

November 2024

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Background

The MCA 2005 applies to everyone over 16 years who may lack capacity to make specific decisions about their life. These decisions can range from simple, everyday things to more complex life changing matters such as where they live or receiving treatment. The MCA protects the rights of individuals by creating a framework for decision making where someone may lack the mental capacity to make the decision for themselves and how those making decisions for them must apply the principles of Best Interests and Least Restrictive options.

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Why it matters

The MCA incorporates human rights and is based on 5 key principles:

1. Assume Capacity: always assume capacity unless proved otherwise
2. Practicable Steps: take all reasonable steps to enable a person to make their own decisions
3. Unwise Decisions: you must not assume incapacity simply because a person makes an unwise decision
4. Best Interests: always act / decide for a person lacking capacity in best interests
5. Least Restrictive: aim to make the least restrictive decision possible.

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Information

Only if capacity is in doubt should an assessment of capacity be carried out. The 2 stage test is:

1. Does the person have an impairment of the mind or brain (temporary or permanent)? If **yes** then:-
2. Can the person:
 - a. Understand what decision needs to be made and the information relevant to it?
 - b. Retain the relevant information long enough to make the decision?
 - c. Weigh the information relevant to the decision?
 - d. Communicate their decision by any means (eg. speech, signing etc)?

The Court of Protection is there to review decisions made that may need judicial oversight eg. disputed decisions, deprivation of liberty in community settings, restrictions on contact.

Lasting Power of Attorney (LPA) enables anyone over 18 years with capacity to give decision making powers to others for Health /Personal Welfare, or Property/Affairs.

Independent Mental Capacity Advocates (IMCA) usually support 'unfriended ' people who lack capacity to make decisions about change of accommodation, serious medical treatment and safeguarding. Deprivation of Liberty Safeguards (DOLS) are part of the MCA to protect people in hospitals and care homes.

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What to do

The MCA Code of Practice provides detailed guidance on the Act. Professionals and carers must have regard to the Code.

- Mental Capacity Act: making decisions - GOV.UK (www.gov.uk)
- Mental Capacity Act 2005 at a glance – SCIE
- Local Safeguarding Adults Board

1. Can the person make all decisions for themselves?
2. Do you need to assess decision specific mental capacity before carrying out any care or treatment (document if formal)?
3. Does capacity fluctuate?
4. Is the person putting themselves at risk due to an apparent or repeated 'unwise decision'?
5. Are you aware of updated code of practice and case law?
6. Do you need advice from your MCA lead?