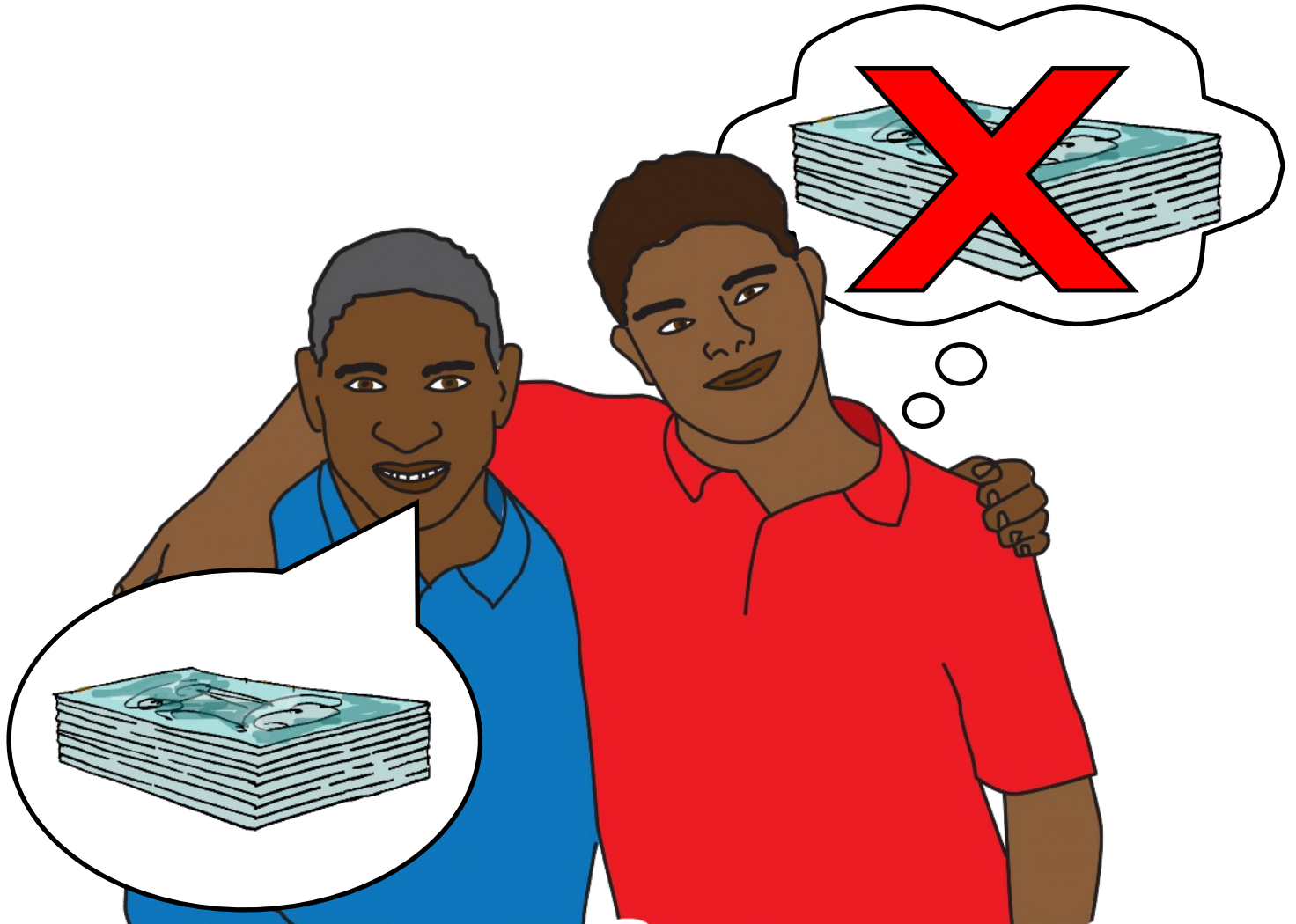




Ministry
of Justice



Making decisions about the money of young people who lack capacity

A toolkit for parents and carers



EasyRead version



Introduction

1



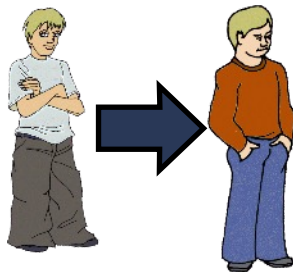
Mental capacity

3



The Mental Capacity Act 2005 (MCA)

5



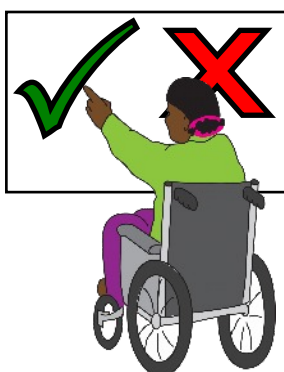
When a child becomes an adult

11



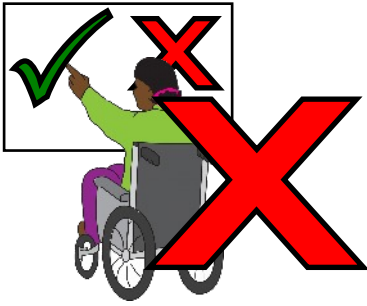
Ways to get legal authority

17



Does the young person have the capacity to make decisions for themselves?

18



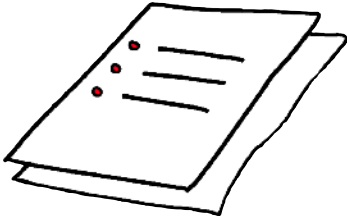
Does the young person lack capacity to make financial decisions for themselves?

23



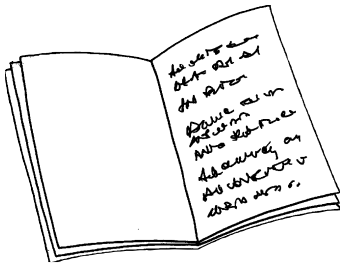
Does your young person have a Child Trust Fund?

30



Summary

32



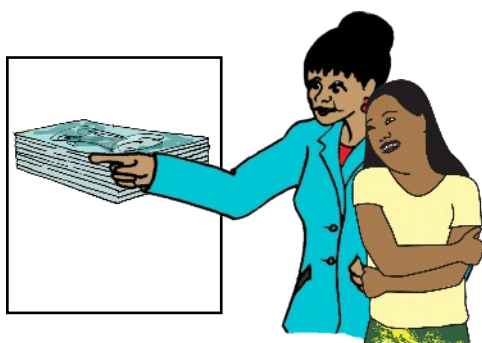
What the words mean

34

Introduction



You may be a parent or carer of a young person who is 14 to 25 years old.



