

THE MENTAL CAPACITY ACT 2005

**What you need to know and do on
April 2nd 2007**

The five underpinning Principles

You must:-

1. Assume the person has capacity unless it is proved otherwise
2. Not treat people as incapable of making a decision unless you have tried all practicable steps to try to help them
3. Allow people to make what may seem to you an unwise decision
4. Always do things, or take decisions for people without capacity in their best interest
5. Ensure that any act or decision must be the least restrictive option to the person in terms of their rights and freedom of action

The two- stage test of capacity

You must use the following test to assess if the person has capacity:-

1. does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way the mind or brain works,
2. if so does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

To have capacity to make a decision someone must be able to:-

- a) Understand the information relevant to the decision, and
- b) Retain the information, and
- c) Use or weigh that information as part of the process of making the decision, and
- d) Communicate his/her decision either by talking, signing, or any other means

Best Interest Checklist

Where a person lacks capacity all decisions must be made in the best interest of that person. The checklist below gives some common factors that you must always take into account where a decision is being made, or an act is being done for the person who lacks capacity.

- Involve the person who lacks capacity
- Be aware of the persons past and present wishes and feelings
- Consult with others who are involved in the care of the person
- Do not make assumptions based solely on the person's age, appearance, condition or behaviour
- Is the person likely to regain capacity to make the decision in the future

You must record your decision by completing the MCA Checklist template and store this within the service users electronic file
For more information on the Mental Capacity Act contact your named lead or visit

www.dca.gov.uk/capacity/index.htm

ROLE OF THE INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCA)

You must involve an IMCA in the following situations and where the person you are representing lacks capacity and has no relative, friend or unpaid carer

A NHS body is proposing:

- Serious medical treatment
- A stay of more than 28 days in hospital or 8 weeks in a care home
- Change to a person's accommodation to another hospital for more than 28 days or more than 8 weeks in a care home

A local authority is proposing:

- To change or to provide residential or supported accommodation for more than 8 weeks

An IMCA would not necessarily be involved if:

- The treatment needed to be provided as a matter of urgency
- If the person lacking capacity would be made homeless unless they were admitted to a care home

An IMCA may also be involved in:-

Accommodation reviews where there are concerns about the suitability of the placement and where

the following three requirements are met:-

1. The LA of NHS has arranged the original accommodation
2. The person lacks capacity
3. There is no other person appropriate to consult

Adult protection cases if the two following criteria are met:-

1. Where protective measures are being put in place in relation to the protection of a vulnerable adult from abuse; and
2. Where the person lacks capacity

An IMCA may also be involved where the person who lacks capacity is abusing another person.

An IMCA will not normally be used in accommodation reviews or adult protection cases where there is already appropriate family support or where an advocate is currently involved.

If you are in doubt about whether or not you should involve an IMCA please contact the IMCA Service on 0117 9800371, or fax 0117 914 1235

March 2007

