

GUIDE TO THE
**MENTAL CAPACITY ACT
FOR CAREGIVERS**

OFFICE OF THE
**PUBLIC
GUARDIAN**

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FOREWORD

This booklet provides guidance for people who are Caregivers. It provides you with an overview of the practicable steps you need to take to help a person whom you are caring for make his/her own decision.

As a caregiver, you are responsible for considering and making decisions on behalf of a person who lacks capacity in his/her best interests.

The scenarios and examples in this guide are for illustration only. The characters and situations used are fictitious. They are not a substitute for professional advice in appropriate cases and are not in any way to be taken as precedents for decisions that need to be made in similar situations. They are also not indicative of how a court would decide any particular case, as that would depend on the actual facts of each case before the court, which may include relevant facts that are not considered in the examples.

PART A

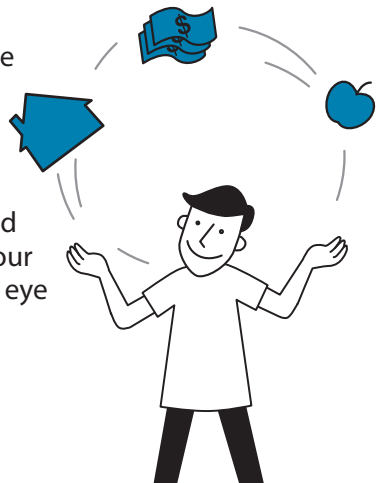
WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW ABOUT IT?

A1. WHAT IS MENTAL CAPACITY?

- *Mental capacity is the ability of the person to make a specific decision at a particular time.*

Mental capacity is assessed on a case-by-case basis and cannot be assumed based only on the person suffering a particular medical condition. Furthermore, a person's lack of mental capacity cannot be based only on:

- age,
- how a person looks – this includes the physical characteristics of certain conditions (for example, features linked to Down's syndrome or muscle spasms caused by cerebral palsy) as well as aspects of appearance like dress or state of cleanliness,
- condition – this includes physical disabilities, intellectual disabilities, age-related illnesses or temporary conditions such as drunkenness, or
- aspect of behaviour – this may include behaviour that appears unusual to others, for example, rocking back and forth, talking to oneself or inappropriate laughing. It also includes extroverted behaviour, for example, shouting and gesticulating, and withdrawn behaviour such as refusing to speak or avoiding eye contact.



A2. WHAT IS THE MENTAL CAPACITY ACT AND WHY DO WE NEED THIS ACT?

The Mental Capacity Act enables people to plan ahead and gives them the power to make choices for their future before they lose their mental capacity. It addresses the need to make decisions for persons who are 21 years or older when they lack mental capacity to make those decisions for themselves. The Act also:

- a. Allows people to voluntarily make a Lasting Power of Attorney to appoint one or more persons (donees) to act and make decisions on their behalf if and when they lack mental capacity in the future.
- b. Allows the court to appoint a deputy to act and make decisions on behalf of a person who lacks mental capacity where a decision is required but the person does not have a proxy decision-maker.
- c. Parents of children with intellectual disability may also apply to court to appoint themselves as deputy for their children and another person as a successor deputy to plan for the event the parents themselves lose capacity or pass away.
- d. Gives legal protection for acts done by anyone in connection with the care and treatment of a person who lacks mental capacity if certain conditions are met, including the requirement that the act is done in the best interests of that person.
- e. Provides safeguards to protect persons who lack mental capacity.

- f. Has 5 statutory principles that anyone making any decision or taking any action for a person who appears to lack capacity must follow.
- g. Creates a new officer called the Public Guardian whose functions include maintaining a register of LPAs and a register of court orders appointing deputies, supervising deputies and dealing with allegations of abuse by donees and deputies.



THE PRINCIPLES OF THE ACT

- *The Act seeks to balance a person's right to make his own decisions and the need to protect him where he lacks mental capacity to make those decisions.*

It sets out 5 statutory principles to help the individual to take part in the decision-making process as far as possible, and protect him when he lacks capacity to do so. The idea is to assist and support people to make particular decisions, not restrict and control them.