This **toolkit** is to help parents and carers to make financial decisions for a young person who is 14 to 25 years old and who does not have the **mental capacity** to make decisions for themselves.

A **toolkit** is a guide.

Mental capacity is the ability for a person to make a decision for themselves when it needs to be made. This is sometimes called **capacity**.



If your young person needs help to look after their money you need to read this **toolkit**.

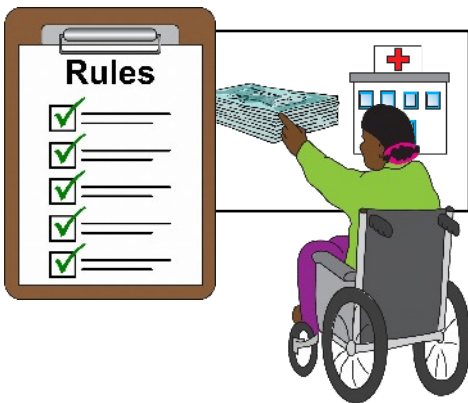


We want to protect young people and their money.



We want to help you help them to make their own decisions about their money, where possible.

Helping your young person with their health and welfare

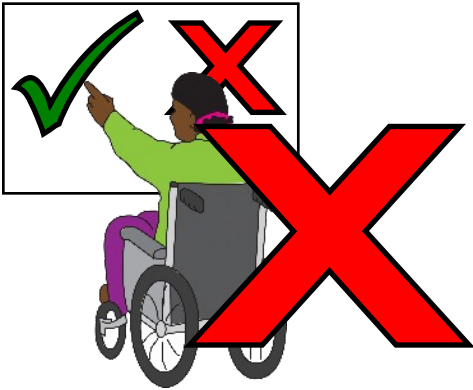


When a young person becomes an adult there are also rules about making decisions for them about their health and welfare.



You can look at the **GOV.UK** website to find out more.

Mental capacity



If you do not have mental capacity we say you **lack** mental capacity.



You may lack mental capacity because of a disability, a disease, or an injury.



Mental capacity can change and a person may be able to decide about some things but not others.



For example, a young person may be able to decide what they want to eat, but not what they want to wear.



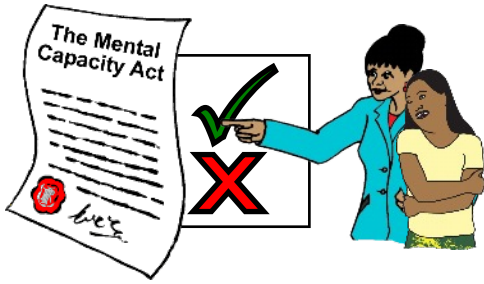
A young person may have the capacity to decide what they want for breakfast one day, but not the next. Mental Capacity can also change during the time of the decision.



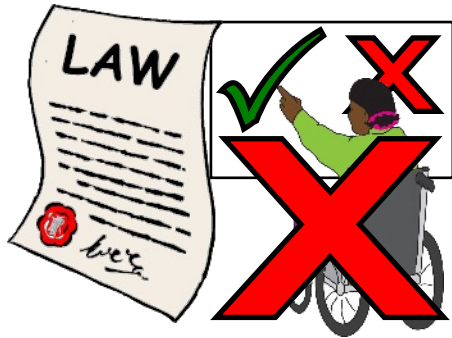
Being able to decide on some days but not others. This is called **fluctuating capacity**. It may be because of an illness or condition which changes their capacity such as:

- a brain disorder
- a psychological illness
- a memory disorder such as childhood dementia.

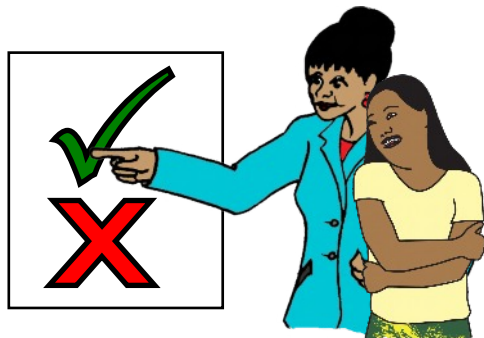
The Mental Capacity Act 2005 (MCA)



The Mental Capacity Act 2005 is a law for all people over 16 years old who live in England and Wales who cannot make some or all of their own decisions.

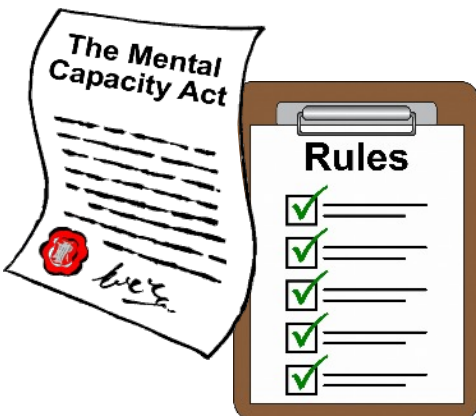


The law gives rights to people who cannot make decisions for themselves.



It explains how other people can make decisions on behalf of someone that lacks capacity.

The 5 rules of the Mental Capacity Act



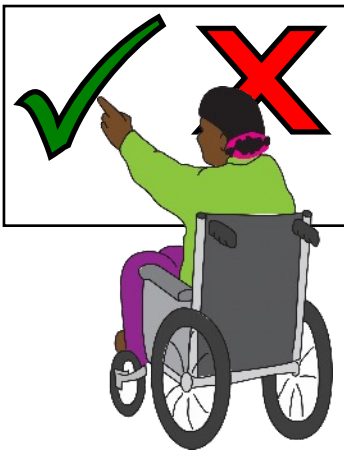
The Mental Capacity Act sets out 5 clear rules you must follow to help a young person aged 16 and over who does not have the capacity to make their own decisions.

The rules are called **principles**.



Principle 1: Assume capacity

Capacity is whether a person understands the choice they need to make.

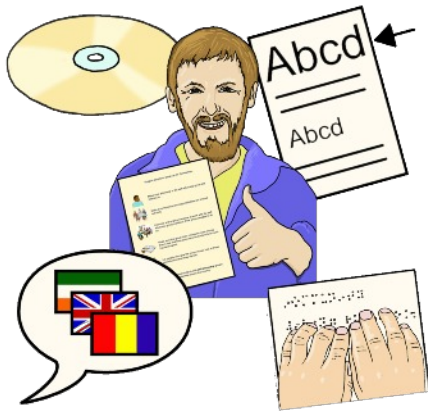


Everyone has the right to make their own decisions. You should not make a decision for a young person, unless you can show that they cannot make the decision.



