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Assessing Capacity

- Every endeavour should always be made to help people to make decisions for themselves.
- You should always start from the assumption that the person has capacity to make the decision in question. Under the MCA, you will normally be required to make an assessment of capacity before carrying out any care of treatment.
- Of course the more serious the decision, the more formal the assessment of capacity will need to be.
- Whether and how such assessments are made may vary according to the seriousness of the decision made.

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- You should always bear in mind that just because someone lacks capacity to make a decision on one occasion that does not mean that they will never capacity to make a decision in the future, or about a different matter.

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When should capacity be assessed?

The MCA makes clear that any assessment of a persons capacity should be 'decision specific', this means that:

- The assessment of capacity must normally be about the particular decision that has been made at a particular time and is not about a range of decisions.

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- If someone cannot make complex decisions this does not mean they cannot make simple decisions. For example, it is possible that someone with learning disabilities could make decisions about what to wear or eat but not about whether or not they need to live in a care home
- You cannot decide that someone lacks capacity based upon their age, appearance, condition or behaviour alone.

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The functional test of capacity

- In order to decide whether an individual has the mental capacity to make a particular decision, first decide whether there is an impairment of, or disturbance in, the functioning of a person's mind or brain (it does not matter if this is permanent or temporary).
- If so, the second question you must answer is does the impairment or disturbance make the person unable to make particular decision?

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The person will be unable to make the particular decision if after all appropriate help and support to make the particular decision has been given to them they cannot:

- Understand the information relevant to the decision
- Retain that information
- Use or weight that information as part of the process of making the decision.
- Communicate their decision (whether by talking, using sign language or any other means).

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- An assessment must be made on the balance of probabilities- is it more likely than not the person lacks the capacity? You should be able to show in your records why you have come to the conclusion that the person lacks capacity to make a particular decision.

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A Practical and Pragmatic Solution

- In a care home or in domiciliary care on first contact (on admission) when the care plan is completed an assessment of capacity should be made. This assessment will apply to matters relating to day to day living.
- Some conditions where the individual will not have mental capacity

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- After care by social care often improvement in general condition so at appropriate times when the care plan is reviewed another assessment should be made.
- Capacity can be intermittent.
- Then there will be one off decisions that need to have a specific assessment done.

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Challenging the result of an assessment of capacity

- Sometimes the assessment that you or a colleague has made will be challenged.
- This may be by the person who has been assessed or by someone acting for them, for instance a relative or an advocate.

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Best Interests

- If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in his or her best interests.
- The person who has to make the decision is the “decision maker” and will normally be the carer responsible for the day to day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation have to be made.

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What is the best interest?

- The law gives a checklist of key factors which you must consider when working out what is in the best interests of a person who lacks capacity. This list is not exhaustive and you should refer to the code of practice for more details

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- It is important not to make assumptions about someone's best interests merely on the basis of the person's age or appearance, condition or any aspect of their behaviour.
- The decision-maker must consider all the relevant circumstances relating to the decision in question.
- The decision-maker must consider whether the person is likely to regain capacity (e.g. after receiving medical treatment). If so, can the decision or act wait until then?

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- The decision-maker must involve the person as fully as possible in the decisions being made on their behalf.
- If the decisions concerns the provisions or withdrawal of life sustaining treatment the decision-maker must not be motivated by a desire to bring about the persons death.
- The decision maker must in particular consider:
 - i. The persons past and present wishes and feelings (in particular if they have been written down).
 - ii. Any beliefs and values (e.g religious cultural or moral) that would be likely to influence the decision in question and any other relevant factors.

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We are here to help.

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