

## The Mental Capacity Act

The Mental Capacity Act (MCA) covers situations where someone is unable to make a decision because the way their mind or brain works is affected, for instance by:

- a stroke or brain injury
- a mental health problem
- dementia
- a learning disability
- confusion, drowsiness or unconsciousness because of an illness (or the treatment for it)
- substance misuse.

It includes everyday decisions such as what to wear or when to take a bath and more serious decisions such as where to live.

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### Key principles of the MCA

The Act works on five key principles (Section 1, MCA)

1. You must presume that an individual does have capacity to make decisions unless it is proved otherwise.
2. Someone must be given as much support as possible to make their own decisions. Even if it is proven that they lack capacity, it is still important to involve the person in decision making.
3. You cannot decide that someone lacks capacity if you disagree with their decisions. People have the right to make decisions which might seem risky or unconventional to you.

4. If a person has been assessed as lacking capacity, anything done for or on behalf of a person must be done in their best interests.
5. All actions made on behalf of someone who lacks capacity must be looked at to see if there are other options. If there is more than one action that can be taken, you need to look at which action interferes less with their rights and freedom. This will depend on each individual circumstance and decision.

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## How can you tell if someone lacks capacity?

If there is a situation where a decision needs to be made, you might need to assess someone's capacity. The assessment would only be valid for that decision as having a lack of capacity is not always a permanent condition. According to the MCA, to assess capacity, there are two questions you need to answer.

### Question 1

Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,

### Question 2

Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

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A person is assessed as lacking the ability to make a decision, and needing an IMCA, if they cannot do one or more of the following:

- Understand information given to them about the decision.
- Retain the information for long enough to make the decision.
- Use or weigh up the information as part of the decision making process.
- Communicate their decision (by any means, e.g. talking, sign language or blinking).

Before making a decision, you need to have tried to find ways of communicating with the person. You also need to speak with their family, friends and other people in their circle of support.

## Who are Total Voice Cambridgeshire and Peterborough?

Total Voice is a partnership providing independent advocacy services across the area. You can find out more on [www.totalvoicecp.org](http://www.totalvoicecp.org) or by calling 0300 222 5704.

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