

Mental Capacity Act Brief Guide



Introduction

This guide has been written with the Voice4All forum, a group of supported people who meet regularly to share their views, ideas and influence Dolphin Homes policies.

It is recognized when people move into supported living, residential care or nursing care it can be confusing to navigate how decisions about care and treatment are made. It can be particularly difficult for families of supported people with regard to how the Mental Capacity Act needs to be applied

What is the Mental Capacity Act

The Mental Capacity Act has been in force since 2007. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It applies to everyone over the age of 16

1

It empowers people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process

2

It allows people to plan ahead for a time in the future when they might lack the capacity

The main part of this law sets out very clearly that a person must **ALWAYS** be assumed to have capacity in the first instance

What Could a Lack of Mental Capacity be Due to?

A stroke or brain injury

A mental health problem

Dementia

A learning disability

ASD spectrum

Confusion, drowsiness or unconsciousness because of an illness or the treatment for it

Substance misuse

Mental Capacity Act and Health and Social Care Providers



In residential, nursing or care homes supporting people with learning difficulties or associated conditions there is a wide range of people with differing levels of capacity.

- Some people are able to make decisions about ALL areas of their lives.
- Some people can make decisions about certain areas of their lives.
- Some people are not able to make any decisions.

People we support need to have each decision considered using the mental capacity act. We are not legally “allowed” to assume that someone lacks capacity about a specific decision

What Type of Decisions Does the MCA Apply to?

On a day to day basis.

What to Wear

Whether to let a member of staff support them with personal care, showers, baths, etc.

Whether to stay at the pub until its closing time, and even if they can drink alcohol.

Bigger Decisions include:

Relationships

Where to live

Decisions around their finances

Medical Decisions

Capacity to understand if they are doing something that breaks the law in some way.

How do we know if someone can make a decision?



The Mental Capacity sets out the following questions with regard to if someone is able to make a decision:

1. Can the person understand the information?
2. Can the person remember it for long enough to make the decision?
3. Can they think about the pros and cons of the decision they are making?
4. Can the person communicate their decision?

We also need to ensure that we consider the timings of when we are discussing decisions with people. A person capacity can fluctuate, particularly for people supported in Learning Disability services. For example; if they have had a seizure recently, if they have mental health conditions or if they are tired

How is Capacity Assessed?

Where there is any concern about a person's ability to understand a specific decision a mental capacity assessment is completed by a person who knows them. The assessment starts with an "acid test" to demonstrate if a Mental Capacity Assessment is needed:

Is there an impairment or disturbance in the functioning of mind or brain (permanent or temporary)?

If "yes", the MCA can proceed.

If "no", the MCA is not required

One MCA assessment cannot be used as "evidence" that a person lacks capacity for all decisions in their life

Five Main Principles

1

Assume people have capacity to make decisions (unless it is shown they cannot

2

Support the person to make the decision

3

People have the ability to make “unwise” decisions.

If the person has been shown to lack capacity for the decision in question

4

Anything decided on behalf of someone should be in their best interest.

5

The decision made in a persons best interest should be the least restrictive

1

Assume Capacity

This is the first and foremost principle of the act.

Everyone is assumed to have capacity until proved otherwise.

A lack of capacity should not be automatically assumed based on someone's age, appearance, condition or behaviour.

Similarly, just because a person has lacked capacity to make a previous decision does not mean they cannot make the decision in question. For example, a lack of capacity to manage finances does not mean they lack capacity to decide where they want to live

2

Support to Make a Decision

All practical steps should be taken to support the person to make the decision before treating them as unable to make the decision.

We need to consider how and when they are being asked to make the decision.

- What is their preferred way to communicate.
- Have they been provided with all relevant information.
- Do they need assistance from someone?

It is easy to think someone does not have capacity, simply because we have not taken the time or effort to explain it in a way they can understand

3

Ability to Make Unwise Decisions

Just because someone makes an “unwise” decision does not mean they lack capacity to make the decision in question.

It is important for this principle to put the actual decision in question to one side, if we base our assessment of capacity on the decision then we are applying our own values to the decision and not the persons.

Examples include:

- Spending too much money
- Smoking 40 cigarettes a day
- Going for a walk with no shoes on in the rain

4

Best Interest (to be applied when a person has been assessed as lacking capacity)

This is implemented if a decision is made (or an act done) on behalf of a person who does not have the capacity to make the decision themselves.

There is no specific answer about what is in a person's best interest, each decision is unique to the person and circumstances involved.

- Can the decision wait until they are able to make the decision themselves.
- How can the person be helped to make the decision themselves.
- What do other people who know the person think

There are Limits to “Best Interest”

Carers must NOT

1. Use too much restraint (holding someone down for an injection they don't want)
2. Carers must not take away someones freedom without proper approval
3. Carers must not go against the wishes of someone legally allowed to make decisions on the person behalf (Power of Attorneys, etc.)
4. Go against an advance decision

5

Least restrictive

If a decision is made (or an act is done) on behalf of a person who does not have mental capacity, it should be the least restrictive option of the persons rights and freedoms.

In health and social care if we are supporting someone who has been shown to lack capacity around maintaining their safety, we must consider the least restrictive approach to supporting them. For example, any physical interventions must be the least restrictive, no pain, and for the shortest amount of time possible. Health and social care staff would need to demonstrate that any physical interventions were used as an absolute last resort. (Instances where staff have been unable to use these approaches successfully and someone is a risk to themselves, or others is where they will phone the police for support)

Questions	Answers
Can relatives make decisions for adults like they did when they were a child?	No. This law protects people and ensures everyone is treated equally. Decision making processes must be followed. Relatives will be involved in making decisions but cannot by law make the final decision
What if my relative has capacity and makes a decision I don't agree with?	If the person has capacity, under law they are entitled to make an unwise decision.
Does lacking capacity apply to all decisions?	No. Under this act no one can be deemed as a person “lacking capacity” this is an unlawful term. They may lack capacity to make some specific decisions but have capacity to make other decisions.

For more information, please refer to the DHL Mental Capacity Act – how it applies to people living in Dolphin Homes Services, family guide