

Simple guides

What is the Mental Capacity Act 2005?



The Mental Capacity Act is all about making decisions.

The Mental Capacity Act (MCA) 2005 came into force in 2007. It is designed to protect and empower people who may lack the capacity to make their own decisions.

The MCA applies to everyone working within a health care setting and other sectors involved in the support and treatment of people who are aged 16 and over living in England and Wales.

In this guide:

- › Introduction
- › The Act's five statutory principles
- › Capacity assessment



Introduction

The Mental Capacity Act 2005 (MCA) covers a huge range of decisions, including day-to-day things like what to wear or what to buy for the weekly shop, as well as serious life-changing decisions such as whether to move into a care home or have major surgery.

Some examples of people who may lack capacity include those with dementia, learning disabilities, brain injury, mental health illness, stroke or sudden traumatic injury.

Just because a person has one of these health conditions does not necessarily mean they lack the capacity to make a specific decision but it is an indication that their capacity should be considered.

Someone can lack capacity to make some decisions, for example, to decide on complex financial issues, but still have the capacity to make other decisions, for example, to decide what items to buy at the local shop.

The Act has five statutory principles

1. Presumption of capacity
2. Support individuals to make their own decisions
3. Unwise decision making
4. Best interests
5. Selecting the least restrictive option

These are covered in more detail overleaf.

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The Act has five statutory principles

1. Presumption of capacity

We should assume a person has the capacity to make a decision unless PROVED otherwise.

This means that you cannot assume someone cannot make a decision for themselves just because they have a particular medical condition or disability.

2. Support individuals to make their own decisions

Do not treat people as incapable of making a decision until all practicable steps have been exhausted to try and help them to make their own decisions.

You should encourage and support people to make the decision themselves. If the lack of capacity is proven then it is still important to include the person in the process of making decisions.

3. Unwise decision making

A person should not be deemed as incapable of making a decision because their decision may be deemed unwise.

People have the right to make decisions that others may regard as unwise or eccentric. Everyone has their own values, beliefs and preferences which may not be the same as others.

4. Best interests

We should always do things or take decisions for people lacking capacity in their best interests.

The MCA sets out a checklist to consider when deciding what's in a person's best interests. It says you should encourage participation – do whatever's possible to permit or encourage the person to take part, identify all relevant circumstances – try to identify the things the individual lacking capacity would take into account if they were making the decision themselves.

Find out the person's views – including their past and present wishes and feelings, and any beliefs or values, avoid discrimination – don't make assumptions on the basis of age, appearance, condition or behaviour. Assess whether the person might regain capacity – if they might, could the decision be postponed?

We should try to consult with others for their

views about the person's best interests.

Such as anyone previously named by the individual, anyone engaged in caring for them, close relatives and friends, any attorney appointed under Power of Attorney or any deputy appointed by the Court of Protection to make decisions for the person.

5. Selecting the least restrictive option

We should ensure that when we are doing something to or for someone or making a decision on their behalf, that you chose the least restrictive option.

Always question if you can do something else that would interfere less with their basic rights and freedoms. This is called finding the "least restrictive option". It includes considering whether there's a need to act or make a decision at all.

The final decision must always allow the original purpose of the decision or act to be achieved.



Capacity assessment

When to assess capacity

We may need to assess capacity where a person is unable to make a particular decision at a particular time because their mental capacity is affected by illness or disability.

Capacity may be fluctuating and is only applicable at the time of assessment and for the specific decision being made; more than one assessment may need to be carried out. The more serious the decision, the more rigorous the assessment of capacity and documentation will be.

The assessment

There is a two stage functional test of capacity.

In order to decide if an individual has capacity to make a specific decision, you must answer two questions:

- › Is there an impairment of, or disturbance in, the functioning of the person's mind or brain? If so,
- › Is the impairment or disturbance sufficient that the person lacks the capacity to make that particular decision?

The MCA states that a person would be unable to make their own decision if they cannot do one or more of the following four things:

- › Understand information given to them.
- › Retain the information long enough to be able to make the decision.
- › Weigh up the information available to make the decision.
- › Communicate their decision. This could be by talking, using sign language or even simple muscle movement such as blinking an eye or squeezing a hand.

Record Keeping

What and when to record will vary.

As a general rule, there is no need to record assessments of capacity to take day-to-day decisions.

Remember in order to have protection from liability when providing care or treatment, staff must have a reasonable belief that the person they care for lacks capacity to make relevant decisions about their care or treatment. In these circumstances, it is useful to be able to describe the steps taken and have a written record.

Professionals are subject to higher standards in terms of record keeping and a formal record will be required to be kept, for example in the patient's clinical notes if a doctor or a healthcare professional is proposing treatment for someone who lacks capacity.

MCA supporting bodies

Lasting Power of Attorney (LPA): people over the age of 18 can appoint one or more formal Lasting Power of Attorneys for their health and welfare, or financial decisions, in case at some time in the future they lack the capacity to make those decisions.

Court appointed deputies: the court is able to appoint deputies who can also take decisions on health, welfare and financial matters if the person concerned lacks the capacity to make a decision. They'll come into action when the court needs to delegate an ongoing series of decisions rather than one decision. If the person concerned already has an LPA appointed, they won't normally need a deputy as well.

The Public Guardian: the Office of the Public Guardian registers LPAs and EPAs, and supervises court-appointed deputies. It provides evidence to the Court of Protection and information and guidance to the public. The Public Guardian works with a range of agencies such as the financial sector, police and social services, to investigate concerns.

Independent Mental Capacity Advocate (IMCA): are a statutory safeguard for people who lack capacity to make some important decisions. This includes decisions around where to live and serious medical treatment when the person does not have family or friends who can represent them. IMCA's can also represent people who are at the centre of adult protection proceedings.