Principle 2: Supported decision making

We must work hard to help people make decisions before we make them for them.



To support someone to make a decision you should make sure that:

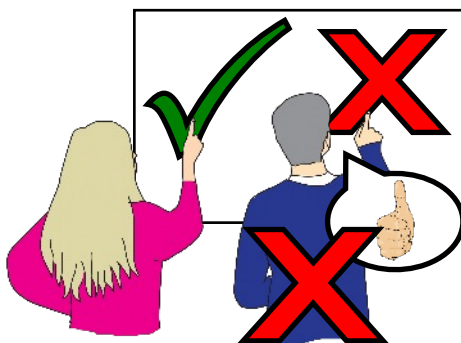
- They have the information they need in an accessible form.



- They are made to feel comfortable and safe.



- Anyone else who could help them to make a decision is available.

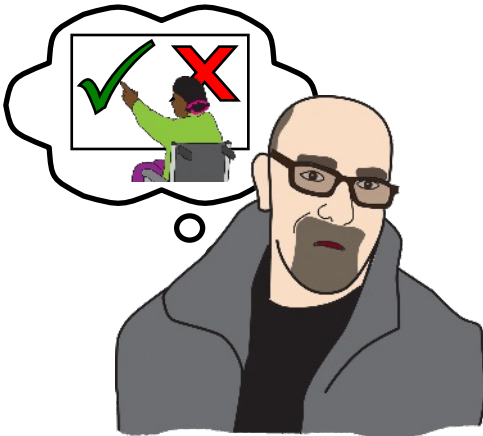


You should be careful not to try to persuade the person what to do.

Principle 3: Unwise Decisions



We all have our own values and beliefs. People cannot decide for you just because they do not agree with your choice.

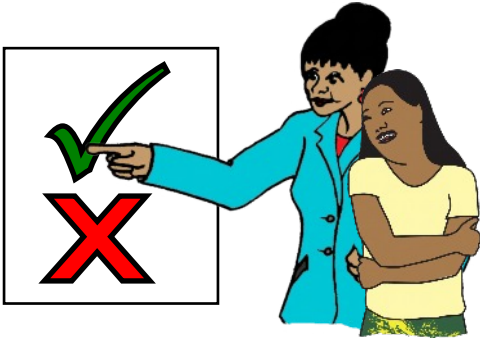


If a young person makes a decision that you as a parent or carer are unhappy with, you should not take over the decision for them.

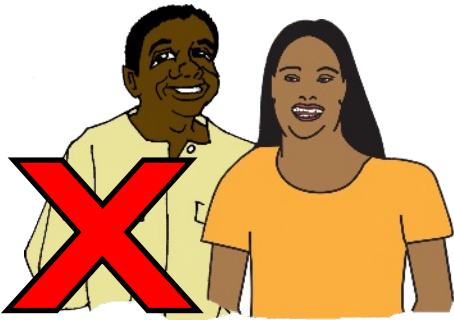


But you will need to check if the young person keeps making decisions that put them in danger or seem unusual for them.

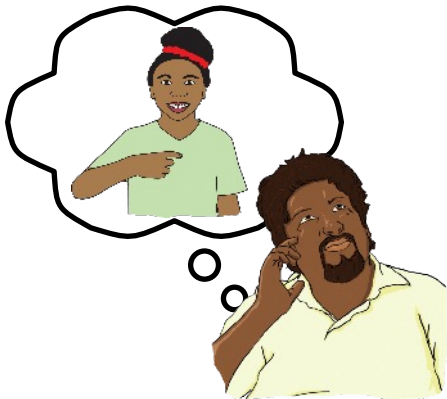
Principle 4: Best Interests



If you are helping a person who lacks mental capacity, you must ensure that every act or decision you are taking for them is **what is best for them, not for you or anybody else**. This is called **best interests**.



Do not use someone's age, gender, appearance, condition or behaviour to work out their best interests.



- Think about the young person's past and present wishes and feelings.



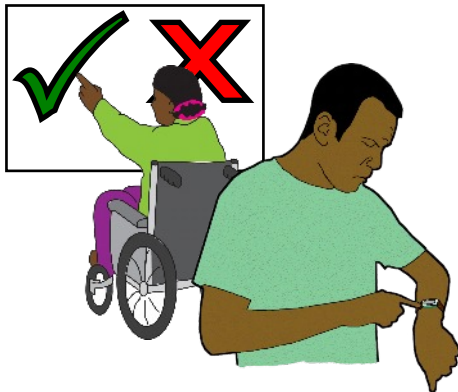
- Think about their feelings, beliefs, values and any cultural factors.



- Talk to other people involved in their care.



- Look closely at the situation.



- If it is not urgent, wait until they can make the decision.



Principle 5: The Less Restrictive Option

Restrictive means you stop someone from doing what they want to do.



So look for ways that don't block the young person's rights and freedoms.

When a child becomes an adult

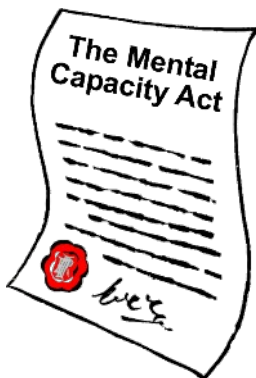


There are new decision-making rules when your child reaches 16 and then 18.



Your **parental responsibility** to make decisions for them will change.

Parental responsibility means the legal rights, duties, powers and responsibilities that a parent of a child has by law.

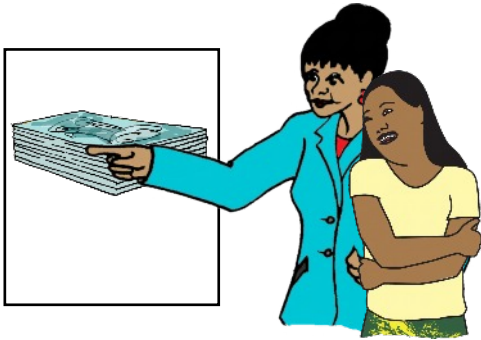


From the age of 16

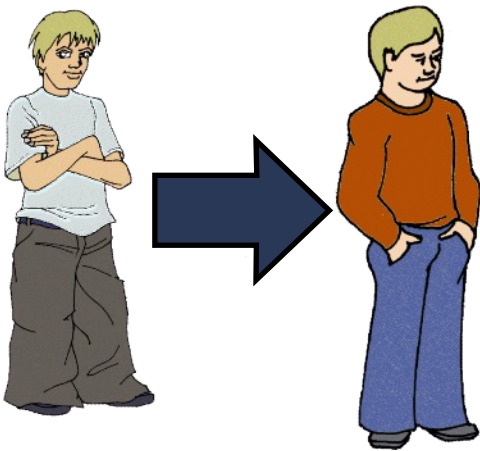
The Mental Capacity Act rules begin to apply.



