

## **Mental Capacity Act 2005 – Reference Guide**

### **Principles**

- Presume capacity
- Help and encourage people make decisions
- People are entitled to make unwise decisions
- Decisions for person without capacity: best interests
- Less restrictive option

### **Definition and test of capacity**

- Is there any impairment of, disturbance in, the functioning of the person's mind or brain?
- Does the impairment make the person unable to make the decision and can they:-
- Understand the information relevant to that decision?
- Retain that information?
- Use or weigh that information as part of the decision making process?
- Communicate their decision?

Try different ways of communicating and consider using professionals with specialist skills in verbal and non-verbal communication. The standard is whether it is more likely than not that the person lacks capacity.

### **Assessing capacity**

- Decision and time specific assessment
- Don't rush and do provide the time needed
- Don't push through decisions when the person's capacity is at its lowest
- An eccentric or unwise decision does not necessarily mean lack of capacity
- Make a record of the assessment

### **Lack capacity**

If a person does not have capacity, does the decision need to be made without delay? Will the person regain capacity and is it possible to wait until the person does have capacity?

### **Consulting others**

If appropriate consult other people such as:

- Carers, close relatives, friends
- Any deputy appointed by Court of Protection
- Attorney under LPA

Should an Independent Mental Capacity Advocate be instructed? Must do so if no one else appropriate to consult with over best interests and the decision concerns serious medical treatment or the provision of longer term accommodation. In a safeguarding situation where family members are involved (or suspected) of causing harm, an IMCA can also be appointed.

### **Best interests**

Any action must be in the best interests (as defined by the Act) of the person. Consider anything relevant and in particular:

- Past and present wishes and feelings of the person
- Any beliefs and values of the person that may influence the decision
- Has a written statement of wishes and feelings been made?
- Has a valid and applicable advance decision been made?
- Is the act or decision the least restrictive of basic rights and freedoms?

### **10 key points about the Mental Capacity Act 2005**

- Assess the person's capacity
- Presumption of capacity
- Capacity is decision specific
- Encourage, assist and support.
- An unwise decision does not imply incapacity
- If a person lacks capacity consult with others
- Any act must be in person's best interests
- The Mental Capacity Act applies to age 16+
- Always consider the least restrictive options
- Make a record of the assessment.