Mental Capacity Act

Level One Awareness session

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Aim

• To introduce participants to the key messages of the Mental Capacity Act 2005

• To explore the implications for different service areas
Objectives

• List the five guiding principles.

• Explain what it means to lack capacity.

• Identifying who the decision maker is.

• Describe the role of an IMCA and how to contact them.

• Recognise the offences of ill treatment and willful neglect.

• Explain briefly about the Court of Protection, Deputies and Lasting Power of Attorney
Children and Young People

• The MCA applies to people who are 16 years old or older.

• All the principles apply to people aged 16 and over.

• People have to be 18 to make Lasting Powers of Attorney and advance decisions.
When the Act cannot be used to make a **best interest** decision

- Consenting to, marriage or civil partnership, sexual relations or divorce.
- Decisions about parental responsibility, adoption or fertility treatment.
- Making a will or gift.
- Litigating.
- Entering into a complex contract.
- Voting.
What is mental capacity?

Put simply it’s the ability to make a decision.

The MCA definition is………

“A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of or a disturbance in the functioning of mind or brain”
What is a lack of capacity?

- An inability to make a particular decision at the time it needs to be made.
- **Due to** an impairment or disturbance in the functioning of the mind or brain, whether temporary or permanent
- *(Issue & Decision Specific)*
Five guiding principles

An assumption of capacity.
Every adult has the right to make their own decisions and must be presumed to have capacity unless it is proved otherwise.
Two

Supported decision making.
People must have all practicable support to make a decision before anyone concludes that they can’t.
Three

Unwise decisions do not mean a person lacks capacity.
People can’t be treated as lacking capacity because they make what others might regard as unwise decisions.
Four

Act in the persons best interests.
Anything done for or on behalf of someone who lacks capacity must be done in their best interests and there is a statutory checklist to assist with this.
Five

Less restrictive option.
Any action we take on behalf of people without capacity should generally be the option which least interferes with their rights and freedom of action.
1. An assumption of capacity.
2. Supported decision making
3. Eccentric or unwise decisions
4. Best interest
5. Less restrictive
What triggers an assessment

Staff should always assume capacity then take into account:

• the person’s behaviour

• their circumstances

• any concerns raised by other people
Rhys has a moderate learning disability and autism. He makes most decisions about his finances but has a new girlfriend and is now spending considerable amounts of money on clothes. He has stopped contributing to the household budget of the group home where he lives. His care manager decides to call a meeting with others involved in his support to discuss her concerns. The trigger was his behaviour.
We use a two part test to assess capacity?

1. Diagnostic
2. Functional
Step 1: Diagnostic Test of capacity

Is there an impairment of or disturbance in the functioning of the person's mind or brain?

If “NO” then STOP
Step two: Functional Test of capacity

- Understand the information
- Retain the information
- Use and weigh the information
- Communicate the decision
Join it all up

- Has the person got an impairment or disturbance in the functioning of mind or brain?
- Are they unable to make the decision because they can’t understand, retain or use and weigh the information or communicate their decision?
- Is the inability to do this because of the impairment?
Assessing capacity

• It can vary over time

• It can vary depending on the decision to be made.

• It can be affected by things such as location.

• Do not assume a lack of capacity because of a person’s age, physical appearance, condition or an aspect of their behaviour.
What kind of decisions do you support people with? Discuss with the people near you a typical example of a decision you would be involved where you may need to use the MCA.
The Decision maker is .......

The name the MCA gives to the person who has to decide capacity and best interests for someone. This is likely to be the person who needs to know the answer because they have to act on it.
“The bottom line”

The person delivering the treatment or care makes the final decision about whether to deliver it, even though it may have been prescribed by someone else (although there may be discussions with other professionals).
Examples

Day to day activities . . . Social care staff

Long term care decisions . . . Social care staff

Medical treatment . . . Doctor or health professional

Nursing care . . . Nurse
Best interests

If the person lacks capacity
Make a best interests decision

If the person has capacity they
Make their own decision
Best interests checklist

- Equal consideration and non-discrimination
- Considering all relevant circumstances
- Regaining capacity
- Permitting and encouraging participation
- Special considerations for life-sustaining treatment
- The person’s wishes, feelings, beliefs and values
- The views of other people
What would you do if…..

