.



This information needs to be good and kept up to date by the organisation in charge of making the MCA happen.



DoLS

The next part (13 to 21) is all about the **Deprivation of Liberty Safeguards** (or DoLS).



These are rules about people who are made to stay in a hospital or care home. They are meant to give people rights and make sure they are looked after properly and kept safe.



13. 14. 15. 16. 17. 20. 21.

Starting again with the rules about being made to stay in a hospital or care home

These rules (DoLS) need to be done again.



They were meant to give people rights and make sure everything was done properly.



They are very complicated, not good enough and not always used.

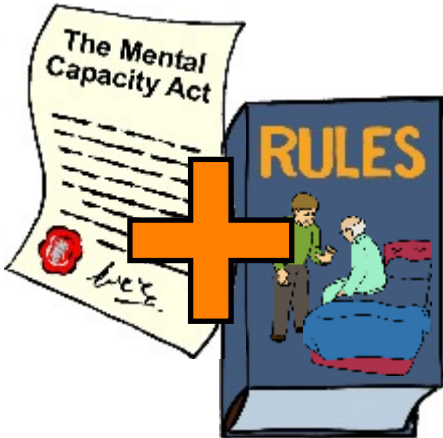


The new rules need to:

- be clear why they are needed



- be much easier to understand



- fit in with the rest of the MCA which people like.



- make sure everyone who needs it has the protection of these rules. This includes people in supported living and in mental health wards.



Speaking up for you

18.

Someone to speak up for you

Your local council can agree for a person to speak up for you. They are called an **RPR** (Relevant Person's Representative).



This needs to be made better so the right person gets the job and they are listened to.



19.

Checking on who decides about being made to stay in a hospital or care home

The people who decide that someone should be made to stay in a hospital or care home should be checked themselves. To make sure they're doing it properly.

Advocates



22. 23. 24.

More people having an advocate

Some people can get an advocate called an **IMCA**. IMCA means they are working under the MCA rules.



People said these advocates were good and wanted them to do more. We think so too.

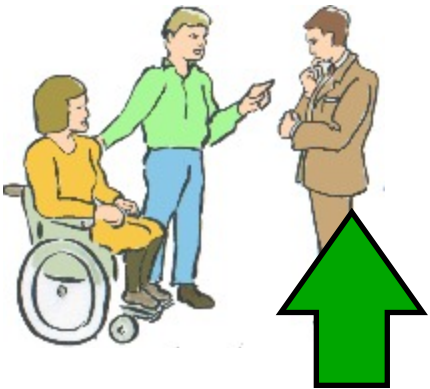


IMCAs should be:

- trained



- asked to be involved sooner



- asked to be more involved as well.



People should be able to ask for an IMCA themselves.



LPAs or Lasting Powers of Attorney

If you are able to make decisions, you can say who you would like to make them for you if you can't anymore. This is done using a legal document called an **LPA** or **Lasting Power of Attorney**.



This puts in writing who can make decisions about things when you can't.



25. Making LPAs easier and telling people about them

Staff need to know more about LPAs and how the person named in one can make decisions for someone else.



Councils need to tell people about LPAs and what they can do.



We need new rules about what to do if services and others do not do what someone with an LPA has asked them to do.

Deciding you do not want a particular treatment in the future



26.

Deciding about treatment that you do not want

You can write down that you do not want a particular treatment in the future when you might not be able to make a decision about it. This is called an **Advance Decision**.



This helps if you are unable to say what you want because you are too ill.

People need to know you can do this.



Staff need to know people can do this and follow what has been written down.



Health staff need to talk to people early on in an illness to help do this.



These decisions need to be kept on patient's records.

The Court of Protection

27. 28. 29. 30. 31.

A better Court of Protection

When someone can't make a decision, there are some things that need to go to a special court to be decided. This is called the **Court of Protection**.



They need to have more staff who can make decisions so it doesn't take so long.



The court is making changes to be more open so people can see what they do. We think that is a good thing.



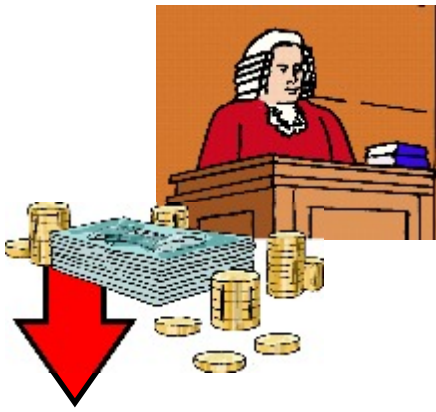
They need to be able to put their own words on their website so people know what they do.



Before a problem goes to court, other ways to sort it out should be tried.



New rules are needed about helping a case go to court. This is really important if it is the person who they think can't make a decision who wants to do that.



Legal aid

32. 33. 34.

Legal aid

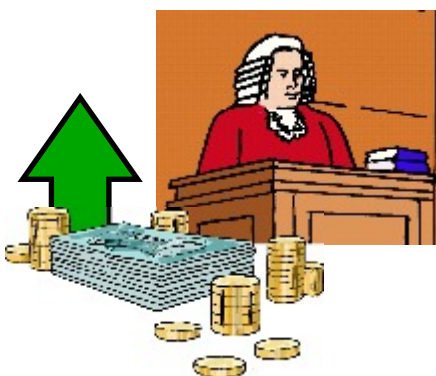
We know there is not enough legal aid money to pay for everything.



