



## MENTAL CAPACITY ASSESSMENTS

**Definition:** Mental capacity refers to a person's ability to make a specific decision at a specific time.

**Scope:**

- The Mental Capacity Act 2005 is relevant to all individuals aged 16 and over in England and Wales.
- The Mental Capacity Act 2005 relates to decisions about personal welfare, healthcare and financial matters where a person may lack the capacity to decide for themselves. A **Decision-maker is a person/professional responsible for an intervention into a person's life while caring for them.**
- Under the Act, persons are presumed to have capacity until otherwise proven.



**Key Legislation and Policy:**

[Mental Capacity Act 2005](#)

[Mental Capacity Act 2005 Code of Practice](#)

### Key Takeaways:

**Do:**

- Keep the five principles in mind at all times.
- If in doubt, seek advice early from professional leads or legal team.
- Document everything about the assessment

**Don't:**

- Assume lack of capacity due to a diagnosis, disability, age, or appearance.
- Treat disagreement as lack of capacity.
- Skip recording of the assessment process and your reasoning.
- Forget to retest if necessary and review decisions if capacity may change.
- Override decisions without lawful and proportionate reasons.

### Resources

[LB Redbridge website – Looking after someone's affairs](#)

[RSAB website – Mental Capacity Act and DoLS](#)

[Voiceability - Advocacy](#)

### Five Key Principles

1. **Presumption of capacity** - Everyone is presumed to have capacity unless otherwise proven
2. **Right to make unwise decisions** - Making a decision others see as unwise does not mean someone lacks capacity
3. **Support to make decisions** - All practicable help must be given before concluding someone lacks capacity.
4. **Best interests** - Any act done or decisions made on behalf of someone lacking capacity must be in their best interests.
5. **Least restrictive option** - Any intervention must **be the least restrictive of the person's rights and freedoms.**

### Best Interests Decision Making

**Do:** Use the Best Interests Checklist:

- Involve the person as far as possible.
- Consider all relevant circumstances -
- Involve others - consult with relevant others (family, friends, carers, advocates, Lasting Power of Attorney, Independent Mental Capacity Advocates, other professionals).
- **Take account of the person's past and present wishes, feelings, values, and beliefs.**
- Avoid discrimination – do not base decisions on **the person's age, gender, appearance, or other personal attributes** but base it on their circumstances

**Consider:**

- If the person might regain capacity
- if the decision can be delayed until capacity returns.

**Explore less restrictive options**

- Choose the option that interferes least with rights and freedoms while meeting the need.
- Base the decision solely on what is in **the person's best interest**
- Ensure the decision does not result in harm or death of the person

Record the decision-making process and the rationale for the choice made.



### Decision-making

**Check:**

Is there ability to understand retain, weigh and use the information and communicate the decision?

Executive functioning — can they act on or carry through their decision in reality? Yes – they have capacity.

**Check:**

Is the person unable to understand retain, weigh and use the information and communicate the decision (one or more)?

Is this inability because of the impairment or disturbance & not because of factors such as age, gender or ethnicity? Yes – they lack capacity & Best Interests Decision is required.

**Record:** date, time, people present, practical steps, evidence and outcome.

### The two-Stage Test

**Stage 1: The Diagnostic Test/Element**

Is there an impairment or disturbance in the functioning of the mind/brain? (MCA s2(1))? If so, you move on to stage 2

**Stage 2: The Functional Test/Element**

Whether or not the person is unable to a) understand, b) retain or c) weigh the relevant information or d) communicate their decision because of the impairment or disturbance in functioning of mind and brain.

### Assessing Mental Capacity

**Starting Point:** Presume capacity unless proven otherwise.

Take practical steps to support decision-making.

- Choose an appropriate environment and the best time
- Allow sufficient time for the assessment
- Use communication aids, interpreters, visual materials.
- Use plain language, large print, easy-read material, sign language, visuals etc., to aid the **person's understanding**

Apply the two-stage test: Functional and Diagnostic (impairment or disturbance of mind or brain and the effect on decision-making).