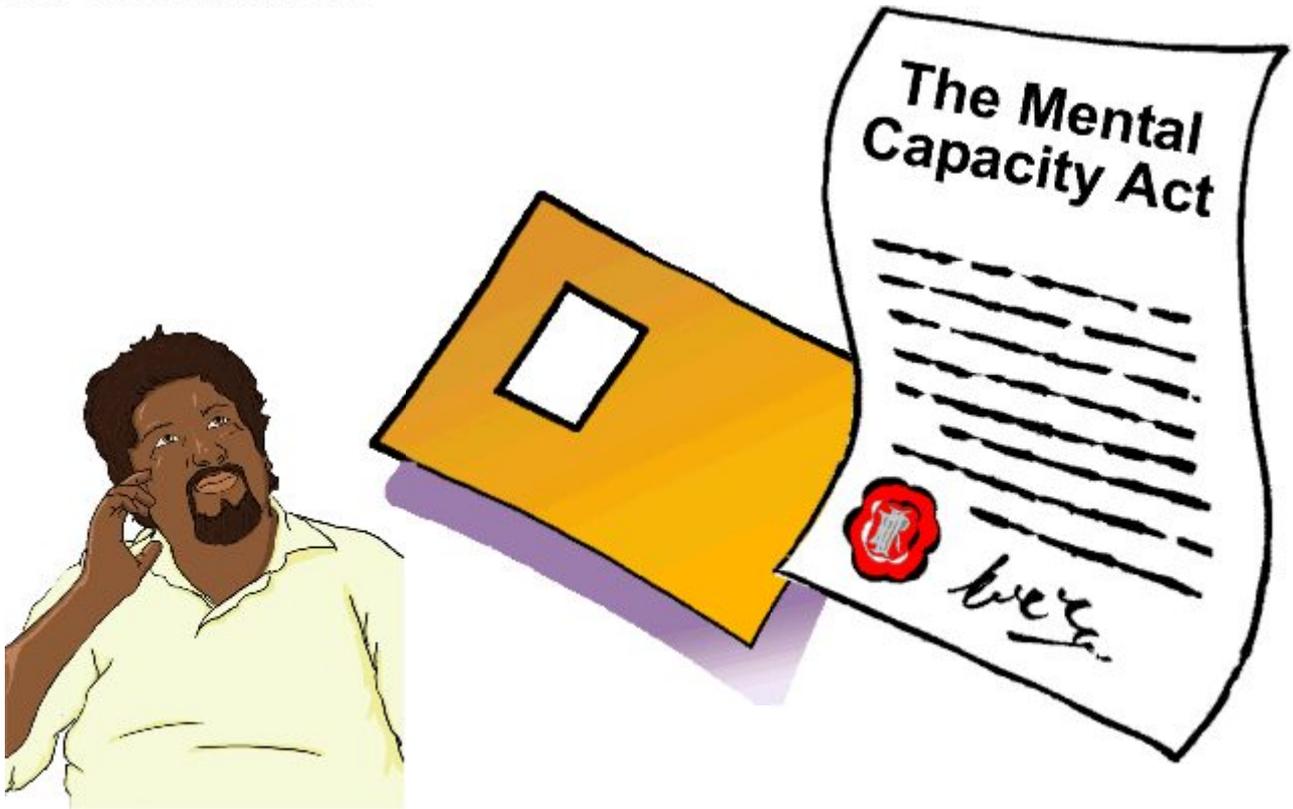




HM Government



Valuing Every Voice, Respecting Every Right.

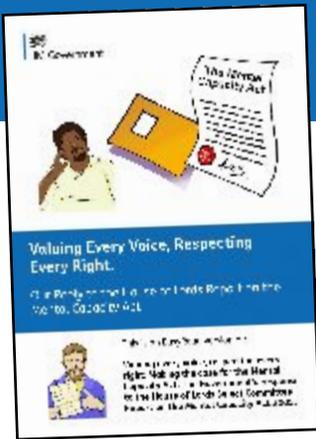
Our Reply to the House of Lords Report on the Mental Capacity Act



This is an EasyRead version of:

Valuing every voice, respecting every right: Making the case for the Mental Capacity Act. The Government's response to the House of Lords Select Committee Report on the Mental Capacity Act 2005.

What is in this reply



About this reply

1.



What the Ministers think

3.



What has been done already?

6.



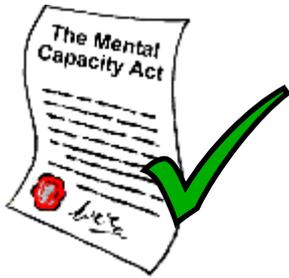
What has happened since the MCA started in 2005

8.



What we plan to do

10.



Making sure the MCA happens

12.



Checking how the MCA is used and working

14.



Telling people about the MCA

16.



Training Professionals

18.



Checks

20.



Deciding you do not want a certain treatment in the future

21.



Advocates

22.



DoLS

23.



LPAs or Lasting Powers of Attorney

26.



The Court of Protection

28.



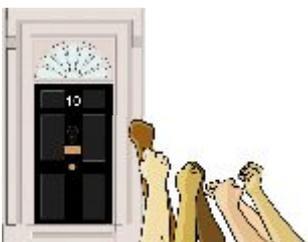
Legal aid

30.



Treating people badly

31.



Other work the Government is doing that will help people get their rights under the MCA

32.



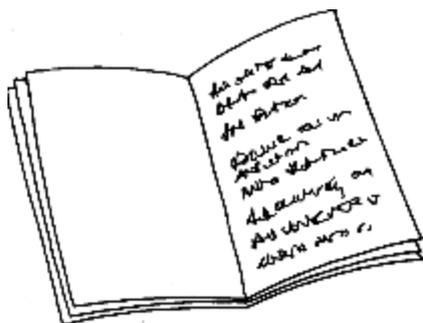
What the Words Mean

43.

About this reply



This EasyRead reply has been written by the Government.

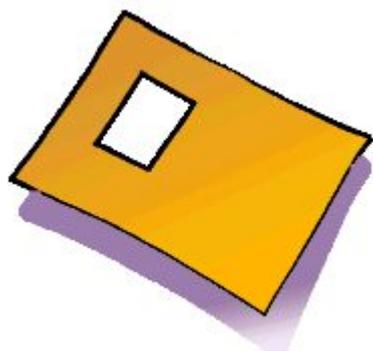


There are some difficult words used in this reply, they are in **Bold** and explained more in the **What the words mean** section at the end.



In 2013 a House of Lords Committee asked people what they thought about how the **Mental Capacity Act**, or **MCA** for short, was working.

They wrote a report saying what they had found out.



You can see an EasyRead copy of that report here:

<http://www.parliament.uk/documents/lords-committees/mental-capacity-act/mental-capacity-act-2005-easyread.pdf>



This is our reply saying what we think and what we plan to do about the things the House of Lords said.



The MCA is a law passed in 2005 that tells people their rights and what to do about decision making, it has 5 main points:



1. Everyone must think you are able to make your own decisions unless it really has been shown you can't.



2. You must not be treated as if you can't make a decision until everything has been tried to help you make that decision.



3. You must not be treated as not able to make a decision just because you have made a decision some people think is unwise or not sensible.



4. If someone else makes a decision for you it must be what is best for you.



5. If someone else makes a decision for you it must be the easiest way to do what is needed.



What the Ministers think



There are 2 Ministers in the Government whose job it is to look at the MCA.



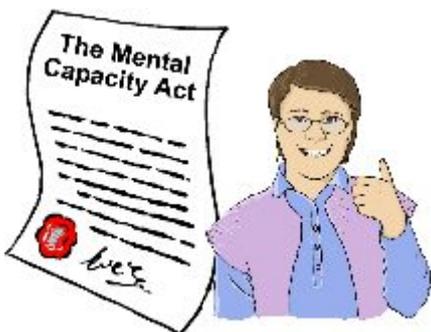
They are Norman Lamb, in charge of Care Services and Simon Hughes in charge of Justice.



