

The Mental Capacity Act (2005)

The main goal of the Mental Capacity Act (MCA) is to ensure and protect decision-making within a legal context. It achieves this through two primary methods:

- By **empowering people** to make decisions for themselves wherever possible, and through protecting people who lack capacity by providing a flexible framework that places individuals at the very heart of the decision-making process. The MCA ensures that individuals participate as much as possible in any decisions made on their behalf, and that these are made in their best interests.
- By allowing people to **plan ahead** for a time in the future when they might lack the capacity to make decisions for themselves.

[Mental-capacity-act-code-of-practice.pdf \(publishing.service.gov.uk\)](#)

Key Messages

- The MCA potentially 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.
- The MCA is designed to **protect and restore power** to those vulnerable people who lack capacity to make a particular decision for themselves.
- All **professionals have a duty to comply with the Mental Capacity Act**. It also provides support and guidance for less formal carers.
- Anyone caring for or supporting a person who may lack capacity could be **involved** in assessing capacity.
- Independent Mental Capacity Advocates (IMCAs) are a legal safeguard for people who lack the capacity to make specific important decisions. **An IMCA must be instructed, and then consulted, for people lacking capacity who have no-one else (other than paid staff) to support them when making a decision about serious medical treatment or where to reside.**

[Mental Capacity Act 2005 at a glance - SCIE](#)

Statutory Principles

The MCA is underpinned by five key principles (Section 1, MCA). It is useful to consider the principles chronologically:

- Principles 1 to 3 will support the process before or at the point of determining whether someone has capacity to make a specific decision.
- Principles 4 and 5 support the decision-making process once an individual is assessed as lacking capacity to make a specific decision.

Principle 1: Presumption of capacity

S.1 (2): *A person must be assumed to have capacity unless it is established that they lack capacity:*

- It is important to balance people's right to make a decision with their right to safety and protection when they can't make decisions to protect themselves. But the starting assumption must always be that an **individual has the capacity, until there is proof that they do not.**

[*Mental Capacity Act principle 1: Assume capacity \(youtube.com\)*](#)

Principle 2: Supporting individuals to make their own decisions

S.1 (3): *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*

- It is important to do **everything practical** to help a person make a decision for themselves before concluding that they lack capacity to do so.
- The kind of support people might need to help them make a decision varies. It depends on personal circumstances, the kind of decision that has to be made and the time available to make the decision. It might include using different forms of communication, visual / accessible information, treatment of a medical condition or support to improve a person's capacity to make particular decisions

[*Mental Capacity Act principle 2: Supported decision making \(youtube.com\)*](#)

Principle 3: Unwise Decisions

S.1 (4): *A person is not to be treated as unable to make a decision merely because they make an unwise decision:*

- Everybody has their own values, beliefs, preferences and attitudes. **A person should not be assumed to lack the capacity** to make a decision just because other people think their decision is unwise. This applies even if family members, friends or healthcare or social care staff are unhappy with a decision.
- Where there is cause for concern, such as a person repeatedly making unwise decisions that place them at significant risk of harm, there will be need for further investigation, taking into account the person's past decisions and choices.

[*Mental Capacity Act principle 3: Unwise decisions \(youtube.com\)*](#)

Principle 4: Best interests

S.1 (5): *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:*

- This principle sets out that a person's **best interests** must be the basis for all decisions made and actions carried out on their behalf in situations where they lack capacity to make those particular decisions for themselves.
- It is impossible to give a single description of what 'best interests' means. A checklist of steps (Best Interests Checklist) must therefore be followed in order to determine what is in the best interests of a person who lacks capacity to make the decision in question **each time** someone acts or makes a decision on that person's behalf.

[Mental Capacity Act principle 4: Best interests \(youtube.com\)](https://www.youtube.com/watch?v=...)

[Mental-capacity-act-code-of-practice.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/...)

[Mental Capacity Guidance Note Capacity Assessment March 2023.pdf \(39essex.com\)](https://www.39essex.com/...)

Principle 5: Less restrictive option

S.1 (6): *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:*

- Before making a decision or acting on behalf of a person who lacks capacity, they must always question if they can do something else that would interfere **less** with the person's basic rights and freedoms. This is called finding the 'less restrictive alternative'. It includes considering whether there is a need to act or make a decision at all.
- Any decision or action must still be in the best interests of the person who lacks capacity. So sometimes it may be necessary to choose an option that is not the least restrictive alternative if that option is in the person's best interests.

[Mental Capacity Act principle 5: Less restrictive option \(youtube.com\)](https://www.youtube.com/watch?v=...)

Professional Curiosity

Professional curiosity is required to enable practitioners to question and challenge the information they receive, identify concerns and make connections to enable a greater understanding of a situation.

If you have reason to think that a person may lack capacity to take a relevant decision, especially if the consequence of what they are wanting to do is likely to lead to serious consequences for them, the 'presumption of capacity' cannot be used in place of formally assessing and determining capacity.

[Professional curiosity in safeguarding adults](https://www.nottinghamcity.gov.uk/...)