- *Anyone making any decision or taking any action for a person who appears to lack capacity must apply the 5 principles.*



Principle 1: A person must be assumed to have capacity unless it is established that he lacks capacity.



Principle 2: A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.



Principle 3: A person is not to be treated as unable to make a decision merely because he makes an unwise decision.



Principle 4: An act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.



Principle 5: Before an act is done or decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

When acting or taking decisions on behalf of a person who lacks mental capacity, these principles should be read alongside the provisions in the Act to ensure that the appropriate action or decision is taken in each case.

PART B

WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?

B1. THE PUBLIC GUARDIAN

The Public Guardian works towards protecting the dignity and interests of individuals who lack mental capacity and are vulnerable. He is the head of the Office of the Public Guardian.

B2. THE FUNCTIONS OF THE PUBLIC GUARDIAN

The Public Guardian carries out various functions towards enabling and protecting persons who lack capacity. These functions include:

- a. To maintain a register of Lasting Powers of Attorney and a register of court orders that appoint deputies,
- b. To supervise deputies,
- c. To receive reports from donees and deputies,
- d. To investigate any alleged violation of any provision in the Mental Capacity Act, including complaints about the way in which donees and deputies are exercising their powers.

B3. THE OFFICE OF THE PUBLIC GUARDIAN

- The Office of the Public Guardian (“OPG”) supports the Public Guardian in carrying out his functions.
- The OPG is a division of the Ministry of Community Development, Youth and Sports.

B4. THE ROLE OF BOARD OF VISITORS

The roles of the Board of Visitors are to:

- visit persons who lack capacity, donees or deputies as may be requested by the Public Guardian or the court, and
- check on the well-being of the person who lacks capacity.



There are 2 types of visitors:

- a. Special Visitors – who are registered medical practitioners or persons who have the relevant expertise about impairment of, or disturbance in, the functioning of the mind or brain.
- b. General Visitors – who need not be medically qualified.

PART C

THE 5 PRINCIPLES UNDER THE ACT

C1. INTRODUCTION

When caring for a person who lacks capacity, you must have regard to the 5 statutory principles and the Code of Practice.

The Mental Capacity Act offers legal protection to you if

- before doing the act, you take reasonable steps to establish whether the person lacks capacity about the matter in question, and
- you reasonably believe that the person lacks capacity and the act to be done is in his best interests.

C2. HOW DO I APPLY THE 5 STATUTORY PRINCIPLES?

The statutory principles help the individual to take part in the decision-making process as far as possible, and protect him when he lacks capacity to do so.

When acting or taking decisions on behalf of a person who lacks mental capacity, these principles should be read alongside the provisions in the Act to ensure that the appropriate action or decision is taken in each case.



Principle 1: Presumption of Capacity

- *It must be assumed that a person has capacity to make a decision for himself*
- *unless there is proof that he lacks capacity to make the decision at the time it needs to be made.*

The assessment of a lack of capacity cannot be based simply on the person's appearance, age, condition or behaviour. So, people should be allowed to make their own decisions where they can.

Scenario

Shanti Sandhu is a 66-year-old divorcee who lives alone in a walk-up apartment. Her children were tragically killed in a road traffic accident six months ago.

Shanti used to be active in the community, taking part in local activities and volunteering at Resident Committee activities. Since the accident, she does not speak to anyone.

The apartment block committee is organising a health talk and free health screening activity. The committee is considering excluding Shanti as they feel she does not have capacity to contribute to organising the activities.

The organising committee should not assume that, just because Shanti lives alone and does not talk with anyone, it means that she lacks mental capacity. A person is presumed to have capacity unless it is proven otherwise. The organising committee should consider inviting Shanti. Whether she chooses to be involved is her choice.