Their departments worked together with others to write this reply to the House of Lords Committee.



They thanked the Committee for all their good work.



They liked it that the Committee thought the MCA was still a great idea and could really change people's lives.



They agreed there is still lots to do and not enough people know about the MCA.



They know lots of people, who are not able to make their own decisions, are still missing out.



They really want to put this right.

They know it is a big job.



Lots of people will need to change the way they think about those they think are not able to make their own decisions.



Making these changes will need everyone to work together.



If it does work, people who are not able to make their own decisions will be treated in the same way and have the same rights as everyone else.



We now want everyone to do all they can to make this happen.



Norman Lamb and Simon Hughes

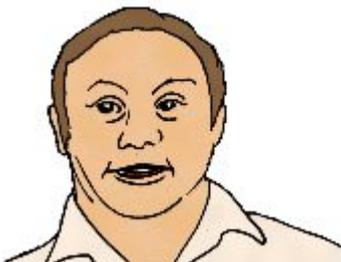
What has been done already?



No one knows exactly how many people might not be able to make their own decisions.



But it could happen to anyone at anytime.



It includes some people:

- with a learning disability



- with dementia



- with mental health problems



- with brain damage from accidents.



This could add up to 2 million people.

We need to make sure people:



- are supported to make their own decisions whenever they can



- have the best decisions made for them, what they would have wanted, if they cant.



What has happened since the MCA started in 2005



Hundreds of people in the NHS and councils have the job of making the MCA happen in their areas.



There are now hundreds of MCA advocates, called **Independent Mental Capacity Advocates** or **IMCAs** for short.



IMCAs help people make their own decisions or help make the best decisions they would have wanted.



Over 1,000 people are working in services making sure decisions made for people are done in the easiest way keeping people's rights.



Many thousands of people have signed up friends or family to make decisions for them for a time when they can't.



A lot of people's cases have gone to the special Court for decision making and had decisions made for them when it has been needed.



The **Deprivation of Liberty Safeguards** or **DoLS** for short, are rules about keeping people who can't make a decision in a hospital or care home.



It is good that thousands of people have had their rights kept safe using these rules.



But there are not as many people as we think there should be using these rules.



What we plan to do



We don't just tell people how to make the MCA work better.



We listen to people who are experts who help us to make rules and guides that will work.



We have asked the people we work with about the 39 points the Committee made and included what they think.



Each point starts with what the Committee said.

It is in a box like this.



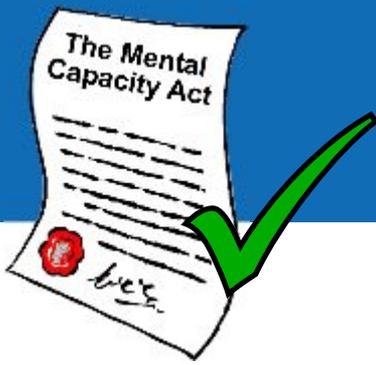
We then say what we have done or plan to do about the point.



We have put some of the points together. The numbers in **orange** are the point numbers the Committee used.



They are in the order we used in the longer version of this reply:
<http://www.parliament.uk/documents/Mental-Capacity-Act-2005/GovernmentResponseToLordsCommitteeonMentalCapacityAct.pdf>



Making sure the MCA happens

Committee Points 3. 4.



The Committee said there should be a single independent organisation in charge of making the MCA happen.



They also said a Government group called the MCA Steering Group was working well.



We don't think a single organisation would work well.



