

# The Mental Capacity Act 2005

Remember to apply the **5** and **2** in all you do



## Five Guiding Principles

- 1) Presume capacity
- 2) Do all you can to support decision making
- 3) Do not conclude someone lacks capacity just because they make an unwise decision
- 4) If the person lacks capacity for a decision you must act in their best interests and
- 5) You must aim to choose the less restrictive option

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## Two Part assessment:

- 1) You need some evidence that the person has an impairment or disturbance in the functioning of mind or brain. Because of this impairment they must be unable to satisfy the next part of the test.
- 2) Carry out the functional test. Can the person:
  - Understand the information relevant to the decision
  - Retain the information long enough to make a decision
  - Use and weigh the information to make a decision
  - Communicate their decision, by any means

If the person cannot meet any one of these requirements **because** of the mental impairment then they lack capacity for the specific decision at this point in time.

# Best Interests Decision Making applies only when someone lacks mental capacity

**1.** Do not discriminate - avoid assumptions

**4.** Find out what values and beliefs the person holds, take these into account

Is there an LPA?  
Is the decision within their power to make?  
Is there an advance decision to refuse medical treatment?

**2.** Does the decision need to be made now? Might the person regain capacity?

**5.** Be person centred, involve the person in the decision

Involve the IMCAs if appropriate (unbefriended, and decisions about serious medical treatment or care environment). Take the IMCAs views into account

**3.** Consult with others including family and friends, care providers and other professionals involved

**6.** Do a balance sheet approach for all options considered, i.e. benefits and disadvantages. Avoid risk averse approaches

Every best interests decision must be recorded and justify how this is the least restrictive approach and in the person's best interests