

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



<b>PART A</b>	<b>WHAT IS THE MENTAL CAPACITY ACT AND WHAT DO I NEED TO KNOW?</b>	<b>04</b>
	A1. What is mental capacity?	04
	A2. What is the Mental Capacity Act and why is it important?	05
	A3. The Code of Practice	06
	A4. The Lasting Power of Attorney	07
<b>PART B</b>	<b>WHAT DOES THE OFFICE OF THE PUBLIC GUARDIAN DO?</b>	<b>08</b>
	B1. The Public Guardian	08
	B2. The functions of the Public Guardian	08
	B3. The Office of the Public Guardian	09
	B4. Roles of the Board of Visitors	09
<b>PART C</b>	<b>WHAT HAPPENS WHEN I AM APPOINTED A DONEE?</b>	<b>10</b>
	C1. What are the two kinds of donees?	10
	C2. Personal welfare donee	10
	C3. What are my dos and don'ts as a personal welfare donee?	12
	C4. Other restrictions	14
	C5. What are the excluded decisions?	15

C6. When do my powers as a personal welfare donee end?	16
C7. Property & affairs donee	16
C8. What are my dos and don'ts as a property & affairs donee?	17
C9. When do my powers as a property & affairs donee end?	19
C10. Other questions	20
C11. How should a donee make decisions and act?	21
C12. How will I be protected as a donee?	21
<b>PART D</b>	
<b>WHAT DECISIONS CAN I MAKE AS A DONEE?</b>	<b>22</b>
D1. What decisions should I make and when should I make them?	22
D2. How do I know when to step in to make a decision?	22
D3. Consider any Advance Care Planning (ACP) that the Donor has done	23
D4. How do I apply the five statutory principles?	23
<b>PART E</b>	
<b>WHAT HAPPENS IN THE EVENT OF A DISPUTE?</b>	<b>29</b>
E1. What should I do in the event of a dispute?	29
<b>PART F</b>	
<b>WHERE CAN I FIND MORE INFORMATION?</b>	<b>32</b>
<b>GLOSSARY</b>	<b>34</b>

This booklet provides guidance for you if you are appointed to take on the role of a donee. It will provide you with an overview of your powers, duties and responsibilities as a donee.

As a donee, you are responsible for making decisions and acting on behalf of a person who lacks 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.

Mental capacity is assessed on a case-by-case basis and cannot be assumed based only on the person suffering a particular medical condition. Furthermore, a person's lack of mental capacity cannot be based only on:

- age;
- how the person looks – this includes the physical characteristics of certain conditions (for example, features linked to Down syndrome or muscle spasms caused by cerebral palsy) as well as aspects of appearance like dressing or state of cleanliness;
- condition – this includes physical disabilities, intellectual disabilities, age-related illnesses or temporary conditions such as drunkenness; or
- aspect of behaviour – this may include behaviour that appears unusual to others, for example, rocking back and forth, talking to oneself or inappropriate laughing. It also includes extroverted behaviour, for example, shouting and gesticulating, and withdrawn behaviour such as refusing to speak or avoiding eye contact.



## 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 those 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 providing care and treatment to 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. allows registered professionals to provide deputyship and doneeship services for remuneration.

A person may have the capacity to make some decisions at a particular time, but not others. For example, a person may be able to go to the market and buy food, but not able to handle large sums of money to make investment decisions. Mental capacity may improve or degrade over time.

### A.3. 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.



## A4. THE LASTING POWER OF ATTORNEY

A Lasting Power of Attorney (LPA) is a legal document that allows a person who is 21 years of age or older (donor), and who has mental capacity, to voluntarily appoint one or more persons (donee(s)), to make decisions and act on his behalf for his personal welfare, property & affairs matters or both matters when he lacks mental capacity in the future.

Unlike a Power of Attorney that generally ceases to have effect when the donor loses his mental capacity, an LPA takes effect when the donor loses capacity. The LPA allows individuals to plan for such a possible occurrence.

