



Hampshire  
County Council

# What is Mental Capacity?

- It is your ability to make a particular decision at a particular time.
- It is specific to the decision and the time when this is being taken. Capacity is not an 'all or nothing' thing.
- The Act allows people to future proof their wishes including giving limited powers to third parties to take a decision on their behalf.

# Why this Act?

- Mental capacity issues potentially affect everyone
- We need this act for two reasons:
  - as a professional
  - as a private individual

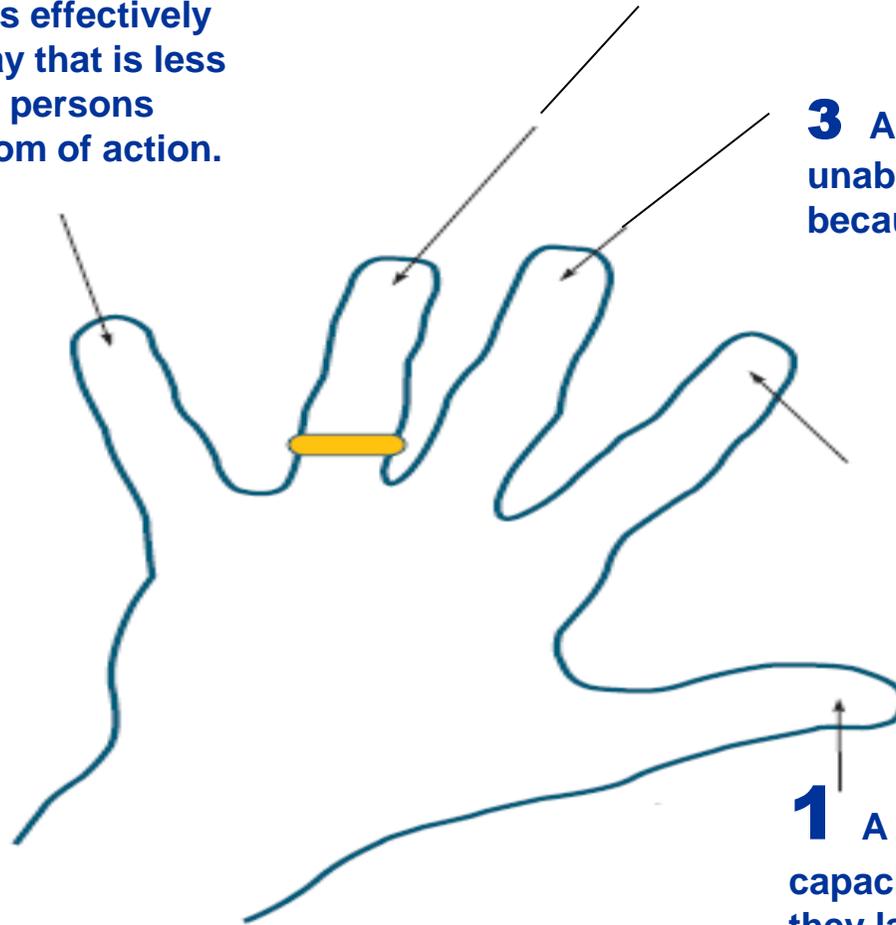
**5** Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the persons rights and freedom of action.

**4** 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

**3** A person is not to be treated as unable to make a decision merely because he makes an unwise decision

**2** 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.

**1** A person must be assumed to have capacity unless it is established that they lack capacity.



Statutory  
Principles –  
Section 1 MCA

# Principle 1

## **A presumption of capacity:**

- Every adult has the right to make their own decisions and must be assumed to have capacity to do so.
- You cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.
- Personal autonomy can only be overruled if a person is assessed as lacking the mental capacity to make a particular decision for themselves at the relevant time.

# Principle 2

## Individuals being supported to make their own decisions:

- a person must be given all possible help before anyone treats them as not being able to make their own decisions.
- This means you should make every effort to encourage and support people to make the decision for themselves.
- If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

# Be prepared!

- Frame the question and tell P what the question is.
- Work out what information is relevant
- Work out what available options P is to chose between
- Present P with detailed options.
- Record all you did to help P decide.
- Show verbatim notes on key questions.

# Principle 3

## Unwise decisions:

- People have the right to make decisions that others might regard as unwise or eccentric.
- You cannot treat someone as lacking capacity for this reason.
- Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

# When should capacity be assessed?

The starting assumption must be that the person has capacity.

If all practical and appropriate steps (principles 1-3) are taken and doubts remain.

## Section 2: People who lack capacity

A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

## Section 3: Inability to make decisions

A person is unable to make a decision for himself if he is unable

- (a) to **understand** the information relevant to the decision,
- (b) to **retain** that information,
- (c) to **use or weigh** that information as part of the process of making the decision, or
- (d) to **communicate** his decision (whether by talking, using sign language or any other means).

# Principles 4 & 5

- (4) 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.
- (5) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

# Section 4: Best interests

We consider -

- equal consideration and non-discrimination;
- considering all relevant circumstances;
- considering whether (and when) that the person may regain capacity;
- permitting and encouraging participation;
- the person's wishes and feelings, beliefs and values;
- the views of other people;
- special considerations for life-sustaining treatment;

It cannot be emphasised enough that Section 4 never gives the answer, it just makes us (hopefully) ask the right questions.

“the intention of the Act is not to dress an incapacitous person in forensic cotton wool but to allow them as far as possible to make the same mistakes that all other human beings are at liberty to make and not infrequently do.”

Hedley J in *A NHS Trust v P*  
[2013] EWHC 50 (COP)