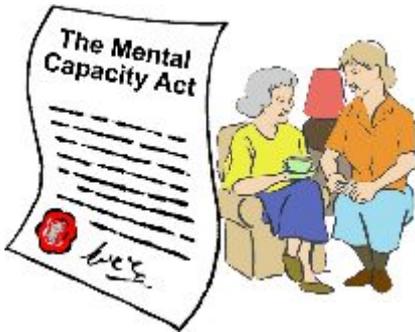
But we will set up a new group called the Mental Capacity Advisory Board.



The Board will check on how the MCA is going and write a report each year.



The MCA Steering Group will not finish.

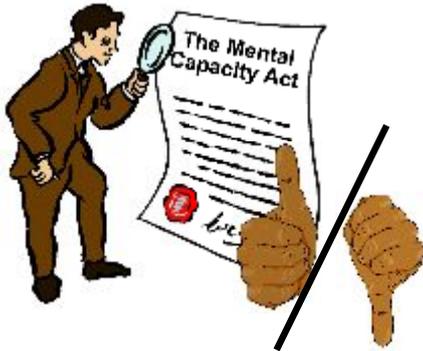


They will carry on helping to make sure the MCA is working in health and social care.



Checking how the MCA is used and working

Committee Points **2. 36. 37. 38. 39.**



The Committee said we need to check how the MCA is being used and if it is being used properly.



We know this is a difficult area to check properly.



We have asked some organisations to work on ways people can check in health and social care.



CQC will add the MCA to their checks on services. This will also help. See page 20.



We will do more to listen to what people using the MCA have to say about it themselves.



We will also listen to what their organisations tell us.



We will work with the Board.



And we will let the House of Lords know how this is all going.



Telling people about the MCA

Committee Points 1. 6. 12.



The Committee said everyone needs to know more about the MCA. This includes people who might or might not be able to make decisions as well as professionals.



We think it is everyone's job to talk about the MCA, especially professionals.



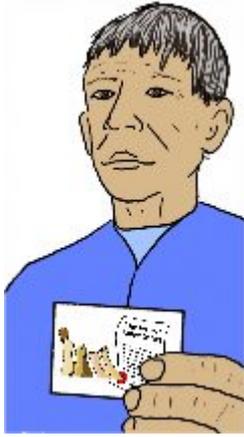
We will make sure people in Government know more about it.



We will ask SCIE (The Social Care Institute for Excellence) to look at the MCA information already done to see how good it is.



They can also tell us what new information is needed and we will look at getting that made.

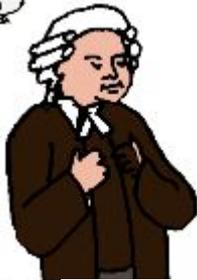


Another thing we want to have is a handy credit card size card saying what rights people have under the MCA.

Information needs to get to lots of groups including:



- doctors



- lawyers



- the police



- housing organisations



- carers



- banks.



Training Professionals

Committee Points **6. 8. 9, 10. 11.**



The Committee said more must be done to train professionals.



GPs, social workers and others should try everything to help people decide for themselves.



They should involve family and friends to find out what someone might want only when this doesn't work.



The groups in charge of training all health and social care professionals as well as the people who buy services are looking at how to better train people about the MCA.



There are worries about the way people are kept safe in some areas, called safeguarding.



This doesn't always give people their MCA rights.



We think if the rules are followed properly this shouldn't happen.



People need to follow the safeguarding rules and the MCA.



Everyone with a job that could involve decision making should think about the MCA.



Checks

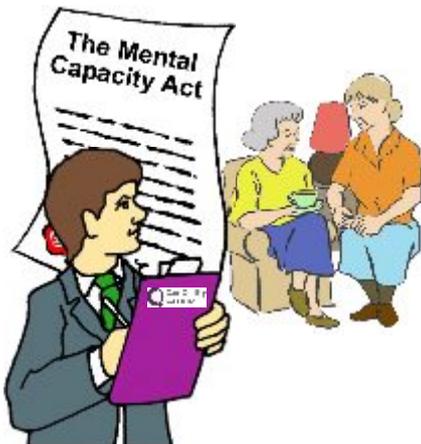
Committee Point 5.



