



# People who cannot make some decisions and have lost their liberty



We want to know what you think of our ideas.

**November 2015**

Mon	Tues	Weds	Thurs	Fri	Sat	Sun
						1
	2	4	5	6	7	8
10	11	12	13	14	15	
16	17	18	19	20	21	22
23	24	25	26	27	28	29
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Please tell us what you think by Monday 2nd November 2015.



An easy read version of  
**The Law Commission's Mental Capacity and Deprivation of Liberty: a Consultation Paper**  
CP No 222  
July 2015



What this paper is about

1



What is protective care?

4



Supportive care

8



Restrictive care and treatment

14



Protective care in hospitals

20



Advocates

22



How this works with the Mental Health Act

24



Right to appeal

27



Making decisions with support

29



Advance decision making

31



Checking how this is working

33



Other things

34

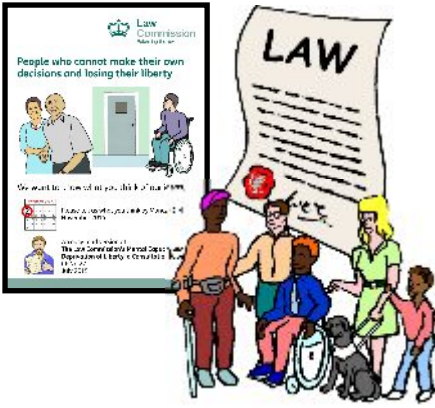


Telling us what you think

36

There are some words in this that can be hard to understand. They are printed in **bold**, then put into easy English at the back.

# What this paper is about



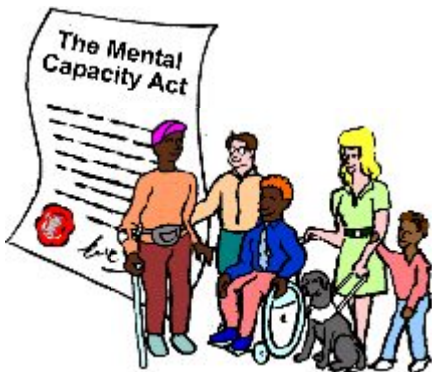
This paper is about making some changes to the law about people who can't make their own decisions.



We want to know what you think about our ideas.

November 2015						
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						1
<b>2</b>	4	5	6	7	8	
10	11	12	13	14	15	
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

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People who cannot make their own decisions are protected by the Mental Capacity Act.



This tells everyone who cares for them how to know what decisions a person can make. And how to know what decisions a person cannot make.





Being able to make a decision is called having **capacity**.



If you do not have capacity sometimes you may have to stay somewhere. This is called losing your **liberty**.



It might be because you:

- need treatment in hospital or a centre



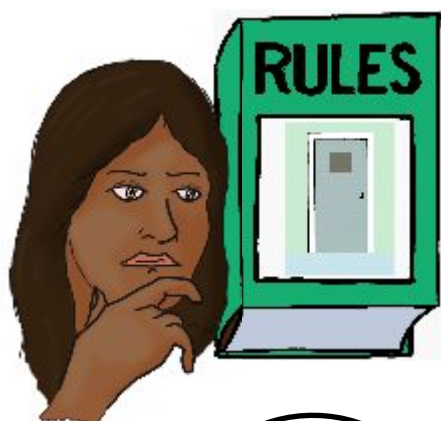
- hurt yourself



- hurt others



- get lost.



There are rules about deciding if someone should lose their liberty. But there have been problems with the rules.



The Government has asked us to write better rules.

We think:



- we need a new way of working.

We have called this new way **protective care**



- the English and Welsh Governments need to look at the **code of practice** for the Mental Capacity Act.

# What is protective care?



**Protective care** is for you when you cannot make some decisions and have lost your liberty.



Protective care must make life better for you. It is not just about keeping you safe.



