

Mental Capacity Act | the key principles



The Mental Capacity Act 2005 (the Act / MCA) came into force in October 2007 and is designed to protect and empower vulnerable individuals who aren't able to make their own decisions, and enable people to plan ahead to a time when they may lose capacity.

It deals with the assessment of a person's capacity and acts by their carers, and enshrines in statute best practice and common law principles concerning those who lack mental capacity.

Five key principles govern the practical implementation of the Act

1. The starting point is that a person should always be assumed to have capacity to make a decision until it is established that they do not.
2. Before it is established a person cannot make a decision, every step should be taken to help them make that decision. This may include taking time to explain and discuss things, using props to help them to understand etc.
3. Just because someone makes an unwise decision does not mean they are incapable of making a decision. Everyone is entitled to make what might be seen as an unwise or eccentric decision.
4. Every decision that is taken on behalf of a person must be taken in their best interests.
5. If options are available, always seek to take the least restrictive option for the person's rights and freedoms.

The Act is of particular interest to those affected by brain injury or their carers. Many people who have suffered a brain injury might appear perfectly 'normal' when in fact they face a range of complex, sometimes subtle problems that collectively can be devastating. Assessment of their capacity to understand the decisions they may be asked to make or that will affect them can therefore be extremely difficult and the results can fluctuate.

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What is 'capacity'?

Capacity is the ability to make a decision for yourself about a particular matter. People are said to lack capacity when illness or injury prevents them from being able to make personal decisions, temporarily or permanently.

Capacity is not 'fixed'. It can change over time, and according to the decision to be made. For example, a person may have capacity to make simple decisions such as what to eat, but not complex decisions about managing their finances or medical treatment.

This note is for information only and does not constitute legal advice.

The Brain Injury Group a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk