

Making decisions- what happens if you can't?



This easy read tells you about what happens if you can't make decisions. The law about this is called the Mental Capacity Act.

The Mental Capacity Act (MCA) 2005



The Mental Capacity Act (MCA) 2005 is a law to protect and help people over 16 years old who can't make decisions for themselves.

How does the Mental Capacity Act help and protect people?



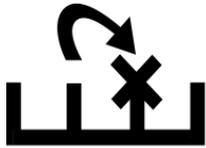
The Mental Capacity Act helps and protects people by:



- Helping people to make decisions for themselves where possible.



- It tells people what to do when someone cannot make decisions for themselves.



- It lets people plan what they want to happen if they don't have capacity to make a decision in the future.

What is capacity?



Capacity means someone's ability to make a particular decision.



Anyone looking after or helping someone might wonder if someone can make a particular decision.



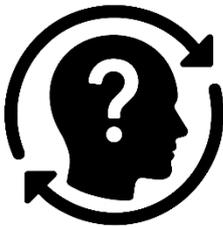
For most day-to-day actions or decisions (such as what to wear or what to eat) a family member or carer will be able to look at the person's capacity to make the decision.



For more complex decisions (e.g. where to live or managing money), a more formal assessment may be needed.



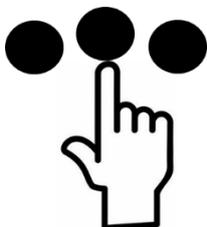
Different people might help with the assessment, such as a doctor, social worker, or other professionals.



Capacity is specific to a decision and can change. Someone might not have the capacity to make a decision at one point but have capacity at another time.



A person may have capacity to make one decision but not another. For example, a person may be able to choose what to wear but may not be able to make their own decisions about their money.



People should be supported to make as many of their own decisions as possible.



This may help people to learn new skills and their ability to make decisions may get better over time.

Key rules and principles about Mental Capacity

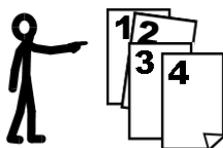


The Act has 5 key rules or principles which must be followed to support someone with making a decision.



Principle 1:

It must be assumed that every adult can make their own decisions ('has capacity') unless it is proved otherwise.



This is because everyone has the right to make their own decisions.



This means we cannot assume that because someone has a medical condition or disability they cannot make a decision for themselves.

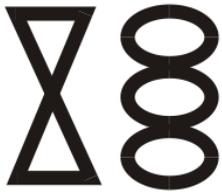


Principle 2:

A person must be given help to make the decision for themselves.

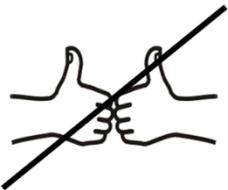


This means we should try our best to encourage, support and involve the person to make the decision for themselves.

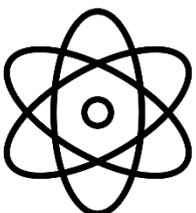


Principle 3:

People have the right to make decisions that seem strange or like a bad idea.



We cannot say a person lacks capacity because we don't like their decision.

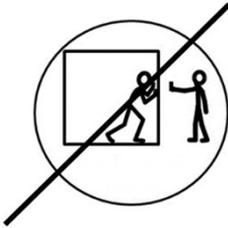


Each person has their own values, beliefs and preferences.



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 for someone or acting on their behalf must be done in the way that least impacts their rights and freedoms.

How to test if the person can make this decision



Testing to see if someone can make a decision is called assessing capacity.



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



Stage 1

Do they have a condition that may affect how their brain is working?

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 the way that someone's brain works is not impaired, you must stop and you can't test for capacity.



Stage 2

Does this impact on their ability to make a particular decision?



Remember – capacity is decision-specific.



The person assessing capacity will need to be able to explain if someone cannot do one or more of the following 4 things:



1. Understand information given to them.



2. Remember the information long enough to be able to make the decision.



3. Weigh up the information they are given to make the decision.



4. Communicate their decision – this could be by:

- Talking



- Using sign language



- 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 at least listen to the wishes and feelings of the person and involve people that know them well.



Professionals should use the Mental Capacity Act checklist to think about what should be done.



They will look at all the information and make a decision based on what is least restrictive for the person and in their best interests.



Some best interest decisions can and will change according to the person and their circumstances.



The best interest information and final decision will be kept on record.

More information and contact details



If you have any concerns about capacity or decision making and need help, you can contact Nottinghamshire County Council.



Our Customer Service Centre can answer most of your questions and help with information and form filling.



There are several ways to contact them, including:

Web: [Use our online contact form.](#)



Telephone: 0300 500 80 80



Text Relay: 18001 0115 977 4050

People who have hearing or speech difficulties and prefer to communicate via text can use the Text Relay service through the [Relay UK app](#).



Sign Video

People who use British Sign Language to communicate can use [the SignVideo app](#) to speak with us.



You can also contact POhWER, the advocacy group, for independent advice and support.



You can phone POhWER on 0300 456 2370.



You can visit [POhWER's website](#).



The Government website has more information about [The Mental Capacity Act](#).

Links in this document

Nottinghamshire County Council – contact us form

nottinghamshire.gov.uk/contactform

Relay UK app

relayuk.bt.com/how-to-use-relay-uk/download-app.html

SignVideo app

signvideo.co.uk/download

POhWER

pohwer.net/nottinghamshire

Government website- The Mental Capacity Act

gov.uk/government/collections/mental-capacity-act-making-decisions

For plain English web page version of this information, go to:

[Making decisions: what happens if you can't | Nottinghamshire County Council](#)

<https://www.nottinghamshire.gov.uk/care/adult-social-care/social-care-publications/making-decisions>

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