Protective care is for people:

- over 16 years old



- with a learning disability

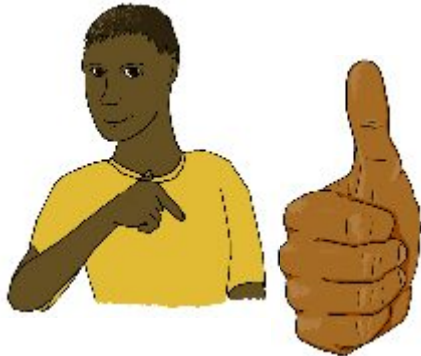


- or who have problems remembering and get confused - like **dementia**



Protective care must:

- have everyone agree to protective care, including you, your family or carers and staff



- show that life will get better for you



- be easy to understand and make happen. But still protect your legal rights and keep you safe



- fit well with our laws:
  - the Mental Capacity Act
  - the European laws on human rights
  - the United Nations disability laws





- be able to fit well in different places. So what happens will be different in different places.



You can lose your liberty anywhere you live.



So protective care can happen in:

- hospitals



- care homes



- supported living



- **shared lives homes**



- **family homes.**



There are different parts to protective care. It will all be explained here.

# Supportive care



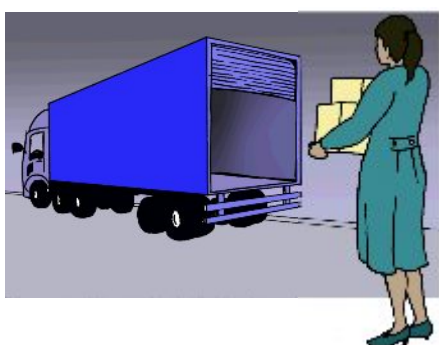
Supportive care is for when you live in:

- a care home
- supported living
- a shared lives home.

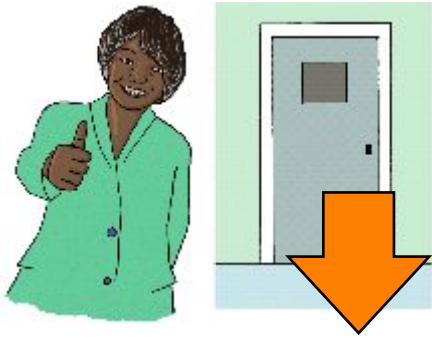


## Who needs supportive care?

Supportive care is for when you cannot make all your own decisions but have not lost your liberty.



It is for when you need to move home for special care or treatment.



Supportive care protects you and finds safe ways for you to live. It will help you lose your liberty less in the future.



The local council sets up an **assessment** to see if supportive care is right for you.



The assessment looks to see if you can decide where you are living.



Often there is already an assessment done that covers this.



## Keeping a person safe in supportive care

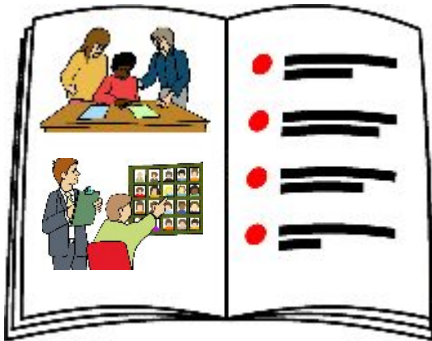


When an assessment says you need supportive care:

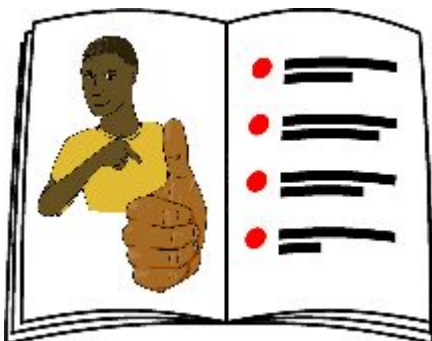
- the local council must keep a watch on your health and care



- the council will watch to see if the next step in protective care is needed



- care plans must show what decisions you can make



- care plans must show how decisions are made about what is best for you



- you must be given an advocate who can support you to:



- take part in the care plan review



- **appeal** against any decisions that have been made



- the local council can give you an **Approved Mental Capacity Professional**.



The NHS and local council must say how they have made decisions for you.



They must show:

- what choices they thought about



- how your needs will be met by the place you are being moved to



- that they have listened to everybody, including you and your family



- why it is the best place for you.

