

Mental Capacity Act 2005

Further information about the Mental Capacity Act can be found in the Mental Capacity Act Code of Practice.

Web www.gov.uk/government/publications/mental-capacity-act-code-of-practice

What is the Mental Capacity Act (MCA)?

The MCA provides a legal framework for assessing people's ability to make decisions for themselves, and for others to make decisions for them where they are unable to do so. It empowers people to make decisions for themselves where they can do so and puts those who are unable to at the centre of the decision-making process. The MCA applies to those age 16 and over.

When is mental capacity assessed?

A person's mental capacity must be assessed when there is a reason to question their ability to make decision(s) for themselves. Capacity assessments must be decision specific, and with consideration to the 'material time' the person needs to make the decision.

Sometimes it may be necessary for a person's capacity to be assessed more than once and in relation to more than one decision.

What decisions might this apply to?

The assessment of capacity set out in the MCA applies to most decisions relating to a person's finances, healthcare or welfare (with a small number of exceptions, such as capacity to make a will). This includes making decisions about medical treatment, care and support needs, residence and admission to hospital.

Who will assess mental capacity?

Capacity to make decisions about health and social care matters will normally be assessed by a health or social care professional. If they have reason to question a person's capacity, they must complete an assessment.

The starting point for all assessments is a presumption that the person has capacity, and it is the responsibility of the professional to form a reasonable belief that the person has, or lacks, capacity.

How will capacity be assessed?

The assessment of capacity is set out in the MCA and professionals are expected to adopt the following approach:

1. Identify the specific decision(s) they want the person to make.
2. Identify the information relevant to that decision.
3. Assess if the person is able to make the decision. To be found to be able to make the decision the person will need to be able to understand the information relevant to the decision, retain it for long enough to make the decision, and use and weigh the information. They also need to be able to communicate their decision (this can be by any means).
4. If the person is unable to make a decision, this must be caused by an impairment or disturbance in the functioning of their mind or brain.

What happens next?

If a person is assessed to have capacity, they can make decisions for themselves. Although, in some circumstances professionals may still need to take steps to safeguard the person or others; the rationale for this must be documented in the medical records.

If a person is assessed to lack capacity, decisions will need to be made in their best interests. What is in a person's best interests will be decided by undertaking a best interest assessment. This requires professionals to review the options available and decide what is in the person's best interests, there is a checklist in the MCA that sets out what professionals need to consider and who they need to consult when doing this.

Unless urgency means it is not possible, this will include ascertaining the person's past and present wishes, feelings, beliefs and values, and obtaining the opinions of people who know the person on what would be in their best interests. If a person has a lasting power of attorney with authority to make the decision in question, it will be them who decides what is in their best interests. If there is disagreement between the assessors (including the person, or those who know the person) about what is in a person's best interests, efforts will be made to resolve this. Sometimes, where agreement cannot be reached, an application may need to be made to the Court of Protection to decide what is in the person's best interests.

Advance Planning

Advance Decisions to Refuse Treatment (ADRT)

An ADRT can be made by a person aged 18 or over who has capacity. An ADRT must be followed if the person subsequently lacks capacity to make relevant decisions (unless the treatment can be provided using the Mental Health Act). An ADRT can be written or verbal (unless it relates to life sustaining treatment, in which case it must be written, and specific rules apply – see chapter 9 of the Mental Capacity Act Code of Practice for more).

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Lasting Power of Attorney (LPOA)

A person can nominate someone to make decisions on their behalf when they lack capacity. This is done by completing an application for a LPOA. A LPOA can be made for decisions about Personal Welfare and Property and Affairs, two separate applications need to be made if a person would like to appoint someone to make decisions in relation to both of these matters.

If the person nominating would like, Property and Affairs can also be used when the person has capacity. Personal Welfare can only be used where the person has been assessed to lack capacity.

Deputyship

If a person has been assessed to lack capacity to appoint a LPOA, an application can be made to the Court of Protection to have a deputy (or deputies) appointed. If appointed, the deputy will then be given authority to make best interest decisions on behalf of the person. They can be appointed in relation to Personal Welfare and Property and Affairs.

Advocacy

In some circumstances people are eligible for free support from an Independent Mental Capacity Advocate (IMCA). IMCAs are independent and provide safeguards for people who lack capacity to make certain important decisions and, have no-one else (other than paid staff) to support or represent them or be consulted.

An IMCA must be instructed where this applies and an NHS body is proposing to provide serious medical treatment, or an NHS body or local authority is proposing to arrange (or change) accommodation in hospital (and they will be there longer than 28 days) or a care home (and they will be there longer than 8 weeks).

An IMCA may be instructed where there is a care review, or adult protection case (for adult protection cases, it doesn't matter if the person has others involved for an IMCA to be instructed).

How to make a complaint

If you want to complain about anything to do with your care or treatment, please speak to a member of staff in the first instance. They may be able to sort the matter out.

If not, you can contact the our Patient Advice and Liaison Service (PALS) for support from 9am to 4pm, Monday to Friday, excluding Bank Holidays.

Call [0118 960 5027](tel:01189605027)

Email PALS@berkshire.nhs.uk

If you do not feel that the hospital complaints procedure can help you, you can also contact your IMCA (if applicable), or the Care Quality Commission (CQC)

Web www.cqc.org.uk

