

**THE MENTAL CAPACITY ACT:
A DEPUTY'S
GUIDE**

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This booklet provides guidance for you if you would like to take on the role of a deputy. It will provide you with an overview of your duties.

As a deputy, you are responsible for making decisions and acting on behalf of those who lack capacity to make 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. 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.

BEFORE WE BEGIN

PART A

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

A1. WHAT IS MENTAL CAPACITY?

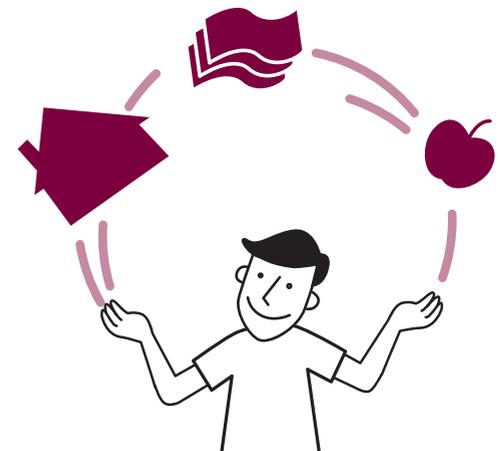
Mental capacity is the ability of a person to make a specific decision at a particular time.

A2. WHAT IS THE MENTAL CAPACITY ACT AND WHY IS IT IMPORTANT?

The Mental Capacity Act (the 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 decisions for themselves.

The Act also:

- a. allows people to voluntarily make a Lasting Power of Attorney (LPA) to appoint one or more persons (donee(s)) to make decisions and act on their behalf if and when they lack mental capacity in the future;
- b. allows the court to appoint a deputy to make decisions and act 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. allows parents of children with intellectual disability to apply to court to appoint themselves as deputies for their children and another person as a successor deputy to plan for the event the parents pass away or lose their mental capacity;
- 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 five statutory principles that anyone making any decision or taking any action for a person who appears to lack capacity must follow; and
- 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.



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 they can take to prepare for a time in the future should they lack capacity; and
- 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 lacks capacity.

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

- a. donee of an LPA;
- b. court appointed deputy;
- c. people who act in a professional capacity, for example, a lawyer, healthcare professional, accountant, ambulance crew; and
- d. people who act for remuneration, for example, a paid caregiver, therapist.

All the guidelines in the Code of Practice should be followed.

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 (OPG).

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. maintaining a register of Lasting Powers of Attorney and a register of court orders that appoint deputies;
- b. supervising deputies;
- c. receiving reports from deputies; and
- d. investigating 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 OPG supports the Public Guardian in carrying out his functions.
- The OPG is a division of the Ministry of Social and Family Development.

B4. ROLES OF THE BOARD OF VISITORS

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 two 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, and
- b. General Visitors – who need not be medically qualified.



PART C

WHAT HAPPENS TO EXISTING MEMBERS OF THE COMMITTEE OF THE PERSON OR ESTATE?

Members of the committee of the person or estate appointed under the Mental Disorders & Treatment Act shall be deemed as deputies appointed by the court under the Mental Capacity Act on and after the commencement date, 1 March 2010.

These individuals will have the same powers and functions that were previously conferred by the Supreme Court as a member of the committee.

PART D

HOW DO I BECOME A DEPUTY?

There are two ways to become a deputy:

- You may apply to the court to seek a court order to be appointed as a deputy, or
- become a deputy through your prior appointment as a committee of the person or estate.

You may wish to consult a lawyer for further assistance.

PART E

WHAT ARE THE POWERS, DUTIES AND RESPONSIBILITIES OF DEPUTIES?

E1. WHEN WILL A DEPUTY BE REQUIRED?

A deputy should be appointed if a decision(s) has to be made on behalf of a person who has lost his mental capacity and does not have any donee under a Lasting Power of Attorney (LPA) to act for him. An application may be made to the court for someone to be appointed his deputy.

Parents of children with intellectual disability may also apply to court to appoint themselves as deputies for their children and another person as a successor deputy to plan for the event the parents themselves lose capacity or pass away.

IDA'S STORY

Ida had a stroke three months ago. She is in a coma. Her condition is stable but unchanged. She owns a HDB flat and has \$50,000 in her bank account.

Ida's husband died 5 years ago. Ida's daughter, Rohani, is a 22-year-old university student. Rohani does not have any income.

The doctors have told Rohani that they do not know when Ida will regain consciousness. In the meantime, ongoing expenses for Ida's hospitalisation and household need to be paid.

A decision also has to be made to move Ida into a nursing home. Ida has not made an LPA.

Rohani cannot withdraw the money from Ida's account to meet those expenses nor decide about moving Ida to a nursing home.

In this situation, Rohani should apply to court to make a decision about moving Ida to a nursing home and to appoint a deputy to manage Ida's property & affairs matters. The court is likely to appoint a suitable family member as deputy.

E2. WHAT ARE THE ACTIONS OR DECISIONS I CAN MAKE?

The type of actions and decisions you can make as a deputy are covered specifically in the court order appointing you. Please note that you cannot delegate your authority or responsibility to another person.

