

Making your own decisions

(Mental Capacity Act 2005)





About this booklet

This booklet explains how the Mental Capacity Act (MCA) 2005 for England supports people to make their own decisions. It outlines the five key principles contained in the Act and explains how organisations, such as the council must follow a laid down two stage test of mental capacity. It also states what needs to be considered when decisions need to be made for people who are unable to make them for themselves.

What is mental capacity?

If you have mental capacity, it means that you are able to make your own decisions. This means that you are able to understand and think through information and make a choice based upon that information.

A lack of someone's mental capacity could be due to a stroke, or brain injury, a mental health problem, dementia, a learning disability or substance misuse. In any of these instances a person may lack capacity to make particular decisions at particular times. It doesn't mean that they lack capacity to make any decisions about their life. Lack of capacity can also be temporary.

What is the Mental Capacity Act?

In simple terms the Act sets out in law how people who may lack mental capacity can be assessed and protected.

The Act provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. It makes it clear who can take decisions in which situations and how they should go about this. It also allows people to plan ahead for a time when they may lack mental capacity.

How can the Mental Capacity Act support people?

The Act enables people to express their preferences for care and/or treatment in case they lack capacity to make these decisions at a later date. It also allows them to appoint a trusted person to make a decision on their behalf should they lack capacity in the future.

Under the Act people should also be provided with an independent advocate who will support them to make decisions in certain situations, such as serious medical treatment or where the person might have significant restrictions placed on their freedom and rights in their best interests.

The five key principals of the Act

There are five main principles to the Act:

- Every adult has the right to make his or her own decisions and must be assumed to have the capacity to make them unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because a person makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Before anything is done for, or, on behalf of a person who lacks capacity, consideration should be given to whether it could be achieved in a less restrictive way.

Assessing capacity

The Act sets out a two stage test of capacity, to make a judgement about whether a person has the capacity to make their own decisions. These two stages are:

- 1) Does the person concerned have an impairment of, or a disturbance in the functioning of their mind or brain, whether as a result of a condition, illness, or external factors such as alcohol or drug use?
- 2) Does the impairment or disturbance mean the person is unable to make a specific decision when they need to?

People can lack capacity to make some decisions but have capacity to make others, so it is vital to consider whether the person lacks capacity to make a particular decision.

Sometimes capacity can fluctuate with time - a person may lack capacity at one point in time, but may be able to make the same decision at a later date. If this is possible the person, should be allowed the time to make a decision themselves.

In relation to the second question, the Act states that a person is unable to make a decision if they cannot:

- Understand the information relevant to the decision
- Retain that information
- Use or weigh up that information as part of the process of making the decision
- Communicate their decision (by talking, using sign language, or through any other means)



Best interest decisions

Before somebody makes a decision or acts on behalf of a person who lacks capacity to make a decision or to consent to an act, they must always question if they can do something else that would interfere less with the person's basic rights and freedoms. This includes considering whether there is a need to act or make a decision at all.

If a decision needs to be made for the person, the Act states that this decision must be made in their best interests. To do this the decision maker must listen to what the person wants, ask the people who know them best and involve any carers.

The Act also sets out a checklist of things to consider when deciding what's in a person's best interests. This includes:

- Participation - do whatever is possible to permit or encourage the person to take part in the decision making process.
- Identify all relevant circumstances - try to identify the things that the person lacking in 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 - do not make assumptions on the basis of age, appearance, medical condition or behaviour.
- Assess whether the person might regain capacity - if they might, could the decision be postponed?

Consulting with others is a vital part of best interest decision making. People who should be consulted include, anyone engaged in caring for the person, close relatives, friends or others who take an interest in the person's welfare, any attorney appointed under a Lasting Power of Attorney or Enduring Power of Attorney, and any deputy appointed by the Court of Protection to make decisions for the person.

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.

Protecting people who lack capacity

The Act introduced a new criminal offence of ill treatment or wilful neglect of a person who lacks capacity. If you think someone is abusing, ill treating or neglecting another person you should contact the police, or the council's Access to adult social care helpline call - **0300 555 0055**.

Alternatively visit **www.safeguarding.dudley.gov.uk**

Other publications in this series

Deprivation of Liberty Safeguards (DoLS)

A guide to adult social care and support in Dudley

Keeping adults safe from abuse and neglect

Support for carers in Dudley

Having your say

Useful contact details

Age UK

Offer a useful factsheet on the Mental Capacity Act and planning for the future

Tel **0800 169 6565** or visit **www.ageuk.org.uk**

SCIE MCA

Provides a wide range of information and advice about the MCA

Visit **www.scie.org.uk/publications/mca**

The Alzheimer's Society

Provides a wide range of information on mental capacity with a focus on people with dementia

Tel **03000 222 1122** or visit **www.alzheimers.org.uk**

Dudley Carers Network

Information and resources for carers and their families

Tel **0300 555 0055** or visit **www.dudley.gov.uk**

Carers UK

Provide a booklet 'What every carer needs to know - a guide to mental capacity', aimed at carers who look after people who may not be able to make decisions for themselves about health and social care choices.

Tel **0808 808 7777** or visit **www.carersuk.org**

Further information

**For further information please contact our
access to adult social care helpline**



or contact our Access to Adult Social Care hotline on **0300 555 0055**
(Monday to Friday - 9am to 5pm)
An emergency duty team is available on **0300 555 8574**, at all other times

Web **www.dudley.gov.uk/asc**

Email **accessteam.dachs@dudley.gov.uk**

Post **Brierley Hill Health & Social Care Centre
Venture Way, Brierley Hill DY5 1RU**

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