

One Minute Guide to the Mental Capacity Act 2005 (MCA)

The Mental Capacity Act 2005 has three main drivers

- Protecting adult autonomy and empowering people to make decisions for themselves
- Protecting people who lack capacity by providing Best Interests framework that places individuals at the heart of the decision-making process and providing IMCAs where needed.
- Allowing people to plan for a time in the future when they might lack capacity and future proof their decision making through attorneys and advance decisions.

The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales who are unable to make all or some decisions for themselves.

All professionals have a duty to comply with the [Mental Capacity Act 2005 Code of Practice](#). It also provides support and guidance for family and informal carers too.

The Act is underpinned by five key principles (Section 1, MCA). The five principles can be split into two groups.

The first group are principles 1-3, from the start we aim to help people make their own decisions, giving relevant information in a useful way.

Principle 1: A presumption of capacity

Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

Principle 2: Individuals being supported to make their own decisions

A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

Principle 3: Unwise decisions

People have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

The second group are principles 4 and 5. We only use these when we have determined that some lacks capacity to decide on a matter.

Principle 4: Best interests

Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.

Principle 5: Less restrictive option

Someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all. Any intervention should be weighed up in the particular circumstances of the case.

Assessment of capacity (Section 2 & 3)

When should capacity be assessed?

Having mental capacity means that a person can make their own decision. If there is a reason to doubt capacity for a certain decision, you move to exploring if the person meets the legal definition of lacking capacity. Recording your conversation with the person should be proportionate, the more serious the decision, the more detailed the assessment of capacity needs to be. Lack of capacity may not be a permanent condition. Assessments of capacity must be based on a specific decision and should be based on the time that matters. Decisions cannot be based upon age, appearance, condition or behaviour alone.

Can the person decide?

Case law has updated our thinking on how to define a lack of capacity, we follow these steps:

- (1) Is the person able to make a decision? If not:
- (2) Is there an impairment or disturbance in the functioning of the person's mind or brain? If so:
- (3) Is the person's inability to make the decision because of the identified impairment or disturbance?

The person needs to be able to:

- Understand the relevant information

what information is relevant courts have already set guidance on this in some decision areas.

- Retain the information to reach a decision
- Use and weigh the relevant information to decide
- Communicate their decision.

What does use and weigh mean?

- Can the person grasp the relevant information and determine how it impacts on them, if they decide one way or another or fail to decide.
- Can they risk assess using this information, though they may choose to disregard risk mitigation depending on their appetite for risk.
- Or are you meeting with someone who just simply cannot grasp the information due to the impact of their brain impairment.

The assessment must be made on the balance of probabilities e.g. is it more likely than not that the person lacks capacity? You only need to show your reasonable belief and why the conclusion has been reached that capacity is lacking for the decision.

Best interests decision-making

If a person has been assessed as lacking capacity, then any action taken, or any decision made for or on their behalf, must be made in his or her best interests (principle 4). The decision maker could be a carer, attorney or a care commissioner and they then choose between the best interest service options that were already presented to the person at the start of the process, when you assumed capacity.

Section 4 of the Act provides a checklist of factors that decision-makers must work through in deciding what is in a person's best interests. This includes consulting people involved in caring for the person lacking capacity, reading any statement of wishes that the person lacking capacity may have written and ensuring that the person remains central to the process, even though they lack capacity.