The Committee said the CQC (Care Quality Commission) should check services are using the MCA in the right way and people are getting their rights.



CQC checks all health and social care services.

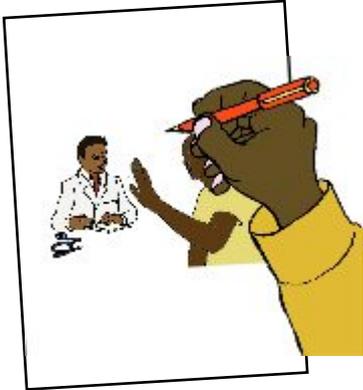


They will include checking that services follow the MCA.



Deciding you do not want a certain treatment in the future

Committee Point 26.



You can write down that you do not want a particular treatment in the future when you might not be able to make a decision about it. This is called an **Advance Decision**.



The Committee said that everyone needs to know more about this.



We agree that the MCA must be at the centre of care planning and assessments.



We have asked SCIE (The Social Care Institute for Excellence) to say how this could happen.



We will ask the Board to include this in their work as well.

Advocates



Committee Points 22. 23. 24.



The Committee said more people should have an advocate.



We think the MCA advocates or IMCAs have worked really well.



We have added advocacy to the new law called the Care Act.



We will make sure they have better training, are able to do their jobs and can speak up in court for people.



We will ask the Public Health people in each council to do more to make sure local people get their rights under the MCA.



DoLS

Committee Points **13 to 21**.

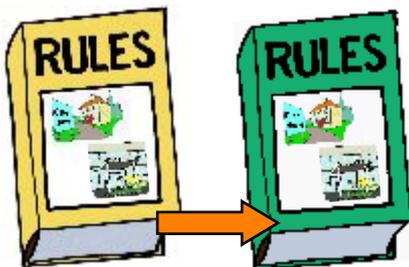
This part is all about the **Deprivation of Liberty Safeguards** (or DoLS).



These are rules about people who are made to stay in a hospital or care home.



They are meant to give people rights and make sure they are looked after properly and kept safe.



The Committee said the DoLS rules need to be done again.



They were meant to give people rights and make sure everything was done properly.



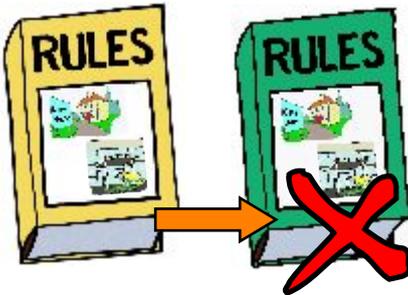
They are very complicated, not good enough and not always used.



We agree that DoLS have not been used as much as we thought they would be.



DoLS can work very well. 12,000 people are being kept safer using them.



So we don't think they should be redone. However, we need to make sure they work better as quickly as possible.



We will make sure:

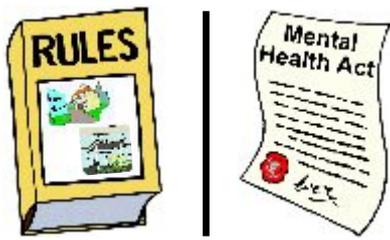
- the law is clear



- DoLS are easier and simpler to use



- DoLS are a part of care planning



- we explain the difference between DoLS and the Mental Health Act.



For the future we will look at changing the law to use DoLS more easily in supported living, so that people can have care nearer home.



We will then see if any other small changes are needed.

LPAs or Lasting Powers of Attorney



Committee Point 25.

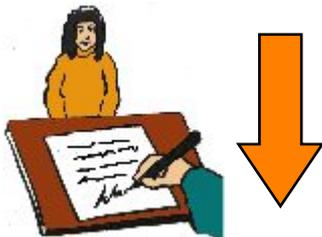
If you are able to make decisions, you can say who you would like to make them for you if you can't anymore.



