

Mental Capacity Act - ED Summary

The Mental Capacity Act 2005 came into force in 2007 and generally only affects people aged 16 or over. The act provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act is underpinned by a set of **5 key Principles**

Five Key Principles

1. Presumption of Capacity

- Every adult has the right to make his or her own decisions and must be assumed to have capacity unless it is proved otherwise

2. Individuals Supported to make their own Decisions

- A person must be given all practicable help to make a decision

3. Unwise Decisions

- An individual has the right to make an unwise decision without being deemed as lacking capacity

4. Best Interests

- An act or decision made under the Act must be done in the person's best interests

5. Least Restrictive Option

- Anything done for or on behalf of the person should be the least restrictive of their basic rights and freedoms

Assessing Capacity

The Act sets out a simple clear test for assessing capacity.

Stage 1 asks whether there is any impairment or disturbance in the functioning of the person's mind or brain – **If the answer is No then you do not proceed to Stage 2**

Stage 2 consists of 4 elements – **If the answer is No to any of them then the person is deemed to lack capacity for this specific decision**

1. Is the patient able to understand the information relevant to the decision?
2. Can the person retain the information for long enough to reach a decision?
3. Can the person use or weigh the information to reach a decision?
4. Can the person communicate their decision by any means?

This test is [Decision Specific](#) and [Time Specific](#) - it does not suggest that the person is not capable of making any decisions regarding their care and also that their capacity may change over time.

This test of capacity should be clearly documented in the patient's notes on the Trustwide form available on the Intranet.

Deprivation of Liberty Safeguards (DOLS)

This part of the Act can authorise the deprivation of an individual's liberty in a hospital or care home this is to ensure that people are given the care they need in the least restrictive way, prevent arbitrary decisions and provide rights of challenge against unlawful detention.

DOLS apply to anyone

- Age 18 and over
- Who has a mental disorder
- Lacks capacity to consent to arrangements made for their care or treatment
- For whom deprivation of liberty may be necessary in their best interests to protect them from harm
- Where detention under the Mental Health Act is not appropriate at that time.

There are six assessments that are needed in order to satisfy the requirements of an MCA DOLS being granted

1. Age Assessment
2. No Refusals Assessment – Any conflict with other existing authority
3. Mental Capacity Assessment
4. Mental Health Assessment
5. Eligibility Assessment
6. Best Interests Assessment

At the Great Western Hospital the DOLS Service is available for information, advice and referrals between 9am-5pm.

Further information on the Trust Intranet on the following [link](#)

