



Independence & the Mental Capacity Act



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Introduction

- MCA 2005 – passed as an act of law in 2005, came out for everyone to use in 2007
- “Empower people to make decisions for themselves”
(Lord Falconer, MCA Code of Practice)
- Capacity is time and decision specific
- For adults aged 16 or over



5 Principles



1. Assumption of Capacity

- Starting point is the person HAS the ability to make the decision for themselves unless established otherwise

2. Practicable Steps

- Have all practical, reasonable and feasible steps been tried to enable the person to make the decision for themselves, e.g. have family present to support the person

3. Unwise Decisions

- Just because the person wants to make a decision that others think is 'unwise', it doesn't mean they lack capacity e.g. stop taking medication



5 Principles



4. Best Interests

- Any decision made for the person who lacks capacity **must** be made in their best interests. To understand this we use the Best Interest Checklist

5. Less Restrictive Option

- Is there a less restrictive option? Is it in the person's Best Interests to use it? If not what is the next more restrictive option?



Capacity Assessment



2 Stage Assessment

- Stage 1 – Diagnostic stage

- Is there an impairment of, or disturbance in, the functioning of the persons mind or brain

- Stage 2 – Functional stage

- Can the person
 - Understand the information
 - Retain the information
 - Use/weigh the information
 - Communicate



Capacity Assessment



- If the Assessor has a ‘reasonable belief’ that the person can **understand, retain, use/weigh, and communicate** then the person has Capacity to make the decision for themselves
- If they have a ‘reasonable belief’ that the person **cannot** do at least **1** of those 4, then the person lacks the capacity to make the decision
- The same Assessment process no matter what the impairment or disturbance the person has



Best Interests



- Consider the relevant circumstances
 - All the issues most relevant to the person and that particular decision
- Encourage and enable the person to participate
 - Even if the person is unable to make their decision, they may be able to express a viewpoint on some of the options
- Person's past & present wishes, feelings, beliefs and values
- The views of others
 - The Decision Maker will gather the views of those that know the individual



Best Interests



- Will the person regain capacity? Can the decision be delayed
 - If the decision is not time critical, then delay the decision until the person is more able to make the decision for themselves
- Cannot base decision on age, appearance, condition or behaviour
 - Avoid discriminating and making assumptions
- Life Sustaining Treatment
 - There are special considerations around the withdrawal of life sustaining treatment in an individual's best interests. The Decision Maker must not be motivated by a desire to end the person's life.



Court of Protection



- Appoint Deputies to make decisions on behalf of the person who lacks capacity
 - Property and Affairs (Financial decisions)
 - Personal Welfare (Health & Social Care Decisions)
- Decide if a person has capacity
- Rule on difficult cases
- Resolve disagreements when other avenues have been exhausted



More Information



- MCA Code of Practice

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

- OPG Booklet

<https://www.gov.uk/government/publications/making-decisions-who-decides-when-you-cant>

<http://www.bristol.gov.uk/sites/default/files/assets/documents/mca-info-families-friends.pdf>

- Mencap MCA Resource Pack

<https://www.mencap.org.uk/sites/default/files/documents/mental%20capacity%20act%20resource%20pack.pdf>