

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

OFFICE OF THE
**PUBLIC
GUARDIAN**

CONTENTS

Foreword	03
PART A WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW ABOUT IT?	04
A1. What is mental capacity?	04
A2. What is the Mental Capacity Act and why do we need this Act?	05
A3. The Code of Practice	06
A4. The Lasting Power of Attorney	07
PART B WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?	08
B1. The Public Guardian	08
B2. The functions of the Public Guardian	08
B3. The Office of the Public Guardian	08
B4. The role of Board of Visitors	09
PART C WHAT HAPPENS WHEN I AM APPOINTED A DONEE?	10
C1. What are the two kinds of donee?	10
C2. Personal welfare donees	10
C3. What are my dos and don'ts as personal welfare donee?	12
C4. Other restrictions	14
C5. What are the excluded decisions?	16

C6.	When does my powers as a personal welfare donee end?	17
C7.	Property and affairs donee	18
C8.	What are my dos and don'ts as property and affairs donee?	19
C9.	When do my powers as a property and affairs donee end?	22
C10.	Other questions	23
C11.	How should the donee(s) act or make decisions?	23
C12.	How will I be protected as a donee?	24

PART D WHAT DECISIONS CAN I MAKE AS A DONEE? 25

D1.	What decisions should I make and when should I make them?	25
D2.	How do I know when to step in to make a decision?	26
D3.	How do I apply the 5 principles?	26

PART E WHAT HAPPENS IN THE EVENT OF A DISPUTE? 35

E1.	What should I do in the event of a dispute?	35
E2.	Who should I contact if I need help in the event of a dispute?	38
E3.	Where can I find more information?	39
	Glossary	41

FOREWORD

This booklet provides guidance for people who are appointed to take on the role of a donee. It will provide you with an overview of your powers, duties and responsibilities as a donee.

As a donee, you are responsible for acting and making decisions on behalf of a person who lacks capacity to make those decisions for themselves.

If you experience difficult or complicated decision-making involving financial matters, medical treatment or personal welfare matters, we recommend that you seek independent legal and or other professional advice.

The scenarios and examples in this guide are for illustration only and use fictitious characters and situations. 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:

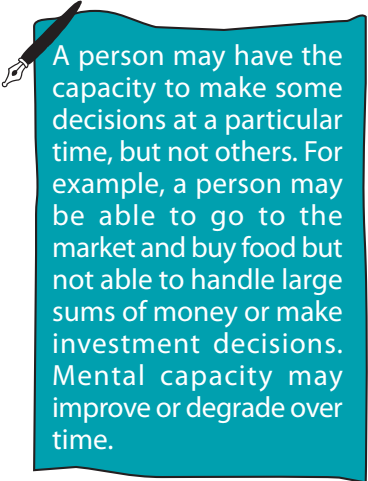
- age,
- how a person looks – this includes the physical characteristics of certain conditions (for example, features linked to Down's syndrome or muscle spasms caused by cerebral palsy) as well as aspects of appearance like dress or state of cleanliness,
- condition – this includes physical disabilities, 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.



A person may have the capacity to make some decisions at a particular time, but not others. For example, a person may be able to go to the market and buy food but not able to handle large sums of money or make investment decisions. Mental capacity may improve or degrade over time.

A3. THE CODE OF PRACTICE

The Code of Practice serves to elaborate on the Mental Capacity Act. It provides further explanation on how the Act should be applied in practice. It helps people

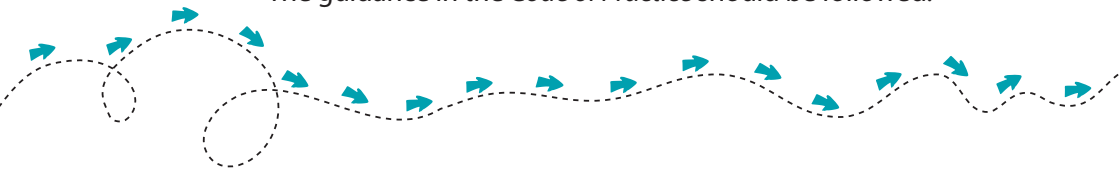
- understand their roles and responsibilities under the Act.
- understand the steps you can take to prepare for a time the future should you lack capacity.
- understand the principles to be applied when caring for persons lacking mental capacity.

