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Resources

[Safeguarding Adult Board - Mental Capacity Act](#)

[Safeguarding Children Partnership - Greater Manchester Policies & Procedures - Mental Capacity Procedure](#)

[Mental Capacity Act 2005: an easy read guide](#)

[Promoting Less Restrictive Practice: reducing restrictions tool for practitioners](#)

[Social Care Institute for Excellence \(SCIE\) MCA in Practice](#)

[Mental Capacity Act - Making Decisions](#)

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Considerations

An individual can lack capacity to make some decisions but may have capacity to make others. Mental capacity can also fluctuate with time; an individual may lack capacity at one point in time but could make the same decision in the future. An individual's behaviour may be an indicator they lack mental capacity, despite what they say.

Consider whether someone is putting themselves at risk due to an apparent 'unwise decision'.

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Assessment of Mental Capacity

The Act has a two-stage test for assessing capacity:

Stage 1 – Is the person unable to make a particular decision (the functional test)?

Stage 2 – Is the inability to make a decision caused by an impairment of, or disturbance in the functioning of, a person's mind or brain? This could be due to long-term conditions such as mental illness, dementia, or learning disability, or more temporary states such as confusion, unconsciousness, or the effects of drugs or alcohol (the diagnostic test).

Bury Safeguarding Partnership

7 Minute Briefing: Mental Capacity Act (MCA) 2005



[Bury Safeguarding Partnership](#)

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Background

The [Mental Capacity Act \(MCA\) 2005](#) is a legal framework which applies to individuals over the age of 16, who may lack the mental capacity to make specific decisions about their life and for themselves, whether on a permanent or temporary basis. These decisions can range from everyday things like choosing what to wear or eat, to more complex considerations such as deciding where to live or receiving medical treatment.

The Act is in place to empower and protect individuals who may lack capacity by placing them at the centre of the decision-making process. The Act is underpinned by five key principles.

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Five Key Principles

Principles 1 to 3 will support the process before or at the point of determining whether someone lacks capacity. Once you've decided that capacity is lacking, use principles 4 and 5 to support decision-making

- 1: Presume capacity:** unless proved otherwise.
- 2: Individuals being supported to make their own decisions:** take all reasonable steps to enable a person to make their own decision.
- 3: Unwise decisions:** you must not assume incapacity, simply because a person makes an unwise decision.
- 4: Best interests:** decisions made on behalf of someone lacking capacity must be in their best interests.
- 5: Less restrictive option:** any decisions made must be the least restrictive.

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Decision Making

The Act states that a person can make a decision for themselves if they can do the following:

- Understand the information given to them
- Retain the information long enough to make the decision
- Weigh up the information available to make the decision
 - Communicate their decision

Nothing in the MCA 2005 allows for the following decisions to be made on behalf of an individual:

- Marriage, civil partnership or divorce
- Sexual relations, adoption, parental responsibility
- Voting rights

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Why Individuals May Lack Capacity

There are various reasons as to why someone may lack mental capacity to make decision for themselves. Some examples include:

- Dementia
- Learning Disability
- Brain injury
- Mental health condition
 - Stroke
- Unconsciousness due to accident / injury
- Substance use

Just because someone has an impairment of the mind/brain, this doesn't mean that you can presume they lack mental capacity.