

BEST INTERESTS & WHO ELSE MIGHT DECIDE

If the person lacks capacity for this decision, any decision made for them must be in their **best interests** (s.4).

THE BEST INTERESTS CHECKLIST

- Don't discriminate — not based on age, appearance, or condition.
- Consider whether capacity could return — can the decision wait?
- Involve the person as much as possible in the decision.
- Find out their **past and present wishes**, beliefs, and values.
- Consult family, carers, and anyone with power of attorney or deputyship.
- Avoid life-sustaining-treatment decisions motivated by a desire for death.

IMCA — INDEPENDENT MENTAL CAPACITY ADVOCATE

Must be instructed for someone who lacks capacity and has **no family or friends** to consult, for serious medical treatment or a change of accommodation.

WHO MIGHT ALREADY HAVE LEGAL AUTHORITY

Lasting Power of Attorney (LPA) — named by the person when they had capacity. Check whether it covers *health & welfare*, *property & finance*, or both.
Court-appointed Deputy — appointed by the Court of Protection when there is no valid LPA.

REMEMBER

Section 44 makes it a **criminal offence** to wilfully neglect or ill-treat a person who lacks capacity.

When in doubt, ask. Write it down.

WHEN TO ASSESS CAPACITY

Assess capacity when there is a **specific decision** to make and a **reason to doubt** the person can make it. Not based on diagnosis or age — on what you see and hear in this conversation.

THE TWO-STAGE TEST

Stage 1. Is there an impairment of, or disturbance in, the functioning of the person's mind or brain? (It can be temporary or permanent.)

Stage 2. Does that impairment mean they are unable to make *this specific decision at this time*?

TO MAKE A DECISION, A PERSON MUST BE ABLE TO...

UNDERSTAND	the information relevant to the decision
RETAIN	it long enough to use it
WEIGH	the information to reach a decision
COMMUNICATE	their decision (by any means)

If any one is missing for this decision → they lack capacity for it.

THE GOLDEN RULE

Capacity is **decision-specific** and **time-specific**. Someone may have capacity to choose tea but not to choose to move home. Someone may have capacity this morning but not this evening.

Assess for this decision, at this time.

MENTAL CAPACITY ACT 2005

the five principles

1. Presumption of capacity
2. Support to decide
3. Unwise decisions
4. Best interests
5. Least restrictive

A pocket guide for everyone
involved in care and support

Keep in your pocket. Use every decision.

THE FIVE PRINCIPLES — SECTION 1, MCA 2005

what the Act says, what it means, and what it looks like in practice

1 PRESUMPTION OF CAPACITY

The Act says: “A person must be assumed to have capacity unless it is established that he lacks capacity. (s.1(2))”

What it means: Start by assuming the person **can** decide. Don’t make them prove it.

In practice: Don’t use diagnosis as the answer. “She has dementia, so…” is not enough.

2 ALL PRACTICABLE SUPPORT

The Act says: “A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success. (s.1(3))”

What it means: Help them decide. Try every reasonable thing first.

In practice: Pictures, sign language, plain words, a quieter room, a better time of day, glasses on, hearing aids in, a familiar person beside them.

REMEMBER

***Capacity is not all-or-nothing.
Decision by decision. Day by day.***

Empower first. Decide for last.

3 UNWISE DECISIONS

The Act says: “A person is not to be treated as unable to make a decision merely because he makes an unwise decision. (s.1(4))”

What it means: An unwise choice is not the same as an incapable choice.

In practice: If a resident with capacity wants the chocolate cake despite their diabetes — that is their right. Document it; don’t override it.

4 BEST INTERESTS

The Act says: “An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests. (s.1(5))”

What it means: If they can’t decide, you decide **for them** — from *their* point of view, not yours.

In practice: Use the s.4 checklist (see flap). Ask what they would have chosen, not what you would choose.

REMEMBER

***Eccentric is not incapable.
Best interests means theirs, not ours.***

Respect choice. Decide with care.

5 LEAST RESTRICTIVE OPTION

The Act says: “Before the act is done, or the decision is made, regard must be had to whether the purpose can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom. (s.1(6))”

What it means: Choose the option that limits their freedom **least**, while still achieving the purpose.

In practice: Could you ask before you act? Use a verbal prompt before a physical one? Lock a cupboard rather than a door?

ASK BEFORE EVERY DECISION

1. Have I **assumed capacity** until I had a reason not to?
2. Have I **helped** the person understand and decide?
3. Am I judging an **unwise** choice as if it were incapable?
4. If I’m deciding for them — is this what **they** would choose?

REMEMBER

***Least restrictive ≠ doing nothing.
It means doing the smallest thing that works.***

Lightest touch. Greatest freedom.