

# Quick Guide to Mental Capacity Act for 16- and 17-year-olds

## Background

The Mental Capacity Act 2005 (MCA) (<https://www.legislation.gov.uk/ukpga/2005/9/contents> and code of practice <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>) provides the legal framework for acting and making decisions on behalf of individuals over the age of 16 who lack the mental capacity to make particular decisions for themselves because of a disturbance or impairment in the functioning of their mind or brain (whether temporary or permanent). It empowers young people to make decisions for themselves whenever possible, and protects those whom lack capacity by providing a legal framework that places individuals at the very heart of the decision making process.

## Why it Matters

It is important that professionals, families & carers understand there is a legal framework surrounding decision making for young people. The MCA is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. The aim is to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

**Information** - Five statutory principles that underpin the Act are as follows:

- The Act's starting point is to assume that anyone aged 16 or over has capacity to make decisions for themselves.
- All practicable steps should be taken to support the person to make their own decisions.
- Unwise decisions do not mean the person lacks capacity.

- **Acts** done on behalf of someone who lacks capacity must be in their best interests. When considering best interests, it is important to check the person's previously expressed wishes, feelings, beliefs and to consult with all interests' parties i.e. family/ carers.
- Before an act is done or a decision is made, it must be considered whether it can be achieved in a way that is less restrictive of the person's rights or freedoms of action

## What to do

If you work with young people 16 and over, you have a legal duty to have regard to the MCA Code of Practice. We must do all we can to maximise capacity for our young people to enable them to make decisions where possible.

If capacity is in doubt the 2-stage test of capacity must be carried out as set out by the MCA.

## Making a competent decision entails being able to :

- Understand the information relevant to the decision (including the foreseeable consequences of deciding one way or another or of failing to make a decision)
- retain the information (even if for only a short time)
- Using the information to make the decision
- Being able to communicate the decision (by some recognisable way)

the YP's wishes, views and feelings should always be sought, their views taken seriously, and they should be kept as fully informed as possible; explanations should be given in a way they understand

## Questions to Consider

What can be done for young people we work with to maximise their capacity to make their own decisions?

Are we clear about our responsibilities under the MCA for young people in our care?

Do all staff working in your organisation with young people or their parents/ carers have a good knowledge of the MCA?

any intervention in the life of a YP that is considered necessary by reason of their mental disorder should be the least restrictive option and the least likely to stigmatise them. It should also result in the least possible separation from family/friends/their community

## Further info and Links

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

[Welcome \(proceduresonline.com\)](http://Welcome.proceduresonline.com)