



## The Mental Capacity Act 2005 & Zakat, Fidyah, Fitrana, Qurbani and Sadaqah, England and Wales

### Introduction

This guide is intended for use by people already knowledgeable in Shariah that need to understand how the Mental Capacity Act applies in cases of charitable payments. Accordingly, it does not explain the Islamic terms mentioned or provide guidance on the circumstances (if any) in which a person that lacks mental capacity is obliged to make charitable payments according to Shariah. It is acknowledged that Zakat is neither a charity nor a tax.

### Mental Capacity Act 2005

In England and Wales, there is a special law that covers people that don't have the mental capacity to make a decision. This law only applies to a person if their mind or brain is impaired or disturbed (examples: dementia, stroke, learning disability, confusion due to an infection, bipolar disorder or unconsciousness) in a way that *causes* them to be unable to make a decision. The law can only be used if the person has had a mental capacity assessment that is compliant with the Mental Capacity Act 2005. Except in a few circumstances, the assessment does not have to be completed by a doctor or other professional as long as the person assessing follows the law properly. They must not discriminate based on someone's age, appearance, condition or behaviour ie saying someone must lack capacity simply 'because they are old or have dementia'.

### What does mental capacity mean?

In law, mental capacity means the ability to make a specific decision, at a specific time. For example, the mental capacity to buy a house or the mental capacity to consent to a blood test. Mental capacity means more than just saying 'yes' or 'no'. The person has to understand what they are saying yes or no to, the reasons for their decision and the reasonably foreseeable consequences (risks/benefits) of their decision. This guide will focus on Zakat but the law can apply equally to fidya, fitrana, qurbani and sadaqah. Please note, the law in this guide applies to those aged 18 and over only.

### Why does the Mental Capacity Act matter when making religious payments?

If someone lacks mental capacity to manage their own money, it could be managed for them by someone under a Lasting Power of Attorney or by a Deputy (explained later). The person managing their money is responsible for assessing the person's mental capacity to make the decision in question and if the person does lack mental capacity, deciding whether the zakat, fidyah, sadaqah, fitrana or qurbani should be paid in their 'best interests'. A person could have the mental capacity to make small purchases such as their weekly groceries but not enough to decide on the payment of zakat. A person's mental capacity may also fluctuate. In these circumstances, the decision to pay zakat could be delayed until they can make it themselves if this would fall within the Islamic year in which the zakat is due.

### Mental capacity and zakat

How do we assess whether someone has the mental capacity to pay Zakat? We start by assuming the person does have the mental capacity to make the decision but if there is a doubt about this, the person can be assessed using a legal assessment tool contained in the Act.

## Practical support for the assessment

It is important not to confuse mental capacity with a lack of knowledge, education or physical disabilities. A person may not be knowledgeable on the requirements in Shariah or need other help but this would be nothing to do with their mental capacity to understand it:

- A 19 year old man with a mild learning disability may never have had Zakat explained in a way they could understand, such as using pictures and might need extra help to make this decision.
- A 78 year old woman in the early stages of dementia may have always relied on her husband to manage the payment of zakat and after 50 years of marriage, he has sadly died. She may lack knowledge about the zakat calculations but with support, she may be able to make the zakat payment herself.
- A 50 year old, partially deaf man may have had a stroke but still have mental capacity and use hearing aids so he can properly hear the relevant information

The assessor must use practical support to ensure the person has the best chance of making their own decision. The assessor should write down their reasons for saying the person lacks mental capacity (in accordance with the legal assessment described below). No special form is required but free sample templates may be downloaded from [www.edgetraining.org.uk](http://www.edgetraining.org.uk)

### Understand the information relevant to the decision +

The assessor must first check if there is anything the person cannot understand about the information relevant to the decision to pay zakat such as:

1. What Zakat is?
2. Why Zakat is paid?
3. Pros and cons of paying Zakat and what will happen if they don't make a decision at all

### Retain the information long enough to make a decision +

If the person can understand the above, the next question is can the person retain this information long enough to make the decision? This means they should simply be able to hold on to what the assessor has explained. It is not a memory test so there is no set number of minutes/hours they have to remember as long as it is long enough to make the decision.

### Use/weigh the information +

Next, the assessor should check they are able to use or weigh up that information (accept and take it into account, process it) as part of their decision making process.

### Communicate the decision

Finally, if they can make their decision, the final stage is to check whether they can communicate their decision in any way for example, if the person is not able to speak but can write down their decision, this would be sufficient. If the person cannot do any one of the above four stages, they will lack mental capacity about the specific decision to pay Zakat.

### Causation?

If the assessor *reasonably believes* the person cannot do any one of the four stages (above), they must justify how they know this inability is **because of** their mental condition (see above) and not just an aspect of their personality, lack of knowledge, loss of hearing/sight etc

## The wisdom of the decision is not the issue

The assessor must judge the person's decision making process (using the assessment described above) instead of the actual decision they make or the assessor's own personal views/views of others. For example, a person may have the mental capacity to donate half their assets to charity because they believe this will increase their rewards in the afterlife even though there is a risk that they will not have enough money for a 'rainy day' and their family think this is unwise because it will impact on their inheritance. The question is whether the person themselves can understand, retain and use or weigh the information relevant to that decision.

## Best interests and zakat

If someone lacks mental capacity, money can be paid on their behalf if it is in their 'best interests'. In law, this is not limited only to what is in their financial best interests or only limited to their religious best interests. Instead, a number of factors must be taken into account using the legal checklist described below, looking at the pros and cons, in a balanced way.