This means that between 16 and 18 you should try to support your young person to make their own decision.

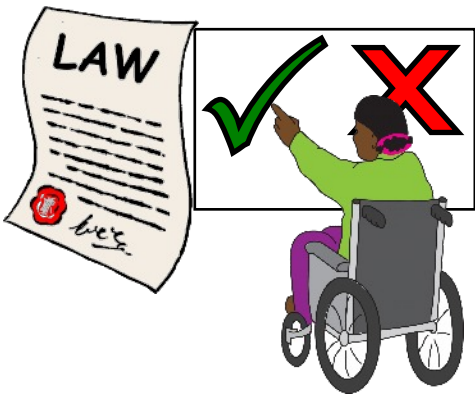


If they cannot make their own decision, the decisions you make for them about their finances must be what is best for them.

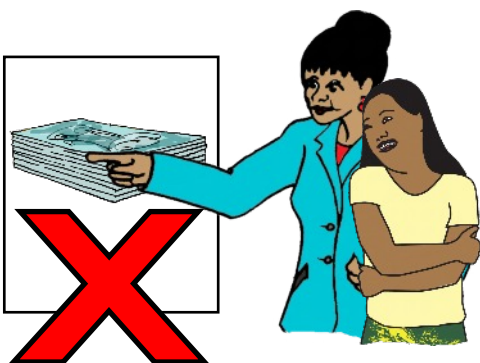


From the age of 18

Once a young person turns 18 they legally become an adult.



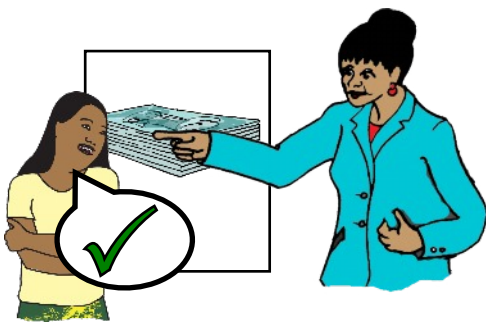
The law says they have to make their own decisions. This means that no one else has the right to make decisions for them.



You will no longer have parental responsibility to make decisions for them.

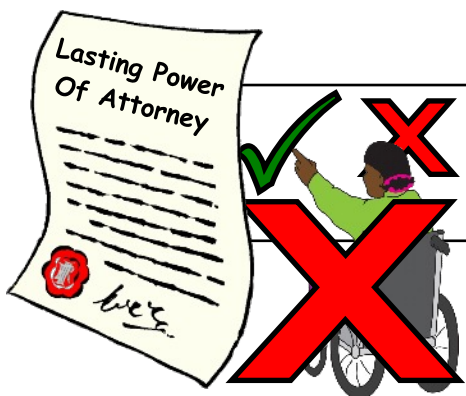


However other people should ask what you think when they are making decisions on behalf of the young adult you care for.



When you make a decision for someone who has turned 18, you must seek their **consent** and apply the 5 principles of the Mental Capacity Act.

Consent is being asked if you agree to something. This means saying yes or no.



If your young person lacks the capacity to provide consent, you must have a legal paper like a Lasting Power of Attorney to make the financial decision for them about their property or assets such as a bank account.

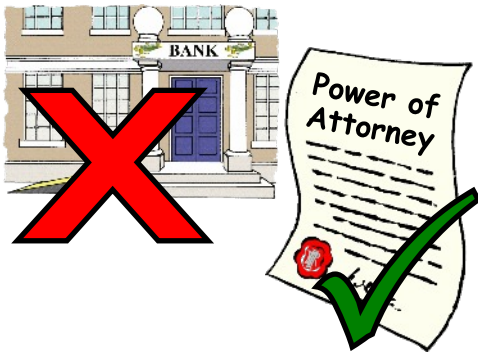


This applies even if you are the person's:

- parent (even if you have made added money to their assets or property)



- or their next of kin, spouse, or family member.



If a young adult lacks capacity to access their bank accounts or their own property, you must get proper legal authority to access them on their behalf.



Some people say that parents and carers have the right to access their adult child's bank accounts.



But no one has the right to access the accounts or property of another adult.

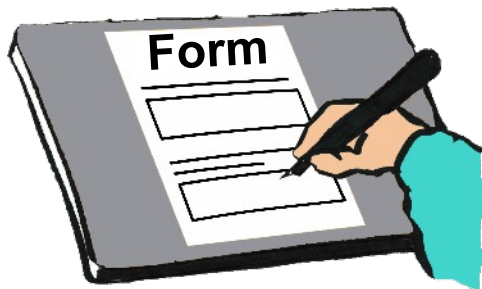


State benefits

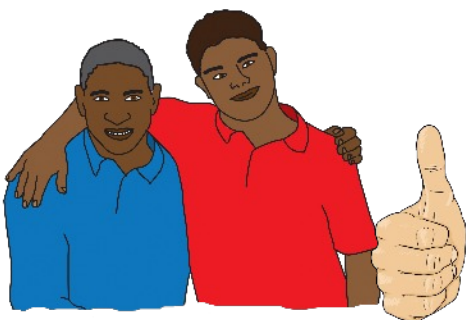
This is about when a young person who lacks capacity is getting help like **Personal Independent Payment**.



Personal Independence Payment or PIP is a benefit from the Department for Work and Pensions. It helps with some of the extra costs you have to pay when you have long term ill health or a disability.



A parent or carer or a corporate body can apply to the Department for Work and Pensions to manage the benefit for them.



Any decision you make when using the benefit should be in the **best interests** of the person who lacks capacity.



Some people say that having the young person's PIP going into their own account means they can also access the young person's bank account.

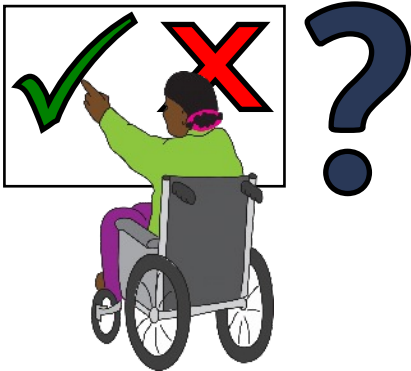


But this is not true. You must have a **legal authority** like a Lasting Power of Attorney.