There are two different prescribed LPA forms to cater to the needs of individuals:

1. LPA Form 1 contains mostly checkboxes for donors to grant general powers to their donees with the option to select basic conditions or restrictions to these powers. This form can be self-completed by the donors.
2. LPA Form 2 contains mostly free text spaces where individuals can specify powers according to their needs. This form is to be drafted by a lawyer.

The LPA will be made by the donor when he has the capacity to do so. However, the authority granted under the LPA to a donee will not be effective until the time the donor loses mental capacity.

The LPA covers decisions pertaining to:

- a. personal welfare matters (allowing decisions on care, where to live, etc.), and
- b. property & affairs matters (allowing a donee to make decisions about dealings with banks, Central Provident Fund matters, selling of property, etc).

(For LPAs submitted from 1 August 2019)

After the LPA is registered, the softcopy LPA can be viewed on the OPG e-services portal by the donor and donee(s). To transact with organisations such as banks and hospitals using an LPA, donees can access the softcopy LPA via the OPG e-services portal and share the softcopy LPA directly to the organisation's email address.

For LPAs submitted before 1 Aug 2019, donees will need to produce the original hardcopy LPA to third party organisations in order to transact on behalf of the donor.

# 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. The Public Guardian heads 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 WHEN I AM APPOINTED A DONEE?

### C1. WHAT ARE THE TWO KINDS OF DONEES?

The donor of a Lasting Power of Attorney (LPA) may give the donee authority to make decisions about the donor's:

- personal welfare (including healthcare decisions) and/or
- property & affairs (including finance matters).

### C2. PERSONAL WELFARE DONEE

A personal welfare donee must be an individual who is at least 21 years old to sign the LPA.

The donee must be a person, for example, "Fiona Fernandez", and not a job title, for example, "my lawyer". A company or business cannot be appointed as a personal welfare donee.

## What are my powers, duties and responsibilities?

In general, a personal welfare donee helps make decisions on behalf of the donor relating to matters such as where the donor should live and his daily activities.

The types of decisions and actions a personal welfare donee may be authorised to make include:

- where the donor should live;
- who the donor should live with;
- day-to-day care decisions (for example, what to wear and eat);
- what social activities to take part in;
- handling the donor's personal correspondence; and
- who the donor may have contact with.

The list above contains some examples of the types of decisions and actions a personal welfare donee may make but it is not a complete list.

### C3. WHAT ARE MY DOS AND DON'TS AS A PERSONAL WELFARE DONEE?

#### Dos

All donees play an important role in carrying out their duties under an LPA. This applies to both personal welfare and property & affairs donees.

You must:

- follow the statutory principles;
- act in the donor's best interests;
- have regard for the guidance in the Code of Practice;
- carry out the donor's instructions and make decisions within the scope of authority given by the LPA;
- carry out your duties with reasonable care and skill;
- act in good faith;
- respect confidentiality; and
- keep records.

## Don'ts

Here are some key points donees must bear in mind:

- do not take advantage of your position to benefit yourself;
- do not pass your authority to someone else; and
- do not give up the role without informing the donor and the OPG.

You should refer to paragraph 8.5 of the Code of Practice for more guides on the dos and don'ts for a donee.

A donee appointed to make decisions about personal welfare (personal welfare donee) cannot make decisions about the donor's finances unless the same donee is also authorised to make decisions about the donor's property & affairs matters.

A personal welfare donee may give or refuse consent to carrying out or continuing treatment by anyone providing healthcare (including the conduct of a clinical trial) if, and only if, the donor expressly states this in the LPA.

However, a personal welfare donee does not have the power to refuse life sustaining treatment or any other treatment that is necessary to prevent a serious deterioration in the condition of the donor. The doctor will usually make these decisions based on the best interests of the patient.

If the donor has made an Advance Medical Directive (AMD) in accordance with the Advance Medical Directive Act while he still had capacity, the doctors have to comply with the AMD.