• A patient with advanced dementia refused all personal care
• A patient with a learning disability always said “No” to drinks
• A patient with skin problems who has had a stroke would not move position
What would you do if

• A resident with dementia refused essential medication
• A resident with a learning disability refused a shower for 4 weeks
• A resident with skin problems who has had a stroke would not move position
Providing day to day care/treatment

• First obtain consent or refusal

• If capacity is in doubt
  – Assess capacity
  – Decide best interests
  – Provide the care/treatment
This means the MCA allows care or treatment to be given when a person lacks capacity to consent, where it is in the persons best interests.
Acts in connection with personal care may include:

- Washing, dressing, changing a catheter, colostomy care
- Help with eating and drinking
- Help with travelling
- Shopping, paying bills & Household maintenance
Healthcare and treatment may include:

- Administering medication
- Diabetes injections
- Diagnostic examinations and tests
- Medical and dental treatment
- Nursing care
- Emergency procedures
Protection for staff and carers

People providing day to day care/ treatment are protected from liability providing

- They have taken reasonable steps to assess capacity
- They reasonably believe the person lacks capacity
- They reasonably believe that the decision is in the persons best interest
Checklists

- Assessing capacity checklist
- Making Best Interests Decisions checklists
- MCA Assessment tool

Follow these and your recording will be compliant with the Act
Keeping records

• Day-to-day records - need not be elaborate on every occasion about decisions/acts of care.

• Professional records – record formal assessments of capacity.
What to record

“Ray was unable to tell me whether he wanted a shave today so a decision was made that a shave would be in his best interest. I will assess his capacity to decide about this again next week.”
Importance of accurate recording

- The lab test indicated abnormal lover function.

- Patient has left his white blood cells at another hospital.

- Exam of genitalia reveals that he is circus sized.

- She stated that she had been constipated for most of her life until 1989 when she got a divorce.

- The patient lives at home with his mother, father, and pet turtle, who is presently enrolled in day care three times a week.

- (Quotes direct from medical journal 2009)
CIPOLD report, where did it come from?

Death by indifference

In 2007, following the deaths of six people with a learning disability in NHS care, Mencap published – **Death by indifference** which exposed the unequal healthcare and institutional discrimination that people with learning disabilities often experience within the NHS.

Death by indifference played an important role in influencing the Department of Health to commission the Confidential Inquiry into premature deaths of people with a learning disability - CIPOLD report
The CIPOLD cohort

CIPOLD reviewed the deaths of 247 people with learning disabilities over the 2-year period 2010–2012, approximately 2½ times more than the number expected.

This apparent difference may reflect the under-recognition of people with mild learning disabilities in the community.
The most common reasons for deaths were assessed as:

• premature where there were delays or problems with diagnosis or treatment

• problems with identifying needs

• problems providing appropriate care in response to changing needs.
Factors contributing to vulnerability and premature deaths of people with learning disabilities

While the great majority (86%) of the illnesses that led to the deaths of people with learning disabilities were promptly recognised and reported to health professionals, for 29% there was significant difficulty or delay in diagnosis, further investigation or specialist referral.

For 30% there were problems with their treatment. The lack of reasonable adjustments to facilitate healthcare of people with learning disabilities, particularly attendance at clinic appointments and investigations, was a contributory factor in a number of deaths.
What does it mean in respect of the Mental Capacity Act?

Adherence to the Mental Capacity Act was generally poor. Health and social care providers must ensure that all professionals understand and act in accordance with the Act, and we recommend further work at national and local levels to support conformity to its requirements.

CIPOLD set 18 Key recommendation's, here are some of them:

• 6 Standardisation of Annual Health Checks and a clear pathway between Annual Health Checks and Health Action Plans.
7 People with learning disabilities to have access to the same investigations and treatments as anyone else, but acknowledging and accommodating that they may need to be delivered differently to achieve the same outcome.