Principle 2: Giving All Practicable Help

○ *Caregivers, family members, donees, deputies and professionals who care for or treat a person who may have difficulty in making a particular decision should take all practicable steps to help the person to make his own decision.*

They should not exert pressure or impose their views on the person they are supporting when helping him to make a decision.

○ *The type of support the person should receive depends on the type of decision he has to make and the circumstances.*

The individual should not make a decision on behalf of a person simply because that person has difficulty communicating. Instead, the individual should provide support, for example, by providing information in more accessible formats such as large font and drawings, and using different forms of communication such as sign-language, Braille, etc.

Scenario

Several police officers find a middle-aged man living underneath a bridge on the Pan Island Expressway. He is very dirty and has a big cut on his leg, which looks infected. They take him to the hospital.

The hospital staff asks for his personal details and relatives they could contact. To help the man to communicate, these enquiries are made in several languages. The man remains silent and does not want to cooperate with the doctor who wants to examine his injury.

The doctor tells him that if the injury is not treated, he may lose his leg and makes a sawing motion over his leg in an attempt to explain the situation to him. The man appears to pay more attention after that and starts pointing at his mouth and ears while shaking his head.

A nurse realises that he may be a deaf mute, so she gives him a paper and pen, and calls in a person who knows sign language. The man calms down and starts communicating to the hospital staff in writing.

The man may not have been able to communicate orally, but that does not mean he cannot make a decision about his treatment. The medical team should not conclude that he does not have the capacity to decide about treatment before giving him all the practicable help to make and communicate his decision.

In emergency situations, for example, serious injury from an accident, it may not be practicable to take as many steps to support a person to make his own decisions. All that can be done may be to keep the person informed of what is going on and why procedures are being done.

Principle 3: Unwise Decision

- *A person is free to make his own decisions even if those decisions are unwise in the view of others.*

- *This recognises the right of a person to make his own choices. Just because a decision is unwise does not mean that the person has lost mental capacity.*

However, there is a difference between a person making an unwise decision (which the person who decides may make) and his making a decision when he lacks the ability to understand, remembers or uses the information necessary to make the decision.

If a person makes several decisions which are unusual bearing in mind his usual behavior, or makes decisions which make it easy for him to be exploited or harmed, then further investigation into that person's capacity should be conducted.

Scenario

Ah Huat is 73 years old. He is a widower and lives alone.

Last week, a window installer named Paul visited Ah Huat at his home. Paul convinces Ah Huat to change the window in his bathroom because it is rusty. The next day, Paul returns and advises Ah Huat to change the windows in his bedroom. Paul charges Ah Huat \$500.

Ah Huat's son, Ah Seng, is concerned about his father. Ah Huat is normally careful with his finances because he is retired.

Paul returns for a third time and Ah Huat agrees to change the remaining windows in his flat for \$1500. Ah Seng, who examined the windows earlier, noticed that they are still in good condition and did not need to be changed. He believes that Paul has taken advantage of his father and wonders whether Ah Huat is capable of making similar purchasing decisions.

Ah Huat explains that he prefers to get the windows replaced all at once because he gets a better bargain. He believes that all the windows will need to be replaced in one or two years' time.

Ah Seng cannot just assume that because his father, Ah Huat, is 73 years old and has decided to change all the windows in his flat, he lacks mental capacity. If Ah Huat's usual pattern of behaviour continues to change and causes concern, then Ah Seng should consider getting his mental capacity assessed by a doctor.

Principle 4: Best Interests

- Every act or decision made on behalf of a person who lacks capacity must be made in his best interests.*
- Whether a decision is in the person's best interests will depend on the circumstances of the case.*

Best Interests Checklist

Checklist items	Extent of application
1. Whether it is likely the person will regain capacity at some time in the future to make the decision in question and when that is likely to happen.	Must consider.
2. The person's past and present wishes and feelings, especially if they were written down when the person had capacity.	Consider so far as reasonably ascertainable.
3. The beliefs and values likely to affect that person's decision if he had capacity; e.g. cultural background, religious beliefs and past behaviour or habits.	Consider so far as reasonably ascertainable.
4. Any other factors the person would likely have considered, if he had capacity to do so.	Consider so far as reasonably ascertainable.

