

The Mental Capacity Act

This training course has been created to cover all aspects of the mental capacity act and look at how we implement this into the work we do as health and social care professionals.

Learning Aims

- Understand essential responsibilities under the Mental Capacity Act 2005
- Have an awareness of what's involved in assessing capacity and best interests. Supporting people make their own decisions.
- Professional roles & the protection of capacity

This course is divided into 4 modules:

- 1) What is the Mental Capacity Act
- 2) Capacity assessments
- 3) Support and Best interest decisions
- 4) Protection of Capacity

The Mental Capacity act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment.

It covers decisions about day-to-day things such as what to wear or what to buy from the shops. It also includes serious life changing decisions like moving house or major surgery.

Examples of conditions that may impact on a person's capacity

- dementia
- a severe learning disability
- a brain injury
- a mental health illness
- a stroke
- unconsciousness caused by an anaesthetic or sudden accident

Just because a person has one of these conditions don't not always mean they will lack capacity to make specific decisions.

Its important to remember a person may lack capacity to make some decisions for example financial issues still may have capacity to make other decisions.

The MCA says:

- assume a person has the capacity to make a decision themselves, unless it's proved otherwise

The Mental Capacity Act

- wherever possible, help people to make their own decisions
- do not treat a person as lacking the capacity to make a decision just because they make an unwise decision
- if you make a decision for someone who does not have capacity, it must be in their best interests
- treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms

The MCA also allows people to express their preferences for care and treatment, and to appoint a trusted person to make a decision on their behalf should they lack capacity in the future.

People should also be provided with an [independent advocate](#), who will support them to make decisions in certain situations, such as serious treatment or where the individual might have significant restrictions placed on their freedom and rights in their best interests.

What MCA means for care workers?

Working within the care sector means we have a duty of care to all those we support and care for, this means at some point we will have situations where we need to consult other professionals regarding an individual's Mental Capacity. This can be daunting at times so it's important to have all the information.

Think..... "Does this person have mental capacity to make this decision at this time?"

If you believe they don't, you need to ask for an MCA assessment.

Five Key points

The 5 main principles of the Mental Capacity Act

1. Always assume the person can make the decision until informed otherwise.
2. Try everything possible to support the person make the decision themselves.
3. Do not assume the person does not have capacity to make a decision just because they make a decision that you think is unwise or wrong.
4. If you make a decision for someone who cannot make it themselves, the decision must always be in their best interests.
5. Any decisions, treatment, or care for someone who lacks capacity must always follow the path that is the least restrictive of their basic rights and freedoms.

It's important to remember that a person may have capacity for some decisions but not others, or they may not have capacity right now but may regain it in the future with support. This means all capacity decisions should be regularly reviewed to make sure they still reflect the person's ability to make decisions.

A person's capacity to make a decision can be affected by a range of factors such as a stroke, dementia, a learning disability or a mental illness

The Mental Capacity Act

Module 2 – Mental Capacity assessments

The MCA sets out a 2-stage test of capacity:

- 1) Does the person have an impairment of their mind or brain, whether because of an illness, or external factors such as alcohol or drug use?
- 2) Does the impairment mean the person is unable to make a specific decision when they need to? People can lack capacity to make some decisions but have capacity to make others. Mental capacity can also fluctuate with time – someone may lack capacity at one point in time but may be able to make the same decision at a later point in time.

Where appropriate, people should be allowed the time to make a decision themselves.

The MCA says a person is unable to make a decision if they cannot:

- understand the information relevant to the decision
- retain that information
- use or weigh up that information as part of the process of making the decision

Module 3 - Helping people make their own decisions

Before deciding a person lacks capacity, it's important to take steps to enable them to try to make the decision themselves.

For example:

- does the person have all the relevant information they need?
- have they been given information on any alternatives?
- could information be explained or presented in a way that's easier for them to understand (for example, by using simple language or visual aids)?
- have different methods of communication been explored, such as non-verbal communication?
- could anyone else help with communication, such as a family member, carer or advocate?
- are there particular times of day when the person's understanding is better?
- are there particular locations where the person may feel more at ease?
- could the decision be delayed until they might be better able to make the decision?
- Is the decision in their best interests?