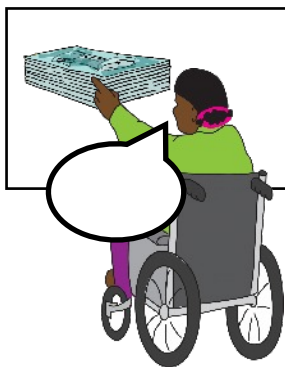
Ways to get legal authority



Legal authority means the official right to do something, like making money decisions for someone.

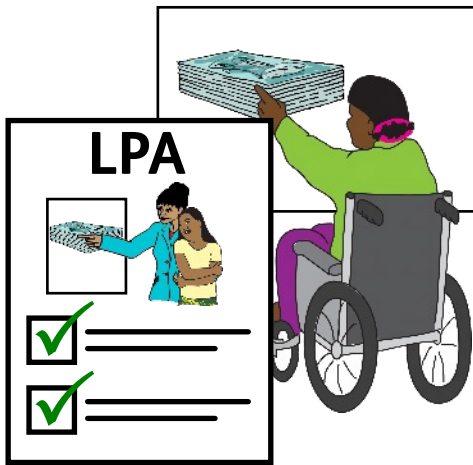


The type of legal authority to make financial decisions for a young adult depends on the young person's capacity.



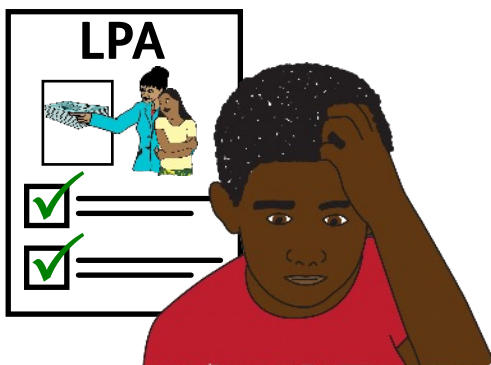
If a young person has capacity to make all decisions for themselves they can make their own financial decisions or they can ask you for help.

Does the young person have the capacity to make decisions for themselves?

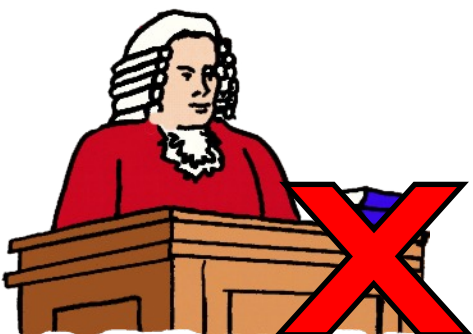


If a young person has capacity to make some financial decisions they can make a **property and affairs lasting power of attorney**.

A **property and affairs lasting power of attorney** is a legal paper. It is sometimes called an **LPA**.



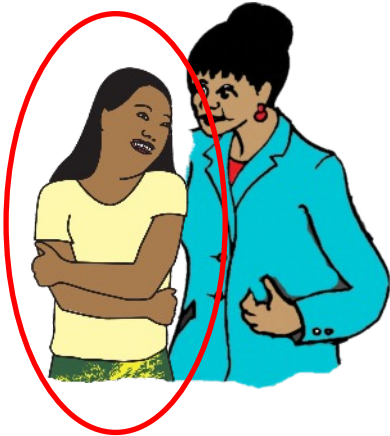
Having a property and affairs LPA means the young person gives someone they trust the power to make decisions about their money and property.



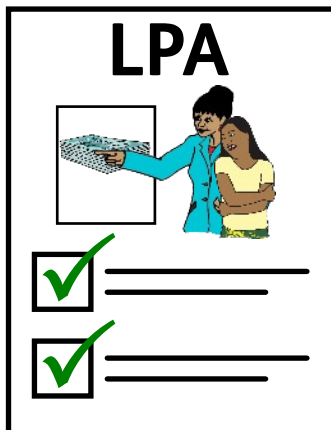
An LPA means the parents and carers do not have to apply to the Court of Protection to get authority to manage the young person's finances if they lose capacity.



The trusted person making decisions is called the **attorney**.



The young person making the LPA is called the **donor**.

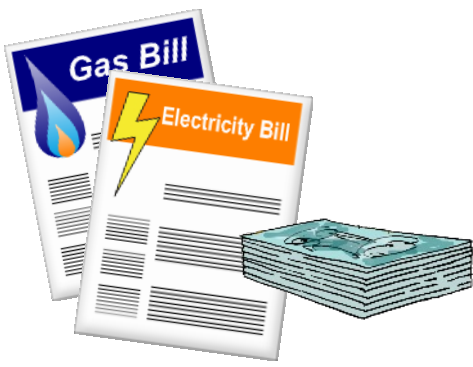


In an LPA the young person can say exactly what decisions the parent or carer can make and when.



For example, a property and affairs LPA could allow the parent or carer to:

- manage a bank or building society account



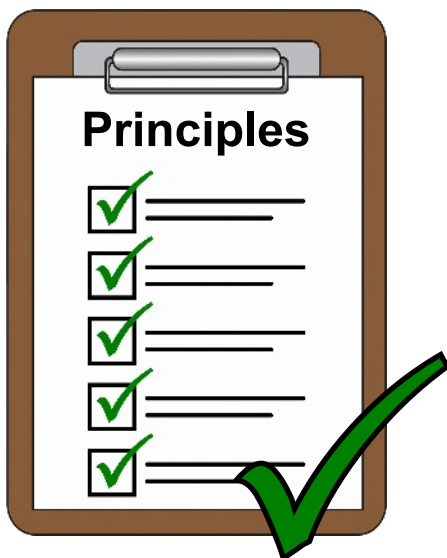
- pay bills



- collect benefits or a pension



- sell the person's home.



As the attorney the parent or carer must follow the 5 principles of the MCA we covered above.

Principle 1: Assume capacity

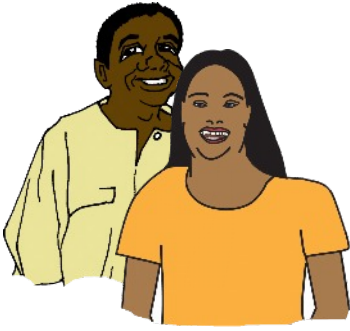
Principle 2: Supported decision making

Principle 3: Unwise Decisions

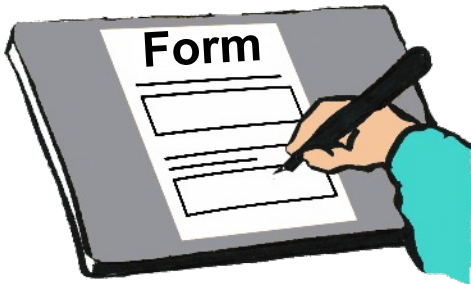
Principle 4: Best Interests

Principle 5: The Less Restrictive Option.