Checklist items	Extent of application
5. The views of anyone named by the person as someone to be consulted on the matter in question or on matters of that kind.	Consult if practicable and appropriate.
6. The views of anyone engaged in caring for the person or interested in his welfare.	Consult if practicable and appropriate.
7. The views of any donee of any Lasting Power of Attorney granted by that person.	Consult if practicable and appropriate.
8. The views of any court-appointed deputy.	Consult if practicable and appropriate.

Scenario

Kevin Khoo and his wife, Rishima Rajah, have three children. Their eldest, Ron, who is 23 years old, has an intellectual disability and has been working at a sheltered workshop operated by a charity.

The charity also has a programme which offers temporary residence to persons like Ron to acquire basic life skills for more independent living. With some support, they are also taught how to take public transport. These life skills help them to be better suited for open employment.

A place in the residential programme becomes available and the social workers at the charity recommend that Ron take up the offer.

Kevin and Rishima know that Ron will like to become more independent. However, they are worried that if Ron takes up the offer, they won't be able to look out for him and he will spend less time with them.

If Ron has the mental capacity to make the decision on the residential programme, then Kevin and Rishima should not decide for him. If Ron lacks the capacity to make this decision, Kevin and Rishima must remember that they should be acting in Ron's best interests and not their own.



Principle 5: Less Restrictive

- When acting or making a decision on behalf of a person who lacks capacity, the action or decision taken should be one which is less restrictive on that person's right and freedom to act.

The less restrictive option is usually also the option that is in the best interests of the person.

- Sometimes, that includes not taking any action or decision at all. All actions taken or decisions made, or decisions not to take any actions, must be taken in the person's best interests.

Scenario

Ah Mei lives with her 80-year-old mother, Madam Kwong Siew Moi, who has dementia.

When Ah Mei goes to work, she locks her mother in her room to prevent her from injuring herself or wandering off. She leaves food and water in the room. Madam Kwong wears adult diapers.

When Ah Mei returns home in the evening, she bathes and feeds her mother. Even though Ah Mei is acting out of concern for the safety of her mother, and is a filial daughter, this form of care is not the less restrictive option. She must make some other more suitable care arrangement such as placing Madam Kwong in a dementia day-care centre.



If there is more than one option available, then the options must be weighed up and the decision taken must be determined by both the best interests and less restrictive option principles.

PART D

HOW DOES THE MENTAL CAPACITY ACT PROTECT PERSONS WHO LACK CAPACITY?

People who lack mental capacity are a vulnerable group in society. They may not even be aware that they are being ill-treated. The Mental Capacity Act has created a new criminal offence of ill-treatment that covers physical, sexual and emotional abuse.

The Act sets out to protect the persons who lack capacity. It has created a new criminal offence of ill-treatment that covers physical, sexual and emotional abuse.

D1. WHAT HAPPENS IF ANYONE SUSPECTS ABUSE?