The Code of Practice is a guide of best practices for everyone who interacts with a person lacking mental capacity. This includes those who are under a formal duty to offer care, such as professionals and paid caregivers as well as informal caregivers, such as family and friends of the person who lack capacity.

The following individuals must consider the Code when acting for a person lacking mental capacity:

- a. donee of a Lasting Power of Attorney,
- b. court appointed deputy,
- c. people who act in a professional capacity, e.g. a lawyer, health care professional, accountant, ambulance crew, and
- d. people who act for remuneration, e.g. a paid caregiver, therapist.

The guidance in the *Code of Practice* should be followed.



A4. THE LASTING POWER OF ATTORNEY

A Lasting Power of Attorney (LPA) is a legal document that allows a person who is 21 years of age or older (also known as donor), and who has mental capacity, to voluntarily appoint one or more persons (also known as donee(s)), to act and make decisions on his behalf for his personal welfare matters, property & affairs matters or both matters when he lacks mental capacity in the future.

Unlike a Power of Attorney that generally ceases to have effect when the donor loses his mental capacity, an LPA takes effect when the donor loses capacity. The LPA allows a person to plan for such a possible occurrence.

There are two versions of LPA available to cater to the different needs of individuals:

1. LPA-Form 1 contains mostly checkboxes for donors to grant general powers to their donees with the option to select basic conditions or restrictions to these powers. This form can be self-completed by the donors.
2. LPA-Form 2 contains mostly free text spaces where individuals can give specific powers to their needs. This form is to be drafted by a lawyer.

The LPA will be made by the donor when he or she has the capacity to do so. However, the authority granted under the LPA to a donee will not be effective until the time the person loses mental capacity.

The LPA covers decisions pertaining to:

- a. Personal welfare matters (allowing decisions on care, where to live, etc.)
- b. Property and affairs matters (allowing a donee to make decisions about dealings with banks, CPF matters, selling of property etc.)

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. 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

WHAT HAPPENS WHEN I AM APPOINTED A DONEE?

C1. WHAT ARE THE TWO KINDS OF DONEE?

The donor of an LPA may give the donee authority to make decisions about the donor's:

- personal welfare (including healthcare decisions) and/or
- property and affairs (including finance matters).

C2. PERSONAL WELFARE DONEE

- A personal welfare donee must be an individual who is at least 21 years old to sign the LPA.
- The donee must be a person; e.g. "Fiona Fernandez", and not a job title; e.g. "my lawyer".

A company or business cannot be appointed as a personal welfare donee.

What are my powers, duties and responsibilities?

In general, a personal welfare donee helps to make decisions on behalf of the donor, relating to matters such as where the donor should stay and his daily activities.



The types of decisions and actions a personal welfare donee may be authorised to make include:

- where the donor should live,
- who the donor should live with,
- day to day care decisions (e.g. what to wear and eat),
- what social activities to take part in,
- handling the donor's personal correspondence, and
- who the donor may have contact with.

The list above contains some examples of the types of decisions and actions a personal welfare donee may make but it is not a complete list.

C3. WHAT ARE MY DOS AND DON'TS AS PERSONAL WELFARE DONEE?



Dos

All donees play an important role in carrying out their duties under an LPA. This applies to both personal welfare and property & affairs donees. You must:

- follow the statutory principles.
- act in the donor's best interests.
- have regard to the guidance in the Code of Practice.
- carry out the donor's instructions and make decisions within the scope of authority given by the LPA.
- carry out your duties with reasonable care and skill.
- act in good faith.
- respect confidentiality.
- follow any directions made by the court.
- keep records.



