

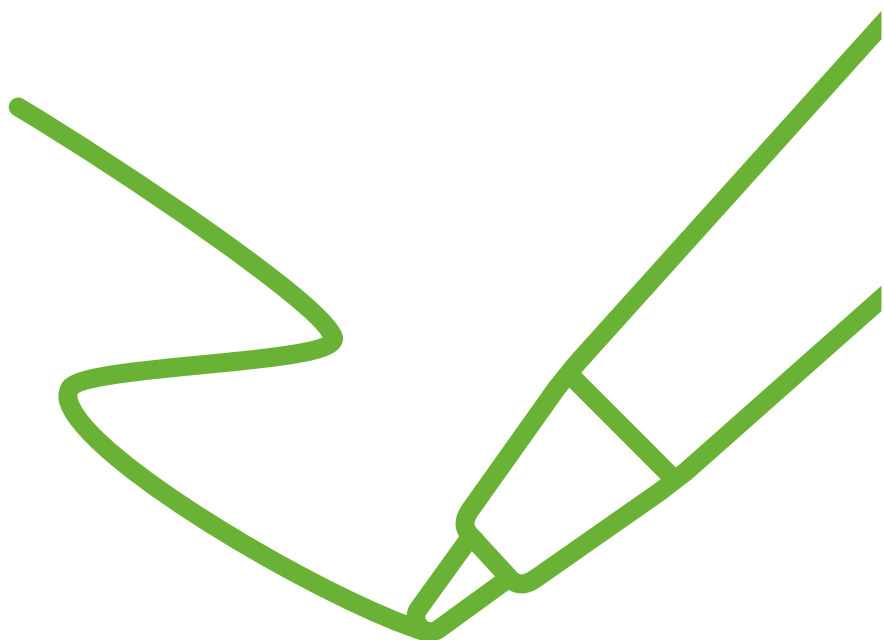


# Mental Capacity Act 2005

Guidance for staff on the application of  
the Mental Capacity Act 2005 Code of  
Practice

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*Here's some extra help – if you need it.*



# Introduction

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**This guidance has been produced for frontline staff, with the intention of summarising and clarifying the key principles of the Mental Capacity Act and the considerations you should make when completing a Mental Capacity Assessment.**

This guidance is not exhaustive and should be read alongside the [Mental Capacity Act 2005 Code of Practice \(Department for Constitutional Affairs, 2007\)](#). That document contains details around the legal status of the Code, Lasting Powers of Attorney, the Court of Protection, Deprivation of Liberty Safeguards, and Best Interests decisions, which are not within the scope of this guidance.

You should refer to your own organisation's policies and procedures, alongside this guidance, and use your own organisation's mental capacity assessment form, if you have one.

## Your responsibilities

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The Mental Capacity Act 2005 Code of Practice provides guidance to anyone who is working with adults who may lack capacity to make decisions, and particularly decisions about their care and treatment. It is intended for use by a wide range of staff, including (but not limited to):

- healthcare staff, such as doctors, nurses, dentists, and paramedics;
- social care staff, such as social workers and care managers;
- district and borough council staff, such as housing workers;
- police;
- care workers, including care home staff and domiciliary care workers;
- voluntary sector workers who are providing a service to the adult.

# What is mental capacity?

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**Mental capacity is defined as the ability to make a specific decision, at the time that the decision needs to be made.**

This can include 'daily life' decisions, such as what to wear, or daily routines, or more 'complex' decisions which have more significant consequences. This could include decisions around medical treatments or planning a will.

## Statutory principles

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**There are five key principles underpinning the Mental Capacity Act. It's important to keep these principles in mind, whenever you are undertaking work relating to the Mental Capacity Act.**

1. You must assume that adults have capacity to make their own decisions, unless it is established that they don't have capacity.
2. Before deciding that a person doesn't have capacity to make a decision, you must take reasonable steps to support them to be able to make decisions for themselves; this could include using different forms of communication or supporting them to learn new skills. This, however, may not apply in an emergency situation if immediate action is required.
3. If an adult makes an 'unwise decision' it does not automatically mean that they don't have capacity. You will need to explore the reasons for their decision.
4. Any decision made under the Mental Capacity Act must be made in the best interests of the adult.
5. Any decision made under the Mental Capacity Act must be done so in the least restrictive way possible, respecting their rights and freedoms.

