

Date	08/04/2016
Author	Lauren Sayers
Update log	

Mental Capacity Act

The Mental Capacity Act 2005 (MCA) is a law applied to anyone over 16 years to put them at the centre of their treatment when they lack the mental capacity at the time of needing treatment, to make their own decisions about their finances, estate and health & social care. For instance if they have dementia, have taken drugs, consumed alcohol or possibly have a mental health condition.

Everyone is assumed to have capacity until it is brought into question and if it is then a Mental Capacity assessment is carried out by the doctor and/ or the psychiatrist. Importantly, capacity is not brought into question purely on the basis that the patient has a diagnosed mental health condition or when a patient makes an 'unwise' decision regarding their care and treatment; such decisions need to be respected by all.

A mental capacity assessment may differ slightly between health services, however all should record **why capacity has been questioned** (IE the smell of alcohol/ suffering from bereavement) and state all the individual **reasons what capacity is assessing** (IE refusing therapy/ refusing to take medication). Different decisions require different amounts of capacity; an individual may have capacity to refuse therapy but not to refuse taking their medication. The patient must be **given information** about why they need treatment, have explained the **risks and benefits** involved, be given **material information** that the individual attaches significance too, as well as be informed about all **alternative treatment options** (IE be treated by a different professional or attend a different type of therapy). The assessment should additionally conclude if they have a **disturbance and/ or impairment in their mind and/ brain**. 'Disturbance' is defined as a short term issue whereas 'impairment' refers to a long term issue and the 'mind' refers to the thoughts and feeling of the individual whereas the 'brain' refers to the individuals' chemical and structural matter. A disturbance of the brain may be they have consumed a small amount of alcohol, however an impairment and disturbance of the mind and brain may be they have dementia. The MCA should then assess whether the patient can **understand, retain and process** the information given. Retention of information only needs to be long enough to make a choice and processing the information involves explaining back in their own words what the professional has told them and give a rationale of why treatment is being refused. Lastly, the patient needs to **communicate back their choice** of treatment (in any form suitable for them). Failure in one of these assessment criteria's demonstrates a lack of capacity and thus the individual can be treated under the MCA.

For patients that lack capacity, advanced decisions and advanced statements are there to make explicit to health professionals the wishes of patients and to allow them to still make their own decisions. Advanced decisions (otherwise known as living wills) are legally binding documents explaining what treatment an individual refuses and health professionals have to abide by this document regardless of a lack of capacity (IE being treated by a man or being resuscitated). Advanced decisions are difficult to validate due to strict procedures and if it is deemed 'invalid', it becomes an advanced statement. Statements are not legally binding but equally they outline the individuals' wishes and professionals should still consider these for best practice.

Mental Capacity Act Version 1.0

Patients who lack capacity in the long term have a best interests assessment which ensures that the treatment option for that individual is the most suitable, putting them at the heart of their treatment. Like the MCA it is to protect and empower patients and give them the best possible care and treatment. Primarily, it is to establish whether the patient is being deprived of their liberty during a certain treatment and if they are, if this is in the patient's best interest to do so. For instance, if a patient is being treated in a hospital too far for family or friends to visit, this is depriving the patient of their liberty to a social network and they should be transferred to a closer treatment facility. The Best Interest assessment is completed by a minimum of two approved mental health professionals that have received best interest assessor training and who are not already involved in the patients care. The assessment needs to consider all **possible options available** to successfully treat the patient. The assessors need to **profile the patient**, considering their current wishes (IE verbal and behavioural indications of how they want to be cared for), their past wishes (IE referring to advanced statements and decisions), confer with all interested parties in the individuals treatment programme (IE friends, family, church leader) and consider any other factors (IE sexuality, location, phobias). Assessors need to then **revise all options** of how to treat the individual, considering what is most appropriate for that specific person, their characteristics and their situation. Lastly, the assessor should **select and justify** why a specific treatment option has been chosen.

Lasting power of attorneys are additionally useful when someone lacks capacity and are there to make decisions on behalf of the patient about their finances, property, health and welfare. Patients can have more than one LPA and the LPA's have to be registered by the Office of the Public Guardian. Primarily LPA's have the responsibility of making sure the MCA is being adhered to for the patient and to make decisions when the patient lacks capacity. Importantly, if the patient has capacity to make a certain decision the LPA's are not required at that specific time.

References

Care and quality commission. (c2016). *About the Mental Capacity Act*. Retrieved 18 April, 2016, from <http://www.cqc.org.uk/content/about-mental-capacity-act>
London TSO. (2007). *Mental Capacity Act 2005 Code of Practice*. Retrieved 18 April, 2016, from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf
Information gathered from the Healthcare conferences by speaker Kate Hill on the 19th January 2016 in the Mental Capacity Act Masterclass