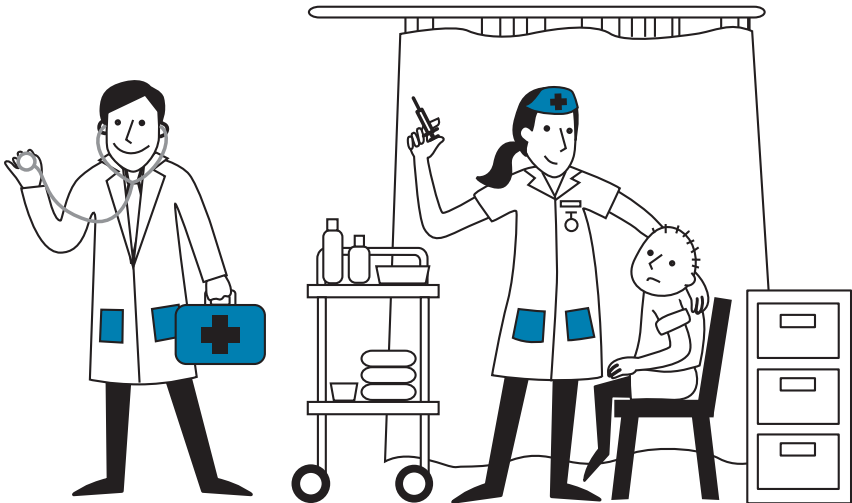
- *Anyone who knows, suspects or believes that a person who lacks capacity is not properly looked after, needs care or protection, may report this to the Public Guardian and the appropriate bodies.*
- *If there is good reason to suspect that a crime has been committed against the person, the report should be made to the police.*



Health care workers who inform the Office of the Public Guardian of their suspicions that a person who lacks capacity needs care or protection will not breach their professional code of ethics or standard of professional code.

To encourage individuals to report to the Public Guardian suspected ill-treatment, the Mental Capacity Act provides whistle-blower protection. The whistle-blower's identity may not be disclosed in court proceedings. No one can be forced to disclose the identity of whistle-blowers in court proceedings.

For health care workers who act in good faith in making the notification to the Public Guardian, the Act gives protection and they would not incur any civil liability for making such notifications.



PART E

WHAT DO I NEED TO KNOW ABOUT ASSESSMENT OF MENTAL CAPACITY?

E1. WHAT DOES “LACK OF MENTAL CAPACITY” MEAN?

The lack of mental capacity refers to the inability to make a decision in relation to the matter at hand because of an impairment or disturbance in the functioning of the mind or the brain.

A person is unable to make a decision when he cannot do one or more of these things in relation to making a specific decision at the time it needs to be made:

- Understand the information.
- Remember the information.
- Weigh up the information.
- Communicate the decision.

The definition of “lack of mental capacity” provides a 2-stage test for mental capacity.

STEP 1

Is the person suffering from an impairment of, or disturbance in the functioning of the mind or brain?

STEP 2

If yes, does the impairment or disturbance cause the person to be unable to make a decision when he needs to?

E2. WHO DECIDES WHETHER OR NOT SOMEONE LACKS CAPACITY?

Different individuals may be involved in assessing a person's capacity for different decisions. The assessor is usually the individual directly concerned with the person at the time the decision needs to be made.

Informal Assessment

These assessments are appropriate for most day-to-day decisions, e.g. whether the person can go out alone. The assessor is likely to be the person's caregiver. The assessor must apply the statutory principles and give all practicable help to the person to make his own decision. If the person lacks capacity to make the decision, the caregiver will make the decisions on behalf of the person.

An individual who has not been specially trained to conduct mental capacity assessments carries out an informal assessment. These assessments are appropriate for most day-to-day decisions. The assessor is likely to be the person's caregiver.

Formal Assessment

An accredited GP or specialist can conduct the assessment. To avoid any conflict of interest, the assessor should not be related to the person being assessed or the individual seeking formal assessment of the person.

The donee of an LPA or a professional, such as a lawyer, may seek formal assessment where they have doubts about the person's capacity and the decision the person has to make is an important one. E.g. of such decisions are:

- moving house,
- selling assets, or
- transferring assets to another individual or organisation.

An individual or an organisation such as a bank, that deals with a donee of an LPA on a matter relating to the property of the donor, may require the donee to produce a certification from a registered doctor stating that the donor's lack of capacity relating to the matter is likely to be permanent. To obtain this certificate, the donee must first get the donor's capacity formally assessed.

E3. WHEN MIGHT A PERSON'S MENTAL CAPACITY CHANGE?

A person's mental capacity changes from time to time (e.g. his condition changes from good to bad and bad to good) – it is fluctuating.

The person should be supported to make decisions at times when he has mental capacity (i.e. when his condition is good).

