

## What is mental capacity?

Mental capacity is the ability to make decisions for yourself.

The Mental Capacity Act (MCA) 2005 is a law in England and Wales designed to protect and empower people who may lack the mental capacity to make their own decisions. It applies to people aged 16 and over. There is a Code of Practice which provides additional information about how the MCA works in practice.

Examples of people who may lack capacity include those with:

- A stroke or brain injury
- A mental health illness
- Dementia

Just because a person may have one of the conditions mentioned above, it does not mean they lack capacity to make a specific decision.

Someone can lack capacity to make some decisions, for example a complex financial decision, but still have capacity to make other decisions, for example to purchase small items of personal expenditure.

## The five key principles

The MCA is underpinned by five key principles.

1. Every adult has the right to make decisions for themselves
2. Every adult has the right to be supported to make their own decisions.
3. Every adult has the right to make decisions that may appear to be unwise or eccentric.
4. If a person lacks capacity, any decisions taken on their behalf must be in their best interests.
5. If a person lacks capacity, any decisions taken on their behalf must be the option least restrictive to their rights and freedoms.

Principles 1-3 support the process before or at the point of determining whether someone lacks capacity. Once it has been decided that a person lacks capacity, principles 4-5 support the decision making process.

## How is mental capacity assessed?

The MCA sets out a 2 stage test of capacity.

1. Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,
2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA says a person is unable to make a decision if they cannot do one or more of the following:

- Understand information given to them that is relevant to the decision they want to make
- Retain that information long enough to be able to make the decision
- Weigh up information available to make the decision
- Communicate their decision by any possible means.

## Making decisions

Before deciding that someone lacks capacity to make a particular decision, it is important to take all practical and appropriate steps to enable them to make that decision themselves. These steps must be taken in a way which reflects the person's individual circumstances and meets their particular needs. For example, what is the best way of presenting information to the person or is there a particular time of day when the person's understanding is better?

If someone lacks the capacity to make a decision and the decision needs to be made for them, the MCA states the decision must be made in their best interests. It should never be made in the best interests of the person making the decision.

The MCA provides a non-exhaustive checklist to consider when deciding what is in a person's best interests.

## How can we help?

If someone lacks capacity having not made a Lasting Power of Attorney or Enduring Power of Attorney, an application can be made to the Court of Protection for the appointment of a Deputy.

The Court of Protection oversees the operation of the MCA.

If you have any queries or questions about the MCA or how to support someone to make their own decisions then please contact our specialist Court of Protection team by email on [cop@boyesturner.com](mailto:cop@boyesturner.com)