This is done using a legal document called an **LPA** or **Lasting Power of Attorney**.



This puts in writing who can make decisions about things when you can't.



The Committee said not many people are using LPAs.



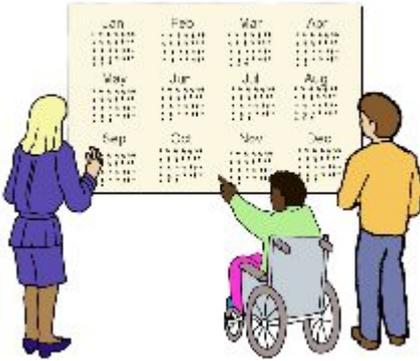
We agree with the Committee.



Lots of people only think about them when they are very ill.



We want people to plan for the future and use them earlier.



We are thinking about having a 'Life Planning Day' next year to tell people more about this.



Other organisations are doing their bit to tell people more about them as well.

The Court of Protection



Committee Points **27. 28. 29. 30. 31.**



When someone can't make a decision, there are some things that need to go to a special court to be decided. This is called the **Court of Protection**.



The Committee said the Court:

- needs more staff



- needs new rules



- is being more open



- needs their own website



- should have other ways to sort problems out before court



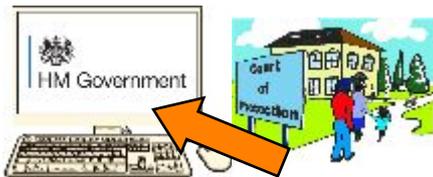
- should have a better guide for when councils should go to court.



There are going to be more staff soon.



We will have new rules next year.



We only want one Government website, but we will ask them to have more information about the court on it.



We will make sure more people are helped to sort problems out instead of going to court.



We will give councils a better guide about when to go to court.

Legal aid



Committee Points 32. 33. 34.



The Committee said we know there is not enough legal aid money to pay for everything.



But we need to make sure people who have been seen as unable to speak up for themselves in court can still go to court if they need to.



We agree that some people should be able to get legal aid to go to court.



Because we don't have much money, most people will need to ask for it and only the people who need it most will get it.



Treating people badly

Committee Point 35.



There is a law in the MCA about looking after people who can't make a decision properly and not treating them badly.



The Committee said this law has not been used much.



We want people to be kept safe.



So we will look into this to see if it is not being used enough and why that is.



Other work the Government is doing that will help people get their rights under the MCA



The MCA covers lots of different areas.



Helping people understand these areas will help people get their rights under the MCA.



There are 7 other main pieces of work we are doing that will help.

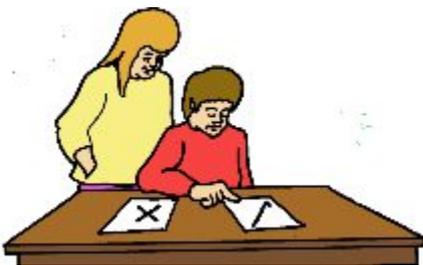
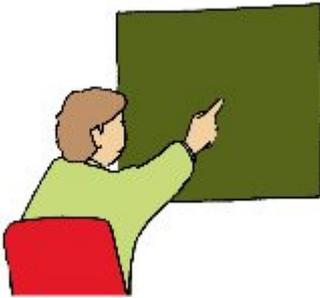
1. The Care Act



Most of the Care Act starts in 2015.