Persons who have mental capacity for even a short time can make decisions during the periods when they have capacity.

Type	Examples
Fluctuating Incapacity	A person with: <ul style="list-style-type: none">• Early stage dementia• Clinical depression• Schizophrenia

Scenario

Danielle aged 72 suffers from early Alzheimer's disease. Her mental capacity fluctuates. When she has mental capacity, she has a good grasp of her financial affairs. At other times, she becomes forgetful and makes payment several times for the same goods and services, and gives away cash to strangers. When she realises what she has done, she gets very upset with herself.

Her family members note that Danielle's mental capacity tends to be better in the morning compared to the rest of the day.

Morning will be a better time for them to talk to her about instructing the bank to reduce the limit of her daily withdrawals so that she will not have as much cash to spend during the times she suffers a lapse in her mental capacity.

PART F

CHECKLIST FOR CAREGIVERS

F1. CHECKLIST

The individual carrying out acts of care or treatment should apply the checklist below. All professionals should keep records on the steps taken when applying the checklist. It is a matter of good practice and will be useful if there is a dispute.

Stage 1	Have regard to the statutory principles	Apply
	1. When dealing with any person, he must be assumed to have mental capacity unless it is established otherwise.	✓
	2. A person is not to be treated as though he is unable to make a decision unless all practicable steps have first been taken to help him.	✓
	3. A person is not to be treated as lacking mental capacity just because he makes an unwise decision.	✓
	4. Any act or decision taken on behalf of a person who lacks mental capacity must be taken in his best interests.	✓
	5. Before an act or decision is taken on behalf of a person who lacks capacity, consider if there is any option which can as effectively achieve the purpose for which the act or decision is needed that is less restrictive of the person's rights and freedom.	✓




Stage 2		Not to base determination of best interests merely on certain factors	Apply
<p>The decision-maker must not decide what is in a person's best interests or assess capacity merely based on his:</p> <ul style="list-style-type: none"> • Age. • Appearance. • Condition. • Aspect of behaviour. 			✓
Stage 3		Assess capacity	Apply
<p>The decision-maker must assess the person's capacity, applying the 2-stage test.</p>			✓
Stage 4		Involve & encourage participation	Apply
<p>The decision-maker must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him or any decision affecting him.</p>			✓
Stage 5	Apply best interests checklist	Extent of application	Apply
	<p>1. Whether it is likely the person will regain capacity at some time in the future to make the decision in question and when that is likely to happen.</p>	<p>Must consider</p>	✓
	<p>2. The person's past and present wishes and feelings, especially if they were written down when the person had capacity.</p>	<p>Consider so far as reasonably ascertainable.</p>	✓


Stage 5	Apply best interests checklist	Extent of application	Apply
	3. The beliefs and values likely to affect that person's decision if he had capacity; e.g. cultural background, religious beliefs and past behaviour or habits.	Consider so far as reasonably ascertainable.	✓
	4. Any other factors the person would likely to have considered, if he had capacity to do so.	Consider so far as reasonably ascertainable.	✓
	5. The views of anyone named by the person as someone to be consulted on the matter in question or on matters of that kind.	Consult if practicable and appropriate.	✓
	6. The views of anyone engaged in caring for the person or interested in his welfare.	Consult if practicable and appropriate.	✓
	7. The views of any donee of any Lasting Power of Attorney granted by that person.	Consult if practicable and appropriate.	✓
	8. The views of any court-appointed deputy.	Consult if practicable and appropriate.	✓

