

Mental capacity decision-making process

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Remember!
Someone who can't make complex decisions, could still make simple decisions, such as what to eat or wear.

Start from the assumption that the person has the capacity to make the decision.

Assessment must be about that particular decision and not about a range of decisions.

An assessment will usually include the person's family, friends and carer, or an Independent Mental Capacity Advocate (IMCA) if one has been appointed.

Assessment

1. Is there a permanent or temporary impairment of, or disturbance in, the functioning of the person's mind?
2. If yes, does the impairment mean that the person is unable to make this decision?

Remember!
Make every effort to find a way to communicate with the person. This may need specialist help.

The person is unable to make the decision if, after they have had all appropriate help and support, they can't:

- understand information about the decision and the consequences of making it
- retain information about the decision
- use the information as part of the decision-making process
- communicate their decision by any means.

Person has capacity and can make the decision – even if their decision seems strange or eccentric.

Person does not have capacity, so you must make the decision in their best interests.



Best interests

- Don't make assumptions on the basis of the person's age or appearance, condition or any aspect of their behaviour.
- Consider all the relevant circumstances relating to the decision.
- Consider whether the person is likely to regain capacity (after medical treatment). Can the decision wait until then?
- Involve the person as fully as possible in the decision that is being made on their behalf.
- Consider the person's past and present wishes and feelings, and beliefs and values which could influence the decision.
- Consult other people if it is appropriate and take into account their views, especially anyone named by the person as someone to be consulted, carers, close relatives or friends, an attorney appointed under a Lasting Power of Attorney and any deputy appointed by the Court of Protection to make decisions for the person.



Remember!

If you are making a decision about serious medical treatment or changes of accommodation and there is no one else to consult, you should consider involving an IMCA.



When you are carrying out certain actions in connection with the care and treatment of people who lack capacity to consent, you must work within the MCA, which means that you must:

- observe the principles of the MCA
- carry out an assessment of capacity and reasonably believe that the person lacks capacity in relation to the matter in question
- reasonably believe the action you have taken is in the best interests of the person.

Remember!

You should always refer to:

Mental Capacity Act 2005 www.legislation.gov.uk/ukpga/2005/9/contents

MCA Code of Practice www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act

Devon MCA Practice Guidance

www.new.devon.gov.uk/adultsocialcareandhealth/guide/mca-practice-guidance

Ministry of Justice Guidance leaflet www.dca.gov.uk/legal-policy/mental-capacity/publications

You can also use our **e-Health tracker tools** to help you make decisions

www.ehealthtracker.co.uk