

Overview of Mental Capacity Act 2005

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Key Principles of MCA

- A person is assumed to have capacity. A lack of capacity has to be clearly determined.
- No-one should be treated as unable to make a decision unless all practicable (reasonable) steps to help them have been exhausted and shown not to work.
- A person can make an unwise decision. This does not necessarily mean they lack capacity.
- If it is determined that a person lacks capacity then any decision taken on their behalf must be in their best interests.
- Any decision taken on behalf of a person who lacks capacity must take into account their rights and freedom of action. Any decision should show that the least restrictive option for intervention is achieved.

Making Decisions/Who should Assess Capacity?

- What decision needs to be made?
- The person required to assess capacity is the person who wishes to take some action in connection with the individuals care or treatment
- Care Homes need to take responsibility for assessing capacity and working in “best interests” in relation to day to day care decisions ie. the care plan

How can I assess capacity?

The Act's definition of capacity is: “**capacity is the ability to make a decision**”

The 2 stage test of capacity

1. “Is there an impairment of, or disturbance in the functioning of the person's mind or brain? (You may seek a medical opinion if unsure.) And if so
2. Does the impairment or disturbance make the person unable to make that particular decision?”

Both must be applied and shown to apply.

How do I assess capacity? (con)

The Act states that the person must meet the 4 criteria below to show they have mental capacity:

- **Understand information given to them**
- **Retain that information long enough to be able to make the decision**
- **Weigh up and use the information available to make a decision**
- **Communicate their decision (whether by talking, using sign language, blinking or any other means)**

If they cannot do one or more of the above they are deemed **NOT** to have mental capacity.

Good Practice when Assessing Capacity

Refer to the Mental Capacity Act Code of Practice for guidance **and remember**

- Consult the person on the particular decision to be made and try to seek their views
- Take as much time as is needed to explain what is happening
- It may fall to other people to communicate with the person to establish their views, but the decision maker must be satisfied that reasonable efforts have been made to assist the person to participate.
- A trusted relative or friend or Independent Advocate may be able to help the person express wishes or indicate a choice between different options

Record Keeping

Care & treatment under MCA:

Keep records of long-term or significant decisions made about capacity

- what the decision was
- why the decision was made
- how the decision was made
- who was involved
- why was it in person's best interests

How do I determine “Best Interests”?

Refer to the MCA Code of Practice for detail but always

- Consider the person’s present and past wishes and feelings
- Be aware of influencing beliefs and values the person holds
- Consult other people when it is appropriate to do so.

NB: “Best Interests” cannot be considered until a mental capacity assessment has been undertaken