### The legal best interests 'checklist' (Section 4, Mental Capacity Act 2005)

The person making the decision must consider and take into account the following:

- **all the relevant circumstances** such as the amount of savings and debts the person has and whether they have reached the Nisab threshold
- whether it is likely that the person will **regain mental capacity** in relation to payment of zakat and when that is likely to be. Waiting until that time so the person can make their own decision would be better, if possible.
- as far as possible, allow and encourage the person to **participate**, or to improve their ability to participate in the decision to pay zakat
- the person's **past and present wishes and feelings** (and any **relevant written statement** made by them when they had capacity) for example had they previously set up direct debits to pay their zakat and did they have a particular cause closest to their heart such as orphan sponsorship or homelessness?
- The **beliefs and values** that would be likely to influence them if they had mental capacity for example, the madhab they followed and whether they believed in the reward of paying zakat?
- **other factors** that they would be likely to consider if they were able to do so such as, their dependents and how any charitable payments may affect them.
- take into account, if it is practicable and appropriate to **consult** them, the views of anyone **named by the person** as someone to be consulted on this issue such as a family member that knows what their views were or maybe a good friend of theirs
- consult anyone **caring for the person or interested in their welfare**, for example a member of staff in a care home might be able to shed some light on their more recent views from conversations they have had in the care home
- consult any **attorney or deputy**. Remember that the attorney or deputy could be the decision maker anyway, if they are responsible for the person's finance and property.

If someone was born with a severe condition that means they have never been able to make decisions about Zakat, the person(s) managing their money would need to take into account their views as much as possible, including non verbal communication ie do they show an interest in helping others through their actions, gestures or behaviours?

### Lasting power of attorney

When someone has mental capacity, they can choose someone to make financial decisions for them in case they ever lack mental capacity or simply for convenience for example, because they travel a lot and need someone to manage their finances while they are away. The Attorney (formally known as a donee) must use the best interests checklist as above to make decisions, even if they are a family member.

### Deputy

If someone has lost mental capacity to make financial decisions then a special court called the Court of Protection can appoint someone to make decisions on their behalf, to protect them. The Deputy must use the best interests checklist as above, to make decisions, even if they are a family member.

### Advance statements

Whilst not legally binding, there are examples in court cases where a person's written statements have been given a lot of weight in making best interests decisions. Therefore, a Muslim may wish to record their wishes relating to Zakat, Sadaqah, Fitrana, Fidya and Qurbani while they have mental capacity. For example, which of the madhabs they follow and how generous they wish to be in paying Sadaqah in case their savings fall below a certain level.

### Safeguarding

If there are concerns about financial abuse by an attorney or deputy, these can be reported to the local council or the Office of the Public Guardian in the following ways:

- Complete the online report a concern [OPG130 Form](#) (quickest method)
- Email: [opg.safeguardingunit@publicguardian.gov.uk](mailto:opg.safeguardingunit@publicguardian.gov.uk)
- Telephone: 0115 934 2777
- Write to: Office of the Public Guardian  
PO Box 16185  
Birmingham  
B2 2WH

Early intervention to avoid the vulnerable person suffering a permanent loss of their funds or assets is vital. Try to include as much information as possible about the person (including full name, address and date of birth). The date you first noticed any concerns and any evidence you have to support the concern – for example, financial records. In addition, what you know about the person's mental capacity, including copies of any mental capacity assessments or names of who might have these and your contact details.

## Different ‘madhabs’

In Sunni Islam, there are four main schools of thought and Muslims may choose between them according to which they find easiest or convenient. The Hanafi School of thought believes the person is not duty bound to pay Zakat in case of incapacity, as this is considered an act of worship and acts of worship are not compulsory on the incapacitated. However, the other schools of thought are of the view that the duty to pay Zakat is attached to the wealth itself and therefore is due, regardless of incapacity. Those making best interests decisions therefore, should enquire as to which madhab the person followed or simply what their previous wishes were or were most likely to be if they had capacity.

## Interface between the Mental Capacity Act & Shariah

Importantly, under the Mental Capacity Act, even if there is no religious duty to pay Zakat, payments could continue if considered to be in the person’s legal best interests, in accordance with the person’s past/present wishes, feelings, statements beliefs and values. Sometimes a person’s past wishes may be the opposite of their present wishes and the assessor will need to consider how much weight or significance to give each of these alongside all the other factors in the best interests checklist.

## Using this guide & limitations

Please distribute freely, unedited. The wording in this document should not be modified as it may impact the interpretation of the law. A book on the Mental Capacity Act by the same author (written in lay terms) is available in [paperback](#) or [kindle](#). This guide is not intended to be legal advice and should not be relied upon as such. For independent legal advice, please find a solicitor using the search function on [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

This document may be updated in case of legal developments. Please email [assistant@edgetraining.org.uk](mailto:assistant@edgetraining.org.uk) to request the latest version or download from our website.

## Further information and training

- Edge Training & Consultancy: [www.edgetraining.org.uk](http://www.edgetraining.org.uk)  
Free resources on the Mental Capacity Act including information about Lasting Power of Attorney or Deputyship
- Lasting Power of Attorney Forms: [www.gov.uk/power-of-attorney](http://www.gov.uk/power-of-attorney)
- Deputyship Application Forms: [www.gov.uk/become-deputy](http://www.gov.uk/become-deputy)
- Search the register: [OPG100](#)  
Free search form to check the validity (registration) of an attorney or deputy

Please email [assistant@edgetraining.org.uk](mailto:assistant@edgetraining.org.uk) for training enquiries or conference talks/lectures. Special courses on mental capacity law (England and Wales) are available for faith groups including issues such as marriage, fasting, & charitable donations.

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### Publications:

[Working with the Mental Capacity Act 2005 \(3<sup>rd</sup> Edition\)](#)

[The DoLS Handbook \(2<sup>nd</sup> Edition\)](#)

[Working with the Mental Health Act \(4<sup>th</sup> Edition\)](#)