# Helping adults to make decisions

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**Before deciding that an adult doesn't have capacity to make a specific decision, it's important that you work with them, to support them to make the decision, if they can.**

**To do this, you need to consider the following:**

- Do you know the best way to communicate with the adult? Discuss this with those who know the adult best. You may need to communicate pictorially or engage the help of an interpreter.
- Are they comfortable in the environment? Think about how you can make them feel more comfortable, including reducing distractions and respecting their privacy.
- Are you speaking with them at a good time? Some people are more alert in the mornings or evenings. If they are taking medication, does it make them drowsy for a time after taking it?
- Would they benefit from the presence of a friend or family member? You may also wish to consider whether they would benefit from an advocate.

## Assessing capacity

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**Once you have made the decision to assess an adult's mental capacity, you need to consider the following three questions, which constitute the mental capacity 'test':**

1. Is the adult unable to make the decision in question, at the time it needs to be made?
2. Does the adult have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? The impairment could be a temporary or permanent impairment and can include (but not limited to) mental illness, dementia, learning disabilities, medical conditions causing confusion, or symptoms of drug or alcohol use.
3. Is the adult's inability to make the specified decision as a result of the identified impairment or disturbance?

If the answer to all three questions is 'yes', then the adult will lack capacity to make the specified decision.

To help you judge the above test, you need to consider the following questions:

- Does the adult understand the decision that needs to be made, and why?
- Do they understand the consequence of the decision?
- Can they understand, retain, use, and weigh up relevant information?
- Can they communicate their decision?
- If the decision required is a 'complex' decision, do you need to involve other professionals and take a multi-agency approach? This could be their GP or healthcare specialist.

It's also important to be aware that there are a number of factors which can affect capacity. Some people have fluctuating or temporary capacity. This means that their capacity can be affected by temporary factors, such as acute illness, severe pain, the effects of medication, or experiencing trauma or grief. In these situations, if possible, you should put off making the decision until they are better able to engage in the process.

## Recording your decision

**It is good practice for staff to keep a written record of the steps they have taken to assess mental capacity for all decisions, including 'daily life' decisions. This is particularly important, though, for mental capacity assessments made in relation to 'complex' decisions.**

Details of the assessment should be recorded in:

- healthcare clinical notes;
- legal client files, in the case of solicitor or police involvement;
- care plans.

Your organisation may have their own format for recording mental capacity assessments. If this is the case, you should use these formats to record the steps you have taken in assessing capacity.

If your organisation does not have their own format, though, you could consider a format similar to the example overleaf.

# Record of mental capacity assessment

Use this example to support you to record your mental capacity assessments. Ensure that you keep your records in your client files or record-keeping systems.

Name of the adult being assessed:

Date of birth:

Today's date:

System reference:

Current address:

Your name and role:

Name and role of any person assisting:

Details of the specific decision to be made:

Details of the concerns surrounding the adult's mental capacity to make this decision:

**Details of any information relevant to this decision:**

**What steps have you taken to help the person make the decision themselves, and why did these not succeed?**

**The mental capacity 'test'**

**1. Is the adult unable to make the decision in question, at the time it needs to be made?**

*Confirm if the adult is able to make the decision and note on what basis you have reached this decision (i.e. the evidence for this).*

**2. Does the adult have an impairment of the mind or brain or is there some sort of disturbance affecting the way their mind or brain works?**

*If there is an impairment or disturbance, note what this is.*

**3. Is the adult's inability to make the specified decision as a result of the identified impairment or disturbance?**

*If the answer is yes, notes any details about the impairment or disturbance which impacts on the adult's ability to make the specified decision.*

If the answer to all three questions is 'yes', then the adult will lack capacity to make the specified decision. To assist you in making this decision, you should consider the following four-stage test.

If you answer 'No' for any question below, give details of what the person could not do in relation to one or more of the four questions and explain what practicable steps were taken to overcome the problem.

If you answer 'Yes' for any question below, please detail what the person understood and how this was indicated, how retention of the information was shown, evidence of using or weighing the information (what the person said or did), and how the decision was communicated.

Failure on any one question below means the person lacks capacity at this time to the decision asked of them.

### **The four-stage test**

#### **1. Does the adult understand the decision that needs to be made, and why?**

*Note the information you shared about the decision to be made, including the consequences of the decision and the adult's exact words and/or responses (e.g. movement, pictures used etc).*

#### **2. Can they use and weigh up the relevant information?**

*Note the adult's exact words and/or responses (e.g. movement, pictures used etc) to evidence how they can or cannot weigh up the information relevant to the decision.*

#### **3. Can they retain the relevant information long enough to make a decision?**

*Note your judgment on this based on the adult's ability, or not, to remember the information discussed and their decision.*

#### **4. Can they communicate their decision in any way to you?**

*If they can, please describe how they communicated. If they cannot, please explain how you found them to be, what they were doing and/or saying.*