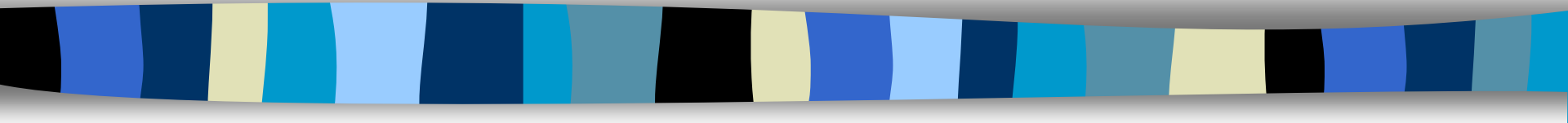


Mental Capacity Act 2005





Mental Capacity Act 2005

- Provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions.
- The MCA enshrines in statute current best practice and common law principles concerning people who lack capacity and those who take decisions on their behalf.



Mental Capacity Act 2005

Who Is Affected?

- Mental capacity can affect anybody. Over 2 million people in England and Wales lack mental capacity to make some decisions for themselves: learning disabilities, dementia, mental health difficulties, brain injury.
- Can be a permanent incapacity or temporary incapacity due to illness (infection, for example).
- The Act also affects up to 6 million family carers, carers, health and social care staff.



Mental Capacity Act 2005

The 5 Key Principles

- A presumption of capacity
- The right for individuals to be supported to make their own decisions
- Individuals must retain the right to make what may seem to be eccentric or unwise decisions
- Anything done for or on behalf of someone must be done in his/her **best interests**
- Least restrictive intervention



Mental Capacity Act 2005

Who decides capacity?

- The person who wishes to take some action in connection with the person's care or treatment or who is contemplating making a decision on the person's behalf
- Will depend on the circumstances and the decision to be made:
 - Consent to medical treatment – Consultant/doctor proposing the treatment
 - Change in accommodation – Care Manager/ Social Worker



Mental Capacity Act 2005

Assessing Capacity

Clear test to assess whether a person lacks capacity to **take a particular decision at a particular time.**

Stage 1

Inability to make a decision must be due to an impairment of or disturbance in the functioning of mind or brain.



Mental Capacity Act 2005

Stage 2

If there is an impairment, that impairment has made the person unable to make a particular decision.

A person is unable to make a decision if they cannot:

- understand information relevant to the decision
- retain the information in their mind
- use or weigh the information as part of the decision-making process, or
- communicate their decision (any form of communication is sufficient)



Mental Capacity Act 2005

Best Interests Checklist

- Avoid discrimination (cannot be based on age, appearance, condition, behaviour, etc)
- Encourage participation
- Identify all relevant circumstances, i.e. the things the person would take into account if they were making the decision
- Find out the person's views
 - Past and present wishes and feelings
 - Beliefs and values
 - Any other factors the person may consider
- Consult others
- Is it likely the person will regain capacity? If so, can the decision be put off until then?
- Avoid restricting the person's rights. The least restrictive option must always be taken



Mental Capacity Act 2005

- In emergencies, it will often be in a person's best interests for urgent treatment without delay.
- There are some decisions about medical treatment that are so serious that each case should go to the Court of Protection. For more detailed information you should refer to the Code of Practice.
- The Department of Health's consent guidance and model consent forms are available at: www.dh.gov.uk/consent



Mental Capacity Act 2005

What to consider

- **Medical** – not just the outcome, but what will be the burden and benefit of the treatment.
- **Welfare** – How will this impact (for better or worse) on the way the person lives their life?
- **Social** – What will this do to the person's relationships etc?
- **Emotional** – How will this person feel, react?
- **Ethics**



Mental Capacity Act 2005

New Criminal Offences

The Act introduced (in April 2007) 2 separate offences:

- Ill treatment
- Wilfull neglect

Liability is personal, not vicarious.

Penalties range from a fine, to imprisonment of up to 5 years, or both.



Mental Capacity Act 2005

Ill-treatment

For a person to be found guilty of ill treatment, they must either:

- Have deliberately ill-treated the person, or
- Be reckless in the way they were ill-treating the person or not.

It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the person's health.



Mental Capacity Act 2005

Wilful neglect

The meaning of “wilful neglect” varies depending on the circumstances. But it usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.

MCA 2005 Code of Practice: Sections 14.24 – 14.26



Mental Capacity Act 2005

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Mental Capacity Act 2005

Protection from liability

- It is important to keep a full record of what has happened. The protection from liability will only be available if you can demonstrate that
 - you have assessed capacity,
 - reasonably believe it to be lacking and then
 - acted in what you reasonably believe to be in the person's best interests.
- The Act will offer carers and professionals protection from liability so long as they have a 'reasonable belief' that the person lacks capacity and their actions are in the person's best interests. This means that even if you can't show that you did a full capacity or best interest assessment in every instance, a belief that is based on good reasons (not just an assumption), within the spirit of the principles of the Act, could protect you.



Mental Capacity Act 2005

Lasting Power of Attorney (LPA)

- Replaces Enduring Power of Attorney (EPA) and extends the areas of authority:
 - Property and Affairs (like EPA)
 - Referred to as ‘Property and Affairs LPA’ or ‘Financial LPA’
 - Can be used before and after donor loses capacity, depending on donor’s wishes, must be registered.
 - Personal welfare, including healthcare and consent to medical treatment
 - Referred to as ‘Personal Welfare LPA’
 - Can only be used when donor lacks capacity and must be registered with the Public Guardian.



Mental Capacity Act 2005

Further information and downloadable booklets are available on the Mental Capacity Act 2005 and IMCA from

<http://www.publicguardian.gov.uk/mca/mca.htm>