

Mental Capacity Act

The Five Core Principles

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Two-stage Test of Capacity

Stage 1: Does the person have an impairment of, or a disturbance in the functioning of their mind or brain? If so

Stage 2: Does the impairment or disturbance mean that the person is unable to make the particular decision being asked?

In regard to stage 2 the Act states that the person must meet the 4 criteria below to show they have mental capacity:

1. Understand the information given.
2. Retain the information long enough to be able to make the decision.
3. Weigh up and use the information.
4. Communicate their decision - in any way

If they cannot do one or more of the above they are deemed NOT to have mental capacity.

You must have tried all reasonable and practicable steps to help the person have capacity, including giving the person time (if necessary days).

Remember: Mental capacity is decision specific

Working in someone's best interests

Find out the person's past & present wishes, beliefs, values and any other factors they would be likely to consider if they had capacity.

Involve the person in all decision making. Involvement & Communication are essential (in whatever way).

Do not make assumptions based on the person's age, appearance, condition or behaviour.

Assess whether the person might regain capacity.

Identify all relevant circumstances.

If the decision concerns life sustaining treatment then the best interests decision must not be motivated by the desire to bring about the person's death.

The Person

Consult with others :
Anyone previously named as someone to be consulted;
Anyone engaged in caring for the person;
Close friends, relatives or others with an interest in the person's welfare;
Any attorneys - LPA, EPA or Deputies.

Abide by any valid advanced decision and consider any advanced statement.

Take the least restrictive alternative, action or intervention.

Consider views of IMCA's, where involved.

RECORD - any assessment of capacity - complete form in MCA policy document.
- everyone consulted in best interests decision process - complete checklist in MCA policy.
- why the decision, action and/or intervention is in the person's best interest.