

## Mental Capacity Act- Five principles of the MCA

At the heart of the MCA in terms of concepts and values are the five 'statutory principles'. Consider the five principles as the benchmark – use them to underpin all acts done and decisions taken in relation to those who lack capacity. In doing so, you will better empower and protect individuals who lack capacity. It is useful to consider the principles chronologically: principles 1 to 3 will support the process before or at the point of determining whether someone lacks capacity. Once you've decided that capacity is lacking, use principles 4 and 5 to support the decision-making process.

The five key underpinning principles (Section 1, MCA)

### Principle 1: A presumption of capacity

Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

### Principle 2: Individuals being supported to make their own decisions

A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

### Principle 3: Unwise decisions

People have the right to make what others might regard as an unwise or eccentric decision. Everyone has their own values, beliefs and preferences which may not be the same as those of other people. You cannot treat them as lacking capacity for that reason.

### Principle 4: Best interests

If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests.

### Principle 5: Less restrictive option

Someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all. In essence, any intervention should be proportional to the particular circumstances of the case.

## Assessing capacity.

Consider the following factors when assessing an individual's capacity to make a specific decision:

- Presume someone has capacity
- Understand what is meant by capacity and lack of capacity
- Treat everyone equally
- Support the person to make the decision for themselves.
- What is mental capacity and when might you need to assess capacity?

Having mental capacity means that a person is able to make their own decisions. You should always start from the assumption that the person has the capacity to make the decision in question (principle 1). You should also be able to show that you have made every effort to encourage and support the person to make the decision themselves (principle 2). You must also remember that if a person makes a decision which you consider eccentric or unwise, this does not necessarily mean that the person lacks the capacity to make the decision (principle 3). Under the MCA, you are required to make an assessment of capacity before carrying out any care or treatment – the more serious the decision, the more formal the assessment of capacity needs to be.

When should capacity be assessed?

You may need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability. Lack of capacity may not be a permanent condition. Assessments of capacity should be time- and decision-specific. You cannot decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

The test to assess capacity is a two-stage functional test.

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

Stage 1. Is there an impairment of, or disturbance in the functioning of a person's mind or brain? If so,

Stage 2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

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

- Understand information given to them
- Retain that information long enough to be able to make the decision
- Weigh up the information available to make the decision
- Communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision.

Who should assess capacity?

Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity – follow the two-stage test.

The MCA is designed to empower those in health and social care to do capacity assessments themselves, rather than rely on expert testing by psychiatrists or psychologists.

### Best interests principle.

It is important for the application of the MCA to have a fundamental understanding of the best interests' principle.

If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests (principle 4). The person who has to make the decision is known as the 'decision-maker' and normally will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

What is 'best interests'?

The MCA provides a non-exhaustive checklist of factors that decision-makers must work through in deciding what is in a person's best interests.

Some of the factors to take into consideration are:

- Not to make assumptions about someone's best interests merely on the basis of the person's age or appearance, condition or any aspect their behaviour.
- Take into account all relevant circumstances
- If faced with a particularly difficult or contentious decision, it is recommended that practitioners adopt a 'balance sheet' approach
- Will the person regain capacity? If so, can the decision wait?
- Involve the individual as fully as possible
- Take into account the individual's past and present wishes and feelings, and any beliefs and values likely to have a bearing on the decision
- Consult as far and as widely as possible.