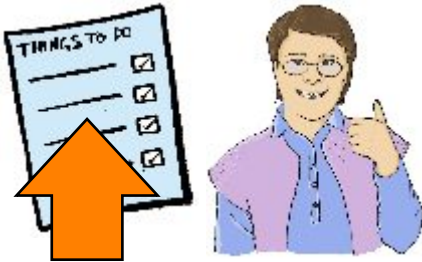


Under supportive care your rights to live there must be in your care plan. These are called **tenancy rights**.



## Other things to think about

We want to know if you think that having an advocate will make things safe.



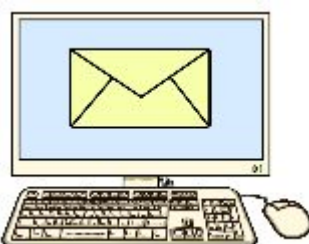
Do we need more things there to make sure it is safe? What sort of things would help?



A group have written a draft law that they want. It is called the LB Bill.



It is to make sure people with learning disabilities and autism are involved in decisions about their lives.



Please have a look at it and let us know what you think.

You can find it here:  
[www.tinyurl.com/LBbillEasyRead](http://www.tinyurl.com/LBbillEasyRead)



## Restrictive care and treatment



Sometimes you may need to move from supportive care to restrictive care.



**Restrictive** care and treatment is when one of these happens:

- you are always watched by staff



- you are not free to leave



- you are not allowed out alone



- barriers are put up (like locking doors) to keep you in an area



- what you do is controlled when it is not an emergency, this can be by:



- force



- using things that hold a person like handcuffs



- or medication



- you show you do not like what is happening



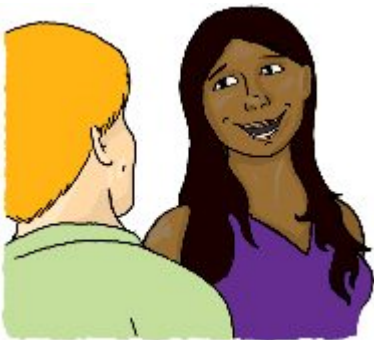
- staff stop you



- eating what you want



- going out



- seeing who you want to. This includes having to ask staff to agree to visits from people.



## **Approved mental capacity professional (approved professional)**

This approved professional will be in charge of restrictive care and treatment assessments.



How the assessment is done will be different for different people.



It may be:

- done by staff who know you well



- with advice and support from the approved professional



- by the approved professional.



The approved professional will make the decisions for the council or the NHS about restrictive care and treatment.





The approved professional will say what can happen to you. They will check you are treated well.



Advocates will tell them if things are not being done the way they said. Family can ask the approved professional for a review.



With restrictive care and treatment some people may have to lose their liberty. This must be put in the care plan.



The approved professional must say this has been done in the correct way.



In an emergency staff must go to an approved professional for permission to take away your liberty.



An approved professional can give 7 days for restrictive care and treatment to start. By the end of 7 days a full assessment must be done.



The Health and Care Professions Council in England and the Care Council for Wales will be in charge of the training of approved professionals.



They will keep a list of approved people.

## Protective care in hospitals



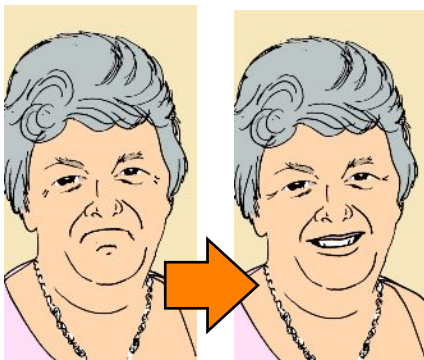
There is a different way of doing protective care in hospitals and hospices.



The hospitals may be NHS, independent or private where you are being treated for a physical problem.



You may need treatment in hospital that you cannot agree to because you do not have capacity.



You need the treatment to get better.



To have this treatment you may have to lose your liberty. Then you will have protective care.



A doctor or other health worker must write to the hospital managers telling them why you are losing your liberty.



They will write a care plan after talking with you, your family and carers.



