

THE PURPOSE OF THIS POLICY

Put simply, you have mental capacity if you're able to make your own decisions. The MCA says that a person is unable to make a particular 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.

We might all have problems making decisions from time to time, maybe due to illness, tiredness or indecision. But the MCA is designed to go beyond these types of situations. It is designed specifically to empower and protect an individual who is unable to make a decision because of the way their mind or brain works is affected, for example, by illness or disability, or the effects of drugs or alcohol.

1. BACKGROUND

People may lack capacity due to:

- a stroke or brain injury
- a mental health problem
- dementia
- a learning disability
- confusion, drowsiness or unconsciousness because of an illness or the treatment for it
- substance misuse.

The MCA covers all types of decisions, big and small. This may be from the day-to-day, such as what to wear or eat, through to more serious or complex decisions, about, for example, where to live, whether to have surgery or how to manage finances or property.

The MCA applies to situations where someone is unable to make a particular decision at a particular time because of the way their mind or brain is affected. When suffering from depression, an individual may be unable to make a decision, but when recovered they can.

And, because someone lacks capacity to make major decisions, this does not mean they are unable to make minor decisions. For example, an individual with a learning disability whilst unable to make a decision about where to live, is able to make other smaller decisions, such as what to eat, wear or do each day.

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.

MCA helping people with decision-making

The MCA focuses on an individual's right to make their own decisions, and assumes that a person has the capacity to make the decision

(principle 1). Every effort must be taken to encourage and support the person to make the decision for themselves (principle 2). The MCA says that before anyone acts on behalf of someone who lacks capacity they must be able to demonstrate that the person lacks capacity.

To assist in answering the question of whether the person has capacity, you will need to check the following:

- Does the individual have all the relevant information needed to make the decision?
- If there is a choice of options, has information been provided on the alternatives?
- Have the communication needs of the individual been taken into account? The information needs to be presented in a way that is easier for them to understand.
- Have different communication methods been explored, including obtaining professional or carer support?
- Consider the risks and benefits, including describing the consequences of making a decision, and making no decision.

MCA resource - 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

The 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.