Don'ts

Here are some key points donees must bear in mind:

- Do not take advantage of your position and benefit yourself.
- Do not pass your authority to someone else.
- Do not give up the role without telling the donor and the OPG.

You should refer to paragraph 9.8 of the Code of Practice for more guides on the dos and don'ts for a donee.



A personal welfare donee may give or refuse consent to the carrying out or continuation of treatment by anyone providing health care (including the conduct of a clinical trial) IF, AND ONLY IF, the donor expressly states this in the LPA.

However, a personal welfare donee does not have the power to refuse life-sustaining treatment or treatment to prevent a serious deterioration in the condition of the donor. The doctor will usually make these decisions based on the best interests of the patient.

If the donor has made an advance medical directive (AMD) in accordance with the Advance Medical Directive Act while he still had capacity, the doctors have to comply with the AMD.

C4. OTHER RESTRICTIONS

You may only make decisions on behalf of the donor if the donor lacks capacity, or the donee reasonably believes that the donor lacks capacity to make those decisions. To protect the donor, the law does not allow you to make any of the following decisions on behalf of the donor:

Medical Issues

- You may not give or refuse consent to the carrying out or continuation of treatment by a person providing health care (including the conduct of a clinical trial) unless the donor expressly states this in the LPA.
- You may not make any decision with respect to the carrying out or continuation of
 - o life-sustaining treatment on the donor, whether or not it is extraordinary life-sustaining treatment within the meaning of section 2 of the Advance Medical Directive Act, or
 - o any other treatment on the donor which a person providing health care reasonably believes is necessary to prevent a serious deterioration in the donor's condition.
- The doctors, who are governed by their professional duty to decide what is in the patient's best interests, will make these decisions.

Use of Restraint

Restraint is the use or threat to use force by the donee or someone authorised by the donee to secure the doing of an act which the donor resists, or restricting the donor's freedom to move, whether or not he resists.

An act may amount to restraint even though actual physical force or threat of physical force is not used.

- You may not use restraint unless:
 - o you reasonably believe that the act of restraint is necessary to prevent the donor from suffering harm, and
 - o the restraining act is a proportionate (balanced) response to the likelihood of the donor suffering harm and the seriousness of that harm.



C5. WHAT ARE THE EXCLUDED DECISIONS?

The Act does not allow certain decisions to be made on behalf of a person lacking mental capacity. These decisions are:

a.	Consenting to marriage.
b.	Consenting to touching of a sexual nature.
c.	Consenting to divorce on the basis of 3 years' separation.
d.	Consenting to a making of an adoption order.
e.	Adopting or renouncing a religion.
f.	Receiving treatment for change of gender.
g.	Consenting or revoking consent to treatment for sexual sterilisation.
h.	Consenting or revoking consent to abortion.
i.	Registering or withdrawing an objection regarding the removal of an organ from any person upon death.
j.	Making or revoking an advance medical directive.
k.	Making or revoking a gift of a body or any part of a body.

C6. WHEN DOES MY POWERS AS A PERSONAL WELFARE DONEE END?

Your appointment is cancelled if:

- the donor or you die(s),
- the marriage between the donor and you is dissolved or annulled unless the LPA itself specifically provides that it will not,
- you formally refuse the appointment of donee, or
- you lack mental capacity.

However, the LPA is not cancelled and remains valid if there is a replacement donee appointed under it or there is one or more surviving donees appointed to act jointly and severally on any matter.

The power conferred by the LPA will be cancelled if the LPA appoints two or more donees to act jointly and the power to one of those donees is cancelled.

C7. PROPERTY AND AFFAIRS DONEE

In general, a property and affairs donee helps to make decisions on behalf of the donor relating to matters such as his bank account transactions and property.

What are my powers, duties and responsibilities?

The types of decisions a you may be authorised to make include:

- dealing with property – buying, selling, renting and mortgaging property,
- opening, closing and operating bank accounts,
- receiving dividends, income, inheritance benefits or other financial entitlements on behalf of the donor,
- handling tax matters,
- paying the rent, mortgage repayments and household expenses,
- investing the donor’s savings, and
- purchasing a vehicle or other equipment the donor needs

The list above contains some examples of the types of decisions and actions you may make but it is not a complete list.



