



# Mental Capacity Act

Code of Practice

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# What is the Code of Practice?

- A guide of best practices for everyone who deals with persons who may lack mental capacity. It helps people understand their rights and responsibilities under the Act.
- Certain persons have a particular duty to consider the Code – including doctors.
- Not a statute or secondary legislation.
- The guidance in the Code should be followed. A failure to follow the guidance can be used as evidence in court. If you pursue a different course of action, you must be able to justify it.



# What is mental capacity?



- Mental capacity is the ability of the person to make a specific decision at a particular time.
- It must be assessed on a case by case basis.
- You cannot assume a person lacks capacity because she has a particular condition.
- A person may have capacity to do some things but not others.
- A person's capacity may fluctuate so she may have capacity at some times but not others.

# What are the Statutory Principles?

- Assume a person has capacity unless you establish the opposite.
- Take all practicable steps to help a person make a decision.
- A person has the right to make an unwise decision.
- Always act in the person's best interests.
- Choose the less restrictive option.



# Assessing Mental Capacity

The Act prescribes a **2 stage test**:

- Is the person suffering from an impairment of or disturbance in the functioning of the brain?
- If yes, does the impairment or disturbance cause the person to be *unable to make a decision* when he needs to?



# Meaning of “unable to make a decision”

A person is unable to make a decision if she cannot do one or more of these things at the time the specific decision needs to be made:



- Understand the information
- Remember the information
- Weigh up the information
- Communicate the decision

# Types of Incapacity

## 1. Permanent Incapacity

- Long-term
- PVS
- Locked-in syndrome



# Types of Incapacity

## 2. Temporary Incapacity

- Drunk
- Effect of prescribed medication



# Types of Incapacity

## 2. Fluctuating Capacity

- Early stages of dementia
- Clinical depression
  
- Persons with fluctuating capacity should be supported to make their own decisions when their capacity is good.



## Restraint - Definition



- The use of, or threat to use force by an individual to secure the doing of an act which the person resists OR
- Restricting the person's freedom to move whether or not the person resists.
- No requirement of physical force or threat of physical force.

## Acts in connection with care or treatment (section 7)



- The Act protects individuals carrying out acts of care or treatment if they:
  - take reasonable steps to determine whether the person lacks capacity on the matter in question &
  - reasonably believe that the person lacks capacity and the act to be done is in the person's best interests.
- No protection for negligent acts or omissions.

# Restraint

To obtain section 7 protection, the individual must:



- Take reasonable steps to determine whether the person lacks capacity about the matter in question before doing the act
- Reasonably believe the person lacks capacity
- Reasonably believe that the act of restraint is necessary to prevent the person from suffering harm &
- Ensure the restraining act is a proportionate response to the likelihood of the person suffering harm and the seriousness of that harm.



Thank you.