

Mental Capacity - 1 Minute Guide

The Mental Capacity Act 2005 provides the framework for acting and making decisions on behalf of individuals who lack capacity to make particular decisions for themselves.

The mental capacity of all adults and some young people between the ages of 16 and 18 must be considered. Any consideration of an individual's mental capacity should be guided by the following 5 statutory principles which underpin the MCA which are:

1. Every adult must be presumed to have capacity unless it is established that they lack capacity (NB Assuming every adult has capacity should not be used as a reason for failing to consider capacity issues, and assessment under the Mental Capacity Act, if appropriate, when there are concerns).
2. All practicable steps must be taken to assist a person lacking capacity to make a decision.
3. An unwise decision does not mean that a person lacks capacity.
4. Any decision or action taken on behalf of a person lacking capacity must be in their **best interests**

Any decision or action taken on behalf of a person lacking capacity should aim to be the less restrictive option available in terms of their rights and freedom of action.

Mental Capacity assessments must relate to specific decisions and whoever is assessing a person's mental capacity should have the skills and ability to communicate effectively with that person and they should consider Section 2-3 of the Mental Capacity Act and Chapter 4 of the MCA Code of Practice.

Mental capacity is determined by using a two-stage test:

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

Stage 2: Can the person do the following:

1. Understand the information relevant to the decision
2. Retain that information (long enough to make the decision)
3. Use or weigh up the information to make the decision
4. Communicate the decision by talking, using sign language, or any other means.

If the person cannot do one of these 4 things they will be deemed to lack mental capacity in relation to the specific decision.

The decision maker should then make the decision in the person's best interests referring to Section 4 of the Mental Capacity Act and Chapter 5 of the MCA Code of Practice and instructing an Independent Mental Capacity Advocate in circumstances where the person is un-befriended and the criteria are met.

Where a child is at risk of significant harm and in need of protection, the parent's ability to parent appropriately and the risks to the child must be assessed.

This is best done by joint planning of the assessments by all agencies involved.

Resources:

[Mental Capacity Act 2005: Code of Practice](#)