

Understanding Mental Capacity

A guide for parent carers in Herefordshire

Mental Capacity, Power of Attorney, Deputyship and Best Interest Decisions

Information for parent carers, family carers and professionals, brought together by **Parent Carer Voice Herefordshire (PCVH)**.

Parent Carer Voice Herefordshire is the strategic parent carer forum for Herefordshire, representing families of children and young people with Special Educational Needs and Disabilities (SEND). We work to ensure parent carers' lived experience informs services, decisions and policy.

This guide is written to help parent carers understand:

- what **mental capacity** means in everyday situations
- how decisions should be made **with**, not **for**, children, young people and adults
- when **Best Interests, Power of Attorney** or **Deputyship** may be needed
- how families should be **involved and listened** to at every stage



DON'T FORGET

- Mental capacity is **decision-specific** and **time-specific**
- A person may be able to make **some decisions**, but not others
- Capacity can **change over time** or depending on health, stress or environment
- Parents and carers should be **involved**, not sidelined
- The goal is always to support the **person's voice and choices**

What the Mental Capacity Act (2005) says:

Professionals and organisations must:

- **assume capacity** unless it is clearly shown otherwise
- **support the person to decide**, using the right time, environment and communication
- accept that people can make **unwise decisions** and still have capacity
- act in the person's **best interests** only when capacity is lacking
- choose the **least restrictive option**
- fully **record and explain** how decisions were made

💬 *"A diagnosis or disability alone must never be used as a reason to remove someone's right to decide."*

Complex and fluctuating mental capacity

Parent carers often tell PCVH that capacity:

- looks different **day to day**
- can be affected by **pain, anxiety, fatigue, medication or sensory overload**
- may be stronger in **familiar environments** or with trusted people present

Capacity **must be assessed at the right time**, with **reasonable adjustments in place**, such as:

- visual aids or simplified language
- extra processing time
- support from someone who knows the person well

Professionals must assess capacity properly

Capacity assessments **must not** be rushed or used to override parent or young person views.

They should only happen when:

- there is genuine reason to doubt capacity
- significant changes to care, education, freedom or living arrangements are proposed
- restrictions on liberty may occur

Families should expect:

- advance explanation of what is being assessed and why
- involvement of parents/carers who know the person best
- clear written outcomes and next steps



Best Interests decisions

A Best Interests decision is **not about convenience or service pressure**.

It must:

- put the person at the centre
- take account of wishes, feelings, beliefs and values
- actively involve parents and carers, unless there is a clear reason not to
- choose the least restrictive option

PCVH frequently hears from families where Best Interests decisions are made **without proper involvement**. This is not lawful and should be challenged.

Deputyship (parent-carer version)

Deputyship is used when a young person or adult:

- lacks capacity to make **ongoing decisions**, and
- does not already have a **Lasting Power of Attorney**

Applying for deputyship **does not remove all independence**. It allows parents or carers to:

- protect finances and benefits
- support care and living decisions
- act lawfully when decisions are needed

PCVH encourages families to **seek advice early**, especially around transitions to adulthood (16–25).

Power of Attorney and SEND



Many young people with SEND:

- have capacity but **need support** with complex decisions
- want help without losing control
- benefit from **shared decision-making**, not exclusion

A Power of Attorney:

- supports decision-making
- should not override the young person's views
- can be limited to specific areas (health or finance)

Deprivation of Liberty (DoL)

Restricting liberty is a **serious step** and must:

- be lawfully authorised
- be necessary and proportionate
- always aim to be **temporary and reviewed**

Parent carers should be:

- informed
- consulted
- supported to understand their rights

Parent-led • Lived Experience • Co-production

Need support or have concerns?

If you are a parent carer in Herefordshire and:

- feel decisions are being made **without your involvement**
- are unsure whether capacity has been assessed correctly
- need help understanding next steps

Parent Carer Voice Herefordshire can:

- help you understand your rights
- explain processes in plain English
- signpost to advocacy or legal support
- raise system-wide issues from lived experience

 **admin@pcvherefordshire.com**

 **www.pcvh.co.uk.**

Parent Carer Voice Herefordshire (PCVH)

The strategic parent carer forum for Herefordshire, representing families of children and young people (0–25) with Special Educational Needs and Disabilities (SEND).

