

Mental Capacity Act

Mental Capacity Act Code of Practice

The Mental Health Act 1983, Chapter 13- Mental Capacity and Deprivation of Liberty states the definition of mental capacity as “*Empowers individuals to make their own decisions where possible*”. It then goes on to describe that “*where an individual lacks capacity to decide, the Mental Capacity Act provides legal framework to support*”.

This allows others to make decisions for that individual based on their best interests. But wherever possible, decisions should be made by supporting that person to make their own decisions. -The Mental Capacity Act

https://assets.publishing.service.gov.uk/media/5a80a774e5274a2e87dbb0f0/MHA_Code_of_Practice.PDF

5 statutory Principles of the MCA

1. You should assume a person has capacity- Unless established that they do not.
2. A person should not be treated as though they cannot decide unless all steps have been taken to help them, have been exhausted.
3. A person cannot be deemed as unable to decide based just on the fact they make unwise decisions.
4. All decisions made for someone who lacks capacity should always be made in their best interest.
5. While decisions are made for an individual's best interest, careful consideration should be made as to whether the decision/act could be achieved with less restrictions on that person freedoms and liberties.

What does a 'lack' capacity look like?

A person is unable to make a decision for themselves if they are unable to;

- Understand information relevant to the decision made.
- Retain that information.
- Use that information as part of the decision.
- Communicate that decision.

Mental Capacity isn't linear

People can lack capacity to make some decisions but are able to make others. Likewise, people may lack capacity at different points in time but be able to make decisions at a later point.

A few factors could be present in these cases. For example, the impact of mental illness, physical illness, use or withdrawal of medication, illicit drug use and alcohol use.

MCA and Forum CIO

Insert from Forum CIO Safeguarding Policy –

“The Mental Capacity Act 2005 is a law that protects vulnerable people over the age of 16 around decision-making. It says that: Every adult, whatever their disability, has the right to make their own decisions wherever possible. People should always support a person to make their own decisions if they can.

Forum CIO recognises that they have a duty of care to work within the Mental Capacity Act 2005. Where possible, actions will be taken to establish an adult at risk’s capacity. However, where unsure about a person’s capacity this will not affect the support provided or the way a concern is raised in the first instance, as the duty of care and responsibility of Forum CIO remains the same regardless of Capacity if it is in their best interest”.

Making a Mental Capacity decision is important for Forum CIO staff members who work on the ‘front line’. Although it is not the role of any staff member to complete a capacity assessment (that would be completed by relevant professionals) it is important to determine if a client is able to consent to services and support.

Establishing Capacity

1. The client understands the information they need i.e. The consequences of refusing mental health/ medical support.
2. They can remember the information long enough to make the decision.
3. They can weigh up the options and make an informed choice.
4. They can communicate their decision (verbally/sign/point etc)

If you feel like you need more support or training around the subject of mental capacity, then please contact either Amy Elton (Safeguarding Co-Ordinator and DSL) or your line manager.

Making a Referral

If you feel that someone you are working with needs some support with their mental capacity and are worried that they may be unable to consent, discuss with your manager or the DSL to collaboratively decide on the next steps.