

Making decisions

Supporting people within the Mental Capacity Act 2005 (MCA)

Here is some information about the MCA which we hope will be helpful. We believe everyone should make their own choices and decisions and have maximum control over their own lives.

A person with mental capacity is defined as: 'Someone able to make their own decisions. Specifically, it is someone who can make a particular decision at the time it needs to be made.'

People may lack capacity for several reasons including a stroke or brain injury, a mental health issue, dementia, a learning disability, substance misuse or confusion, drowsiness or unconsciousness because of an illness or its treatment.



About the Mental Capacity Act 2005 (MCA)

The MCA promotes and safeguards decision-making within a flexible, legal framework that places individuals at the heart of the decision-making process. It supports people to make decisions for themselves whenever possible. It protects people aged 16 and over who lack capacity to make a decision. It supports people aged 18 or over with capacity who want to plan for when they may lack capacity.

All professionals involved in the care, treatment and support of people aged 16 and over living in England and Wales have a duty to comply with the MCA and the MCA Code of Practice. The MCA is underpinned by five statutory principles:

Principle 1: Always presume capacity – *a person must be assumed to have capacity unless it is established that they lack capacity.*

Principle 2: Support decision making – *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.*

Principle 3: Unwise decisions do not necessarily imply a lack of capacity – *a person is not to be treated as unable to make a decision merely because they make an unwise decision.*

Principle 4: Respect the person's best interests – *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 the person's best interests.*

Principle 5: Seek the least restrictive option – *before an act is done, or a 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 or freedoms of action.*

What decisions are covered by or excluded from the MCA?

The MCA covers a wide range of decisions made and actions taken on behalf of people who lack capacity to make specific decisions themselves. This may be everyday decisions through to more serious decisions such as where to live, whether to have surgery or how to manage finances or property.

The MCA applies when someone is unable to make a particular decision at a particular time because of the way their mind or brain is affected. Someone may lack capacity to make a major decision but may be able to make smaller decisions.

Some decisions can never be made on behalf of a person who lacks capacity to make those decisions because they are so personal or are covered by other legislation. These include decisions about marriage or civil partnership, sexual relationships, divorce or dissolution of a civil partnership, adoption, voting and fertility treatment.



Assessing capacity

We will encourage and support people to make their own decisions. We will give all practical help before we assess someone as unable to make a particular decision. If lack of capacity is established, we will involve the person as far as possible in making the decision.

The MCA identified a two-stage test to assess capacity:

Stage 1: Does the person have a temporary or permanent impairment of the mind or brain, or is there some temporary or permanent disturbance affecting how their mind or brain works? If the answer to this question is *no*, the person is deemed to have capacity to make the decision. The test will then end. If the answer is *yes*, the assessor will record why and continue to Stage 2.

Stage 2: Does the impairment or disturbance mean that they are unable to make the particular decision at the time it needs to be made?

To answer this question, the following needs to be considered. Can the person:

- understand information given to them
- retain that 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 movements such as blinking an eye or squeezing a hand).

Who will assess capacity?

Different people will be involved in assessing capacity at different times. The final decision about a person's capacity will be made by the person, or people, intending to make the decision or carry out the action on behalf of the person who may lack capacity.

Making decisions in people's best interests

If a person has been assessed as lacking capacity in relation to a particular decision at a specific time, any action taken, or any decision made for or on behalf of that person, must be made in their best interests.

Best interests decisions can be made in relation to financial, personal welfare and healthcare decisions

The person who has to make the decision is known as the: '*decision maker*.' Where decisions about treatment, care arrangements or accommodation need to be made the decision maker could be a professional such as a doctor, nurse, or social worker. The MCA is clear that the family, friends, and important people to that person are involved and consulted with during the best interests process.

'Best interests'

The MCA provides a non-exhaustive checklist of factors that decision makers must work through when deciding what is in a person's best interests. It provides the framework for ensuring that the individual remains at the centre of the process. When making a best interests decision, the decision maker/s should not make it based on what they would want to do if they were the person who lacked capacity. They should:

- consult with others on what is considered, as best they can, the person's past and present wishes and feelings
- include any advance statement of preferences and wishes made when the person had capacity
- consider the beliefs and values likely to influence the person's decision if they had capacity
- and take account of any other factors the person might consider if they were able to do so.

For more information on the MCA you can visit:

<https://www.hft.org.uk/our-services/family-carer-support-service/fcss-updates/mental-capacity-act>

This is a free downloadable guidance booklet about the MCA for family and friends of people with learning disabilities.

<https://paradigm-uk.org/2020/09/07/supported-decision-making-a-guide-for-supporters>

This guide was written by Paradigm and Helen Sanderson Associates, it is available to download for free.

Questions or concerns?

If you have any concerns or questions regarding the MCA or how we support your relative to make decisions, please contact your relative's team leader/manager or write to us at: Choice Support, Compass House, 84 Holland Road, Maidstone, Kent, ME14 1UT. Phone: 01622 722400 or email: feedback@choicesupport.org.uk

<https://www.choicesupport.org.uk/contact-us/general-enquiries>