## C4. OTHER RESTRICTIONS

You may only make decisions on behalf of the donor if the donor lacks capacity, or if you reasonably believe that the donor lacks capacity to make those decisions. To protect the donor, the law does not allow you to make any of the following decisions on behalf of the donor:

### Medical issues

- You may not give or refuse consent to the carrying out or continuation of treatment by a person providing healthcare (including the conduct of a clinical trial) unless the donor expressly states this in the LPA.
- You may not make any decision with respect to the carrying out or continuation of:
  - life sustaining treatment on the donor, whether or not it is extraordinary life sustaining treatment within the meaning of section 2 of the Advance Medical Directive Act, or
  - any other treatment on the donor which a person providing healthcare reasonably believes is necessary to prevent a serious deterioration in the donor's condition.

The doctors, who are governed by their professional duty to decide what is in the patient's best interests, will make these decisions.

### Use of restraint

Restraint is the use of, or threat to use, force by the donee or someone authorised by the donee to secure the carrying out of an act which the donor resists, or restricts the donor's freedom to move, whether or not he resists.

An act may amount to restraint even though actual physical force or threat of physical force is not used.



You may not use restraint unless:

- you reasonably believe that the act of restraint is necessary to prevent the donor from suffering harm, and
- the restraining act is a proportionate (balanced) response to the likelihood of the donor suffering harm and the seriousness of that harm.

## C5. WHAT ARE THE EXCLUDED DECISIONS?

The Act does not allow certain decisions to be made on behalf of a person lacking mental capacity.

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

## C6. WHEN DO MY POWERS AS A PERSONAL WELFARE DONEE END?

Your appointment is cancelled if:

- the donor or you dies;
- the marriage between the donor and you is dissolved or annulled unless the LPA itself specifically provides that it will not;
- you formally refuse the appointment of being a donee; or
- you lack mental capacity.

The power conferred by the LPA will also be cancelled if the LPA appoints more than one donee to act jointly and the power of one of those donees is cancelled.

However, the power conferred by the LPA is not cancelled and remains valid if there is a replacement donee appointed under the LPA or there is one or more surviving donees appointed to act jointly and severally on any matter.

## C7. PROPERTY & AFFAIRS DONEE

In general, a property & affairs donee helps to make decisions on behalf of the donor relating to matters such as his bank account transactions and property.

**What are my powers, duties and responsibilities?**

The types of decisions you may be authorised to make include:

- dealing with property – buying, selling, renting and mortgaging property;
- opening, closing and operating bank accounts;
- receiving dividends, income, inheritance benefits or other financial entitlements on behalf of the donor;

- handling tax matters;
- paying the rent, mortgage repayments and household expenses;
- investing the donor's monies; and
- purchasing a vehicle or other equipment the donor needs.

The list above contains some examples of the types of decisions and actions you may make but it is not a complete list.

## C8. WHAT ARE MY DOS AND DON'TS AS A PROPERTY & AFFAIRS DONEE?

### Dos

You play an important role in carrying out your duties under an LPA.

You must follow the same set of Dos as a personal welfare donee in section C3. In addition, you must:

- keep accounts, and
- keep the money and property of the donor separate from your personal account.

### Don'ts

You may only make decisions on behalf of the donor if the donor lacks capacity, or you reasonably believe that the donor lacks capacity to make those decisions.

A donee appointed to make decisions about property & affairs matters (property & affairs donee) cannot make decisions about the donor's welfare unless the same donee is also authorised to make decisions about the donor's personal welfare.

To protect the donor, the law does not allow you to make any of the following decisions on behalf of the donor:

### Wills, insurance & Central Provident Fund (CPF) matters

- Being a donee does not automatically allow you to execute a donor's will.
- You cannot do any of the following on the donor's behalf:
  - make or revoke a nomination for his insurance policy; or
  - make or revoke a nomination for his CPF accounts.

