

The Mental Capacity Act Principles

1. A person must be assumed to have capacity unless it is established otherwise
2. People must be supported as much as possible to make their own decisions before anyone concludes that they cannot make their own decisions
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision
4. Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests
5. Anything done for, or on behalf of, people without capacity should be the least restrictive of their basic rights and freedoms

The Mental Capacity Test

The first test is diagnostic

In order to decide whether an individual has the mental capacity to make a particular decision, you must first decide whether there is an impairment of, or disturbance in, the functioning of the person's mind or brain (it does not matter if this is permanent or temporary).

The second test is functional

The person will be unable to make the particular decision if after all appropriate help and support to make the decision has been given to them (principle 2) if they cannot do one of the following:

1. Understand the information relevant to that decision
2. Retain that information
3. Use or weigh that information as part of the process of making the decision
4. Communicate their decision (whether by talking, using sign language or any other means)

Mental capacity is decision specific

Working in someone's best interest means:

