

MENTAL CAPACITY ACT 2005 - A Guide for Staff

The Mental Capacity Act 2005 (the MCA) came into full force on 1st October 2007. The MCA is intended to protect people who cannot make a particular decision at a particular time because their mind or brain is affected. That could be because of mental illness, brain injury, learning disability, dementia and drugs/alcohol.

The Act affects everyone working with or caring for adults who lack capacity. It applies whether we are dealing with everyday matters or life changing events.

The MCA is based on five principles.

1. Assume a person has capacity unless proved otherwise.
2. Do not treat someone as incapable of making decisions before everything practicable has been done to help them decide for themselves.
3. A person should not be treated as unable to make a decision merely because their decision may seem unwise.
4. Always do things, or take decisions, for a person without capacity in their best interests.
5. Before doing something to someone, or making a decision on their behalf, consider how the outcome could be achieved in a way which is least restrictive of their basic rights and freedoms

Deciding if someone lacks capacity

It is the responsibility of the person requiring the decision to determine if the individual has capacity i.e. if a patient needs surgery then the surgeon must be satisfied that they have

capacity to consent. If a patient is signing a will, their solicitor must be satisfied that they have the capacity to complete that process.

According to the MCA someone lacks capacity to make a particular decision if they cannot do one or more of the following:

- *Understand* information given to them.
- *Retain* that information long enough to be able to make the decision.
- *Weigh up* the information available to make the decision.
- *Communicate* their decision.

Just because a person can't make one particular decision doesn't mean they can't make any decisions at all. Also, if they can't make a decision at one point in time it doesn't mean that they will not be able to make such a decision at another time.

Best interests

If a person lacks capacity then any action taken, or any decision made for or on behalf of that person must be done in their best interests. The person who has to take the decision about what is in someone's best interest must:

- Involve the person who lacks capacity as much as possible in deciding what actions will be taken.
- Try to find out the views and feelings of the person including anything they may have said or written at a time when they did have capacity e.g. lasting power of attorney, advanced decision, conversations with relatives or friends.
- If appropriate, consult other people involved in the care of the person (like relatives and friends) and take into account their views.

- Not make assumptions about their best interests based solely on the person's age, appearance, condition or some aspect of their behaviour.
- If decisions are being made about serious medical treatment or significant changes of residence, and the patient is "unbefriended" i.e. they have no one at all involved in their life apart from paid carers, a referral must be made to the local **Independent Mental Capacity Advocate (IMCA) service**. The IMCA service can be accessed via the MCA Lead..

The MCA creates a new criminal offence of ill treatment or wilful neglect of a person who lacks capacity.

Lasting Power of Attorneys

LPA's replace Enduring Power of Attorneys (EPAs). The LPA is a legal document that must be registered with the Office of the Public Guardian. The significant difference to an EPA is that the appointed person can be authorised to make decisions on behalf of the individual in relation to personal welfare which includes health. In theory we could have a patient's relative or friend able to make decisions about their healthcare once the patient has lost capacity. This would include day to day care as well as consenting to or refusing medical examination and treatment on behalf of the patient. The appointed person cannot consent or refuse life-sustaining treatment unless the LPA document expressly authorises this.

Advanced Decisions

An advanced decision enables someone over 18 to specify, while still capable, to refuse specific medical treatment for a time in the future when they may lack capacity to consent or refuse that treatment. If an advanced decision to refuse treatment is valid and applicable to current circumstances it has the same effect as a

decision made by that person when they had capacity. An advanced decision can be written or verbal. The exception to this is that where it involves life-sustaining treatment the advanced decision must be in writing and witnessed.

Court of Protection

The Court of Protection is designed to deal with decision-making for adults who may lack capacity to make specific decisions for themselves. As well as property and affairs this court now deals with serious decisions affecting healthcare and personal welfare matters.

Restrictions and Restraints

If a patient has been assessed that lacks capacity if any restrictions or restraint being used it **MUST** be in THEIR Best Interest.

The person taking action must **reasonably believe** that the restraint is **necessary to prevent harm to the patient**.

The amount, type and duration of the restraint must be **proportionate response to the likelihood and seriousness of the potential harm**.

Restrictions and restraints **MUST** be part of the patient's plan of care, risk assessed and kept under review.

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