### Gifts

- You may not make gifts from the donor's property unless the donor in the LPA has specifically authorised you to do so.
- Where the donor authorises the donee to make gifts, the donor may state the value of the gift or gifts to be made in the LPA.
- Where the donor has not specifically stated the value of the gifts, you, when making gifts:
  - must take into consideration that the value of the gifts is not unreasonable, bearing in mind all circumstances and, in particular, the size of the donor's estate, and
  - must have regard for the principle that the donor's property should be preserved for the donor's maintenance during his life.

## C9. WHEN DO MY POWERS AS A PROPERTY & AFFAIRS DONEE END?

Your appointment is cancelled if:

- the donor or you dies;
- the donor or you becomes a bankrupt;
- you are a trust company whose licence has lapsed or been revoked or is liquidated, wound up, dissolved or under judicial management;
- the marriage between the donor and you is dissolved or annulled unless the LPA itself specifically provides that it will not;
- you formally refuse the appointment of being a donee; or
- you lack mental capacity.

The power conferred by the LPA will also be cancelled if the LPA appoints more than one donee to act jointly and the power of one of those donees is cancelled.

However, the power conferred by the LPA is not cancelled and remains valid if there is a replacement donee appointed under the LPA or there is one or more surviving donees appointed to act jointly and severally on any matter.

## C10. OTHER QUESTIONS

### Can I reject the request to be appointed as a donee?

Yes, the donor will have to inform you should he intend to appoint you as a donee, and you must give your consent. In the event you wish to decline this appointment, you may do so.

You will have to sign a statement of understanding in the LPA. If you reject the appointment, the LPA will not be complete, and hence your status as a donee will not be made valid.

### Can there be more than one donee?

Yes, the donor can appoint one or more donees.

If you are acting together with another donee, you should be willing to work together so differences in opinions may be resolved amicably, thereby avoiding any deadlock.

### How does a donee transact with organisations such as banks and hospitals?

To transact with organisations such as banks and hospitals using an LPA, donees can access the softcopy LPA via the OPG e-services portal and share the softcopy LPA directly to the organisation's email address.

## C11. HOW SHOULD A DONEE MAKE DECISIONS AND ACT?

The following are ways that the donor can appoint more than one donee to make decisions about the same matters:

- Jointly: The donees have to act together and cannot act separately.
- Jointly and severally: The donees can make the decisions together or separately.

If more than one donee is appointed but the donor does not specify how you are to act, the law assumes that you are to act jointly.

## C12. HOW WILL I BE PROTECTED AS A DONEE?

As a donee, you are afforded protection under the Mental Capacity Act.

If you act in purported exercise of your powers, you will not incur any liability because of the non-existence of the power unless at the time of acting, you:

- know that the LPA was not created, or
- are aware of any circumstances, which, if an LPA had been created, would have terminated your authority to act as a donee.

The above applies to all donees, and whether you are acting singly, jointly and/ or severally.

# PART D

## WHAT DECISIONS CAN I MAKE AS A DONEE?

### D1. WHAT DECISIONS SHOULD I MAKE AND WHEN SHOULD I MAKE THEM?

- a. You may only make decisions on behalf of the donor when the donor lacks capacity to make those decisions.
- b. You may only make decisions that you are authorised to make under the Lasting Power of Attorney (LPA).
- c. You may not make any decision for the donor if you know:
  - the donor does not lack capacity or you do not reasonably believe the donor lacks capacity;
  - the LPA was not created (for example, you knew the donor lacked capacity when the donor signed the LPA); or
  - of circumstances that would have terminated your authority to act as donee.

### D2. HOW DO I KNOW WHEN TO STEP IN TO MAKE A DECISION?

You should not step in to make decisions even after the LPA is registered, as long as the donor still possesses mental capacity. You will step in to make decisions and act on behalf of the donor only when the donor loses his mental capacity.



### D3. CONSIDER ANY ADVANCE CARE PLANNING (ACP) THAT THE DONOR HAS DONE

ACP is a series of voluntary discussions that the donor may have done with his care provider prior to losing mental capacity.

The donee should consider any ACP that the donor has done when making decisions for him.