C8. WHAT ARE MY DOS AND DON'TS AS PROPERTY AND AFFAIRS DONEE?



Dos

You play an important role in carrying out your duties under an LPA. You must follow the same set of Dos as a personal welfare donee in section C3. In addition, you must:

- keep accounts.
- keep the money and property of the donor separate from your personal account.



Don'ts

You may only make decisions on behalf of the donor if the donor lacks capacity, or you reasonably believe that the donor lacks capacity to make those decisions.

To protect the donor, the law does not allow you to make any of the following decisions on behalf of the donor:

Wills, Insurance & CPF Matters

- You cannot do any of the following on the donor's behalf:
 - o make or revoke a nomination for his insurance policy,
 - o execute a will,
 - o make or revoke nomination for his Central Provident Fund Accounts.

Gifts

- You may not make gifts from the donor's property unless the donor in the LPA has specifically authorised the donee to do so.
- Where the donor authorises the donee to make gifts, the donor may state the value of the gifts or gifts to be made in the LPA.
- Where the donor has not specifically stated the value of the gifts, you, when making gifts:
 - o must take into consideration that the value of the gifts are not unreasonable bearing in mind all circumstances and, in particular, the size of the donor's estate and
 - o must have regard to the principle that the donor's property should be preserved for the donor's maintenance during his life.



A donee appointed to make decisions about personal welfare ("personal welfare donee") cannot make decisions about the donor's finances unless the same donee is also authorised to make decisions about the donor's property and affairs.

A donee appointed to make decisions about property and affairs ("property and affairs donee") cannot make decisions about the donor's welfare unless the same donee is also authorised to make decisions about the donor's personal welfare.

The donor may restrict the scope or exclude the types of decisions that a donee may make; e.g the donor appointing a donee for property and affairs matters may state in the LPA that the donee cannot make any decisions on investments.

If the donor does not restrict the decisions a donee may make, a general LPA, whether for personal welfare and/ or property and affairs, gives the donee authority to make wide-ranging decisions on behalf of the donor but not the excluded decisions.

C9. WHEN DO MY POWERS AS A PROPERTY AND AFFAIRS DONEE END?

Your appointment is cancelled if:

- the donor or you die(s),
- the donor or you become(s) a bankrupt,
- you are a trust company whose licence has lapsed or been revoked or is liquidated, wound-up, dissolved or under judicial management,
- the marriage between the donor and donee is dissolved or annulled unless the LPA itself specifically provides that it will not,
- you formally refuse the appointment,
- you lack mental capacity.

However, the power conferred by the LPA is not cancelled and remains valid if there is a replacement donee appointed under the LPA or there is one or more surviving donees appointed to act jointly and severally on any matter.

The power conferred by the LPA will be cancelled if the LPA appoints two or more donees to act jointly and the power to one of those donees is cancelled.

C10. OTHER QUESTIONS

Can I reject if I am appointed as a donee?

Yes, the donor will have to inform you should he intend to appoint you as a donee, and you must give your consent. In the event you wish to decline this appointment, you may do so.

You will have to sign a statement of understanding in the LPA. If you reject the appointment, the LPA will not be complete, and hence your status as a donee will not be made valid.

Can there be more than one donee?

Yes, the donor can appoint one or more donees. There is no maximum number of donees that can be appointed.

If you are acting together with another donee, you should be willing to work together so differences in opinions may be resolved amicably, thereby avoiding any deadlock.

C11. HOW SHOULD THE DONEE(S) ACT OR MAKE DECISIONS?

The following are ways that the donor can appoint two or more donees to make decisions about the same matters:

- **Jointly:** The donees have to act together and cannot act separately.
- **Jointly and severally:** The donees can take the decisions together or separately. Both types of decisions are valid.
- **Jointly on some matters and jointly and severally on others:** The donees have to act jointly on some matters, but may act separately on other matters.

If more than two donees are appointed but the donor does not specify how you are to act, the law assumes that you are to act jointly.

C12. HOW WILL I BE PROTECTED AS A DONEE?

As a donee, you are afforded protection under the Mental Capacity Act.

If you act in purported exercise of your powers, you will not incur any liability because of the non-existence of the power unless at the time of acting, you

- knew that the LPA was not created.
- are aware of any circumstances, which, if an LPA had been created, would have terminated your authority to act as a donee.

The above applies to all donees, and whether you are acting singly, jointly or severally.



PART D

WHAT DECISIONS CAN I MAKE AS A DONEE?

D1. WHAT DECISIONS SHOULD I MAKE AND WHEN SHOULD I MAKE THEM?

- a. You may only make decisions on behalf of the donor when the donor lacks capacity to make those decisions.
- b. You may only make decisions that you are authorised to make under the LPA.
- c. You may not make any decision for the donor if you know
 - the donor does not lack capacity or you do not reasonably believe the donor lacks capacity,
 - the LPA was not created (for example, you knew the donor lacked capacity when the donor signed the LPA), or
 - of circumstances that would have terminated your authority to act as donee.

D2. HOW DO I KNOW WHEN TO STEP IN TO MAKE A DECISION?

You should not step in to make decisions even after the LPA is registered, as long as the donor still possesses mental capacity.

You will step in to act and make decisions on behalf of the donor only when the donor loses his mental capacity.

D3. HOW DO I APPLY THE 5 PRINCIPLES?

The statutory principles help the individual to take part in the decision-making process as far as possible, and protects 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.*

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 will not 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.

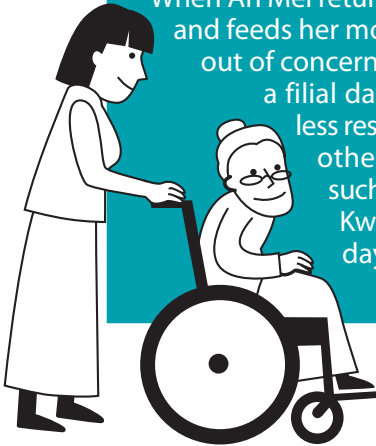
- *Sometimes, that includes not taking any action or decision at all. All actions taken or decisions made, or decisions not to take any actions, must be taken in the person's best interests.*
-

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 E

WHAT HAPPENS IN THE EVENT OF A DISPUTE?

E1. WHAT SHOULD I DO IN THE EVENT OF A DISPUTE?

In the event of a dispute, you should employ the following methods:

Effective Communication

Sometimes, disputes are caused by a breakdown in communication or misunderstanding. It may be useful to hold a best interests conference where the different individuals can come together to discuss their various views and how these may affect the best interests of the person who lacks capacity. Everyone should make an effort to listen to each other, and to answer queries and concerns.

Mediation

This method is good for resolving disputes that are developing or in the early stages. It is cost effective, speedy and less stressful than going to court. An independent third party (the mediator) determines if the dispute is suitable for mediation. The mediator helps the parties see each other's point of view through discussions and to focus on the best interests of the person who lacks capacity rather than imposing their views.



To find out more about mediation, contact:

- Singapore Medication Centre
1 Supreme Court Lane Level 4 Singapore 178879
Tel: 6332 4366
Website: <http://www.mediation.com.sg>.

Or

- Community Mediation Centre
URA Centre, East Wing, 45 Maxwell Road
#01-13 Singapore 069118
Tel: 6325 1600
Website: www.mlaw.gov.sg/cmcc

Scenario

Halimah Hakim is a 72-year-old lady with advanced dementia. She lives with her son, Anwar, his wife, Nora, and their two young children in their semi-detached house. Halimah has two other adult children, Azlan and Adam. Anwar and his wife both work full-time. They hire a helper to care for Halimah when they are at work. Anwar and Nora are expecting their third child in six months' time. They want to move Halimah to a nursing home because they do not think they have enough room in their home to accommodate her once the new baby arrives. Azlan and Adam disagree with their brother. However, they are not prepared to let Halimah live with them. Instead, they want Anwar to continue with the current arrangement. Halimah made a valid LPA for her personal welfare when she had capacity. She appointed all three of her sons as her donees.

