

# Quick Guide to Mental Capacity Act for 16- and 17-year-olds

## Background

In law, young people aged 16 and over are presumed to have capacity. They can consent to, or refuse, treatment in their own right, including hospital admission.

The Mental Capacity Act 2005 (MCA) and Code of Practice ([Mental-capacity-act-code-of-practice.pdf \(publishing.service.gov.uk\)](#)) provides the legal framework for acting and making decisions on behalf of individuals over the age of 16 who lack the mental capacity to make particular decisions for themselves because of a disturbance or impairment in the functioning of their mind or brain. This can be permanent or temporary.

## The Importance of the Mental Capacity Act

The MCA is designed to protect and restore power to vulnerable people who lack capacity.

It empowers people to make decisions for themselves wherever possible and protects people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process.

## The Mental Capacity Act is underpinned by five key principles

**Principle 1: A presumption of capacity** - A person 16 years and over has the right to make their own decisions and must be assumed to have capacity to do so unless it is proved otherwise.

**Principle 2: Individuals being supported to make their own decisions** - Every effort should be made to encourage and support people to make the decision for themselves.

**Principle 3: Unwise decisions** - People have the right not to be treated as lacking capacity merely because they make a decision that others deem 'unwise'.

**Principle 4: Best interests** - Anything done for, or on behalf of, a person who lacks mental capacity must be done in their best interests.

**Principle 5: Less restrictive option** - Someone making a decision, or acting on behalf of, a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedom of action.

In order to assess capacity, the following two-stage test must have been followed:

1. Is that impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?
2. Is there an impairment of, or disturbance in, the functioning of the person's mind or brain?

[A Local Authority v JB | 39 Essex Chambers](#)

The first stage of the test (or functional test) dictates that the person is unable to make a decision if they cannot:

Understand information about the decision to be made.

Retain that information in their mind.

Use or weigh-up the information as part of the decision process.

Communicate their decision.

If a person lacks capacity in any of these areas, then this represents a lack of capacity (*Mental Capacity Act 2005: Code of Practice*).

## Further Links and information

[Consent to treatment - Children and young people - NHS \(www.nhs.uk\)](#)

[Brief guide Capacity and consent in under 18s v3.pdf \(cqc.org.uk\)](#)

[Shedinar – the MCA and 16/17 year olds – Mental Capacity Law and Policy](#) (represents the current position as of January 2021)

The YPs wishes, thoughts and feelings should always be sought, and their views