



Assessing mental capacity when making decisions



What is **mental capacity**?



Mental capacity is when you are able to make decisions for yourself.



If a person cannot make decisions for themselves, they are described as '**lacking capacity**'.



A person might be able to make decisions about easy things like what to wear each day but...



...not be able to make more difficult decisions like how to manage their money.



The Mental Capacity Act (MCA) 2005



The **Mental Capacity Act** 2005 is a law.



It explains how to check (**assess**) if people can make decisions for themselves.



It also explains what to do if people are not able (**lack capacity**) to make decisions.



The **Mental Capacity Act** is based on **5 principles**:



Principle 1



Every adult has the right to make decisions for themselves.



People should think that a person can make their own decisions...



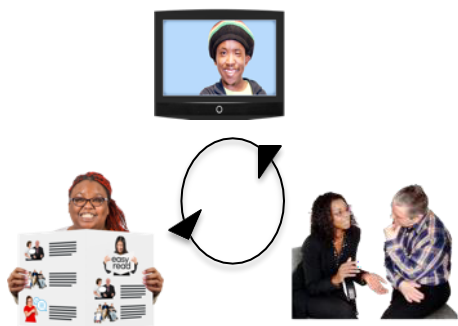
...unless a person has shown they cannot.



Principle 2



Every adult has the right to be supported to make their own decisions.



Every effort must be made to help and support the person to make their own decisions.

For example, they might need information in a video film to help them understand.



Every effort must be made to help and support the person to communicate their decisions...



... before people decide a person **lacks capacity**.



Every adult has the right to make decisions that may seem strange or risky to others.





Principle 4



If an adult **lacks capacity**...



... any decisions taken for them (on their **behalf**) must be in their **best interest**.



Principle 5



If a person **lacks capacity**...



... any decisions made on their behalf must give the person as much freedom as possible and must protect their rights.



Assessing an adult's capacity



People should think that a person can make their own decision...



...unless it is shown and proven that they cannot.



The law says that the way to work this out...



... is to check (**assess**) if an adult is able to make a certain decision at a certain time.



Before this is done, it is important to make sure that the person has as much help as possible to make the decision.

To do this a person might need information:



- in **Easy Read**



- broken down into small bits



- explained in different ways.



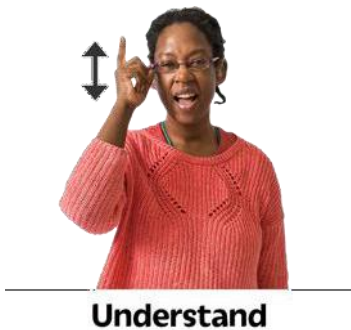
Just because a person cannot make one decision (**lacks capacity**) ...



... it does not mean that they cannot make decisions on other things.



To show they are able to make a decision (have **capacity**), a person must be able to:



- understand the information about the decision they want to make



- remember the information long enough to make the decision.



- understand the 'good' and 'bad' things that could happen as a result of making a decision.



For example, a good point could be that a house the person chooses to move to, is close to the shops.



A bad point could be that the house is by a noisy road.



- communicate their decision in a way that works for them.

This could include:

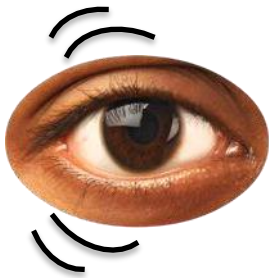


- talking



Happy

- sign language



- or muscle movements like blinking an eye or squeezing a hand.



Who can check (**assess**) a person's **capacity**?



For everyday decisions, like what to wear or eat...



... it is probably going to be a family member or care/support worker who will check (**assess**) if a person can make this decision.



For more difficult decisions, like what medical treatment to have...



... a **GP** should **assess** if the person can make a decision, with help from the person's family or carers.



The way the checking (**assessing**) is done, should match the type of decision being made.



For example, if a family member is deciding if the person is able to choose what to wear that day...



...they do not have to go through an official process or make notes each time.



But if a professional has to decide whether a person has **capacity** to decide whether to have a risky operation...

... a more official **assessment** would be done.



The professional must record how the **assessment** was made and what the results were.



How to say you do not agree with a **capacity assessment**



If you do not agree with an **assessment** on a person's ability to make a decision...



... you may want to do something about this.



For example, if a decision was made for a person...



... without someone checking (**assessing**) beforehand if they can make the decision themselves.



If you do not agree with a **capacity assessment** ...



... or you have not had an **assessment**...



... it is best to start by speaking to the person who carried the **assessment** out...

... or the person who should have carried out the **assessment**.



You should ask them to explain why they made their decision.



You should tell them why you do not agree.



If this does not sort it out...

... you can ask for the **assessor** to think through their decision again...



... or you can ask the organisation (like **Social Services** or a hospital) to look at it again.



If you still are not happy...



... you could make an official complaint about the **assessment**. You would need to use their **complaints procedure**.



For example, if you want to complain about a hospital's decision, you need to use the hospital's **complaints procedure**.



If you are still not happy...



...you could complain to an **ombudsman**.



An **ombudsman** is a person who looks into complaints about companies and organisations.



An **ombudsman** is separate to the organisation you are complaining about. They are **independent**.



Instead of doing this, you might be able to complain about or challenge the decision at the **Court of Protection**.



But there are very strict rules about how to do this.



If you want to do this, you should get advice as soon as possible.



There will be a date that you need to complain by.

If you do not do it by this date, your complaint will not go through.



Making decisions



If a **capacity assessment** has been done ...



...and it says that the person **lacks capacity** to make a decision...



... this decision must be made for them.



The person who makes the decision will depend on what the situation is.



For example, if a person **lacks capacity** to decide what to wear each day...



... then a family member or care and support worker can make that decision.



If the decision is a more difficult one, like where a person should live ...



... then the person's **deputy**, if they have one, can help to make the decision.



A **deputy** is someone who has been chosen legally to make some decisions for the person.

For example, a **deputy** could make decisions about where a person should live or help with their money.



A **local authority** can employ an **Independent Mental Capacity Advocate (IMCA)** to speak for the person.

They can do this if there is no-one else to make the decision for the person or when things are very complicated.



For example, if the **local authority** does not think that family members are acting in the **best interest** of the person.



Making decisions in the person's **best interest**



When a decision is made on behalf of a person who **lacks capacity**...



... it must be made in their **best interest** and make sure they are as free as possible.



Even if a person **lacks capacity** to make a certain decision...



... they should be still be involved as much as possible in making that decision.



The person's thoughts should be included.



Family, friends and carers should also be asked for their thoughts and included in the decision, whenever possible.



They often know the person best and can share what they feel is in the person's **best interest**.



They can also share what the person's thoughts are.

What the words mean

If you have **mental capacity**, it means you are able to make decisions for yourself.

Sometimes a person cannot make a decision on their own and other people need to decide what is best. This is called a **best interests decision**.

Best interests decisions are about

- what the person wants
- what makes them happy
- what keeps them safe

The **Mental Capacity Act 2005** is a law. It explains how to check (assess) if people can make decisions for themselves. It also explains what to do if people are not able (lack capacity) to make decisions.

When a person does not have **mental capacity**, the **Court of Protection** can make decisions about their money and their wellbeing

A **deputy** is someone who has been chosen legally to make some decisions for the person.

If a person cannot make decisions for themselves, they are described as '**lacking capacity**'.

The **local authority** is the council who is in charge of social care in your area.

Making a **complaint** is when you tell the a service that you are not happy with the way they help you.