Stage 6	Special consideration – Life-sustaining treatment	Apply
<p>Decisions regarding life-sustaining treatment should not be made by anybody other than a doctor and the doctor must not be motivated by a desire to end the life of the person.</p>		✓
Stage 7	Special consideration – Acts of care or treatment	Apply
<p>For acts of care or treatment, the individual must satisfy the following conditions to obtain protection under section 7 of the Act:</p> <ul style="list-style-type: none"> • take reasonable steps to determine whether the person lacks capacity about the matter in question before doing the act, and • reasonably believe that the person lacks capacity and the act being done is in the person’s best interests when doing the act. 		✓
Stage 8	Special consideration – Restraint (Acts of care or treatment)	Apply
<p>For acts of care or treatment, where restraint is considered, the individual must, in addition to the matters mentioned in Stage 7:</p> <ul style="list-style-type: none"> • reasonably believe that the act of restraint is necessary to prevent the person from suffering harm, and • ensure the restraining act is a proportionate (balanced) response to the likelihood of the person suffering harm and the seriousness of that harm. 		✓

F2. CARE PLANS

A care plan is a document that details the care arrangements for a person who lacks capacity and may be prepared by:

-  a multi-disciplinary team of professionals (individuals with different skills, e.g. psychiatrists, physiotherapists and geriatricians),
-  the donee of a Lasting Power of Attorney for personal welfare (if the person has appointed one), and
-  the person's relatives.

-  *All care plans should contain an assessment of the person's mental capacity to consent to the acts of care and treatment proposed in the plan. It should also contain risk assessments and state the appropriate measures required to minimise or prevent these possible risks.*

The care arrangements must be in the best interests of the person concerned. When an appropriate care plan is in place, health and social care staff may generally work according to it. However, they should still make every effort to communicate with the person to determine if he still lacks capacity and to see if the action is still in his best interests. Regular checks on a person's capacity to make a specific decision should be made because the circumstances of the person lacking capacity may change, thereby impacting the capacity and best interests assessments. Care plans should be regularly reviewed.

PART G

WHERE CAN I FIND MORE INFORMATION?

Sometimes, caregivers (including deputies) may disagree over matters such as care or treatment for the person or how financial matters should be handled. Most of these disputes should be settled amicably using other methods, such as case conferences, mediation or formal complaint procedures. These alternatives are cost effective and may resolve the dispute fairly and quickly.

Here is a list of possible organisations to help you in resolving a dispute.



List of useful contacts

Who is the complaint about?	Who to contact
<p>1. Donee or deputy</p>	<p>Office of the Public Guardian (OPG) SLF Building, #16-01 510 Thomson Road Singapore 298135 Website: www.publicguardian.gov.sg Tel: 1800 226 6222</p>
<p>2. Health professionals</p> <ul style="list-style-type: none"> • Doctors 	<p>Organisation employing the health professional</p> <p>Singapore Medical Council 16 College Road, #01-01 College of Medicine Building Singapore 169854 Website: www.smc.gov.sg Tel: 6223 1264</p> <p>or the</p> <p>Singapore Medical Association 2 College Road, Level 2, Alumni Medical Centre Singapore 169850 Website: www.sma.org.sg Tel: 6223 1264</p>

Who is the complaint about?	Who to contact
<ul style="list-style-type: none"> • Nurses and midwives 	<p>Singapore Nursing Board 16 College Road, #01-01 College of Medicine Building Singapore 169854 Website: www.snb.gov.sg Tel: 6372 3082</p>
<ul style="list-style-type: none"> • Dentists 	<p>Singapore Dental Council 16 College Road, #01-01 College of Medicine Building Singapore 169854 Website: www.sdc.gov.sg Tel: 6372 3087</p>
<ul style="list-style-type: none"> • Dentists 	<p>Singapore Dental Association 2 College Road, Level 2 Alumni Medical Centre Singapore 169850 Website: www.sda.org.sg Tel: 6220 2588</p>
<p>3. Social worker</p>	<p>Organisation employing the social worker</p> <p>Singapore Association of Social Workers Block 324, Clementi Avenue 5, #01-209, Singapore 120324 Website: www.ssaw.org.sg Tel: 6778 7922</p>

GLOSSARY

Acts in connection with care or treatment

These are tasks carried out by care-givers (paid or unpaid), healthcare staff and family members that involve personal care, healthcare or medical treatment for a person who lacks the capacity to consent to those acts.

