

## Mental Capacity and Decision making: Handout

According to the Human Rights Act 1998 a person living in a care home has the same rights as anyone else. However, by definition, the fact that someone is in receipt of 24-hour care may mean they have less ability, physically and mentally, to manage their own care and decision making. But just because someone has difficulty with decision making does not mean that they no longer care what happens to them. We should not assume we have the right to make decisions for someone else just because they cannot make their own decision in a time frame that fits in with our schedule.

**Below are the five Main Principles of the Mental Capacity Act 2005.**

**Principle 1:** 'A person must be assumed to have capacity unless it is established that he lacks capacity.' (section 1(2)) p.20

**Principle 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.' (section 1(3)) p.22

**Principle 3:** 'A person is not to be treated as unable to make a decision merely because he makes an unwise decision.' (section 1(4)) p.24

**Principle 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.' (section 1(5)) p.26

**Principle 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.' (section 1(6)) p.27

Mental Capacity Act 2005

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/497253/Mental-capacity-act-code-of-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)

Deprivation of Liberty Safeguards. Code of Practice to supplement the Main Mental Capacity Act 2005

<https://www.cqc.org.uk/sites/default/files/Deprivation%20of%20liberty%20safeguards%20code%20of%20practice.pdf>

Human Rights Act 1998

[https://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human-rights/Older People Human Rights Expert series pro.pdf?dtrk=true](https://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human-rights/Older%20People%20Human%20Rights%20Expert%20series%20pro.pdf?dtrk=true)

Care Act 2014 Fact Sheet

<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets>

**An amendment to the Mental Capacity Act (MCA 2019) regarding Deprivation of Liberty is waiting to be introduced.**

<https://www.advocacyfocus.org.uk/news/liberty-protection-safeguards-what-you-need-to-know#:~:text=The%20Mental%20Capacity%20%28Amendment%29%20Bill%20has%20recently%20passed,w ho%20lack%20capacity%20to%20ake%20decisions%20for%20themselves.>