### D4. HOW DO I APPLY THE FIVE STATUTORY PRINCIPLES?

The statutory principles help the individual take part in the decision making process as far as possible, and protect 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.

#### 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 with 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 behaviour, 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 E

## WHAT HAPPENS IN THE EVENT OF A DISPUTE?

### E1. WHAT SHOULD I DO IN THE EVENT OF A DISPUTE?

In the event of a dispute, you should employ the following methods:

#### Effective communication

Sometimes, disputes are caused by a breakdown in communication or misunderstanding. It may be useful to hold a best interests conference where the different individuals can come together to discuss their various views and how these may affect the best interests of the person who lacks capacity. Everyone should make an effort to listen to each other, and to answer queries and concerns.

#### Mediation

This method is good for resolving disputes that are developing or in the early stages. It is cost effective, speedy and less stressful than going to court. An independent third party (the mediator) determines if the dispute is suitable for mediation. The mediator helps the parties see each other's point of view through discussions and to focus on the best interests of the person who lacks capacity rather than imposing their views.

To find out more about mediation, contact:

#### Singapore Mediation Centre

1 Supreme Court Lane

Level 4

Singapore 178879

Website: [www.mediation.com.sg](http://www.mediation.com.sg)

Tel: 6332 4366

### Community Mediation Centre

45 Maxwell Road  
 #07-11, The URA Centre (East Wing)  
 Singapore 069118  
 Website: [cmc.mlaw.gov.sg](http://cmc.mlaw.gov.sg)  
 Tel: 1800 225 5529

### Approaching a Family Service Centre (FSC)

You may also wish to consider approaching an FSC in your neighbourhood for advice and assistance on family-related issues. FSCs are staffed with trained counsellors and social workers to assist individuals and families in working through their relationship issues. The FSC is also an entry point into community and governmental resources to support individuals and families. To locate the FSC closest to your home, visit [www.msf.gov.sg/dfcs/familyservice/default.aspx](http://www.msf.gov.sg/dfcs/familyservice/default.aspx).

### HALIMAH'S STORY

Halimah Hakim is a 72-year-old lady with advanced dementia. She lives with her son, Anwar, his wife, Nora, and their two young children in their semi-detached house. Halimah has two other adult children, Azlan and Adam. Anwar and his wife both work full time. They hire a helper to care for Halimah when they are at work.

Anwar and Nora are expecting their third child in six months' time. They want to move Halimah to a nursing home because they do not think they have enough room in their home to accommodate her once the new baby arrives. Azlan and Adam disagree with their brother. However, they are not prepared to let Halimah live with them. Instead, they want Anwar to continue with the current arrangement.

Halimah made a valid Lasting Power of Attorney for her personal welfare when she had capacity. She appointed all three of her sons as her donees.

**Anwar, Azlan and Adam should try to talk through their differences and discuss the various options available regarding where Halimah should live. If they cannot reach an agreement, they can try mediation. Any decision they make should always be in the best interests of their mother.**



## Disputes with professionals

The methods of resolving disputes with healthcare staff, social workers and other professionals include:

### a. Getting a second opinion (for medical and legal matters)

- Sometimes a family member may not agree with a decision made by a donee for the person who lacks capacity based on medical advice given by the person's doctor. It may help them to resolve the disagreement by getting a second opinion from another doctor.
- The same applies for legal matters. For example, a donee for property & affairs matters wants to act in a particular way on legal advice given by a lawyer. The other donee disagrees with this advice. The disagreement may be resolved by getting a second opinion from another lawyer.

### b. Case conferences

- This conference enables all the parties in the dispute to meet and talk about the matter. Healthcare staff and other professionals should explain clearly the options available, give their opinions and reasons to support that matter.
- Meeting with senior medical staff members.  
Senior medical staff members may be invited to provide a second opinion.
- Giving the family members time to think through the situation.  
This option is only available if it is not an emergency.
- Making an official complaint.  
When making a complaint about a healthcare professional, you should contact the:
  - healthcare professional's employer, and
  - professional board, council or association representing that profession.

