

Mental Capacity Act 2005: What Families Need to Know

Understanding the law that protects your loved one's rights

■ Published April 2025

■ 7 min read

■ Families, Carers & Solicitors

In summary: The Mental Capacity Act 2005 is the law in England and Wales that governs how decisions are made for people who may not be able to make certain decisions for themselves. It exists to protect people's rights, promote their independence, and ensure that any decisions made on their behalf are in their best interests.

What is the Mental Capacity Act 2005?

The Mental Capacity Act 2005 (MCA) came into force in October 2007. It is the legal framework that sets out how capacity should be assessed, how decisions should be made for those who lack it, and how to protect vulnerable people from harm or exploitation.

The MCA applies to anyone aged 16 or over in England and Wales. It is relevant across an enormous range of situations — from everyday decisions about where someone lives or what medical treatment they receive, to legal matters like making a Will or managing finances.

For families caring for a loved one with dementia, a brain injury, a learning disability, or a mental health condition, understanding the MCA is not just useful — it is essential.

The five key principles of the MCA

The Act is built around five core principles that must always be applied when assessing or acting on someone's capacity:

1. Assume capacity unless proved otherwise

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Every adult is presumed to have mental capacity until a proper assessment shows otherwise. No one should be treated as unable to make a decision simply because of their age, diagnosis, or appearance.

2. Support people to make their own decisions

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All practical steps must be taken to help a person make a decision before concluding they cannot. This might include using simple language, pictures, or finding the right time of day when they are most alert.

3. Making an unwise decision does not mean lacking capacity

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Everyone has the right to make decisions that others might consider unwise. A person cannot be assessed as lacking capacity simply because family members disagree with their choices.

4. Any decision made must be in the person's best interests

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When someone genuinely lacks capacity for a specific decision, any decision made on their behalf must be in their best interests — not the convenience of others.

5. Use the least restrictive option

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Before making a decision for someone, consider whether there is a less restrictive option that still meets their needs and respects their rights and freedoms.

Capacity is always decision-specific

- A person may have capacity to make some decisions but not others.
- Someone with early-stage dementia might decide what to eat, but not manage complex finances.
- Capacity is never an all-or-nothing judgment — it is always assessed for a specific decision.

How is mental capacity assessed?

The MCA sets out a two-stage test. First, the assessor must establish whether there is an impairment or disturbance in the functioning of the person's mind or brain. Second, they must determine whether that impairment means the person cannot:

- **Understand** the information relevant to the decision
- **Retain** that information long enough to make a decision
- **Use or weigh** the information as part of the decision-making process

- **Communicate** their decision by any means

If a person cannot do one or more of these things because of their condition, they may be assessed as lacking capacity for that specific decision at that specific time.

Do you need a mental capacity assessment?

Our specialist assessors work with families and solicitors across England and Wales.

■ 0333 335 6547 | ■ info@novacare.org.uk

What happens when someone lacks capacity?

When a person lacks capacity for a specific decision, there are several legal mechanisms that may come into play:

- **Lasting Power of Attorney (LPA)** — if one was made before the person lost capacity, the appointed attorney can act on their behalf
- **Court of Protection deputyship** — if no LPA exists, a family member or professional can apply to the Court to be appointed as deputy
- **Best interests decisions** — for day-to-day decisions, the person's care team makes decisions in their best interests, involving family where possible
- **Independent Mental Capacity Advocate (IMCA)** — if a person has no one to speak for them, an IMCA may be appointed

Frequently asked questions

Does the MCA apply in Scotland or Northern Ireland?

No. The Mental Capacity Act 2005 applies in England and Wales only. Scotland has the Adults with Incapacity (Scotland) Act 2000, and Northern Ireland has its own legislation. Nova Care Consultants operates across England and Wales.

Can a family member override a doctor's decision?

Not automatically. Families should be consulted as part of best interests decision-making, but the final decision usually rests with the treating clinician or, in disputed cases, the Court of Protection.

What if we disagree with a capacity assessment?

Capacity assessments can be challenged. A second opinion from an independent specialist assessor — such as those at Nova Care Consultants — is the most effective first step.

Is a formal assessment always needed?

Not for everyday decisions. For significant decisions — particularly those with legal, financial, or medical implications — a formal written assessment is strongly advisable to protect everyone involved.

Easy Read

This section uses simple words and short sentences for people who find reading difficult.

The Mental Capacity Act — Easy Read

■ The Mental Capacity Act is a law.

It was made in 2005.

It is the law in England and Wales.

■ The law is about making decisions.

Sometimes people find it hard to make decisions.

This might be because of dementia.

Or a brain injury.

Or a learning disability.

■ The law says everyone has the right to make their own choices.

People should be given help to make decisions.

Just because someone makes a different choice does not mean they have no capacity.

■■■■ Sometimes an expert checks if someone can make a decision.

This is called a capacity assessment.

The expert asks questions and listens carefully.

They write a report.

■ If someone cannot make a decision, others must help.

The helpers must do what is best for that person.

This is called acting in someone's best interests.

■ Nova Care Consultants can do capacity assessments.

We are kind and experienced.

We work across England and Wales.

■ Call us: 0333 335 6547 ■ Email: info@novacare.org.uk

Have questions about mental capacity?

Our specialist team is here to support families, carers and legal professionals across England and Wales.

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