

# Mental Capacity Act 2005

Remember to use the 5 and 3 to assess capacity

## 5

### Principles to guide you

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



## 3

### Questions to help you

- 1) Can the person do all the following?
  - Understand the information relevant to a 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 possible

If at least one of these requirements can't be met - you must ask:

- 2) Does the person have an impairment or disturbance in the functioning of mind or brain?  
If so
- 3) Is this the reason that they cannot make the decision?

# Best Interests Decision Making - applies when the person lacks mental capacity.

## Decision Making – Statutory Checklist

- Do not discriminate - avoid assumptions based on age, disability, behaviour etc
- Consider all relevant circumstances
- Consider the person's past and present wishes, feelings, beliefs and values
- Involve the person in the decision making
- Might the person regain capacity, does the decision need to be made now?
- Consult others e.g. family and friends, care providers, other professionals
- For life sustaining treatment, do not be motivated by the desire to bring about the person's death

## Questions for Decision Makers

- Are you certain you have provided all possible support for the person to make their own decision?
- Is there a Lasting Power of Attorney (LPA) or Deputy appointed?
- Is the decision within the LPA/Deputy's power to make?
- Is there an Advance Decision to Refuse Treatment?
- Have you involved an Independent Mental Capacity Advocate (IMCA) i.e. in all un-befriended decisions about serious medical treatment or change of accommodation; in certain safeguarding situations; and in some care reviews?
- Are you certain about the available options and which are less restrictive?

## Best Interests Decision Making does not replace Care Act duties

For training requirements contact:

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