

Mental Capacity Assessments and Best Interest Decisions

Overview

Mental Capacity is the ability to make your own decisions. The Mental Capacity Act (2005) protects the rights of anyone over the age of 16 who lives in England and Wales and is unable to do this. It protects people who cannot make certain decisions, because their mind is affected by illness, disability, drugs or alcohol. A loss of capacity may be temporary or permanent. The Act includes decisions about day-to-day things and serious life-changing decisions.

Key principles

When assessing a person's capacity there are five key principles that are followed:

1. **Presumption of capacity.** We won't make assumptions based on a medical condition or disability.
2. **Giving support to make the decision themselves.** Or delay this until they are able to make their own decision?
3. **Unwise decisions.** People have a right to make a decision which may not be the best for them; this is no reason to assume a lack of capacity.
4. **Best interests.** Everything we do must be in the person's best interests.
5. **Least restrictive option.** Where possible our actions will have the smallest impact on the person's rights and freedom.

How is capacity decided?

Diagnostic Test

The Mental Capacity Act states that:

- a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

Functional Test

A person does not have capacity for a specific decision if they cannot:

- Understand the information relevant to the decision.
- Retain that information for long enough to make a decision.
- Use or weigh up that information as part of the process of making the decision.
- Communicate their decision.

If the person lacks capacity to make a particular decision, then a ‘best interests’ decision must be made. The following checklist is used:

- Help the person to take part
- What would the person consider if they were making the decision themselves?
- What are the person's past and present wishes, feelings, beliefs and values?
- Make no assumptions on the basis of age, appearance, condition or behavior.
- Consider if the decision could be delayed?

Online content:

- [Social Care Institute of Excellence – Mental Capacity Act 2005 at a glance web page](#)
- [NHS Mental Capacity Act web page](#)

Key contacts:

- MCA / DoLS team
Telephone 01905 822624
Visit: www.worcestershire.gov.uk