

Public Guardians - their role is to protect people who lack capacity from abuse.

Court of Protection and Deputies - this is a new court set up to protect people who lack capacity and to supervise those making decisions on their behalf.

Independent Mental Capacity Advocate (IMCA) - this person provides a statutory safeguard for people who lack capacity to make important decisions.

A criminal offence - the Act introduces a new criminal offence of ill treatment or wilful neglect of a person who lacks capacity.

Advance decisions to refuse treatment - the Act creates statutory rules with clear safeguards so people may make a decision in advance to refuse treatment should they in the future lack capacity.

It is important that health and social care staff have an understanding of the interface issues between MCA and the Mental Health Act 1983 and Deprivation of Liberty Safeguards 2009.

Useful resources

You may also find the following documents helpful.

Mental Capacity Act (2005) Code of Practice

View online at: www.publicguardian.gov.uk

Request copies: www.tso.co.uk

Deprivation of Liberty Safeguards Code of Practice 2009

View online at: www.dh.gov.uk

Request copies: www.tso.co.uk

MCA1 Form - record of mental capacity assessment

MCA2 Form - record of activity taken to make a best interest decision

MCA3 Form - Referral to IMCA for a review of accommodation

MCA4 Form - Considering a referral to IMCA for Safeguarding

Other useful contacts

For more information you can contact:

Adult Social Care Direct: **0191 424 7033**
Safeguarding Adults Team: **0191 433 3361**
Gateshead Council

MCA DOLS Coordinator: **0300 111 0369 / 0191 424 7723**

Denis Johnston Centre

Independent Mental Capacity Advocate:
0191 281 7322

DIFFERENT FORMATS

If you would like this information in a different format such as Braille, large print, on cassette/CD/MP3, or in a different language please contact: 0191 433 2362.

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Mental Capacity Act 2005

A brief guide for social and health care workers



Mental Capacity Act 2005

This leaflet sets out in brief what you need to know about the Mental Capacity Act 2005 and how it affects you and how you work. This leaflet should be used in conjunction with the Deprivation of Liberty Safeguards Code of Practice, and your own organisation's policies and procedures.

What is the Mental Capacity Act?

The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales who are unable to make decisions for themselves.

The Act is designed to protect and restore power to those vulnerable people who lack capacity, and also supports those who have capacity and choose to plan for their future.

All professionals have a duty to comply with the MCA Code of Practice. It also provides support and guidance for less formal carers.

The Act has five statutory principles which underpin all actions carried out and decisions taken in relation to the Act. These are:

- A presumption of capacity
- Individuals being supported to make their own decisions
- Unwise decisions
- Best interests
- Less restrictive option

Having mental capacity means that a person is able to make their own decisions. You should always start from a presumption that the person has the capacity to make the decision in question.

You might need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability.

The test to assess capacity

Stage 1 - Is there an impairment or disturbance in the functioning of a person's mind or brain? If so, move onto:

Stage 2 - Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA says that a person is unable to make their own decision if they cannot do one or more of the following four things:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information
- communicate their decision

The assessment must be made on the balance of probabilities - is it more likely than not that the person lacks capacity? You should be able to show in your capacity assessment (MCA1) why you have come to your conclusion that capacity is lacking for that particular decision.

Best interest decision making

If a person has been assessed as lacking capacity then any action taken, or decision made for or on behalf of that person, must be made in the person's best interests.

The person who has to make the decision is known as the 'decision maker'. This is normally the carer

responsible for the day to day care, or a professional where decisions about treatment, care arrangements or accommodation need to be made.

What do we mean by 'Best Interests?'

The MCA provides a checklist of factors that decision makers must work through in deciding what is in a person's best interests (MCA2). These include:

- avoid making assumptions merely on the basis of the person's age, appearance condition or behaviour
- consider all relevant circumstances
- regaining capacity
- permit and encourage participation
- special considerations to life sustaining treatment
- consider the person's wishes, feelings, beliefs values
- carefully assess conflicting evidence
- provide clear objective reasons
- take into account views of others
- take into account views of Independent Mental Capacity Advocate
- consider whether there is a less restrictive alternative

The new roles, bodies and powers supporting the MCA

Lasting Powers of Attorney (LPA)

The Act introduces a new form of power of attorney that allows people aged over 18 to formally appoint one or more people to look after their health, welfare and finances if they lose capacity.