

# High Street Smiles

**Mental Capacity Act Code of Practice** Section 1 of the Act sets out the five „statutory principles” – the values that underpin the legal requirements in the Act. The Act is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

1. A person must be assumed to have capacity unless it is established that they lack 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 as 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.

*Summary of other key elements of the Act*

The Act assumes that everyone can make their own decisions – just that some people need support. The professional should always:

- Do whatever is possible to permit and encourage the person to take part, or to improve their ability to take part, in making the decision
- identify all relevant circumstances
- Try to identify all the things that the person who lacks capacity would take into account if they were making the decision or acting for themselves
- Find out the person's views
- Try to find out the views of the person who lacks capacity, including:
  - The person's past and present wishes and feelings – these may have been expressed
    - Verbally, in writing or through behaviour or habits.
  - Any beliefs and values (e.g. religious, cultural, moral or political) that would be likely to influence the decision in question.
  - Any other factors the person themselves would be likely to consider if they were making the decision or acting for themselves
- The Act makes provision for people to plan ahead for a time when they may need support. This introduces advanced decisions to refuse treatment, through a Lasting or Enduring Power of Attorney.
- The Act is decision specific in that it deals with difficulties a person may have with a particular issue:
  - If it is practical and appropriate to do so, consult other people for their views about the person's best interests and to see if they have any information about the person's wishes and feelings, beliefs and values. In particular, try to consult:
    - Anyone previously named by the person as someone to be consulted on either the decision in question or on similar issues
    - Anyone engaged in caring for the person
    - Close relatives, friends or others who take an interest in the person's welfare
    - Any attorney appointed under a Lasting Power of Attorney or Enduring Power of Attorney made by the person
    - Any deputy appointed by the Court of Protection to make decisions for the person.
- The Act upholds the principle of Best Interest for the individual concerned.
- This principle covers all aspects of financial, personal welfare and Act mean when it talks about „best interests“? healthcare decision-making and actions. It applies to anyone making decisions or acting under the provisions of the Act, including:
  - –family carers, other carers and care workers
  - healthcare and social care staff
  - attorneys appointed under a Lasting Power of Attorney or registered Enduring Power of Attorney

- deputies appointed by the court to make decisions on behalf of someone who lacks capacity, and
- the Court of Protection.
- A Court of Protection will help with difficult decisions. The Office of the Public Guardian (formerly Public Guardianship Office), the administrative arm of the Court of Protection, will help the Act work.
- An Independent Mental Capacity Advocate (IMCA) service will provide help for people who have no intimate support network.
- The Act makes it a criminal offence to wilfully neglect someone without capacity.

If there any doubts, the treating dentist will consult with their medical indemnity organisation.