How to make and register an LPA



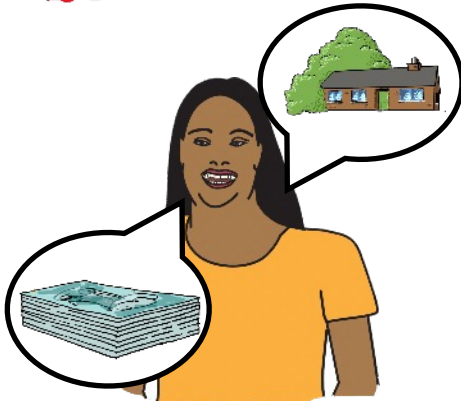
A person must be 18 years old to make an LPA.



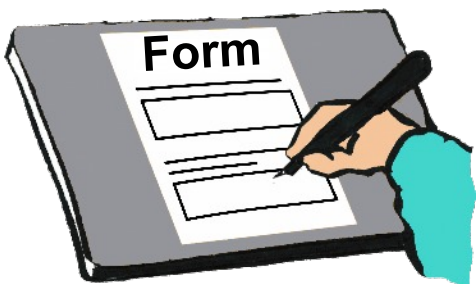
But you can start filling in the application forms before you turn 18.



The donor (young person) must choose their attorney.



The donor says what powers they wish to give their attorney.



They fill in the relevant forms to make a Lasting Power of Attorney saying what decisions the attorney can make. The forms can be found here:
www.gov.uk/power-of-attorney/make-lasting-power

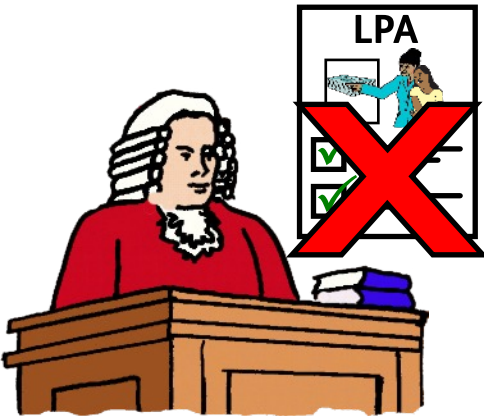


They register the LPA with the Office of the Public Guardian.



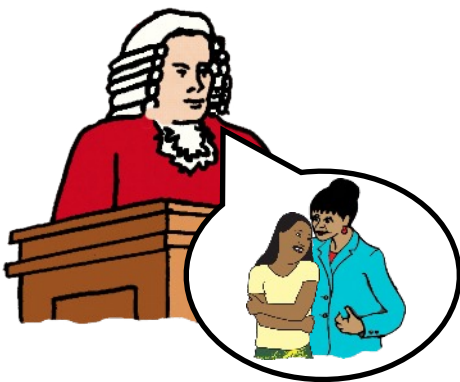
They pay the **power of attorney fees** or they can ask for help if they are on a low income or receive certain benefits. More information is on fees is available here: **www.gov.uk/government/publications/power-of-attorney-fees**

Does the young person lack capacity to make financial decisions for themselves?



If there is no LPA a parent or carer needs an order from the Court of Protection, to manage the young person's property or accounts for them.

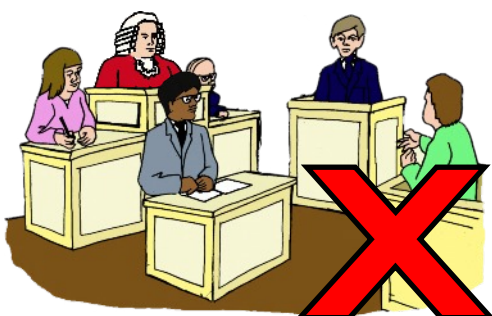
The Court of Protection



The **Court of Protection (CoP)** protects people who lack mental capacity. The court can let trusted individuals make decisions for them.



Some people say you must go into a court when you apply for a Court Protection Order.



But this is not always true because the Court of Protection makes most of its decisions on paper.



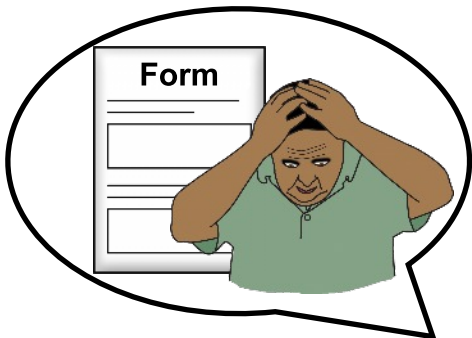
Some people say you need a lawyer to help with your application to the court.



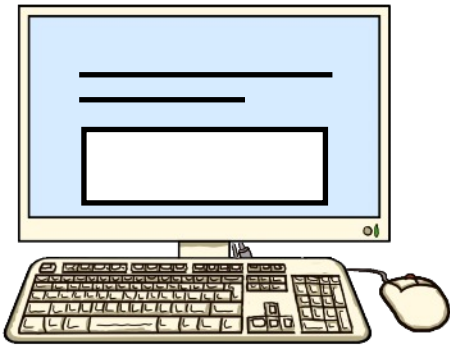
But this is not right. You can ask a lawyer for help if you want them to help you fill out the forms.



The Court may ask lots of questions so it has the right information to make a good decision.



Some people say the Court of Protection order application is confusing, and it takes a long time to get an order.



But the court is making it easier and you can now fill out the forms online.

Property and affairs one-off order



If you need to make just 1 decision about a young adult's finances you can apply to the Court for a **one-off order**.

A **one-off order** gives you the legal authority to make a specific decision in the best interests of a person that lacks capacity.



For example:

- use money put by for a specific need such as wheelchair
- sell a young adult's property.



Property and affairs deputyship



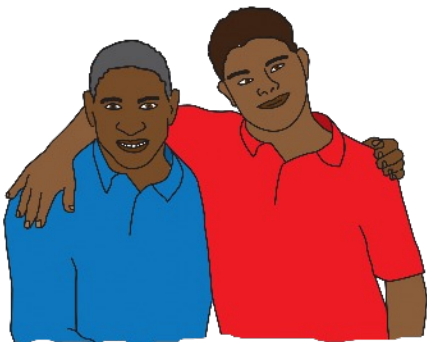
Sometimes a one-off order is not enough.

