

How do I make a best interests decision?

All decision makers must ensure that the decision is made in the person's best interests by following the checklist below.

Table 3

1. Do not make assumptions simply on the basis of the person's age, appearance, condition or behaviour.
2. Consider all relevant circumstances.
3. Consider whether the person is likely to regain capacity. If so, can the decision wait until then?
4. Do whatever is possible to permit and encourage the person to take part, or to improve their ability to take part.
5. If the decision concerns life sustaining treatment, do not be motivated in any way by a desire to bring about the person's death. Do not make assumptions about the person's quality of life.
6. Try to find out the views of the person, including the person's past and present wishes and feelings, any beliefs and values that would be likely to influence the decision in question, and any other factors the person themselves would be likely to consider if they were making the decision or acting for themselves.

7. If it is practical and appropriate to do so, consult other people for their views about the person's best interests and see if they have any information about the person's wishes and feelings, beliefs and values.
8. See if there are other options that may be less restrictive of the person's rights.

Weigh up all of the above factors in order to work out what is in the person's best interests.

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Mental Capacity Act 2005 Code of Practice

Useful Resources

Mental Capacity Act (2005) Code of Practice

- download from www.publicguardian.gov.uk.
- order hard copies from www.tso.co.uk

Making Decisions booklets

- a set of booklets for professionals, carers, relatives and individuals, plus an Easy Read version download from www.publicguardian.gov.uk
- order from 0207 664 7408

Office of the Public Guardian (OPG)

- information and application forms for LPA and Court of Protection
- www.publicguardian.gov.uk
- 0845 330 2900

Local Resources

- www.kent.gov.uk/mentalcapacityact
- www.medwaypct.nhs.uk/Our_services/Mental_Capacity_Act_2005/html

Kent and Medway Independent Mental Capacity Advocacy Service

- 07918 698107

see also

Deprivation of Liberty Safeguards:

A brief guide for social and health care staff

Mental Capacity Act 2005

A brief guide for social and health care staff



To be used in conjunction with the Mental Capacity Act (2005) Code of Practice and your own organisation's policies and procedures.

Produced by the Kent and Medway Local Implementation Network for the implementation of MCA and DOLS (January 2009).

What is the Mental Capacity Act (MCA)?

Mental capacity refers to a person's capacity to make a decision for themselves at the time the decision needs to be made.

Everyone working with and/or caring for a person over 16 years old, who may lack capacity to make particular decisions for themselves, must comply with this Act when making decisions or acting for that person. The same rules apply whether the decisions are life-changing events such as having an operation or everyday matters such as what to wear. It can also help people who currently have capacity, but want to make preparations for a time when they may lack capacity to make decisions for themselves.

What are the five principles that underpin the MCA?

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
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.
5. Any such actions or decisions must be achieved, wherever possible, in a way that is least restrictive of the person's rights.

What are my responsibilities in regard to the MCA?

- All carers, whether paid or informal, must comply with the Act.
- All professionals, Designated Decision Makers, such as a Lasting Power of Attorney (see Table 2), and paid carers have a **legal duty** to 'have regard to' the MCA 2005 Code of Practice (see back page).
- Keep the five statutory principles in mind at all times.
- **Assess capacity** if necessary (see Table 1).
- Contact an **Independent Mental Capacity Advocate (IMCA)** where:
 - *a person is assessed as lacking capacity to make the specific decision for themselves;*
 - *the decision involves a change in residence, a hospital stay of more than 28 days or a stay in a care home for more than 8 weeks; or*
 - *the decision involves a serious medical treatment; and*
 - *they have no family or friends involved in their care who it is practicable and appropriate to consult regarding the person's best interests.*
 - *Additional referral criteria for an IMCA referral include adult protection and care review cases, on a discretionary basis.*
- **Make decisions in the person's best interests** where they have been assessed as lacking capacity (see Table 3).

How do I assess capacity?

If a social or health care professional proposes care or treatment, they must assess the person's capacity to make that decision or consent.

Table 1

Name the decision:

Undertake 2 stage capacity test to include documentation:

1. Does the person have an impairment or disturbance in the functioning of the mind or brain?
2. If so, does the impairment or disturbance mean that the person is unable to make the decision at the time it needs to be made?

Assess capacity at the second stage by asking 4 questions:

1. Can the person understand the information in relation to the decision to be made?
2. Can the person retain the information for long enough to make the decision?
3. Can the person weigh up the information available to make the decision?
4. Can the person communicate their decision?

Who makes a best interests decision?

Table 2

- **Advance Decision to refuse treatment** if valid and applicable
- **Designated Decision Maker** Lasting Power of Attorney (Property & Affairs LPA or Personal Welfare LPA) or Court appointed Deputy with powers to make the specific decision
- **Decision Maker** the person proposing the care or treatment, if no Advance Decision or Designated Decision Maker
- **Court of Protection** the specialist Court for all issues relating to people who lack capacity to make specific decisions