

# 1 Mental Capacity Act

The Mental Capacity Act (MCA) 2005 has been in force since 2007 and applies to young people over the age of 16 and adults. The primary purpose of the MCA is to promote and safeguard decision making within a legal framework. Everyone working with (or caring for) any young person from the age of 16 who may lack capacity must comply with the Act.

# 2 Principles

The MCA is underpinned by 5 principles for supporting young people and adults:

1. Always presume capacity
2. Support them to make their own decisions
3. They have a right to make unwise decisions
4. Always act in their best interests
5. Ensure that decisions are least restrictive as possible

# 3 Code of Practice

There is a [Code of Practice](#) to support effective implementation of the Mental Capacity Act 2005. There is a duty under the Act for all persons and organisations with a responsibility for making decisions, or carrying out acts when a young person lacks capacity to have regard to the code at all times, regardless of the existence of other guidance.

# 7 Resources and Guidance

The WSCB has published a [page](#) about the Mental Capacity Act which includes the following:

- Code of practice and principles
- Recording the assessment
- Care and treatment for young people
- Useful links and resources
- E-learning

# 6 Decisions

There is a range of critical areas for practitioners to consider when making decision with people who may (at times) lack capacity. These are;

- Decisions about Leaving Care;
- Decisions about moving home;
- Decisions about managing risk and controlling behaviour;
- Decision about money matters.

# 4 Testing Capacity

The [Mental Capacity Act](#) sets down the two stage test of capacity. Any assessment should begin with stage 1 and only move to stage 2 if the first stage is met.

**Stage 1 :** must be an impairment in the functioning of the mind or brain.

**Stage 2:** must be an inability to make the decision as a result of the impairment in the functioning of the mind or brain.

# 5 Consent

The test for assessing whether a child under 16 can give valid consent differs from that of a young person aged 16 or 17.

The test for children under 16 is determined by considering whether they are 'Gillick competent'.

The concept of Gillick competence reflects the child's increasing development to maturity.

