



Mental Capacity and Decision Making

RANi Need to Know Guides | Mental Health Advisory sheet 1

Updated: April 2025

A guide for parents, carers, and young people with Special Educational Needs and Disabilities (SEND)

Overview

As children grow older, the law assumes they become increasingly capable of making decisions about their own lives. For young people with SEND, it's especially important to understand who has the **right to make decisions**, and what happens if someone **lacks the mental capacity** to decide for themselves.

This guide explains:

- What *mental capacity* means
- How capacity is assessed
- Who can make decisions and when
- Your rights as a parent or carer
- How decision-making changes at age 16

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

- What happens when someone lacks capacity
-

What Is Mental Capacity?

Mental capacity is the ability to:

Understand, retain, and weigh up information to make a decision — and communicate that decision in any way.

A person may lack capacity to make some decisions, but still be able to make others.

Capacity is always:

- **Decision-specific** (e.g., someone may have capacity to choose clothes but not to manage finances)
 - **Time-specific** (it can change depending on the day, illness, anxiety, etc.)
-

Under Age 16 – Parental Decision-Making

Children under 16 are usually presumed **not to have legal capacity** to make significant decisions.

However:

- Children may still be involved and consulted, especially around their own education and care.
- In some cases, children can make decisions if they are considered “**Gillick competent**” — meaning they have enough understanding and maturity to make an informed choice (often used in health care decisions).

Until age 16, **parents (or those with parental responsibility)** usually make most legal decisions about education, health, and care.

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

Age 16+ – Presumption of Capacity

From **age 16**, the law presumes that a **young person has mental capacity** to make their own decisions — unless it is shown otherwise.

This includes decisions about:

- **Education** (e.g. applying for an EHCP or choosing a school/college)
- **Health care** (e.g. accepting or refusing treatment)
- **Social care** (e.g. types of support or living arrangements)

This is set out in the **Mental Capacity Act 2005 (MCA)**, which applies to all people aged 16 and over in England and Wales.

How Is Capacity Assessed?

Capacity must be assessed based on the specific decision to be made.

The MCA 2005 sets out a **two-stage test**:

1. **Is there an impairment of, or disturbance in, the functioning of the person's mind or brain?**

This could include conditions like learning disabilities, autism, brain injury, or mental illness.

2. **Does that impairment mean the person cannot make the specific decision at the time it needs to be made?**

A person lacks capacity if they cannot:

- Understand the relevant information
- Retain it long enough to decide

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

- Weigh it as part of the process
- Communicate the decision (in any way, including gestures or assistive technology)

Assessment must:

- Be **objective**, not based on assumptions
- Be supported by evidence (often by a professional)
- Focus on helping the person **make** the decision where possible

If a Young Person Has Capacity

If a young person (aged 16+) **has capacity**, they have the legal right to:

- Make decisions independently
- Refuse parental involvement
- Submit or withdraw EHC needs assessment requests
- Choose whether to appeal to the SEND Tribunal
- Consent to medical treatment
- Control who receives information about them

Parents/carers should only act with the young person's **consent** unless a lack of capacity is confirmed.

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

If a Young Person Lacks Capacity

If the young person (aged 16+) **does not have capacity** to make a particular decision, then **someone else** must make the decision **in their best interests**.

This could be:

- A **parent or carer**
- A **social worker, school/college** representative, or **health professional**
- A **court-appointed Deputy** (in complex cases)
- A **Lasting Power of Attorney** (if one has been set up)

The decision must always be made following the **Best Interests checklist** under the Mental Capacity Act.

The Best Interests Checklist (MCA 2005)

When someone lacks capacity, any decision made on their behalf must:

1. Be in their best interests
2. Involve the individual as much as possible
3. Consider their past and present wishes
4. Consult family, friends, and professionals
5. Avoid restricting their rights unnecessarily

Best interests decisions should **not be made solely on convenience**, risk avoidance, or a person's disability.

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

Common Examples in Practice

Decision Area	Can the Young Person Decide (if they have capacity)?	If Not, Who Decides?
Applying for an EHCP	Yes	Parent/carer or LA (if capacity is lacking)
Choosing a school or college	Yes	Parent or LA if no capacity
Refusing therapy or treatment	Yes	Medical professionals decide in best interests
Appealing to the SEND Tribunal	Yes	Representative can appeal on their behalf
Sharing personal information	Yes	Only with their consent unless lacking capacity

What Is a Mental Capacity Assessment Report?

This is a formal document, usually written by a professional such as:

- Educational psychologist
- Speech and language therapist
- GP or psychiatrist
- Social worker

It records:

- The decision being assessed
- Evidence of the person's understanding and reasoning

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

- The outcome (has capacity or lacks capacity)
- Recommendations for support or future planning

It may be used in SEND processes, health care, or social care planning.

Supporting Young People With Decision-Making

Even if a young person struggles with decision-making, the law says we must:

- **Support and encourage their involvement**
 - Use **accessible communication** (e.g. pictures, symbols, simplified text)
 - Give **extra time** or a familiar person to explain options
 - Avoid unnecessary or premature declarations of incapacity
-

Summary of Legal Framework

Law	What It Covers
Children and Families Act 2014	SEND rights and parental involvement (especially under age 16)
Mental Capacity Act 2005	Decision-making for those aged 16+ and those who may lack capacity
SEND Code of Practice (2015)	Guidance on how young people should be involved in decisions

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.

Where to Get Help

- **RANi** - Free guidance, advice and support
 - **SENDIASS**: Free, impartial support for parents and young people
 - **IPSEA**: Legal advice on SEND law
 - **GP/Health Professionals**: For assessments or referrals
 - **Court of Protection**: For complex decisions about mental capacity and legal authority
 - **Social Services**: For care and capacity concerns
-

Remember:

Always keep a copy of all correspondence you send, along with proof of postage or delivery. If you send documents by post, we recommend using a **signed-for** service. If sending by email, request a **read receipt** if possible.

Get in Touch

If you need more information or have a question, we're here to help.

Email us: info@rani.org.uk

Please include:

- Your name
- Your child's name
- Your child's date of birth
- Your query

Or, if you prefer, you can fill out our online **contact form** and we'll get back to you as soon as possible.

Disclaimer: This resource is intended to provide general information and should not be considered legal advice. While RANi strives to ensure the content is accurate and current at the time of publication, we cannot accept responsibility for any loss, damage, or inconvenience that may result from using or relying on the information provided.