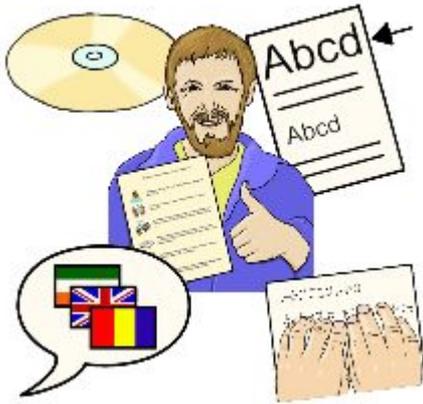
The Care Act will give people rights to:

- control over their lives
- know what is best for themselves
- wishes and wants being listened to
- take part in making decisions





- a care and support plan



- accessible information



- assessments that look at what people can do as well as can't

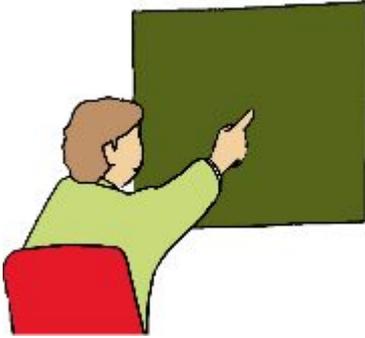


- advocacy for those who need it most.



2. The Prime Ministers Challenge on Dementia

The Prime Minister wants people with dementia to be able to say:



- I understand so I am able to make decisions



- I know my wishes for the end of my life will be followed



- I feel included in society



- I am treated properly with respect.

3. Hard Truths



This was the Government's reply to the problems that happened at the Mid Staffordshire hospitals.



It called for a huge change to make sure patients are always put first.



They want to make sure people who find it harder to speak up for themselves are listened to the most.

4. Winterbourne View



This was another Government reply to the abuse that was seen at Winterbourne View care home for people with learning disabilities.

They found the MCA was ignored and want:



- the people who buy services to make sure those services do what is best for people



- NHS England to do something if services are bought that do not follow the MCA



- the CQC to check services without telling them they are coming



- CQC to do something when things are wrong



- a new guide on how good services should be.

5. Changes to Mental Health Services



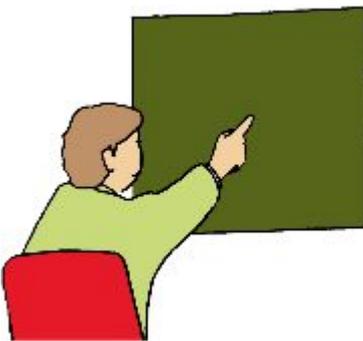
We want to make sure that:



- people with mental health problems are treated equally



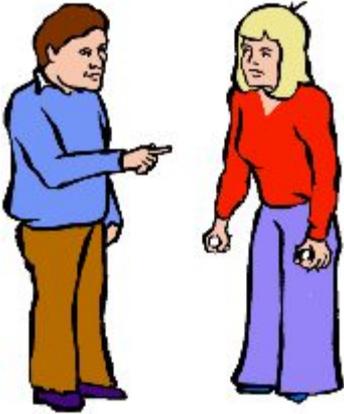
- everyone who needs mental health care gets the right support



- people are seen as able to make their own decisions



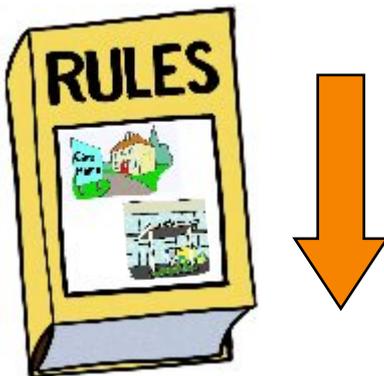
- the MCA is followed



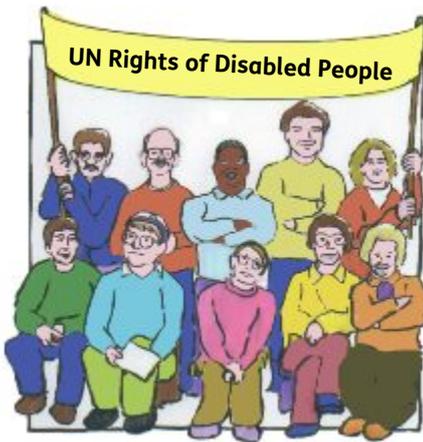
- people can make choices



- carers get better support and be involved



- DoLS are used less.

