

## The Five Statutory Principles of the Act



1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
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.

Following the principles and applying them to the Act's framework for decision-making will help to ensure not only that appropriate action is taken in individual cases, but also to point the way to solutions in difficult or uncertain situations.

For further information regarding our training courses, workshops and consultancy please contact us via one of the following methods.

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# Mental Capacity Act Information Sheet 1



## BEST INTERESTS CHECKLIST

The Mental Capacity Act 2005 was implemented by parliament in 2007 and is a vitally important piece of legislation for England and Wales. Applying to all people over the age of 16 it offers the opportunity to plan ahead as to how decisions should be made about you if you ever lose the capacity to decide how you would want to be cared for or make decisions about medical treatment. It also provides a framework and a safeguard for anyone who is currently unable to make decisions for themselves for a number of reasons to ensure they are at the heart of decision making when decisions are being made on their behalf. Certain professionals are legally required to abide by it including doctors, nurses, paid carers, dentists to name a few. When professionals working within health or social care services make decisions on behalf of a person that lacks capacity, they are required to know and apply key factors in the Act

This information sheet is a tool for you to use and understand your responsibilities if you are working within the framework of the Act and providing care, treatment or services for a person that lacks capacity. Or if you are a friend, family member, advocate or the person that decisions are being made about and you need to know and understand your rights within the Mental Capacity Act.

In this leaflet:

- What is meant by a person's 'best interests'
- Best Interests Checklist

# What is 'best interests'?

**The best interests 'principle' underpins the Mental Capacity Act: This means that all decisions or acts carried out on behalf of a person to make certain decisions must be in their 'best interests'.**

**There is no statutory definition of 'best interests' but rather a checklist of factors that *must be considered* when working out what is in a person's best interests.**

**Exceptions to the best interests principle (where it does not apply):**

- where a person has previously made an advance decision to refuse particular treatment(s), that treatment cannot be given even if it is deemed to be in their best interests.
- the second exception concerns the involvement in research (see further guidance when considering involving a person who lacks capacity to consent to research).

**It is good practice for healthcare and social care staff to record at the end of the decision making process why they think a specific decision is in the person's best interests.** This is particularly important if healthcare and social care staff go against the views of somebody who has been consulted while working out the person's best interests.

**The decision maker should try to find out:**

- what the people consulted think is in the person's best interests in this matter, and
- if they can give information on the person's wishes and feelings, beliefs and values.

**To receive protection from liability under section 5 of the Mental Capacity Act, before taking action, there must be a reasonable belief that:**

- the person lacks capacity to make that particular decision at the time it needs to be made, and
- the action is in the person's best interests.

# Best Interests Checklist

The checklist of factors that *must* be considered when working out what is in a person's best interests:

- Don't make assumptions about someone's best interests merely on the person's age, appearance, condition or behaviour.
- Take account of all the circumstances that are relevant to the decision in question.
- Give consideration to a person's own wishes, feelings and values and any factors they would have considered if able to do so. This includes any written statements made by the person when they had capacity.
- Take account of the views of the family and informal carers, anyone with an interest in the person's welfare and anyone appointed to act on the person's behalf (such as an attorney or deputy). If there is no-one available to be consulted, an Independent Mental Capacity Advocate (IMCA) must be appointed and their views taken into account.
- Is it likely that the person will regain capacity? If so, can the decision be put off until then?
- Involve the person in the decision making process.
- If the decision concerns the provision or withdrawal of life-sustaining treatment, do not be motivated by a desire to bring about a person's death.

***All of the above factors must be considered, if only to be disregarded as irrelevant to the particular decision. It is also important to:***

- Consider whether there is a less restrictive alternative or intervention and whether this might be in the person's best interests.
- Demonstrate that you have carefully assessed any conflicting views or evidence.
- Provide clear, objective reasons as to why you believe you are acting in the person's best interests