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Background

The MCA 2005 applies to everyone over 16 years who may lack capacity to make specific decisions about their life. These decisions can range from the straight forward to more complex, life changing matters. Judgements about an individual's capacity must not be based on their age, appearance, condition or behaviour. The MCA protects the rights of individuals: it clarifies what can and can't be done for / with someone who lacks capacity, and how those making decisions for them must apply the principles of Best Interests and Least Restrictive option.

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Why it matters

The MCA incorporates human rights and is based on 5 key principles:

1. Assume Capacity: always assume capacity unless proved otherwise
2. Practicable Steps: take all reasonable steps to enable a person to make their own decisions
3. Unwise Decisions: you must not assume incapacity simply because a person makes an unwise decision
4. Best Interests: always act / decide for a person lacking capacity in their best interests
5. Least Restrictive: aim to make the least restrictive decision possible.

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Information

Only if capacity is in doubt should an assessment of capacity be carried out.

The 2 stage test is:

1. Does the person have an impairment of the mind or brain (temporary or permanent)? If YES then:-
2. Can the person
 - i. Understand what decision needs to be made and the information relevant to it?

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- ii. Retain the relevant information long enough to make the decision?
- iii. Weigh the information relevant to the decision?
- iv. Communicate their decision by any means (eg speech, signing etc)?

The Court of Protection is there to review decisions made that may need judicial oversight eg disputed decisions, deprivation of liberty in community settings, restrictions on contact

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Lasting Power of Attorney (LPA) enables anyone over 18 years with capacity to give decision making powers to others for Health /Personal Welfare, or Property/Affairs. Independent Mental Capacity Advocates (IMCA) usually support 'unbefriended' people who lack capacity to make decisions about change of accommodation, serious medical treatment and safeguarding. Deprivation of Liberty Safeguards (DOLS) are part of the MCA to protect people in hospitals & care homes.

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What to do

The MCA Code of Practice provides detailed guidance on the Act. Professionals and carers must have regard to the Code.

Further information:

- www.gov.uk/government/collections/mental-capacity-act-making-decisions
- www.scie.org.uk/mca
- www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults.aspx

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Questions to consider

Are we clear about our responsibilities under the MCA?

Do we know what constitutes capacity?
Lack of capacity?

Do we know how to apply the best interests checklist?

Do we know when someone may be deprived of liberty?

Do we need to change our practice in light of the MCA?

