

MENTAL CAPACITY ACT FACTSHEET

Restraint

Section 6 of the MCA puts limitations on acts of restraint which can be carried out with the protection from liability that the Act provides.

The key areas where acts **might not** be protected from liability are where there is inappropriate use of restraint or where a person who lacks capacity is deprived of their liberty.

What is restraint?

Section 6(4) of the Mental Capacity Act states that someone is using restraint if they:

- use force – or threaten to use force – to make someone do something that they are resisting, or
- restrict a person's freedom of movement, whether they are resisting or not.

When can restraint be used?

Any action intended to restrain a person who lacks capacity will not attract protection from liability if the following two conditions are met:

- the person taking action must reasonably believe that restraint is *necessary* to prevent *harm* to the person who lacks capacity, and
- the amount or type of restraint used and the amount of time it lasts must be a *proportionate response* to the likelihood and seriousness of harm.

Healthcare and social care staff should also refer to:

- Professional and other guidance on restraint or physical intervention, such as that issued by the Department of Health
- Limitations imposed by regulations and standards, such as the national minimum standards for care services.



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What if the person needs to be restrained because their behaviour may cause harm to others?

Common law imposes a duty of care on healthcare and social care staff in respect of all people to whom they provide services. Therefore if a person who lacks capacity to consent has challenging behaviour, or is in the acute stages of illness causing them to act in way which may cause harm to others, staff may, under the common law, take appropriate and necessary action to restrain or remove the person, in order to prevent harm, both to the person concerned and to anyone else. However, within this context, the common law would not provide sufficient grounds for an action that would have the effect of depriving someone of their liberty.

When might restraint be 'necessary'?

Anybody considering using restraint must have objective reasons to justify that restraint is necessary. They must be able to show that the person being cared for is likely to suffer harm unless proportionate restraint is used.

A carer or professional must not use restraint just so that they can do something more easily. If restraint is necessary to prevent harm to the person who lacks capacity, it must be the minimum amount of force for the shortest time possible.

Scenario: Appropriate use of restraint

Derek, a man with learning disabilities, has begun to behave in a challenging way. Staff at his care home think he might have a medical condition that is causing him distress. They take him to the doctor, who thinks that Derek might have a hormone imbalance. But the doctor needs to take a blood test to confirm this, and when he tries to take the test Derek attempts to fight him off. The results might be negative, so the test might not be necessary. But the doctor decides that a test is in Derek's best interests, because failing to treat a problem like a hormone imbalance might make it worse. It is therefore in Derek's best interests to restrain him to take the blood test. The temporary restraint is in proportion to the likely harm caused by failing to treat a possible medical condition.

This fact sheet is based on 6.39 – 6.44 of the MCA Code of Practice and was documented in December 2016.