11 The definition of Serious Medical Treatment and what this means in practice to be clarified.

12 Mental Capacity Act training and regular updates to be mandatory for staff involved in the delivery of health or social care.

15 All decisions that a person with learning disabilities is to receive palliative care only to be supported by the framework of the Mental Capacity Act and the person to be referred to a specialist palliative care team.
Criminal offences

2 Separate offences of ill treatment or wilful neglect apply to:

• People caring for someone who lacks capacity

• An attorney

• Court appointed deputies
Ill treatment and wilful neglect

• **ill-treatment:** To deliberately ill treat someone or be reckless in the way someone is treated.

• **wilful neglect:** Usually means that someone has deliberately failed to carry out an act they knew they had a duty to do.
Punishable by a fine or imprisonment up to 5 years
Independent Mental Capacity Advocates (IMCA’s)

- **MUST** be involved in 2 circumstances

  1. Changes of accommodation
     - 28 days or more in hospital.
     - 8 weeks or more in residential.

  2. Serious medical treatment

Where the person lacks capacity and there is no-one who it is appropriate to consult (un-befriended)
IMCA Service cont..

• **MAY** be involved in 2 other circumstances

  1. Adult safeguarding
  2. Accommodation care reviews

For Adult Protection need not be un-befriended

- The IMCA has a right to information about the person who lacks capacity but is not a decision maker
IMCA service for Shropshire, Telford and Wrekin

POhWER

- **Tel:** 0300 456 2370
- **Facsimile:** 0300 456 2365
- **Minicom:** 0300 456 2364
- **Website:** [www.pohwer.net](http://www.pohwer.net)
- **email:** pohwer@pohwer.net
Other things to watch out for

• Advance Decisions to refuse treatment (living will)
  – These are made when a person has capacity
  – They are binding
  – Make sure you know where to look on your paperwork

• Statement of wishes and preferences
  – Not legally binding but an indication of wishes
Advance Decisions to refuse treatment

- Made when a person has capacity

- Decisions to refuse specific treatment

- Says what you don’t want and when you don’t want it

- Are binding

- Don’t need to be in writing (unless…)

- Staff must be able to recognise when an advance decision is valid
Advance decisions to refuse life sustaining treatment

- must be written
- signed
- and witnessed

- Say what you don’t want, when you don’t want it and contain the words “even if my life is at risk”
Look out for

- Lasting Power of Attorney
  - Health and Welfare and
  - Property and Affairs

Ask, look, check, copy

- Documents will have the Office of the Public Guardian’s mark in the form of security stickers or holograms & the date registered will also be shown.
Always check!!!!

An EPA or a Property and Affairs LPA does not let the person make decisions about care or treatment.
The Court of Protection

• Covers all areas of decision making under the MCA.

• Is the final decision maker in complex cases.

• Is able to make Health and Welfare decisions.
Deputies (replace’s receivers)

• Appointed to make certain decisions on behalf of someone who lacks capacity to make those decisions

• Could be a family member, carer or any other person the Court thinks suitable including a trust
Code of Practice

The Code of Practice interprets the MCA. **Anyone** who is working with or caring for adults who may lack capacity **must** have regard to it.
This includes....

- Doctors
- Dentists
- Nurses
- Therapists
- Radiologists
- Paramedics
- Social care staff
- Ambulance crew
- Police officers
and....

- Care assistants in a care home
- Domiciliary carer workers
- Community support staff
- Others who are contracted to provide a service to people who cannot consent to that service
Let's remind ourselves of the basics

- 5 guiding principles
- Definition of capacity
- Assessment of capacity
• Best interest checklist

• Offences of ill treatment and neglect

• Advance decisions

• Lasting Power of Attorney
• Court of Protection

• IMCA’s

• Code of Practice

• Deprivation of Liberty Safeguards
Are there any questions?