

POLICE USE OF MENTAL HEALTH CAPACITY ACT 2005

CI47XX

Police Officers and Staff make health care and social care decisions on behalf of people who lack capacity

PRINCIPLES

There are 5 key Principles which must be considered before any decision is made on behalf of another person:

1. Presume capacity unless there is evidence otherwise
2. Do all you can to maximise a person's capacity
3. Unwise or eccentric decisions do not of themselves prove lack of capacity
4. If you are making a decision for or about someone lacking capacity it must be in that person's best interests
5. In making a "best interest decision" find the least restrictive option that will meet the person's needs.

BEST INTERESTS CHECK LIST

Any decision made on behalf of a person who lacks capacity **MUST** be in **THEIR** best interest

For example you must take into consideration

- All the relevant circumstances
- Will the person regain capacity – can the decision wait?
- What are the person's beliefs and values?
- Is there a less restrictive option available?
- Support the person in being involved in the decision making
- For life saving treatment – the decision maker must not be motivated by a desire to bring about a person's death.

DEPRIVATION OF LIBERTY

The MCA does not provide any person with a power to deprive someone of their liberty

Deprivation of liberty is defined by Article 5(1) European Convention on Human Rights

You cannot **DETAIN** a person under the MCA

You cannot take someone into police custody under the MCA

You cannot take someone to a Place of Safety as provided for under the Mental Health Act using the MCA.

RESTRAINT

You will be protected from liability when restraining a person who lacks capacity in relation to the situation being contained so long as the following two conditions are **BOTH** met:

- The person taking the action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity

AND

- The amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and seriousness of harm

Definition of restraint:

- Anything that restricts movement of a person or compels a person to do something they are resisting or prevents a person from doing something they wish to do
- It is likely to involve the use of or the threat of the use of force.
- Restraint will restrict the liberty of movement whether or not the person resists

Examples for Police:

- Standing in a doorway or by a hospital bed preventing a person's access or egress
- Laying hands on a person to restrict their movement or compel them to go to a particular place
- Use of mechanical restraints such as handcuffs or Velcro straps
- Use of captor
- Use of Taser.

MENTAL CAPACITY ACT 2005

Applies to anyone age 16 and over who lacks the capacity to make specific decisions about their life

Can include decisions which include:

- Medication, medical tests, other healthcare related assessments and treatment
- Social care such as where the person should live or be at any one time

It applies in whatever location the person is when the decision needs to be made, public or private

If a person lacks capacity to make a decision and the decision is made for them the Mental Capacity Act must be used.

SECTIONS RELEVANT TO POLICE

Section 5 MCA

Section 5 Mental Capacity Act does not provide a "power" to make decision on behalf of another it affords protection from liability for those persons making a decision on behalf of a person who lacks capacity if that decision would under normal circumstances be considered a "civil wrong" or "crime"

Section 6 MCA

Section 6 MCA imposes important limitations on acts which can be carried out on behalf of a person who lacks capacity. The key area is in relation to inappropriate use of restraint

Therefore a person will be afforded protection from liability if they have complied with the conditions detailed in the **RESTRAINT** section.

WHOSE DECISION IS IT?

Any person considering making a decision or action on behalf of someone suspected to lack capacity **MUST** make the capacity assessment themselves.

You cannot make a decision or action based on the capacity assessment of another person – however you can include their judgement in your decision making or assessment

If you made a decision or action **YOU** must have a reasonable belief that it is the

LEAST RESTRICTIVE MEANS OF ACTING IN THE PERSONS BEST INTEREST.

ASSESSING CAPACITY

Does the person have an impairment of or disturbance in the functioning of their mind or brain at this moment?

IF YES

Is the impairment or disturbance sufficient that the person lacks the capacity to make the decision needed at this time?

Examples would include:

- Mental Health problems
- Brain injury or stroke
- Dementia
- Temporary impairment due to illness, intoxication or medication
- Learning Disability
- Trauma such as bereavement
- Unconsciousness

Capacity is time specific and decision specific

Does the person have capacity to make this decision which is needed at this time?

If a lack of capacity is suspected then this four point test should be carried out and **"NO"** to **ANY ONE** question would establish the lack of capacity sufficient to make the decision on their behalf

1. Can they understand in broad terms the information relating to the decision required
2. Can they retain information long enough to make the decision
3. Can they use or weigh up information pertinent to make the decision
4. Can they communicate their decision to you in any form.