

What is the Mental Capacity Act ?

The Mental Capacity Act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment.

It applies to people aged 16 and over.

What does the Mental Capacity Act (MCA) cover?

The MCA covers decisions about day-to-day things like what to eat or what clothes to wear and also serious, life-changing decisions like where to live or whether to have major surgery.

Is capacity about the decision or a person's disability?

People can lack capacity to make some decisions e.g. where to live, but have capacity to make others, e.g. what to wear.

Mental capacity can also fluctuate over time. A person may lack capacity at one point in time but may be able to make the same decision at a later point in time. Blanket assessments or assumptions about someone's ability to make decisions based on their disability or condition cannot be made.

How is mental capacity assessed?

The MCA sets out a 2-stage test of capacity:

- 1. Does the person have an impairment of their mind or brain, whether as a result of an illness, or external factors such as alcohol or drug use?**
- 2. Does the impairment mean the person is unable to make a specific decision when they need to?**

When is someone unable to make a decision?

The MCA says a person is unable to make a decision if they cannot do one or more of these things:

- **Understand the information relevant to the decision.**
- **Retain that information for long enough to make the decision.**
 - **Use or weigh up that information as part of the process of making the decision.**
 - **Communicate their decision in any way.**

Who should assess capacity?

The person who assesses an individual's capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made. This means that different people will be involved in assessing someone's capacity to make different decisions at different times.

How should the Act be applied? What are the 5 principles of the Mental Capacity Act?

Section 1 of the Mental Capacity Act 2005 sets out the five statutory principles.

These principles apply to any act done or decision made under the Act.

They include steps which should be taken before any conclusion is reached about a person's capacity to make a decision.

Principle 1 – Presumption of capacity

Every adult has the right to make their own decisions if they have the capacity to do so.

Assume a person has the capacity to make a decision themselves, unless it's proved otherwise.

Principle 2 – Individuals should be supported to make decisions

Wherever possible, help people to make their own decisions. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

Principle 3 – Unwise decisions

Do not treat a person as lacking the capacity to make a decision just because they make an unwise decision.

Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

Principle 4 – Best Interests

If you make a decision or act for someone who does not have capacity, it must be in their best interests.

Principle 5 – Least restrictive

Before acting or making a decision on behalf of a person who lacks capacity, always consider whether the purpose for which the act or decision is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedoms.

What are 'best interests'?

The term 'best interests' is not defined in the Act. This is because so many different types of decisions and actions are covered by the Act, and so many different people and circumstances are affected by it.

Section 4 of the Act explains how to work out the best interests of a person who lacks capacity to make a decision at the time it needs to be made. It sets out a checklist of common factors that must always be considered . This checklist is only the starting point: in many cases, extra factors will need to be considered.

Things to remember about best interests.

This only applies when acting or making decision in relation to people who do not have capacity to make their own decision.

For a person who has capacity their decision cannot be overturned because it is deemed to be in their best interest to do so.

It is important to be clear about what is in the best interest of the person who lacks capacity and not be confused by what is in the best interests of those who support them e.g., family, friends, carers and professionals.

What are some examples from 'Best Interests Checklist' in section 4 of the Mental Capacity Act?

Things which decision makers must do or factors which they must take into consideration include:

- Not discriminating or making assumptions about someone's best interests merely on the basis of the person's age or appearance, condition or any aspect their behaviour.**
- Taking into account all relevant circumstances**

- **Will the person regain capacity? If so, can the decision wait?**
 - **Encouraging participation & involving the individual as fully as possible**
- **Taking into account the individual's past and present wishes and feelings, and any beliefs and values likely to have a bearing on the decision – including any advance directives made.**
 - **Consulting as far and as widely as possible e.g., family, friends, carers.**

The full list is contained in section 4 and the Code of Practice provides further guidance and examples.