

# The MCA and money

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# The context (1)

- The application of the MCA to property and affairs is limited and specific
- Contrast to health and welfare: “Section 5 of the 2005 Act gives a *general authority*, to act in relation to the care or treatment of P, to those caring for him *who reasonably believe both that P lacks capacity in relation to the matter and that it will be in P’s best interests for the act to be done*. This will usually suffice, unless the decision is so serious that the court itself has said it must be taken to court.”

*Re MN* [2017] UKSC 22, per Baroness Hale

- **BUT**
- Section 5 does not give authority to spend or manage someone’s money so have to look elsewhere
  - Section 7: The provision of ‘necessaries’ to a person lacking capacity to enter into the relevant contract
  - Section 8: meeting expenditure incurred in the course of acts of care and treatment – but not giving authority to deal with a person’s bank account or property
- And appointeeship: nothing to do with the MCA (and a problematic scheme) – only ever a workaround in relation to benefits, not e.g. savings or property

## The context (2)

- All this explains why formal authority is much more important in the property and affairs context:
  - Enduring Power of Attorney (pre-2007)
  - Lasting Power of Attorney
  - Property and Affairs Deputyship
  - One off court order

# Capacity and property and affairs

- No different to any other decision:
  - What is the decision
  - What is the information relevant to the decision
  - Above all – can the person to be supported to make the decision?
- Practicable steps: [Making Financial Decisions, Guidance for Assessing, Supporting and Empowering Specific Decision Making](#)
- Particularly important:
  - The scale and consequences of the decision(s) required
  - Is the question about a one-off transaction or the ongoing management of property and affairs?

# Capacity and LPAs

- *Public Guardian v RI* [2022] EWCOP 22 – the relevant information
  - The effect of the LPA
  - Who the attorneys are
  - The scope of the attorneys' powers and that the MCA 2005 restricts the exercise of their powers
  - When the attorneys can exercise those powers, including the need for the LPA to be executed before it is effective
  - The scope of the assets the attorneys can deal with under the LPA
  - The power of the donor to revoke the LPA when he has capacity to do so
  - The pros and cons of executing the particular LPA and of not doing so
- Nb – a person may well be able to grant an LPA even if they can't make all of the decisions that an attorney could make:  
[Guides for lasting power of attorney | Mencap Trust](#)
- LPA for property and affairs can take effect immediately or on incapacity – but only where registered.
  - If on incapacity must still (a) support decision-making; and (b) construct decision around person where acting in best interests
- [OPG guidance](#)

# Capacity and Deputyship

- Court appointed
  - Informal and professional (and panel)
- Critical – but perhaps not always sufficiently remembered –
  - The deputy can only make the decision on behalf of the person where the person cannot make the decision themselves
  - And even if they cannot make the decision, has to be constructed around them
  - i.e. appointment of deputy does not mean ‘writing the person off’
- [OPG guidance](#)

# More resources

- [39 Essex Chambers | Mental Capacity Law | 39 Essex Chambers | Barristers' Chambers](#)
- [Mental Health & Justice | \(mhj.org.uk\)](#)
- [Mental Capacity Law and Policy](#)
- [MCA Directory | SCIE](#)
- [Mental Health Law Online](#)

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