

Introduction to the Mental Capacity Act

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Other formats

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- 01392 402093 (for Mid Devon, East Devon and Exeter services)
- 01271 314090 (for North Devon services)
- rduh.pals@nhs.net

This leaflet introduces the Mental Capacity Act 2005 (MCA). If you have any questions or concerns in relation to your treatment or care, please speak to a member of your healthcare team.

What is the Mental Capacity Act?

The Mental Capacity Act 2005 is a law designed to protect and empower people who may lack the mental capacity to make their own decisions. It applies to people over the age of 16. If someone is unable to make an informed decision for themselves they are said to 'lack capacity' for this specific decision. This might be due to injury, a learning disability, mental health problem or a condition such as dementia. This can also cover situations where someone is unconscious or under the influence of drugs or alcohol.

Many types of decision are covered by the Mental Capacity Act, from simple things like what to have to eat, to more complicated things like where to live, what medical treatment to have, and decisions about someone's property and affairs.

What does mental capacity mean?

Having mental capacity means that you are able to make an informed decision for yourself. The law says that you must be assumed to have capacity unless it is proven otherwise.

Lack of capacity may not be a permanent condition. Assessment of capacity should therefore always be time and decision specific.

Five key principles of the Mental Capacity Act

There are five key principles in the Act. Health and social care staff must:

- Always assume that you have capacity to make your own decision unless it is proved otherwise (this is called 'presumption of capacity')
- Do everything possible to support you to make your own decision
- Allow you to make a decision which might be regarded by others as unwise
- Act in your best interests if you are unable to make your own decision

Choose the least restrictive option when making decisions on your behalf.

How is mental capacity assessed?

The Mental Capacity Act sets out a two-stage test.

1. Functional Test

The Act states a person is unable to make a decision if they cannot do one or more of these things:

- Understand the relevant information about the decision
- Retain that information long enough to be able to make a decision
- Use or weigh up the information available and understand the consequences of the decision
- Communicate the decision – this could be by any possible means, such as talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

2. Diagnostic Test

The Mental Capacity Act states that to lack capacity the person must have an impairment or disturbance in the functioning of the mind or brain (this could be as a result of an illness or external factors such as alcohol or drug use), and that a person's inability to make a decision must be caused by the impairment or disturbance of the brain.

For significant decisions relating to health and care, Trust staff will assess whether someone is able to make a decision for themselves. They will support a person as much as practicable to make their own decisions. If a person lacks capacity to make a decision, then a best interests decision will need to be made on their behalf.

Best interests decisions

If someone lacks capacity, other people have a duty to make the decision for them in the person's best interests. This ensures that their rights and wishes are considered and respected. The decision must be made in the best interests of the person who lacks capacity, not the interests of those making the decision or to make things easier for carers or professionals involved. Some decisions might restrict a person's freedom of action. In such cases, the decision should be the least restrictive option that will still meet the person's needs.

A best interests decision should involve the person as much as possible. Family, friends or others who know the person well should be consulted to find out about the person's wishes and views and to decide what is in their best interests.

If the person has no-one who can do this for larger decision such as serious medical treatment or long-term accommodation changes, the staff will ask an Independent Mental Capacity Advocate (IMCA) to support and represent the person.

See leaflet: Mental Capacity and Best Interest Meetings RD 25 033 001 for further information.

Lasting power of attorney

A Lasting Power of Attorney (LPA) is a legal document that lets a person (the donor) appoint one or more people (known as attorneys) to help them make decisions, or make decisions on their behalf. The LPA is made whilst the donor has capacity.

There are two types of LPA:

Health and welfare – an attorney for health and welfare can only make decisions when the donor lacks capacity.

Property and financial affairs – an attorney for property and finance may have permission from the donor to make decisions about property and finance even whilst the donor has capacity. This will be specified in the LPA document.

Further information

- Mental Capacity Act - Social Care and Support Guide - NHS
- Deprivation of Liberty Safeguards (DoLS)

Your notes

PALS

The Patient Advice and Liaison Service (PALS) ensures that the NHS listens to patients, relatives, carers and friends, answers questions and resolves concerns as quickly as possible. If you have a query or concern, please contact PALS:

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