E3. WHAT ARE THE DOS AND DON'TS FOR A DEPUTY?

Dos

The role of the deputy is elaborated in the Code of Practice.

Here are some of the key points that deputies must bear in mind.

Deputies must:

- follow the statutory principles;
- act in the best interests of the person who lacks capacity;
- have regard for the guidelines in the Code of Practice;
- follow the court's directions and not exceed the scope of authority as laid down by the court;
- keep records and accounts;
- keep the money of the person who lacks capacity separate from the deputies' personal accounts; and
- avoid situations of possible conflicts of interest.

Don'ts

- do not take advantage of your position to benefit yourself.
- do not pass your authority to someone else.

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

E4. OTHER RESTRICTIONS

There are restrictions on the deputies under the Mental Capacity Act. Some of these are:

General restrictions

Deputies cannot make a decision on behalf of the person who lacks mental capacity for whom they have been appointed (referred to as "P") if the deputies know or reasonably believe that P has the capacity to make that decision.

Please see chapter 4 of the Code of Practice on assessments of capacity.

Specific restrictions

Deputies may not:

- prohibit any particular individual from having contact with P;
- change the person responsible for P's healthcare;
- make gifts of P's property;
- execute a Will or make/revoke any Central Provident Fund or insurance nomination for P; and
- consent or refuse the carrying out or continuation of life sustaining treatment or any other treatment to prevent a serious deterioration in P's condition.

Acts of restraint

Deputies cannot carry out an act that is intended to restrain P unless all of the following four conditions are met:

- they are acting within the scope of authority expressly granted by the court;
- P lacks, or they reasonably believe that P lacks, capacity to decide on the matter in question;

- the deputies reasonably believe that the act is necessary to prevent harm to P; and
- the restraining act is a proportionate response to the likelihood of P suffering harm and the seriousness of that harm.

E5. WHAT ARE THE EXCLUDED DECISIONS?

There are certain decisions that the deputies are not allowed by law to make on behalf of P.

These decisions are:

a.	consenting to marriage
b.	consenting to touching of a sexual nature
c.	consenting to divorce on the basis of three 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

E6. WHEN DOES A DEPUTY'S POWERS END?

The court can cancel a deputy's appointment or vary the powers granted if the deputy:

- a. has behaved or is behaving in a way that violates the authority given by the court or is not in the best interests of the person for whom he is appointed as deputy, or
- b. may behave in a way that would violate the authority given by the court or would not be in the person's best interests.

E7. WILL I BE REIMBURSED FOR EXPENSES INCURRED IN CARRYING OUT MY DUTIES?

You can be reimbursed for reasonable expenses incurred when performing your duties as a deputy.

The court may direct you to be paid a remuneration out of the property of the person who lacks capacity for performing your duties.

E8. WHAT HAPPENS IF THE DECISIONS I NEED TO MAKE ARE NOT COVERED UNDER THE COURT ORDER?

You can only make decisions of your authority given under the court order. You may apply to the court to make a further order to allow you to make other decisions.

E9. WHAT KIND OF PROTECTION IS THERE FOR DEPUTIES?

The Mental Capacity Act offers legal protection 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 the person's best interests.

However, the legal protection does not extend to all acts. Please refer to paragraph 7.2.2 and 7.4 of the Code of Practice for matters not covered.

E10. DO I HAVE TO KEEP RECORDS?

It is good practice to keep records of important decisions you have made as a deputy. This will also be useful in the event of a dispute.

From time to time, the Office of the Public Guardian may request for records from you.

PART F

WHAT ARE THE FIVE STATUTORY PRINCIPLES UNDER THE MENTAL CAPACITY ACT AND HOW DO I APPLY THEM?

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

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

5 STATUTORY PRINCIPLES UNDER THE MENTAL CAPACITY ACT

Principle 1: Presumption of capacity

Principle 2: Giving all practicable help

Principle 3: Unwise decision

Principle 4: Best interests

Principle 5: Less restrictive

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.

SHANTI'S STORY

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 to 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 making a particular decision should take all practicable steps to help the person make his own decision.

They should not exert pressure or impose their views on the person they are supporting when helping him 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 fonts and drawings, and using different forms of communication such as sign language, Braille, etc.

TIM'S STORY

Several police officers find Tim, 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 ask for Tim's personal details and relatives they could contact. To help him communicate, these enquiries are made in several languages. Tim remains silent and does not want to cooperate with the doctor who wants to examine his injury.

The doctor tells Tim 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. He appears to pay more attention after that and starts pointing at his mouth and ears while shaking his head.

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

Tim 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 his 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, remember or use 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.

AH HUAT'S STORY

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 were 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 made in the person's best interests will depend on the circumstances of the case.

RON'S STORY

Kevin Khoo and his wife, Sally Lee, 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 Sally 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 Sally should not decide for him. If Ron lacks the capacity to make this decision, Kevin and Sally 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 rights 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 action, must be taken in the person's best interests.

AH MEI'S STORY

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 all options must be weighed and the decision taken must be determined by both the best interests and less restrictive option principles.



PART G

WHAT HAPPENS IF ANYONE SUSPECTS ABUSE?

G1. WHO TO ALERT?