If someone lacks the capacity to make a decision and the decision needs to be made for them, the MCA states the decision must be made in their best interests.

The MCA sets out a checklist to consider when deciding what's in a person's best interests.

It says you should:

The Mental Capacity Act

- encourage participation – do whatever's possible to permit or encourage the person to take part
- identify all relevant circumstances
- find out the person's views – including their past and present wishes and feelings, and any beliefs or values
- avoid discrimination – do not make assumptions on the basis of age, appearance, condition or behaviour
- assess whether the person might regain capacity – if they might, could the decision be postponed?

Before you make a decision or act on behalf of someone who lacks capacity, always question if you can do something else that would interfere less with their basic rights and freedoms.

This is called finding the "least restrictive alternative". It includes considering whether there's a need to act or make a decision at all.

Where there's more than one option, it's important to explore ways that would be less restrictive or allow the most freedom for a person who lacks capacity.

But the final decision must always allow the original purpose of the decision or act to be achieved.

Deprivation of liberty

In certain cases, the restrictions placed upon a person who lacks capacity may amount to "deprivation of liberty". This must be judged on a case-by-case basis.

Where it appears a deprivation of liberty might happen, the provider of care has to apply to their local authority.

An assessment of the person's care and treatment will take place to decide if the deprivation of liberty is in the best interests of the individual concerned.

If it is, the local authority will grant a legal authorisation. If it is not, the care and treatment package must be changed – otherwise, an unlawful deprivation of liberty will occur. This system is known as the Deprivation of Liberty Safeguards.

If you suspect a deprivation of liberty may happen, talk to the care provider and then possibly the local authority.

Advance statements and decisions

An advance statement is a written statement that sets down a person's preferences, wishes, beliefs and values regarding their future care. It's not legally binding.

The aim is to provide a guide for anyone who might have to make decisions in a person's best interests if that person has lost the capacity to make decisions or communicate their decision.

An advance statement can cover any aspect of a person's future health or social care.

This could include:

- how they want any religious or spiritual beliefs they hold to be reflected in their care

The Mental Capacity Act

- where they would like to be cared for – for example, at home or in a hospital, nursing home or hospice
- how they like to do things – for example, if they prefer a shower instead of a bath, or like to sleep with the light on
- concerns about practical issues – for example, who will look after their pet if they become ill

An advance decision

Is sometimes known as an advance decision to refuse treatment, an ADRT, or a living will is a legally binding decision that allows someone aged 18 or over, while still capable, to refuse specified medical treatment for a time in the future when they may lack capacity to consent to or refuse that treatment.

If the advance decision refuses life-sustaining treatment, it must:

- be in writing, signed and witnessed
- state clearly that the decision applies even if life is at risk
- People who make an advance decision may wish to consider letting their family, friends and carers know about it.

Module 4 – Professionals Roles & the protection of capacity

Office of the Public Guardian (OPG) helps people in England and Wales to stay in control of decisions about their health and finance and make important decisions for others who cannot decide for themselves.

Lasting Powers of Attorney

A power of attorney is a legal document that allows someone to make decisions for you, or act on your behalf, if you're no longer able to make your own decisions.

There are three different types of power of attorney:

Personal Welfare Lasting Powers of Attorney

Property and Affairs Lasting Powers of Attorney

Enduring Power of Attorney

Before a Lasting Power of Attorney arrangement is legal, it must be registered with the Office of the Public Guardian or OPG.

Independent Mental Capacity Advocates (IMCAs) are a safeguard for people who lack capacity to make some important decisions.

An IMCA's role is to support and represent a person in the decision-making process. They make sure the MCA is being followed. In IMCA must be instructed for people in these circumstances:

The Mental Capacity Act

As a health and social care professional you have A duty of care and professional obligation to safeguard others while they are **in your care**.

Your duty of care is a legal obligation and something you must abide by. You have a duty to promote individual wellbeing and act in their best interests, protect them from harm, and always act within your competencies. You may sometimes encounter dilemmas in your duty of care, but it's important you support individuals to make their own decisions, even if you believe the decision is unwise.