So the Court will decide who to appoint someone to make lots of decisions for the young person.

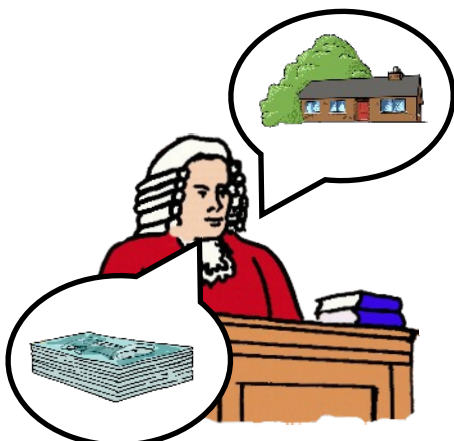
This person is called the **property and affairs deputy**.



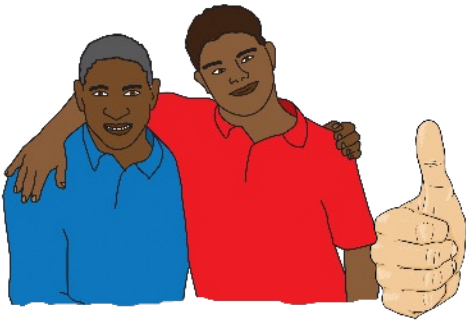
The Court will think about who the young person may want to be appointed.



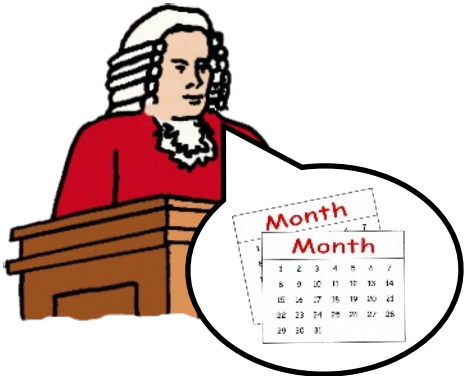
The property and affairs deputy is often the person's family, carers, or friends.



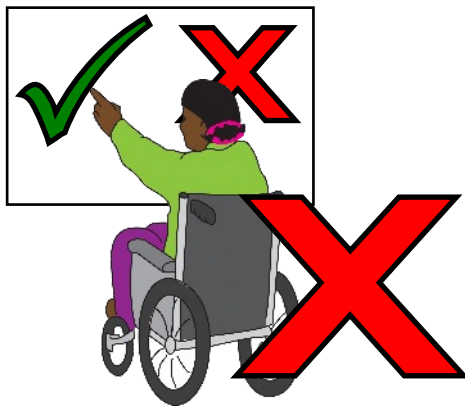
The Court tells the property and affairs deputy what financial decisions they can make.



The decision must be in the best interests of a person who lacks mental capacity.



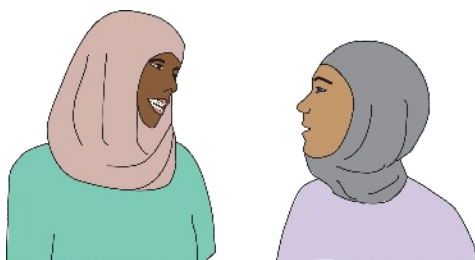
The Court will say how long the deputy can make the decisions.



How to prepare

If you believe your young person will lack capacity to make decisions for themselves when they turn 18 you can get ready early.

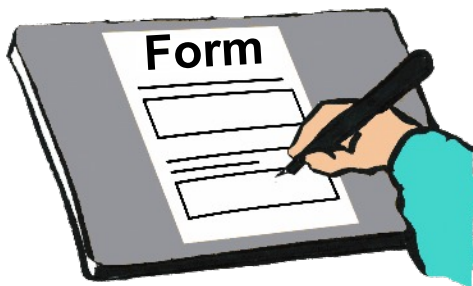
To apply for a property and affairs order you must:



- Speak to the young person you're applying to the Court of Protection for.



- Tell at least 3 people who know the person.



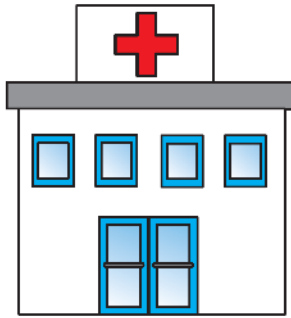
- Apply to be a property and affairs deputy with these forms. The forms can be found here: www.gov.uk/become-deputy/apply-property-financial-affairs-deputy



- Submit the forms online or by post to the Court of Protection.



You must pay the court of protection or you can ask for help with court of protection fees if you are on a low income or receive certain benefits. More information is on fees is available here: www.gov.uk/government/publications/apply-for-help-with-court-of-protection-fees-form-cop44a



For health decisions, you should explore making a **Court of Protection personal welfare application**. More information is available here:

www.gov.uk/government/publications/court-of-protection-personal-welfare-application-cop-gn4

What happens in an emergency?



If you need emergency access to the finances or property of a young adult, you can apply for an **Emergency Interim Order from the Court**. More information is available here:

www.gov.uk/emergency-court-of-protection



An Emergency Interim Order can give you quick access to an account or property.

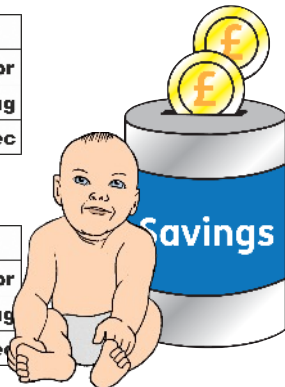


However, the Court will determine if the need is urgent.

Does your young person have a Child Trust Fund?