But we need to make sure people who have been seen as unable to speak up in court for themselves can still go to court if they need to.



This is really important when someone is being made to stay in a hospital or care home.



We want the government to look again at how much money there is to pay for people to speak up for them.

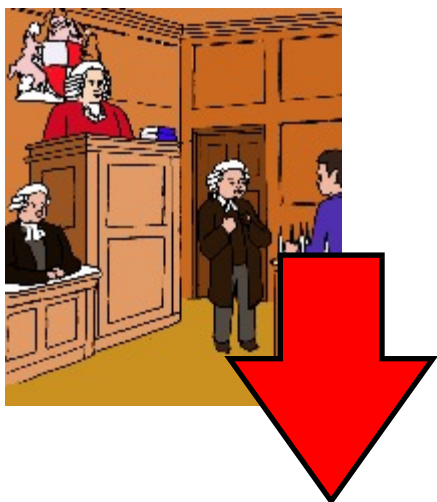
Treating people badly



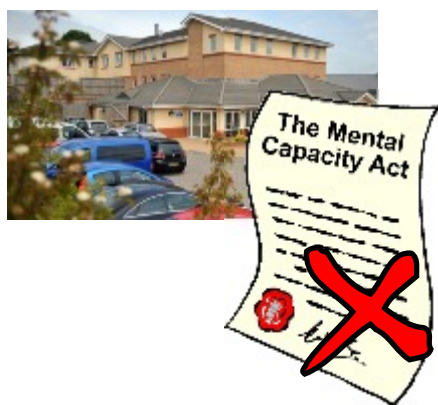
35.

Treating people badly

There is a law in the MCA about not neglecting or treating badly people who can't make a decision.



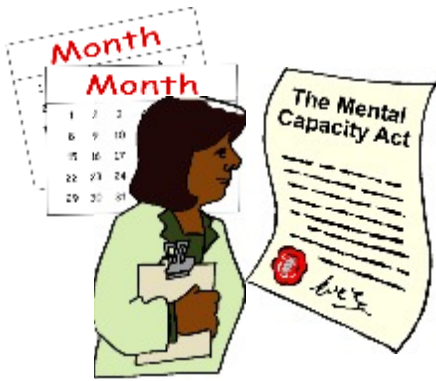
There have not been many cases that have gone to court using this law.



Even the staff at Winterbourne View did not get charged with breaking this law.



We think the government should look at this part of the MCA to make sure it does what it is meant to do.



Checking the MCA is working

36. 37. 38. 39.

Checking the MCA is working

We think the MCA should be checked more often to see if it is working properly.



The right people to make sure this happens would be the organisation that is put in charge of the MCA (see point 3).



They should also check what staff, people who use services and others think about decision making to see if any changes have happened.

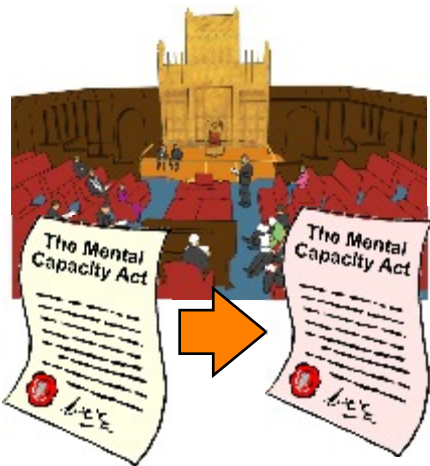


And we want a check made to see what changes have been made by government over the next year.

What happens next?



The Government will read our report. They will let us know what they think of it and what they are going to do.



We will have a debate in the House of Lords, and ask the Government to make the changes we've asked for.



The Committee's job was to write the report. We've now finished our work.



What the words mean

There are difficult words in this report and others you might hear about in this law.

We have tried to explain them as we go along and we have put a bit more about them here.

Advance decision – is when someone who is able to make a decision decides that they do not want a particular type of treatment if they are not able to make that decision in the future.

A doctor must respect this decision.

An advance decision must be about treatment you want to refuse and when you want to refuse it.

Care Quality Commission (CQC)

CQC are an independent organisation that checks health and social care services.

Their job is to make sure services give people good, safe and kind care.

Court of Protection – the specialist Court for all issues about people who can't make their own decisions.

Deprivation of Liberty Safeguards - DoLS for short, are rules about what to do when you are keeping people who can't make decisions in a hospital or care home.

The rules can help people to ask for this to be checked by someone else to make sure it is the right thing to do.

Independent Mental Capacity Advocate (IMCA) - The job of the IMCA is to give independent support and speak for the person who cannot make a decision when they have no one else who can do this for them.

This happens when there are really big decisions to make which will change the person's life.

Lasting Power of Attorney – is a legal form where one person gives the other person the right to make decisions for them in the future, if they stop being able to make decisions.

Legal Aid – money you can get to help with some types of legal or court cases.

Mental Capacity Act 2005 – the law about how to support and protect people who cannot make their own decisions about something. The Act makes it clear how decisions should be made. It lets people plan ahead for a time when they may not be able to make their own decisions.



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