

[The Mental Capacity Act 2005](#)

A Summary of 5 Principles

1. Every adult has the right to make his or her own decisions and must be **assumed to have capacity to do so unless it is proved 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. People have the **right to make what others might regard as unwise or eccentric decisions.**
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 frights and freedoms.**



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First Test (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 brain. It does not matter whether this is permanent or temporary.

Second Test (Functional)

The person will be unable to make the particular decision if, after all appropriate help and support has been given, they cannot:

1. understand the information relevant to the decision required,
2. retain that information,
3. evaluate that information as part of the decision-making process,
4. communicate their decision (through talking, the use of signing, or any other means of communication).

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Assessing Capacity and Working with Incapacity

Assessing capacity is 'decision-specific' – no one can be labelled 'incapable' as a result of a particular medical condition or diagnosis. Lack of capacity cannot be determined by age, appearance, or aspect of a person's behaviour.

When care or treatment is provided for a person who lacks capacity, the care provider does not incur legal liability. This covers actions that may otherwise result in a civil wrong or crime due to interference with the patient's body or property in the ordinary course of caring.

'Restraint' is the threat or use of force in response to the resistance of an incapacitated person or the restriction of liberty or movement, whether or not the person resists. Restraint may only be used if the enforcer believes it required to prevent harm of the incapacitated person. The use of restraint must be proportionate to the likelihood and seriousness of harm.

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