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, a report should be made to the police.

Types of abuse	Who to contact for help
Physical	<ul style="list-style-type: none"> • Police • Family Service Centre • Office of the Public Guardian
Sexual	<ul style="list-style-type: none"> • Police • Office of the Public Guardian
Financial	<ul style="list-style-type: none"> • Police • Family Service Centre • Tribunal for the Maintenance of Parents (failure to financially support parents) • Office of the Public Guardian (where it involves a donee or deputy)
Psychological	<ul style="list-style-type: none"> • Police • Family Service Centre • Office of the Public Guardian
Neglect and acts of omission	<ul style="list-style-type: none"> • Police • Family Service Centre • Office of the Public Guardian

G2. WHISTLE-BLOWER PROTECTION

Persons who lack mental capacity are a vulnerable group. Often, they do not even know when they are being abused and are not able to report the abuse. They need their family members, neighbours and the community to look out for them.

The Mental Capacity Act (the Act) provides whistle-blower protection to individuals who report to the Public Guardian suspected ill-treatment of persons without capacity. 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 healthcare workers who act in good faith in making the notification to the Public Guardian, the Act gives protection and he would not incur any civil liability for making such notifications.

PART H

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, as compared to going to court, are cost effective and may resolve the dispute fairly and quickly.

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

Organisation	Telephone	Address	Website
Office of the Commissioner for the Maintenance of Parents	1800 222 0000	8 Lengkok Bahru #02-01, Family Link @ Lengkok Bahru Singapore 159052	www.maintenanceofparents.gov.sg
Community Mediation Centre	6325 1600	100 High Street #03-02, The Treasury Singapore 179434	www.cmc.gov.sg
Singapore Association of Social Workers	6778 7922	Blk 324 Clementi Avenue 5 #01-209 Singapore 120324	www.sasw.org.sg
Singapore Dental Council	6355 2405	16 College Road #01-01, College of Medicine Building Singapore 169854	www.sdc.gov.sg

Organisation	Telephone	Address	Website
Singapore Dental Association	6220 2588	2 College Road Level 2, Alumni Association Singapore 169850	www.sda.org.sg
Singapore Medical Association	6223 1264	2 College Road Level 2, Alumni Medical Centre, Singapore 169850	www.sma.org.sg
Singapore Mediation Centre	6332 4366	1 Supreme Court Lane Level 4 Singapore 178879	www.mediation.com.sg
Singapore Medical Council	6372 3093	16 College Road #01-01, College of Medicine Building Singapore 169854	www.smc.gov.sg
Singapore Nursing Board	6478 5400	16 College Road #01-01, College of Medicine Building Singapore 169854	www.snb.gov.sg
Legal Aid Bureau	1800 325 1424	45 Maxwell Road #08-12, URA Centre East Wing Singapore 069118	www.lab.gov.sg
Law Society of Singapore	6538 2500	39 South Bridge Road Singapore 058673	www.lawsociety.org.sg

GLOSSARY

Acts in connection with care or treatment

These are tasks carried out by caregivers (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 these 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.

Code of Practice

The Code supports the Mental Capacity Act (the Act) and provides further explanation on how the Act should be applied in practice.

Committee of the person or estate

The court appointed these committees, under the Mental Disorders and Treatment Act (now repealed), to make certain decisions on behalf of a person suffering from a mental disorder. Persons serving on existing committees when the Mental Capacity Act came into force on 1 March 2010 automatically became deputies as if they had been appointed by the court under the Mental Capacity Act, with the same powers and functions they were previously accorded under the committees.

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 an LPA and has no donee to decide on his behalf in respect of those decisions. A deputy can be an individual, or a licensed trust company for property & affairs matters under the Trust Companies Act (Cap. 336) as prescribed by the Mental Capacity Regulations.

Donor

The person, at least 21 years of age, who makes an LPA, appointing donee(s) to take care of his personal welfare and/or property & affairs matters in the event he loses mental capacity one day.

Donee

Donees are appointed by donors to make decisions and act on their behalf on personal welfare and/or property & affairs matters in the event the donors lack mental capacity to manage their own affairs.

Jointly

The donees or deputies must act together and not alone.

Jointly and severally

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

Lasting Power of Attorney (LPA)

A legal document that allows a donor to voluntarily appoint one or more donees to make decisions and act on his behalf should he lose the capacity to make his own decisions.

Mental capacity

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

Mental Capacity Act

Provides safeguards to protect persons lacking capacity. The Act gives the Public Guardian supervisory and investigative powers and makes ill-treatment of persons who lack capacity by their caregivers and decision makers a criminal offence. The Act also prohibits certain decisions from being made on behalf of the person who lacks capacity.

Named persons

Named persons are people that the donor notifies of the application to register an LPA. They should be people who are concerned about his well-being and understand his circumstances well.

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 LPAs, supervising deputies and investigating allegations of ill-treatment.

Statutory principles

There are five statutory principles under the Mental Capacity Act that everyone must follow when dealing with persons who lack or may lack mental capacity.

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.

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Fourth edition (Oct 2016)

OFFICE OF THE
**PUBLIC
GUARDIAN**