2002			
Jan	Feb	Mar	Apr
May	Jun	Jul	Aug
Sep	Oct	Nov	Dec

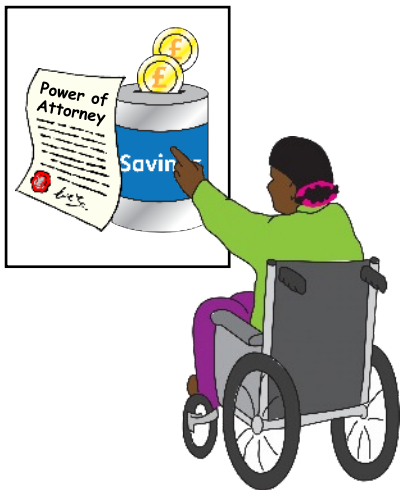
2011			
Jan	Feb	Mar	Apr
May	Jun	Jul	Aug
Sep	Oct	Nov	Dec



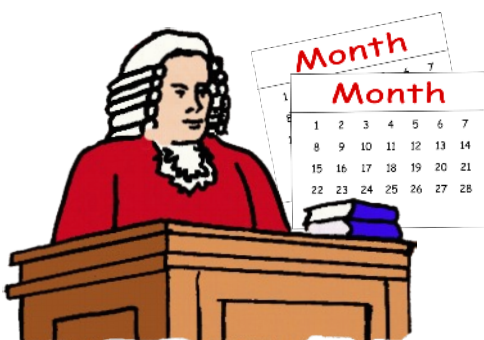
A **Child Trust Fund** (also called a **CTF**) is a savings account given to every child born between 2002 and 2011.



When a child turns 18 they can access their CTF.

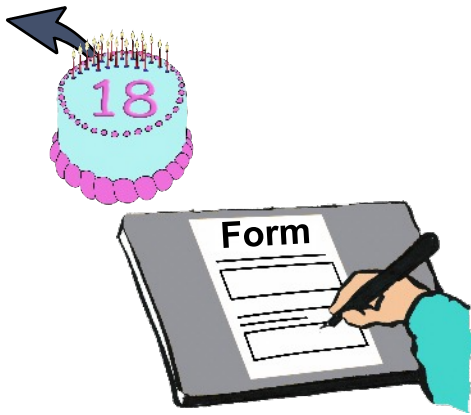


If they have the capacity to do so, a young adult can choose to make a Lasting Power of Attorney to let someone they trust access their CTF.



If a young person lacks capacity, their family or carers will need to apply to the Court of Protection for an order.

It can sometimes take several months.



So if you believe that a young person in your care will lack capacity when they reach adulthood, you should apply for a court order before they turn 18.

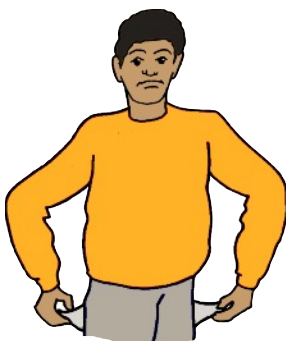


This means that when the young person turns 18, the order will be ready and you will be able to access their CTF.

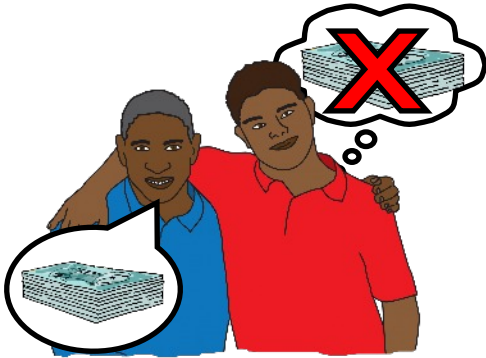


You may not have to pay fees if you:

- apply before their 18th birthday
- ask for a fee waiver through the government **Help with Fees** scheme; or
- ask for a fee waiver due to exceptional circumstances.



Summary



This toolkit is for parents or carers of young people, 14 to 25, who lack capacity in managing decisions about their money.



We have explained how decisions are made in the best interests of a young person.

You should now follow 1 of these steps.

If your young person has capacity:



- Support them to make decisions, where necessary



- They may choose to make an LPA.



If your young person lacks capacity:

- Make an application to the Court of Protection.



If your young person lacks capacity and is still under 18:

- Start the steps so you can make financial decisions when they reach adulthood.



You can read more information here:

- www.scie.org.uk/mca/introduction
- www.scie.org.uk/mca/introduction/using-mental-capacity-act
- www.scie.org.uk/mca/directory/forum/covid-webinars/cliff-edge-18

What the words mean

Attorney: someone the young person trusts to make decisions for them under a Lasting Power of Attorney (LPA).

Best interests: what is best for the person, not for you or anybody else.

Capacity: is whether a person understands the choice they need to make. Mental capacity is the ability for a person to make a decision for themselves when it needs to be made.

Carer: someone who provides unpaid care by looking after a child or young person who needs support because of sickness, age or disability.

Child Trust Funds (CTFs): a savings account given to every child born between 2002 and 2011.

Consent: being asked if you agree to something. This means saying yes or no.

Court of Protection (CoP): a court which deals with decisions about people who may lack capacity.

Deputy: a person the Court of Protection says can make decisions on behalf of a person who lacks capacity to make a particular decision.

Donor: the person who makes a Lasting Power of Attorney (LPA). A donor must be at least 18 years old and have mental capacity when they make their LPA.

Fluctuating capacity: is being able to make decisions on some days but not others.

Lasting Power of Attorney (LPA): an LPA is a legal document. It lets the donor choose trusted people who will be able to help them make decisions if the donor ever wants or needs them to. A property and affairs lasting power of attorney is a legal paper.

Legal authority: the official right to do something like making money decisions for someone.

Mental capacity: the ability for a person to make a decision for themselves when it needs to be made. If you do not have mental capacity we say you lack mental capacity. You may lack mental capacity because of a disability, a disease, or an injury.

The Mental Capacity Act (MCA): a law for all people over 16 years old who live in England and Wales and are not able to make some or all of their own decisions because of disability, injury or illness. It gives rights to people who cannot make decisions for themselves. It explains how other people can make decisions on behalf of someone that lacks capacity.

Office of the Public Guardian (OPG): the agency in England and Wales that supports individuals who may lack capacity or who are planning for a time when they may lack capacity. They register LPAs.

Parental responsibility: the legal rights, duties, powers and responsibilities that a parent of a child has by law.

Personal Independence Payment or PIP: is a benefit from the Department for Work and Pensions. It helps with some of the extra costs you have to pay when you have long term ill health or a disability.

Toolkit: a guide.

Young adult: we say a person is an adult once they are over the age of 18. A young adult is someone from the ages of 18-25.

Young person: someone from ages 14-25. The MCA framework will begin to apply to a person from age 16.

Credits



This paper has been designed and produced by the EasyRead service at Inspired Services Publishing Ltd.
Ref ISL128 23. June 2023.

www.inspiredservices.org.uk



It meets the European EasyRead Standard. © European Easy-to-Read Logo: Inclusion Europe.

More information at
www.easy-to-read.eu



Inspired•pics

Artwork includes material from the Inspired EasyRead Collection and cannot be used anywhere else without written permission from Inspired Services.

www.inspired.pics