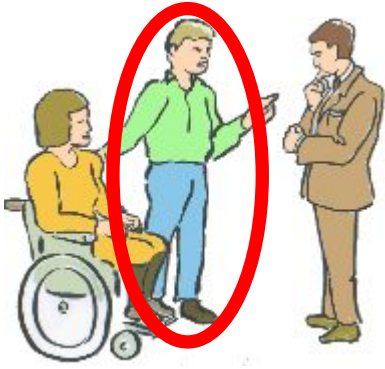
An advocate must be given to the person.



You can only lose your liberty for 28 days. Then an approved professional has to assess you.



# Advocates



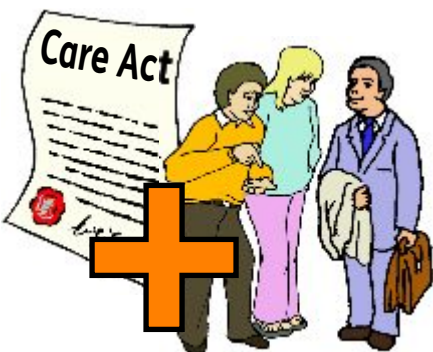
Independent advocates are very important for protective care. Everyone in protective care needs an advocate.



At the moment there are different sorts of advocates.



We think there needs to be one system for advocates. We will call this Care Act advocates.



We want to know if you think the Mental Health advocates should be part of this.



So all advocates would be Care Act advocates.



There is also a person called a representative. This may be family, a friend or a carer.



They help to stand up for you at meetings. They will not be paid.



For people who are in restrictive care and treatment, we want to keep the representative.

## How this works with the Mental Health Act



We think the Mental Health Act needs some changes. It needs to be able to deal with loss of liberty for mental health treatment.



You may not have capacity but be ok with being in hospital.



You may have to lose your liberty for the treatment.



Then the new part of the Mental Health Act would say:

- you have the right to a mental health advocate



- you can be treated if a person with **lasting power of attorney** or the court of protection agrees



- you cannot be treated if it is against an **advance decision**



- you cannot be treated if you have to be forced to take the treatment



- a second doctor needs to agree to certain treatments, including medication





- you have the right for you and your nearest family to have a review of the treatment



- you have the right to go to the mental health **tribunal** to ask to be let out of hospital.



The Mental Health Act already deals with when you do not want treatment.

## Right to appeal



When you have restrictive care and treatment you can ask for it to be looked at again. This is called an **appeal** against the treatment.



We think you need to appeal in a legal place.



There are 2 possible places to do this: a tribunal or the court of Protection.



Tribunals are good at:

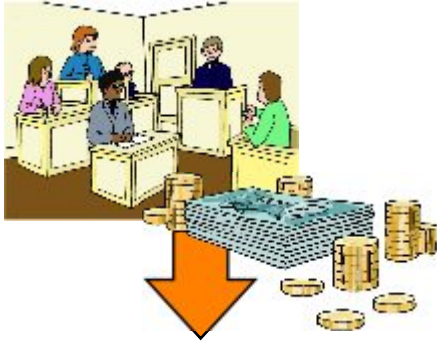
- training their members



- getting you to take part



- meeting where it suits you



- being cheaper than a court.



But Court of Protection judges have worked with a lot with people who do not have capacity. And are used to dealing with very difficult problems.



We think that a tribunal should hear appeals when you have restrictive care and treatment.

If you do not agree with their decision you have the right to appeal again.



This could go to the Court of Protection or a higher tribunal.

## Making decisions with support



If you do not always have capacity, you may need someone to support you to make decisions.



We think there needs to be a legal way for this to happen.



You can have a supporter if you want. This supporter must be good at helping you to make decisions.



With a supported decision, everyone can see how you made the decision and why.





If people are not happy with how the supporter works, the approved person can tell them to stop.



We think the law needs to say how important your wishes and feelings are when it comes to decisions.



So the Mental Capacity Act needs to say decisions start with your wishes and feelings.

