



The Mental Capacity Act

A Basic Overview

Introduction

The Mental Capacity Act (MCA) applies to people aged 16 and over. It is designed to empower and protect those who may be deemed lack the mental capacity to make decisions about their care, treatment or to remain safe from harm. It also discourages anyone who is involved in caring for the person being overly restrictive, controlling or making an assumption based purely on age, appearance, their condition or aspects of behaviour.

Who can assess capacity depends on the type of decision that needs to be made. Simple day to day decisions can be assessed by family members or care workers. However more complex and difficult decisions should be assessed by social care professionals.

Further Information

- [Mental Capacity Act – Code of Practice](#)
- [Warwickshire County Council information](#)
- Contact [Adult Social Care](#)
- [Warwickshire Safeguarding – I work with Adults](#)

Best Interests Decisions

Best interests decisions can only be made for people who have been assessed under the requirements of the MCA as deemed to no have capacity to make a decision. Best interests decisions should be undertaken by the 'decision maker'. This is usually who would need consent to carry out the decision. i.e a decision for a dental treatment would be carried out by the professional carrying out the treatment.

It is vitally important to record how the decision and outcome was reached and that it is the least restrictive of their basic rights and freedom.

Step 4:

Record keeping of steps 1-3 should be kept to demonstrate that the principles and processes of assessing capacity have been complied with. The MCA code of practice (further information) provides more detailed guidance on this.

If a person is deemed to lack capacity for a decision, a best interests process should be followed.

Step 1:

The Mental Capacity Act 2005 (MCA) is very clear in its first principle that assessments must start from the assumption that a person has capacity to make decisions unless proved otherwise. The Act also states that people must be given appropriate support to maximise their participation in making the decision. It is important to recognise that an unwise decision alone cannot lead to the finding of incapacity, even when these decisions are considered irrational or irresponsible.

Step 2:

The question must be asked what is the specific decision that needs to be made at that point in time and not their ability to make decisions in general. This is referred to 'the matter' in law and must be sufficiently identified prior to conducting an assessment.

Step 3:

The functional test, contained in section 3 of the MCA states that a person is unable to make the decision in question if they are unable to:

- [understand the information relevant to the decision](#)
- [retain that information](#)
- [use or weigh that information as part of the process of making the decision](#)
- [communicate their decision \(whether by talking, blinking, squeezing hand etc\)](#)

It is important that support and detailed options are available to people under evaluation so that they can be fairly assessed.

Minute briefing

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