Five Key Principles of the Mental Capacity Act

**Principle 1:**
Capacity should always be assumed. A patient’s diagnosis, behaviour or appearance should not lead you to presume capacity is absent.

**Principle 2:**
A person’s ability to make decisions must be optimised before concluding that capacity is absent. All practicable steps must be taken, such as giving sufficient time for assessments, repeating assessments if capacity is fluctuating, and if relevant, using interpreters, sign language, or pictures.

**Principle 3:**
Patients are entitled to make unwise decisions. It is not the decision but the process by which it is reached that determines if capacity is absent.

**Principle 4:**
Decisions (and actions) made for people lacking capacity must be in their best interests.

**Principle 5:**
Such decisions must also be the least restrictive option(s) for their basic rights and freedoms.

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**Determining best interests for a person who lacks capacity**
It is essential in determining best interests that you do what is possible to permit and encourage the person to take part in the decision making process. As such you should make best use of any existing multi-agency professionals, family, friends and try to identify all the things that the person who lacks capacity would take into account if they were making the decision or acting for themselves. It is also essential that if the decision relates to life sustaining treatment that decision makers ensure that they are not motivated by a desire to bring about a person’s death.

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For further information please consult the Mental Capacity Code of Practice.

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Flowchart 1
Assessing Capacity

1st statutory principle - Presumption of Capacity
- If the person's behaviour or circumstances cause doubt as to whether they have capacity, or
- They have already been shown to lack capacity in other areas of their life, or
- Somebody else expressed concern about the person's capacity, then…

3rd statutory principle - A person is not to be treated as unable to make a decision merely because he makes an unwise decision

Undertake 2 stage assessment of capacity

Stage 1 (diagnostic)
- Does the person have an impairment of the mind or brain, or is there some disturbance affecting the way their mind or brain works?

If YES, provide all practicable support to the person to maximise their ability to make the decision before going on to stage 2 of the assessment.

If NO, proceed to Stage 2 (functional)

Stage 2 (functional)
- Does the person have an understanding of the relevant information needed to make the specific decision?
- Is the person able to retain the relevant information long enough to make the decision?
- Is the person able to weigh up the information as part of decision making?
- Can the person communicate their decision - by any means?

Person lacks capacity to make the specific decision
- Record and prepare the Best Interest decision (Flowchart 2)

Person has capacity to make the decision
- Record and continue to support person to make the decision

Record finding
- Person retains legal capacity to make the decision
- No further action under MCA

Provide information to Deputy to make decision
- See Chapter 8 of the Code

Provide information to Attorney to make decision
- See Chapter 7 of the Code

Flowchart 2
Person Lacks Capacity

Person lacks capacity for specific decision (Flowchart 1 followed)

Can the decision be deferred until the person regains capacity? See Section 5.25-5.28 of the Code

NO

YES

Delay the decision until person has capacity to take it, returning to Flowchart 1 in future

Does the person have friends or family (who are appropriate to consult)?

NO

YES

Are structures in place to enable the decision to be made when the person lacks capacity in this matter?

NO

YES

Instruct local IMCA service and…..

Does the decision require an IMCA to be involved? See Chapter 10 of the Code

NO

YES

Court appointed Deputy

Court appointed Deputy

Undertake 2 stage assessment of capacity

Stage 1 (diagnostic)
- Does the person have an impairment of the mind or brain, or is there some disturbance affecting the way their mind or brain works?

Stage 2 (functional)
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- No further action under MCA

Provide information to Attorney to make decision
- See Chapter 7 of the Code

Provide information to Deputy to make decision
- See Chapter 8 of the Code

Comply with Advanced Decision
- See Chapter 9 of the Code

Lasting Power of Attorney

Court appointed Deputy

Undertake Best Interest decision making process See Flowchart 3