

Safeguarding

Mental Capacity Act

What is the Mental Capacity Act 2005 (MCA?)

The Mental Capacity Act (MCA) is the law created to protect and empower 'individuals who lack capacity' to make their own decisions about their care and treatment.

It applies to individuals aged 16 and over.

What decisions does it apply to?

The MCA looks at your capacity to make decisions about your personal welfare. This means financial, health and social care decisions such as:

- washing, dressing, help with eating
- nursing care - in hospital/care home/community
- occupational therapy, physiotherapy
- social care
- moving to a care home or other accommodation
- medical and dental treatment, diagnostic tests.

Who decides if I lack Capacity?

It is up to a health or social care professional to seek your consent before they initiate any of your care or treatment. The law says that you must be assumed to have capacity unless it is proved to be otherwise. This means that a diagnosis of a particular condition, type of behaviour, your age or appearance cannot automatically mean you lack capacity. If a health or social care professional has any doubts regarding your capacity to make a decision about your care or treatment they have to test it.

The Five Principles of the Mental Capacity Act

1. Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
2. People must be supported as much as possible to make their own decisions before anyone concludes that they cannot do so.
3. People have the right to make what others might regard as unwise or eccentric decisions.
4. Anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.
5. Anything done for, or on behalf of, people without capacity should be the least restrictive of their basic rights and freedoms.

First 3 principles are about supporting decision making (empowering)

Last 2 principles are about actions when someone lacks capacity (protective)

“A diagnosis of a particular condition, behaviour, your age or appearance does not automatically mean you lack capacity”

How do you test a person's capacity?

People who have capacity and do not suffer from ‘Impairment or disturbance in the brain or mind’ (MCA 2005), can make autonomous decisions themselves relating to their care and treatment. The safeguards of the MCA(2005) allow all of us to do this, even if this maybe thought to be an unwise decision. An assessment of capacity to make a decision is made by the person who needs to decide on the care or treatment – the decision maker.

A person will be found to lack capacity if at the time they are making a decision about their care or treatment they are unable to do one of the following:

- Understand the information
- Retain the Information
- Weigh up and use the information
- Communicate a decision

What happens if it is found I/my relative does not have capacity to make a specific decision?

Depending upon what decision needs to be made the health or social care professional will need to look at all the options available with regards to specific decision in question and decide what is in your ‘best interests’. If someone has a Lasting Power of Attorney (LPA) covering this matter the person, or people, appointed in the LPA will decide which of the options will be in your ‘best interests’. A relative / friend if they wish to be involved are consulted when a decision needs to be made unless this is in an emergency situation.

How does someone decide what is in my best interests?

The MCA sets out a checklist that must be followed to ensure that decisions are made in your best interests.

Best Interests Checklist

All points of this checklist must be considered:

- All the relevant circumstances
- Will you regain capacity so you can make your own decision sometime in the future and if so, can the decision wait?
- Your past and present wishes and statements
- Your beliefs and values (e.g. religious, cultural or political beliefs)
- Other factors you would consider if you were able to do so (e.g. if you have dependents or pets)
- Consult others if practicable and appropriate on their views about what is in your best interests (e.g. someone you have requested to be consulted, carers, relatives, attorneys, deputies or an existing advocate)
- You will be encouraged and permitted to participate in any act or decision made.
- The least restrictive option must be considered, can the same result be achieved in a way that interferes less with your rights and freedoms, is there a need to act at all?

Advanced Planning

Advance Decision to refuse treatment

Any individual can have an advance decision. This is a legally binding in the even that in the future you lose capacity it outlines treatment (s) that you are refusing. If you do not have a plan in place please speak with your care team to discuss further options

Advance Statement of wishes

An advance statement allows you to set out in writing how you would like to be treated in the future, in the event that you lose capacity to decide for yourself. Forms and further guidance can be obtained from the Trust to assist you.

Lasting Power of Attorney (LPA)

An LPA allows you to nominate an individual to decide what is in your best interest should you lose capacity in the future. You can nominate them with regards:

- Personal Welfare
- Property and Affairs

Further advice about LPA can be found at www.gov.uk/power-of-attorney/overview

The nominated person must have this paperwork with them to show professionals when required.

If you have any comments about this leaflet or the service you have received you can contact :

Safeguarding Adults Team

Telephone: 01422 224570

www.cht.nhs.uk

If you would like this information in another format or language contact the above.

Potřebujete-li tyto informace v jiném formátu nebo jazyce, obraťte se prosím na výše uvedené oddělení

Jeżeli są Państwo zainteresowani otrzymaniem tych informacji w innym formacie lub wersji językowej, prosimy skontaktować się z nami, korzystając z ww. danych kontaktowych

ਚ ਤੁਸੀਂ ਇਹ ਜਾਣਕਾਰੀ ਕਿਸੇ ਵੇਰ ਪ੍ਰਾਚੁਪ ਜਾਂ ਭਾਸ਼ਾ ਵਿੱਚ ਲੈਣਾ ਚਾਹੁੰਦੇ ਹੋ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਉਪਰੋਕਤ ਵਿਭਾਗ ਵਿੱਚ ਸਾਡੇ ਨਾਲ ਸੰਪਰਕ ਕਰੋ।

اگر آپ کو یہ معلومات کسی اور فارمیٹ میں چاہیں یا کسی اور زبان میں درکار ہوں، تو براہ کرم مہربانی مندرجہ بالا شعبے میں ہم سے رابطہ کریں۔

"إذا احتجت الحصول على هذه المعلومة بشكل مغاير أو مترجمة إلى لغة مختلفة فيرجى منك الاتصال بالقسم المذكور أعلاه"