

The Mental Capacity Act (2005)

This guidance sheet provides some brief information on the key things you should know about the Mental Capacity Act (2005).

As a child grows older, the role of a parent changes. This is familiar to all parents, and how parents manage this is very individual, at the age of 16 a different framework for decision making and consent is created.

What is the Mental Capacity Act?

Parents have responsibility for children, but at the age of 16 young people in England and Wales the 2005 Mental Capacity Act (MCA) starts to take effect.

The Mental Capacity Act is a set of statutory principles and code which has been in force since 2007. It states that every adult, has the right to make their own decisions wherever possible.

People should always support a person to make their own decisions if they can. This might mean giving them information in a format that they can understand (for example this might be easy read information for a person with a learning disability) or explaining something in a different way.

But if a decision is too big or complicated for a person to make, even with appropriate information and support, then people supporting them must make a 'best interests' decision for them.

What does the Mental Capacity Act say?

Mental Capacity relates to the ability to make a decision. In order to make a decision people need to be able to:

- Understand information
- Remember it for long enough
- Think about the information
- Communicate their decision

How a person does this will depend on their skills and any areas of need.

The Mental Capacity Act sets out 5 rules which must be followed when decisions need to be made:

1) Assume that people are able to make decisions, unless it is shown that they are not.

Whether someone is able to make the decision will depend on the person and the decision which is being made. For example, some people may require support or help to decide whether to move to a new house but they may be able to decide what they want to eat or wear. A person must be allowed to make the decisions they are able to make.

2) Give people as much support as they need to make decisions.

This support can come in many different forms. It may require information to be repeated or presented differently. It may be that they need support or to use technology to help them communicate their wishes.

3) Do not assume the person does not have capacity to make a decision just because they make a decision that you think is unwise or wrong.

People have the right to make decisions which other people disagree with. This is OK as long as the person making the decision understands what they are doing. For example some adults choose to eat unhealthy food, stay up until the early hours or spend too much money on a new phone.

4) If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests'.

This means that if a decision is to be made by other people, it must be in the persons best interest, not anyone else's. They must also think about the best interest's checklist:

- Can the decision be made another time if the person will regain the ability to make the decision?
- How can the person be helped to make the decision themselves?
- Have you included those who know the person best?
- Consider all the information available?
- What past, present or future wishes has the person expressed?
- Always pick the very least restrictive option.

5) Find the least restrictive way of doing what needs to be done.

When a decision is made for somebody, it must give them as much freedom as possible.

How is Mental Capacity Assessed?

Assessments about capacity relate to a particular decision and being found to lack capacity doesn't mean the person won't be able to make decisions about other things in their life.

Mental Capacity is assessed at the time of a decision being made and is often made by the person who is carrying out the actions resulting from the decision. Any assessment of capacity has two stages:

Stage one: Does the person have an impairment of, or a disturbance in the functioning of their mind or brain

Stage two: Does the impairment or disturbance mean that the person is unable to make a specific decision at the time the decision needs to be made

Where there is a concern that a person lacks capacity, there is a requirement for both stages to be proved with evidence.

What does this mean in the Education, Health and Care Process?

As a learner reaches the end of compulsory school age (the end of the academic year in which they turn 16), some rights to participate in decision-making about Education Health and Care

(EHC) plans transfer from the parent to the young person, if they have capacity to do so, as set out in the Mental Capacity Act 2005.

This means that from their 16th Birthday where a learner has capacity, a learner will be able to make decisions about their Education, Health and Care Plan. These decisions may include:

- Whether to request an EHC Needs Assessment
- Giving consent to share information from the EHC Needs Assessment or EHC Review
- Requesting a placement be named in section I of an EHC Plan
- Requesting that an EHC Plan be ceased
- To raise an appeal through the SEND Appeals Process

There may be cases where the young person and the parents do not agree on an issue. Legally, it is the young person's decision which prevails, providing they have capacity.

Where there are disagreements, staff providing information, advice and support should work impartially and separately with both the parents and the young person.

Parents of learners can still access information, advice and support on behalf of, or with, the learner with the learner's consent.

In most cases where the young person lacks capacity, decisions will be taken on their behalf by their parent, unless there is a Lasting Power of Attorney or deputy appointed. In all cases it is important that young people are helped to make their own informed decisions with appropriate support.

Further information and advice

Further information is available at:

[pfa factsheet - mca.pdf \(councilfordisabledchildren.org.uk\)](https://www.councilfordisabledchildren.org.uk/pfa-factsheet-mca.pdf)

[What is The Mental Capacity Act? | Mencap](#)

[Mental Capacity Act 2005: An easy read guide \(local.gov.uk\)](#)

[Introducing the MCA | SCIE](#)