

# Swindon Advocacy Movement

Your life. Your choice. Your voice.

*“Advocacy is taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy schemes work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice.” – The Advocacy Charter*

# MCA

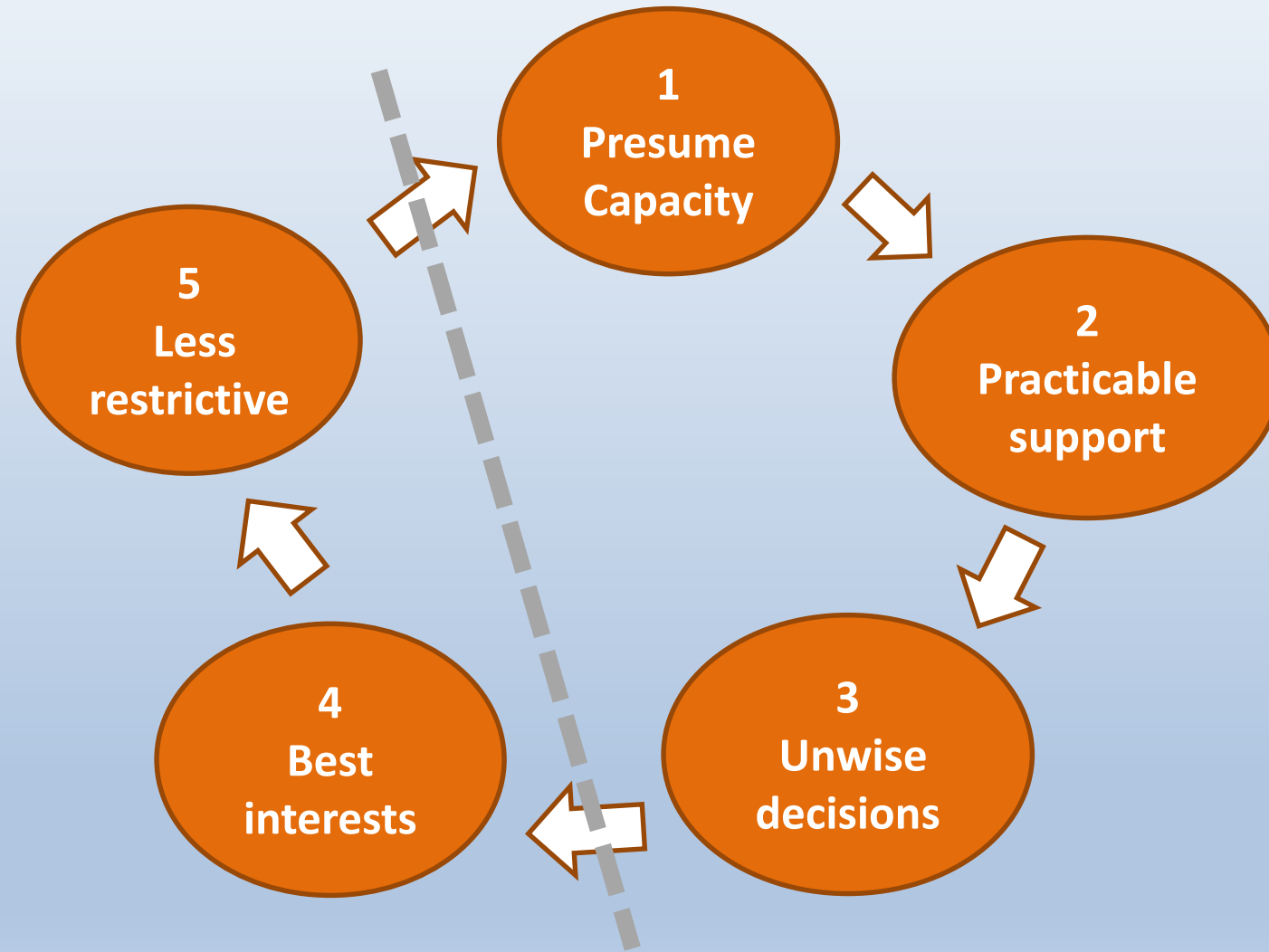
- Presumption of capacity
- Each assessment of an individual's capacity should relate to a specific decision
- The *Mental Capacity Act Code of Practice* stipulates that professionals should never express an opinion on a person's lack of capacity without carrying out a proper examination and assessment.



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Lack Capacity

Capacity



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# Principles of the Mental Capacity Act

<https://mental-capacity.co.uk/five-key-principles-mental-capacity-act/>



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# The 2 Stage Assessment of Capacity

<https://www.england.nhs.uk/wp-content/uploads/2025/05/PRN01699-app-1-how-to-undertake-the-2-stage-test.pdf>



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# Supported Decision Making

**A person is not to be treated as unable to make a decision unless all practicable steps to help to do so have been taken without success.**

If we add this to the 'capacity test' it means that we have to take **all practicable steps** to help the person 'understand, retain, use or weigh and communicate'.



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# Planning for the Future

**“Next of kin” is not recognised in law”**

**No adult can consent on behalf of another adult unless with specific legal authority:**

- Enduring Powers of Attorney: Property and Affairs (valid if created before launch of MCA)
- Lasting Powers of Attorney: Property and Affairs
- Lasting Powers of Attorney: Personal Welfare
- Deputy appointed by the Court – Office of the Public Guardian
- Appointee – Department for Work and Pensions

**Other ways of planning for a time when you may be unable to make a decision**

- Advanced decisions (**Legal**)
- Advanced Directives / Living Wills (**Not Legal**)

# Best Interests Checklist

- Will the person have capacity in the future to make this decision? Can the decision wait?
- Don't make a decision just based on the person's age, condition, disability etc. We are making a decision about this person and not this *type* of person
- If the decision is about whether or not to give treatment that will keep the person alive, we must not be motivated by the desire to bring about the death of the person.
- How can the person still be involved in the decision? Is it in their best interests to do what they want to do?
- What do we know about the person's past and present wishes about the decision? Has the person written anything down?
- What do we know about the person's beliefs and values? What would the person have thought about if they were making the decision?
- What can other people tell us about the person's wishes, feelings, beliefs and values, especially those caring or concerned for the person



# Our Independent Mental Capacity Advocates

We are funded to provide an IMCA for the following processes:

- Serious medical treatment
- Long term accommodation change
- Section 42 Safeguarding enquiry – where the perpetrator lacks capacity AND the individual
- As been found to lack capacity for this particular process / decision AND
- Has no one else appropriate to consult

If the answer is YES to both parts a referral **MUST** be made to the IMCA service.



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# Spot Purchase

If there is an identified need for an Independent Advocate that falls outside the criteria of our current funding we can (resource permitting) provide an advocate via a Spot Purchase arrangement.

Please call or email for more information

<https://www.swindonadvocacy.org.uk/contact/>



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