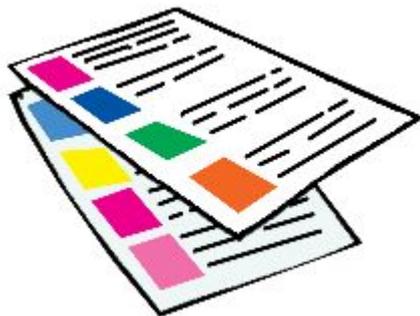


6. UN Rights of Disabled People

These rights started in the UK in 2009.



They say that all disabled people should have the same rights as everybody else.



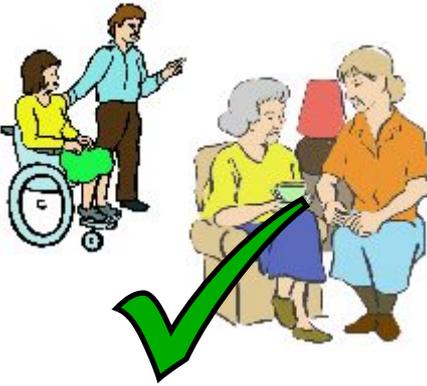
For an EasyRead of the full rights please see:
http://www.equalityhumanrights.com/sites/default/files/documents/publications/uncrpd_guide_easyread.pdf

7. The Mental Capacity Act Steering Group



The Steering Group is made up of 17 different organisations.

They work to make sure people who can't make their own decisions:



- have the same chances and care as everybody else



- have support to say what care and support they want



- have their carers included in making decisions



- have advocates



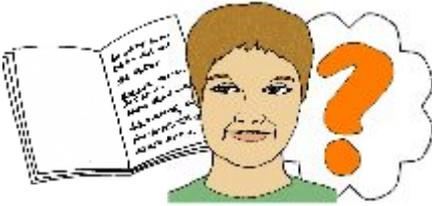
- checks to see if they can make a decision



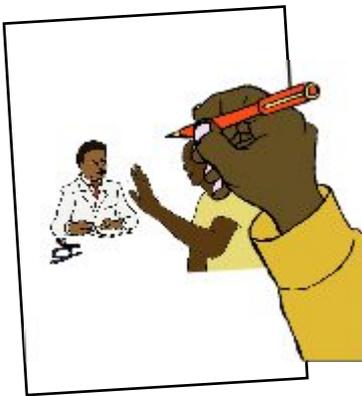
- decisions made that are best for them.



What the Words Mean



There are difficult words in this report and others you might hear about in this law. We have tried to explain them as we go along and we have put a bit more about them here.



Advance decision – is when someone who is able to make a decision decides that they do not want a particular type of treatment if they are not able to make that decision in the future.



A doctor must respect this decision.



An advance decision must be about treatment you want to refuse and when you want to refuse it.



Care Quality Commission (CQC) – CQC are an independent organisation that checks health and social care services.



Their job is to make sure services give people good, safe and kind care.



Court of Protection – the specialist Court for all issues about people who can't make their own decisions.



Deprivation of Liberty Safeguards - DoLS for short, are rules about what to do when you are keeping people who can't make decisions in a hospital or care home.



The rules can help people to ask for this to be checked by someone else to make sure it is the right thing to do.



Independent Mental Capacity Advocate (IMCA) - The job of the IMCA is to give independent support and speak for the person who cannot make a decision when they have no one else who can do this for them.



This happens when there are really big decisions to make which will change the person's life.



Lasting Power of Attorney – is a legal form where one person gives the other person the right to make decisions for them in the future, if they stop being able to make decisions.



Legal Aid – money you can get to help with some types of legal or court cases.



Mental Capacity Act 2005 – the law about how to support and protect people who cannot make their own decisions about something.



The Act makes it clear how decisions should be made.



It lets people plan ahead for a time when they may not be able to make their own decisions.



Credits

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