



# Making decisions: what happens if you can't?

The Mental Capacity Act (MCA) 2005 is designed to protect and help people over 16 years of age who are unable to make all or some decisions for themselves due to an impairment of the brain function.

It does this by:

- helping people to make decisions for themselves wherever possible
- provide guidance for when the person cannot make decisions for themselves
- allowing people to plan ahead for a time in the future when they may lack capacity

Anyone caring for or supporting someone might question a person's ability to make a particular decision. This is called their capacity.

For most day-to-day actions or decisions (e.g. what to wear, or what to eat) a family member or carer will be able to test or assess the person's capacity to make the decision. For more complex decisions (e.g. where to live, managing finances), a more formal assessment may require the involvement of different people such as a doctor, social worker, or other professionals.

Capacity is specific to a decision and can change. A person may have capacity to make one decision and not another. For example, a person may be able to choose what to wear, yet may not be able to make their own decisions about their finances. People should be supported to make as many of their own decisions as possible. In that way, they may learn new skills and their ability to make decisions may improve over time.

## Key rules or principles

The Act has five key rules or principles which must be followed in order to support someone with making a decision.

### Principle 1:

It must be assumed that every adult can make their own decisions (called 'has capacity') unless it is proved otherwise. This is because everyone has the right to make their own decisions. This means that we cannot assume that just because someone has a particular medical condition or disability that they cannot make a decision for themselves.

### Principle 2:

A person must be given help to make the decision for themselves. This means we should make every effort to encourage, support and involve the person to make the decision for themselves.

### Principle 3:

People have the right to make decisions that seem unwise or strange. We cannot say a person lacks capacity because we don't like their decision. Each person has their own values, beliefs and preferences.

### Principle 4:

Anything done with, for, or on behalf of a person who cannot make the decision themselves, must be done in the person's best interests.

### Principle 5:

Making a decision or acting on behalf of a person who cannot make a decision must be done in a way that would have least impact on the person's rights and freedoms.

## How to test if the person can make this decision (assessing capacity):

In order to decide whether someone has the capacity to make a particular decision at that time, a two-stage test must be used:

**Stage 1** - Is there any condition that may affect the way their brain works? Such as:

- 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.

**If there is no impairment of the brain function, stop: a test of capacity is not required.**

**Stage 2** – Does this impact on their ability to make a particular decision?

Remember – capacity is decision-specific.

The person will need to be able to explain if someone 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 will be made to find ways of communicating with the person before deciding that they cannot make the decision. Where appropriate this will involve people that know the person well such as family, friends, carers or other professionals.

Any decisions involving a professional will be recorded and held in the relevant organisation's records.

## Best interests

If a person cannot make their own decision, any action or decision taken, must be made in their best interests. The person who makes the final decision is known as the 'decision-maker'.

Whoever makes the best interests decision should as a minimum take into account the wishes and feelings of the person and involve those that know them well.

Professionals should use the Mental Capacity Act checklist to consider what should be done. (Available via the information at the [www.gov.uk](http://www.gov.uk) link below)

When working in best interests, they will weigh up all of the information and make any best interest decision on a least restrictive basis. Some best interest decisions can and will adapt and change according to the person and their circumstances.

A record of the best interest information and final decision will be made and held on record.

## Contact information:

If you have a concern regarding capacity or decision making and need support, please contact the local authority, or POHWER (advocacy group) for independent advice and support. You might also find the following link for the Department of Health useful:-

GOV.UK - Department of Health / Office of the Public Guardian  
[www.gov.uk/government/collections/mental-capacity-act-making-decisions](http://www.gov.uk/government/collections/mental-capacity-act-making-decisions)

## Nottinghamshire County Council

Customer Service Centre  
Phone: 0300 500 80 80  
(Calls cost 3p a minute from a BT landline. Mobile costs may vary).

Email: [enquiries@nottsc.gov.uk](mailto:enquiries@nottsc.gov.uk)  
Website: [www.nottinghamshire.gov.uk](http://www.nottinghamshire.gov.uk)

Minicom: 01623 869598

Phone 0300 500 80 80 if you need the information in a different language or format.

**POhWER**

Telephone: 0300 456 2370

Minicom: 0300 456 2364

Website:

<https://www.pohwer.net/nottinghamshire>

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<https://www.nottinghamshire.gov.uk/global-content/privacy>