

## The Capacity Test

### Stage 2

A person is unable to make a decision if they cannot:

- understand information about the decision to be made (the Act calls this 'relevant information')
- retain that information in their mind
- use or weigh that information as part of the decision-making process, or
- communicate their decision (by talking, using sign language or any other means).

## Best Interests Checklist

- Encourage participation
- Identify all the relevant circumstances
- Find out the person's views
- Avoid discriminations
- Assess whether the person may regain capacity
- Re: Decisions about life sustaining treatment – refer to Code
- Consult others
- Avoid restricting the person's rights
- Take all this into account when making a decision

Outcome is the least restrictive means available.

Camden and Islington 

NHS Foundation Trust

A guide to the Mental Capacity Act 2005  
For further information please go to  
C&I Intranet > Clinical > Mental Health Law

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## The five key statutory principles are:

1. A person must be assumed to have capacity unless it is established that he lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

## The Capacity Test

### Stage 1

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent.)
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?