

# MCA – general principles



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The Mental Capacity Act 2005 (the Act) aims to protect people who lack capacity, and maximise their ability to make decisions or participate in decision-making. The Act is underpinned by five statutory principles. This factsheet sets out these principles and how they should be applied.

## The Mental Capacity Act

The Mental Capacity Act came fully into force in October 2007. The Code of Practice (the Code) was published in the same year and supports the Act.

The Code has statutory force, meaning that certain people have a legal duty to regard it. These are:

- an attorney under a Lasting Power of Attorney (LPA)
- a deputy appointed by the Court of Protection
- an Independent Mental Capacity Advocate (IMCA)
- a person carrying out research approved in accordance with the Act
- a person acting in a professional capacity for, or in relation to, a person who lacks capacity (which includes healthcare professionals)
- a person who is being paid to act for, or in relation to, a person who lacks capacity.

## Statutory principles of the Act

The Act sets out five statutory principles that underpin the legal requirements.

### 1. A person must be assumed to have capacity unless it is established otherwise

You should assume that a person has the capacity to make a particular decision when it needs to be made, unless you have evidence they do not.

In applying the principle, it is necessary to balance a person's right to make a decision with their right to safety and protection, when they cannot make a decision to protect themselves.

If you believe that a person lacks capacity, you should be able to show that on the balance of probabilities (more likely than not) the individual lacks the capacity to make that particular decision at that time.

### 2. A person is not to be treated as unable to make a decision, unless all practicable steps to help him do so have been taken without success

It is important to do as much as possible to help a person make a decision for themselves. This is to encourage individuals to have a decision-making role in their treatment and prevent unnecessary intervention in their lives.

This may include ensuring that the individual understands information you are giving and the decision to be made. You may, for example, use other forms of communication, such as sign language or diagrams.

### 3. A person is not to be treated as unable to make a decision merely because an unwise decision is made

You should not assume that a person lacks capacity if they make a decision that either you, their family members, friends or health or social care staff think is unwise or disagree with.

You should investigate the case further:

- if you have concerns about the decisions being made, especially if, for example, they repeatedly make decisions that put them at risk of serious harm or exploitation, or if the decision is irrational and out of character.
- if the decision appears to be at variance with previous beliefs, or is acting out of character on the basis of family and other informed information.

You should take into account a person's previous decisions and choices when investigating concerns about the decisions they have made.

**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 his best interests**

Any decision that you make, or action that you take, on behalf of a person lacking capacity must be in their best interest.

There are exceptions to this where other safeguards are in place – for example, if research is being undertaken (the specific requirements are set out in chapter 11 of the Code of Practice) and advance decisions to refuse treatment (chapter 9 of the Code of Practice).

**5. Before the act is done, or the decision is made, care must be taken to avoid restricting the person's rights and freedom of action**

Before taking a decision, or acting on behalf of a person lacking capacity, it is important to look at the options available and to choose the one that interferes the least in that person's basic rights and freedoms.

Any decision or action must still be in the best interests of the person who lacks capacity, and this means that it may be necessary, on some occasions, to choose an option which is not the least restrictive. Both principles must be applied each time a decision is made, or action taken.

## Further information

- MPS factsheets, Mental Capacity Act series – [www.medicalprotection.org/uk/factsheets](http://www.medicalprotection.org/uk/factsheets)
- Mental Capacity Act (2005), Code of Practice – [www.gov.uk/government/publications/mental-capacity-act-code-of-practice](http://www.gov.uk/government/publications/mental-capacity-act-code-of-practice)
- Justice department, Mental Capacity Act – [www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act](http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act)
- Department of Health – [www.dh.gov.uk](http://www.dh.gov.uk)
- The Office of the Public Guardian – [www.justice.gov.uk/about/opg](http://www.justice.gov.uk/about/opg)

**For medicolegal advice please call us on:**

**0800 561 9090**

**or email us at: [querydoc@mps.org.uk](mailto:querydoc@mps.org.uk)**

[www.mps.org.uk](http://www.mps.org.uk)

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