

7 Minute Briefing : Mental Capacity Act (MCA)

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Further Information

- ◆ The [MCA Code of Practice](#) provides detailed guidance on the Act.
- ◆ [MCA Flowchart \(for Rotherham Professionals\)](#)
- ◆ [South Yorkshire's Adult Protection Procedures](#)
- ◆ [Rotherham Safeguarding Adults Board website](#)
- ◆ [Report suspected abuse or neglect of an adult](#)

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What is the Mental Capacity Act?

The Mental Capacity Act 2005 is an Act of the Parliament of the United Kingdom applying to England and Wales.

Its primary purpose is to provide a legal framework for acting and making decisions on behalf of adults who lack the capacity to make particular decisions for themselves and applies to people aged 16 and over

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What is Mental Capacity?

Mental capacity is the ability to make your own decisions at any given time or situation. A lack of mental capacity could be due to permanent or temporary reasons, eg:

- [dementia](#)
- a severe [learning disability](#)
- a [brain injury](#)
- a [mental health illness](#)
- a [stroke](#)
- unconsciousness caused by an anaesthetic or sudden accident

But just because a person has one of these health conditions doesn't necessarily mean they lack the capacity to make a specific decision.

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Assessment

The MCA sets out a 2-stage test of capacity:

- 1) Does the person have an impairment of their mind or brain
- 2) Does the impairment mean the person is unable to make a specific decision?

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Deprivation of Liberty

- ◆ In certain cases, the restrictions placed upon a person who lacks capacity may amount to "deprivation of liberty". This must be judged on a case-by-case basis.
- ◆ Where it appears a deprivation of liberty might happen an assessment takes place to decide if it is in the best interests. This is known as the Deprivation Of Liberty Safeguards.
- ◆ The [Court of Protection](#) oversees the operation of the Mental Capacity Act.



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Steps

Can the person:

- ◆ The [Court of Protection](#) oversees the operation of the Mental Capacity Act.
- 1. **Understand** the decision that needs to be made?
- 2. **Retain** the information long enough to make the decision?
- 3. **Use/weigh** up the information?
- 4. **Communicate** their decision the way they would usually communicate?

Failing one of the above means lack of capacity to make that particular decision at that time.

A best interest decision can now be made unless other channels are in place (Lasting/Enduring powers of attorney, deputy, advanced decision, statement of decision).

Best interest checklist would include:

- ◆ Will the person regain capacity? ◆ Involve the person.
- ◆ Consult all relevant people. ◆ Consider all information.
- ◆ Do not make any assumptions.
- ◆ Consider past, present and future.

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Principles

1. **Assume capacity** – always assume capacity unless it is **established** otherwise
2. **Practicable steps** - A person is not to be treated as unable to make a decision unless all practicable steps have been taken without success.
3. **Unwise decisions** – do not assume incapacity merely because a person makes an unwise decision.
4. **Best interests** - An act done, or decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. **Least restrictive** – aim to make the least restrictive decision possible in a way that is less restrictive of the person's rights and freedom of action.