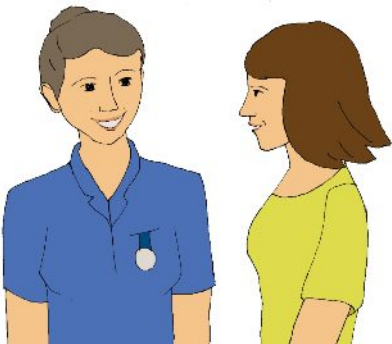
# Advance decision making



Advance decision making is when someone who is able to make a decision decides what sort of treatment they want in the future.



A doctor must pay attention to this decision.



Advance decisions can give staff a clear idea of what you want to happen.



We think giving advance consent to losing your liberty in the future needs to be part of law.



As long as you give consent after understanding what it was all about.



Protective care in hospital cannot be used if it goes against an advance decision you have made.



We want to know what you think about advance decisions.



And how they can be used in other ways for health and social care.

## Checking how this is working



At the moment loss of liberty is checked by:

- the Care Quality Commission
- Care and Social Services Inspectorate Wales



- Healthcare Inspectorate Wales.



We think they can check on protective care.



We want to know is this enough?

Do we need checks on all protective care as well?



## Other things



We want to know what you think about:

- protective care for 16 and 17 year olds



- **ordinary residence** rules for people who lose their liberty. Do we need to make it clearer?



Do we need a way to sort it out quickly if councils disagree?



- Should people go to prison if they take your liberty away illegally?



- **coroners' inquests** only happening when there are worries about the care of the person under restrictive care when they died.



We want to know if a person's body can be given for burial or cremation before the inquest has ended.



- paying for where you stay when you lose your liberty because it is best for you.



What do we do about the cost if you do not pay?

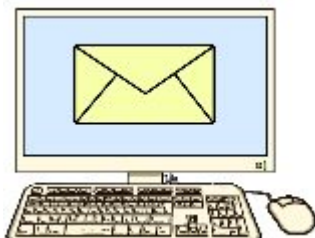


- are there problems when someone from England or Wales needs to lose their liberty and they live in Scotland or Northern Ireland?

## Telling us what you think



Thank you for reading this. We want to know what as many people as possible think.



You can tell us what you think:

By email to:  
[tim.spencer-lane@lawcommission.gsi.gov.uk](mailto:tim.spencer-lane@lawcommission.gsi.gov.uk)



By post to:  
**Tim Spencer-Lane,  
Law Commission,  
1st Floor,  
Tower,  
Post Point 1.54,  
52 Queen Anne's Gate,  
London  
SW1H 9AG**



If you have any questions please call:  
**0203 334 0200**



If you send your comments by post it will help us if you also send them to us by email. If you cannot do this do not worry.

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Mon	Tues	Weds	Thurs	Fri	Sat	Sun
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	2	4	5	6	7	8
10	11	12	13	14	15	
16	17	18	19	20	21	22
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Monday 2nd November 2015.**

## Hard words

**Advance decision** – when someone who is able to make a decision (has mental capacity) decides what sort of treatment they want if they lack capacity in the future. A doctor must pay attention to this decision.

**Appeal** - an official way to say you do not like a decision that has been made.

**Approved Mental Capacity Professional** – a person in charge of restrictive care and treatment assessments.

**Assessment** - when a person comes round to see if any of the protective care rules apply to you.

**Capacity** – being able to make a particular decision or choice at a particular time.

**Clinician** - a person who works in a hospital for your health. It may be a doctor, a psychologist or other health worker.

**Code of practice** – rules saying how professionals have to work.

**Coroners inquests** - looking at why a person died if there are any worries about their death.



**Court of Protection** – a special court for all issues about people who do not have capacity.

**Dementia** - a serious illness that affects the memory and brain and makes people confused.

**Lasting power of attorney** - a legal way for one person to say that another person can make decisions for them if they can't.

**Liberty** - being able to go where you want, with the people you want, when you want.

**Ordinary residence** - where a person usually lives and the council that pays for their care.

**Protective care** - a new way of caring for people who have lost their liberty.

**Shared lives** - when a person who needs support lives with a family and pays them rent.

**Tenancy rights** – the rights you have when you pay rent for where you live.

**Tribunal** – a group of legal and non-legal experts who help to stop people being treated unfairly.



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