# PART F

## WHERE CAN I FIND MORE INFORMATION?

Here is a list of organisations that can provide information or assistance on matters relating to persons without mental capacity.

Organisation	Telephone	Address	Website
Alzheimer's Disease Association	6293 9971	20 Bendemeer Road #01-02 B5 Bendemeer Centre Singapore 339914	<a href="http://alz.org.sg">alz.org.sg</a>
Office of the Commissioner for the Maintenance of Parents	1800 222 0000	8 Lengkok Bahru #02-01, Family Link @ Lengkok Bahru Singapore 159052	<a href="http://msf.gov.sg/maintenanceofparents">msf.gov.sg/ maintenanceofparents</a>
Community Mediation Centre	1800 225 5529	45 Maxwell Road, #07-11, The URA Centre (East Wing) Singapore 069118	<a href="http://cmc.mlaw.gov.sg">cmc.mlaw.gov.sg</a>
Central Provident Fund Board	1800 227 1188	-	<a href="http://www.cpf.gov.sg">www.cpf.gov.sg</a>

Organisation	Telephone	Address	Website
Family Service Centres	-	-	<a href="http://www.msf.gov.sg/dfcs/familyservice/default.aspx">www.msf.gov.sg/dfcs/familyservice/default.aspx</a>
Institute of Mental Health	6389 2000	Buangkok Green Medical Park, 10 Buangkok View, Singapore 539747	<a href="http://www.imh.com.sg">www.imh.com.sg</a>
Singapore Mediation Centre	6332 4366	1 Supreme Court Lane Level 4 Singapore 178879	<a href="http://www.mediation.com.sg">www.mediation.com.sg</a>
Agency for Integrated Care	1800 650 6060	-	<a href="http://www.aic.sg">www.aic.sg</a>
The Legal Aid Bureau	1800 225 5529	Ministry of Law Services Centre 45 Maxwell Road #07-11 The URA Centre (East Wing) Singapore 069118	<a href="http://lab.minlaw.gov.sg">lab.minlaw.gov.sg</a>
The Law Society of Singapore	6538 2500	28 Maxwell Road #01-03 Maxwell Chambers Suites Singapore 069120	<a href="http://www.lawsociety.org.sg">www.lawsociety.org.sg</a>

# GLOSSARY

## 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.

## 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.

## 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.

## 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.

## Life sustaining treatment

Life sustaining treatment is treatment that, in the view of an individual providing healthcare, is necessary to sustain the person's life.

## Mediation

Mediation is a method of resolving disputes. An independent third party, called a mediator, helps the parties see each other's point of view through discussion.

## Mental capacity

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

## 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.

## Professional Deputies and Donees (PDD) Scheme

The PDD scheme supports individuals with modest to significant assets, and who may not have family members or close friends to rely on to be their proxy decision makers. This is by appointing a Professional Deputy to be their donee through an LPA, or as a deputy through a Court order.

## Personal welfare donee

A personal welfare donee is an individual appointed under an LPA by the donor to make personal welfare decisions on behalf of the donor when the donor lacks capacity to make these decisions on his own. Personal welfare decisions are lifestyle related decisions such as where the donor is to live and who may or may not have contact with the donor.

## Property & affairs donee

A property & affairs donee is an individual or a licensed trust company under the Trust Companies Act (Cap. 336), as prescribed by the Mental Capacity Regulations, who is appointed under an LPA by the donor to make decisions relating to property & affairs matters when the donor lacks capacity to make these decisions on his own.

## Restraint

Restraint is the use of, or threat to use, force by an individual to secure compliance to do an act, which the person resists, or restricting the person's freedom to move, whether or not the person resists. A person can be restrained without physical force or threat of physical force being used.

## 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.



## OFFICE OF THE PUBLIC GUARDIAN

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20 Lengkok Bahru  
#04-02, Family@Enabling Village  
Singapore 159053

**Hotline:** 1800 226 6222

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**Website:** [msf.gov.sg/opg](http://msf.gov.sg/opg)

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