

MCA3 – Assessing Capacity Reference Guide

Section 1 - Principles

The five MCA 2005 principles have to be taken into consideration in each case:

1. Presumption of capacity
2. Take all practical steps to help someone make a decision
3. Person is not incapable merely because they make an unwise decision
4. Acts or decisions on behalf of person lacking capacity must be in their best interest
5. Regard must be had to whether less restrictive alternatives is in place

Section 2 – What is meant by lacking capacity?

Section 2(1) of the Act states:

'For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'

Examples of an impairment or disturbance in the functioning of the mind or brain may include the following:

- conditions associated with some forms of mental illness
- dementia
- significant learning disabilities
- the long-term effects of brain damage
- physical or medical conditions that cause confusion, drowsiness or loss of consciousness
- delirium
- concussion following a head injury, and
- the symptoms of alcohol or drug use

An assessment of a person's capacity must be based on their ability to make a **specific decision at the time it needs to be made**, and not their ability to make decisions in general. Section 3 of the Act defines what it means to be unable to make a decision.

Section 3 – Steps to assessing capacity

Four core questions to establish whether someone has capacity to make a decision:

1. Is the person able to **understand** the information relevant to the decision?
(Includes information about the reasonably foreseeable consequences of deciding one way or another, or failing to make the decision)
2. Is the person able to **retain** the information relevant to the decision?
(Retaining information for a short period only does not prevent them from being regarded as able to make the decision)
3. Is the person able to **use or weigh** that information as part of the process of making the decision?
(Can they consider pro's and con's, risks, consequences of actions)
4. Is the person able to **communicate** their decision?
(Whether by talking, using sign language or any other means)

If the answer to **ALL** the above questions is **YES**, then the person has capacity to make the decision.

If the answer to **ANY ONE** of the above questions is **NO**, then the person lacks capacity and decisions can be made in their best interests.

Use the **MCA2 assessment where possible as a guide**. Local Policy states that two assessors is needed, but the MCA allows for any one person to assess capacity and act in a person's best interests, as long as they are following the guidelines of the MCA.

Section 4 – Best Interests Decisions

Once you have assessed someone as lacking capacity, you can now make decisions and act in their best interests. Use the **Best Interests' Checklist** to ensure that you do the following:

1. Encourage participation.
2. Identify all relevant circumstances.
3. Find out the persons views.
4. Avoid discrimination.
5. Assess whether the person may regain capacity.
6. Not make assumptions on quality of life.
7. Consult others.
8. Avoid restriction of rights.

The best interests principle does not apply where a valid and applicable advance decision has been made to refuse medical treatment or where there is a lasting power of attorney or a deputy appointed by the court of protection (with the appropriate authority) who is refusing the proposed course of action.

Section 5 – Protection of our actions

If we have followed the guidelines in Sections 1 to 4 above, **then we are protected for any actions taken or done to the person.**

Section 6 - Restraint

You can restrain a person, which is described as:

- Using force – or threaten to use force – to make someone do something that they are resisting or
- Restricting a person's freedom of movement, whether they are resisting or not

Restraint is permissible under the Mental Capacity Act if it is:

- In the **best interests** of the person; and
- Necessary in order to **prevent harm to them**; and
- A **proportionate response** to the likelihood of them suffering harm and the seriousness of that harm; and
- If there is no **less restrictive** option.

Restraint and restriction of movement is permissible if it meets the above criteria, but the **MCA does not allow for any one to deprive a person of their liberty. If a person is being deprived of their liberty or is at risk of being deprived of their liberty, then authorisation needs to be sought under the Deprivation of Liberty Safeguards (DOLS).**

Further Guidance and Resources

Referral to the IMCA Services:

- If a person is unbefriended and a decision needs to be made regarding serious medical treatment (including psychiatric treatment) or change of accommodation, **A REFERRAL TO THE IMCA SERVICES HAS TO BE MADE PRIOR TO MAKING ANY BEST INTEREST DECISIONS.**
- If there are safeguarding concerns or any other conflicts of interest, a referral to the IMCA services may also be appropriate.
- If the individual is unbefriended and a health or social care review is being carried out, you may consider involving an IMCA as good practice.