This guide provides general information only and does not replace legal advice. It reflects the Mental Capacity Act (2005) and local arrangements in Herefordshire.

Local Support in Herefordshire

Independent Mental Capacity Advocacy (IMCA) – Herefordshire

If a person lacks capacity and has **no appropriate family member or friend** to support them, the law says an IMCA must be involved for certain decisions, including:

- serious medical treatment
- long-term accommodation moves
- deprivation of liberty situations

IMCA service for Herefordshire:

Onside Advocacy

 <https://www.onside-advocacy.org.uk/advocacy>

 imca@onside-advocacy.org.uk

Herefordshire Council – Adult Social Care & Mental Capacity

Herefordshire Council has legal duties under the Mental Capacity Act to:

- assess capacity correctly
- ensure Best Interests decisions are lawful
- authorise any deprivation of liberty

Mental Capacity Act information:

 <https://www.herefordshire.gov.uk/social-care-and-support/adult-social-care/mental-capacity-act/>

Deprivation of Liberty Safeguards (DoLS):

 DoLS@herefordshire.gov.uk

 01432 383645



SEND Information, Advice and Support (SENDIASS)

SENDIASS provides free, impartial, confidential advice covering:

- Education, Health and Care Plans (EHCPs)
- preparing for adulthood (16–25)
- health and social care decision-making

☎ 01432 260955

✉ **sendiass@herefordshire.gov.uk**

🌐 <https://www.worcestershire.gov.uk/sendiass>



When to contact PCVH

Parent carers in Herefordshire can contact Parent Carer Voice Herefordshire if:

- decisions feel rushed or made without family involvement
- mental capacity has been assumed without proper assessment
- Best Interests decisions do not reflect the person's wishes
- you want support to understand processes or raise concerns

✉ admin@pcvherefordshire.com

Families consistently tell PCVH that outcomes are better when professionals work with parents and carers, not around them.

The Mental Capacity Act supports partnership, transparency and the least restrictive approach — not exclusion.

KNOW YOUR RIGHTS

Mental Capacity & Decision-Making
For parent carers in Herefordshire

Your legal rights under the Mental Capacity Act (2005)

1. Assume capacity first

Everyone has the right to be assumed to have mental capacity unless it is clearly proven otherwise. A diagnosis or disability alone is not evidence of lacking capacity.

2. Support must come before decisions are taken away

Professionals must take all practicable steps to support the person to decide for themselves (clear language, visuals, right timing, trusted support).

3. Capacity is decision-specific and time-specific

A person may be able to make some decisions and not others. Capacity can change over time or depending on health, stress or environment.

4. Unwise decisions are allowed

Making a decision others disagree with does not mean a person lacks capacity.

5. Best Interests decisions must involve families

If someone lacks capacity for a specific decision, it must be made in their Best Interests, involving parents/carers and choosing the least restrictive option.

6. Deprivation of liberty must be lawful

If a person is under continuous supervision and not free to leave, this may be a Deprivation of Liberty and must be legally authorised.

7. Advocacy is a legal right

If a person lacks capacity for a serious decision and has no appropriate family or friend, an Independent Mental Capacity Advocate (IMCA) must be involved.

8. You can ask questions and challenge decisions

You have the right to clear explanations, written records, reassessment and support if something does not feel right.

Support in Herefordshire

Independent Mental Capacity Advocacy (IMCA)

Onside Advocacy (Herefordshire)

 www.onside-advocacy.org.uk

 imca@onside-advocacy.org.uk

Deprivation of Liberty Safeguards (DoLS)

Herefordshire Council

 01432 383645

 DoLS@herefordshire.gov.uk

Parent Carer Voice Herefordshire (PCVH)

The strategic parent carer forum for Herefordshire

 admin@pcvherefordshire.com

This sheet provides general information only and does not replace legal advice.



**Parent Carer
Voice**
HEREFORDSHIRE