

What is the Mental Capacity Act?

The [Mental Capacity Act \(MCA\) 2005](#) is a legal framework designed to support 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, if someone else should manage their finances or whether to have a medical operation.

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.

Further Information

To receive information about Havering's multi-agency training programme, that includes mental capacity training, please email:

safeguardingpartnerships@haverling.gov.uk

For more information on the Mental Capacity Act 2005, you can read:

[Mencap's Guide to the Mental Capacity Act 2005](#)

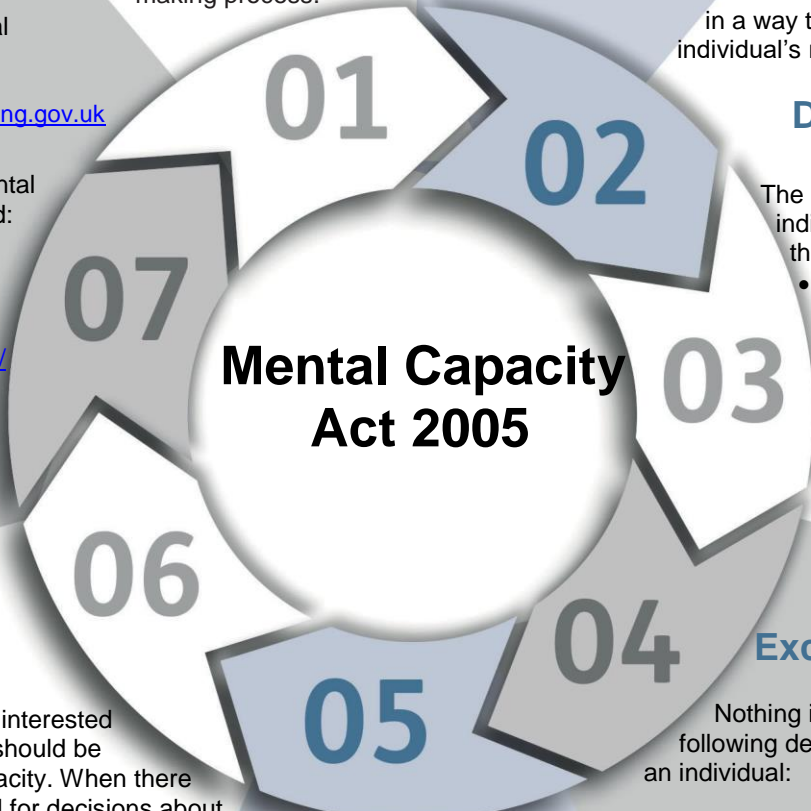
<https://mentalcapacitytoolkit.co.uk/>

Key Principles of the Act

Everyone working with and/or caring for a person over the age of 16 must comply with the MCA 2005, and have regard to the Act's [Code of Practice](#).

There are 5 key principles that underpin the Act.

- 1. Assume capacity** – to always start off by thinking that an individual can make their own decisions, unless it is proved otherwise.
- 2. Provide support** – to give an individual all the support they need to help them make decisions.
- 3. Enable choice** - an individual should not be stopped from making a decision just because someone else thinks it is unwise or wrong.
- 4. Best interest** - anytime someone else does or decides something for an individual who lacks capacity, it must be in the individual's best interests.
- 5. Least restrictive** – when a decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the individual's rights and freedom of action.



Decision-Making

The MCA 2005 states that an individual can make a decision if they can:

- **Understand the information given to them**
- **Retain this information long enough to make a decision**
- **Think about or weigh up the information to make the decision**
- **Communicate the decision.**

Excluded Decisions

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.

The UK Government website provides guidance on how to make decisions under the MCA 2005, and this can be viewed by clicking [here](#).

Who might lack capacity?

An individual may lack mental capacity for different reasons. This could include those who have or may experience dementia; a severe learning disability; a brain injury; a mental health condition; a stroke; unconsciousness or confusion due to an illness/accident; alcohol or substance misuse.

Advocacy

Family members and/or carers interested in the welfare of the individual should be consulted when assessing capacity. When there is no-one that can be consulted for decisions about serious medical treatment, changes in accommodation, care reviews or adult protection cases for instance, then an Independent Mental Capacity Advocate (IMCA) service will be applicable. The advocate is there to represent the individual who lacks capacity, their views and interests, they are not the decision-maker. It is the decision-maker's duty to instruct the IMCA before making a decision (unless it is an emergency, such as a doctor or care worker).

The Social Care Institute for Excellence provides information on IMCA → to find out more click [here](#).

Assessing Capacity

The MCA 2005 has a two stage test for assessing capacity.

- Stage 1: Does the individual have an impairment of their mind or brain, whether as a result of an illness, medical condition, or external factors such as alcohol or drug use?**
- Stage 2: Does the impairment or disturbance of the individuals mind or brain mean they are unable to make a decision when they need to?**

An individual can lack capacity to make some decisions, but may have capacity to make others. Mental capacity could 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.



7-minute briefing