Anwar, Azlan and Adam should try to talk through their differences and discuss the various options available regarding where Halimah should live. If they cannot reach an agreement, they can try mediation. Any decision they make should always be in the best interests of their mother.

Disputes with Professionals

The methods of resolving disputes with healthcare staff, social workers and other professionals include:

- a. Getting a second opinion (for medical and legal matters)
 - Sometimes a family member may not agree with a decision made by a donee or deputy for the person who lacks capacity based on medical advice given by the person's doctor. It may help them to resolve the disagreement by getting a second opinion from another doctor.
 - The same applies for legal matters. For example, a donee for property and affairs wants to act in a particular way on legal advice given by a lawyer. The other donee disagrees with this advice. The disagreement may be resolved by getting a second opinion from another lawyer.
- b. Case conferences
 - This conference enables all the parties in the dispute to meet and talk about the matter. Health care staff and other professionals should explain clearly the options available; give their opinions and reasons to support that matter.
 - Meeting with senior medical staff members
 - o Senior medical staff members may be invited to provide a second opinion.

- Giving the family members time to think through the situation
 - This option is only available if it is not an emergency.
- Making an official complaint
 - When making a complaint about a health professional, you should contact the:
 - Health professional's employer, and
 - Professional board, council or association representing that profession.

E2. WHO SHOULD I CONTACT IF I NEED HELP IN THE EVENT OF A DISPUTE?

Who is the complaint about?	Who to contact
1. Donee or deputy	Office of the Public Guardian (OPG)
2. Health professionals <ul style="list-style-type: none"> • Doctors • Nurses and midwives • Dentists 	Organisation employing the health professional <ul style="list-style-type: none"> • Singapore Medical Council or the Singapore Medical Association • Singapore Nursing Board • Singapore Dental Council • Singapore Dental Association
3. Social Worker	Organisation employing the social worker <ul style="list-style-type: none"> • Singapore Association of Social Workers

E3. WHERE CAN I FIND MORE INFORMATION?



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>
<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>

Who is the complaint about?	Who to contact
• Dentists	Singapore Dental Council 16 College Road, #01-01 College of Medicine Building Singapore 169854 Website: www.sdc.gov.sg Tel: 6372 3087
• Dentists	Singapore Dental Association 2 College Road, Level 2 Alumni Medical Centre Singapore 169850 Website: www.sda.org.sg Tel: 6220 2588
3. Social worker	Organisation employing the social worker Singapore Association of Social Workers Block 324, Clementi Avenue 5, #01-209, Singapore 120324 Website: www.ssaw.org.sg Tel: 6778 7922

GLOSSARY

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.

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.

Jointly (in the context of decision-making by donees or deputies)

The donees or deputies must act together and not alone.

Jointly and severally (in the context of decision-making by donees or deputies)

The donees or deputies can act together or separately. Both types of decision are valid.

Jointly on some matters and jointly and severally on others (in the context of decision-making by donees or deputies)

This means that the donees or deputies must act jointly on some matters; e.g. sale of residential property, but may act separately on other matters; e.g. paying household bills.

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.

Mediation

Mediation is a method of resolving disputes. An independent third party, called a mediator, helps the parties see each other's point of view through discussion.

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.

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* (Cap. 336), 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.

Statutory principles

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

NOTES

OFFICE OF THE PUBLIC GUARDIAN

Ministry of Community Development, Youth and Sports
510 Thomson Road, #16-01, SLF Building, Singapore 298135
Tel: 1800 226 6222 Fax: (65) 6258 3512
Email: enquiry@publicguardian.gov.sg
Visit our website @ www.publicguardian.gov.sg

ISBN: 978-981-08-5168-2

OFFICE OF THE
**PUBLIC
GUARDIAN**