Best interests

Decision-makers have a duty to consider many factors that focus on what is best for the person lacking capacity before making a decision on his behalf. Refer to chapter 6 of the Code of Practice for more information.

Decision-maker

The decision-maker is the individual or person who makes decisions on behalf of persons who lack capacity. They include caregivers, nurses, doctors, donees of a Lasting Power of Attorney (LPA) and court-appointed deputies.

Deputy

A deputy is appointed by the court to make certain decisions on behalf of a person who lacks mental capacity when the person has not made a Lasting Power of Attorney (LPA) or has no donee to decide on his behalf in respect of those decisions. A deputy can be an individual, a licensed trust company or an exempt person under the Trust Companies Act, as prescribed by the Mental Capacity Regulations.

Donee

Donees are appointed by individuals to act and make decisions about their personal welfare and/ or property & affairs matters, on their behalf, when they lack mental capacity.

Fluctuating capacity

A person has fluctuating capacity when the capacity changes from time to time, e.g., when his condition changes from good to bad and bad to good. It is variable. Persons in the early stages of dementia or suffering from schizophrenia may experience fluctuating capacity.

Formal assessment (of mental capacity)

An accredited General Practitioner who has been specially trained to conduct such assessments or specialists in mental health, such as psychiatrists, conducts formal assessments of mental capacity. A professional, such as an accountant, or the donee of a Lasting Power of Attorney (LPA) may seek a formal assessment where they have doubts about the person's capacity and the decision the person has to make is an important one or they anticipate a dispute over the decision.

Ill-treatment

Ill-treatment under the Mental Capacity Act is the abuse of persons who are at least 16 years old and who lack capacity or whom the offender reasonably believes to lack capacity. Ill-treatment includes physical abuse, sexual abuse, psychological abuse and neglect and omission.

Lasting Power of Attorney (LPA)

A legal document that a person (donor) signs which allows him to choose one or more persons called donees to make certain decisions on his behalf when he lacks mental capacity. These decisions may be about his personal welfare and/or his property and affairs.

Life-sustaining treatment

Life sustaining treatment is treatment that in the view of an individual providing healthcare is necessary to sustain the person's life.

Mental capacity

Mental capacity is the ability of a person to make a specific decision at a particular time. The Act introduces a 2-stage test to ascertain mental capacity.

Office of the Public Guardian (OPG)

The OPG has a wide range of responsibilities within the framework of the Mental Capacity Act. These include keeping a register of Lasting Powers of Attorney, supervising deputies and investigating allegations of ill-treatment.

Permanent incapacity

A person suffers from permanent incapacity when the incapacity is long-term. Examples include persons suffering from permanent vegetative state or locked-in syndrome.

Personal welfare donee

A personal welfare donee is an individual appointed under a Lasting Power of Attorney (LPA) by the donor to make personal welfare decisions on behalf of the donor when the donor lacks capacity to make these decisions on his or her own. Personal welfare decisions are decisions such as: where the donor is to live, who may or may not have contact with the donor.

Property and affairs donee

A property and affairs donee is an individual or a licensed trust company or exempt person under the Trust Companies Act, as prescribed by the Mental Capacity Regulations who is appointed under a Lasting Power of Attorney (LPA) by the donor to make decisions relating to property and affairs when the donor lacks capacity to make these decisions on his or her own.

Restraint

Restraint is the use of, or threat to use, force by an individual to secure the doing of an act, which the person resists, or restricting the person's freedom to move, whether or not the person resists. A person can be restrained without physical force or threat of physical force being used.

Statutory principles

There are 5 statutory principles that everyone must follow when dealing with persons who lack or may lack capacity. Refer to part C for more information.

Unwise decision

This refers to one of the statutory principles. A person who has mental capacity has the right to make a decision that is unwise in the view of others. Just because a decision is unwise does not mean that the person has lost mental capacity. Refer to part C for more information.

NOTES

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