

Making decisions: What does 'capacity' mean?





Sometimes it is difficult to make decisions and you might need support to do this.

This booklet is about capacity and choice and who can help you make decisions.



Read the booklet with someone who supports you.

You don't have to read it all at once.



Page 3 is about Capacity



Pages 4, 5 and 6 are about Power of Attorney

Pages 8, 9 and 10 are about Guardianship

Capacity



Everyone has the right to make their own decisions.

You can be supported to make decisions by:



- Getting support from someone who knows you well and can help you communicate.
- Getting support from someone who explains things or gives you more information.



- Getting support from someone who uses communication support to help you. This means things like Easy Read, symbols, pictures, or Talking Mats to help you understand.



If the law says you have 'capacity':

- You can make a good decision.
- You can make a bad decision.
- You can make a decision that other people don't agree with.

It is important you understand what will happen when you make a decision.

Power of Attorney

You can choose someone to be your Power of Attorney.

They can help you to make decisions in the future.

You decide what powers to give your Power of Attorney.



To make someone your Power of Attorney you have to sign a legal form.



The person you choose to be your Power of Attorney should be someone you trust who knows you well.

They must make decisions that will benefit you.

This means they think about what you would want and what would be good for you.





Get an advocate or a solicitor to help you if you need support to get a Power of Attorney.

Nobody can make you sign the form.



If someone tries to make you sign a form, tell your support staff, social worker, GP or someone you trust.



Power of Attorney can be:

- Continuing Attorney (about looking after your money and property)

- Welfare Attorney (making decisions about how and where you get looked after)





The person who has Power of Attorney must always ask you before making any decisions.



Office of the
Public Guardian

An organisation called the Office of the Public Guardian holds information on all the people who have Power of Attorney.



If the person who is your Power of Attorney treats you badly you can ask that their power to make decisions about you is stopped.



You can do this by asking your social worker or someone you trust to get in touch with the Office of the Public Guardian.

What does 'lack capacity' mean?

The Law says you lack capacity if you are not able to:



- Make decisions
- Carry out your decisions
- Communicate your decisions
- Understand decisions
- Remember your decisions

You do not lack capacity just because you have an illness, health condition or a disability.



A doctor might say you lack capacity to make decisions at the moment, but this could change.



You might be able to make some decisions in the future.

This might be because your illness or disability means your capacity changes.



A doctor may say there are some decisions that someone else should make for you.

For example, you could find it easy to make a decision about medical treatment,



but not be able to make a decision about money.

Guardianship



If a doctor has said that you lack capacity, in some or all areas, someone else called a Guardian will get the power to make decisions for you.

A court must decide who should be your guardian. This is called a Guardianship order.

Guardianship orders can be:



- financial (about money)



- welfare (how and where you are looked after)

A Guardian must:



- know you well, and make choices as if they were you.



- Make a decision that will be good for you.



- Make a decision that does not affect your freedom.

- Ask others who know you well, what they think.



- Think about what you would want.



If the decision is about medical treatment the doctor may be able to make the decision for you.



They must fill out a form saying why they think you do not have capacity to make this decision.



If you are worried about how a financial guardian is carrying out their duties, get in touch with the Office of the Public Guardian.



Telephone: 01324 678300

Email: opg@scotcourts.gov.uk

www.publicguardian-scotland.gov.uk



If you are worried about how a welfare guardian is carrying out their duties, get in touch with the Mental Welfare Commission for Scotland.



Telephone: 0131 313 8777 (professionals)

0800 389 6809 (service users & carers)

Email: enquiries@mwscot.org.uk

www.mwscot.org.uk

Useful websites

[Power of Attorney](#)

Mental Health Act [Easy Read Version](#)

Adults with Incapacity

[Adults with Incapacity \(Scotland\) Act 2000](#)

Adults with Incapacity

[A Guide to Communication and Assessing Capacity](#)

If you or someone you know is being harmed or neglected.
You can get help and support.



Adult Protection

0300 300 1380

