



Mental Capacity Act (MCA)

1: What is the Mental Capacity Act?

The Mental Capacity Act 2005 is an Act of Parliament of the United Kingdom applying to England and Wales.

Its primary purpose is to provide a legal framework for acting and making decisions on behalf of people who lack the capacity to make particular decisions for themselves and applies to people aged 16 and over.

2: What is Mental Capacity?

Mental capacity is the ability to make your own decisions at any given time. A lack of mental capacity could be due to a permanent or temporary reason, for example:

- dementia
- a learning disability
- a brain injury
- a mental health illness
- a stroke
- unconsciousness caused by an anesthetic or sudden accident.

But, just because a person has one of these health conditions doesn't necessarily mean they lack the capacity to make a specific decision.

3: Principles of the MCA

1. Assume capacity – the starting point is always that someone has capacity unless it can be established otherwise
2. Practicable steps - A person is not to be treated as unable to make a decision unless all practicable steps have been taken to support them, without success.
3. Unwise decisions – do not assume incapacity because a person makes what you perceive to be an unwise decision

4. Best interests – an act done, or a decision made, on behalf of a person who lacks capacity must be done, or made, in their best interests

5. Least restrictive – consider if the act or decision can be done in a way that is less restrictive of the person's rights and freedoms.

4: What is an MCA assessment?

The MCA sets out a two-stage test of capacity:

1. Is the person unable to make a specific decision at the time it needs to be made? (see below for the 4 stages of this part of the test) and
2. Are they unable to decide BECAUSE OF an impairment or disturbance in their mind or brain?

5: Steps of assessment

Can the person:

1. Understand the decision that needs to be made?
2. Retain the information long enough to make the decision?
3. Use/weigh up the information?
4. Communicate their decision the way they would usually communicate?

Failing one of the steps means lack of capacity to make that decision at that time.

If someone lacks capacity, a decision can be made in their best interests (with some exclusions)

6. Best interests' decisions

First, check is there a substitute decision maker e.g. LPA, deputy or advance decision to refuse treatment
Best interest checklist includes:

- Can the decision wait?
- Involve the person.
- Consult all relevant people.
- Do not make any assumptions.
- Consider past, present and future views.

7: Deprivation of Liberty

- In some cases, the restrictions placed upon a person who lacks capacity may amount to "deprivation of liberty". This must be judged on a case-by-case basis
- Is the person free to leave, are they under continuous supervision and control?
- Are the restrictions in the person's best interests?
- The arrangements may need to be authorized to be lawful.
- If a care home or hospital then use the Deprivation of Liberty Safeguards. Anywhere else, apply to the Court of Protection. .

7: Further information

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