

Mental Capacity Act 2005

Basic principles

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s.1 MCA 2005

- (2) A person must be **assumed to have capacity** unless it is established that he lacks capacity.
- (3) A person is not to be treated as unable to make a decision unless **all practicable steps** to help him to do so have been taken without success
- (4) A person is not to be treated as unable to make a decision merely because he makes an **unwise decision**.

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The capacity test

Section 2: People who lack capacity

- (1) For the purposes of this Act, 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, the mind or brain.

Section 3: Inability to make decisions

- (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable

- (a) to understand the information relevant to the decision,
- (b) to retain that information,
- (c) to use or weigh that information as part of the process of making the decision, or
- (d) to communicate his decision (whether by talking, using sign language or any other means).

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Best interests principles

s.1 MCA 2005:

- (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

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Best interests checklist (1)

s.4 MCA 2005:

- (1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—
- (a) the person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.
- (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
- (3) He must consider—
- (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
 - (b) if it appears likely that he will, when that is likely to be.

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Best interests checklist (2)

- (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
- (6) He must consider, so far as is reasonably ascertainable—
- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
 - (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
 - (c) the other factors that he would be likely to consider if he were able to do so.

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Best interests checklist (3)

- (7) He must take into account, if it is practicable and appropriate to consult them, the views of—
- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
 - (b) anyone engaged in caring for the person or interested in his welfare,
 - (c) LPA (d) Deputy
- as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).
- (11) "Relevant circumstances" are those—
- (a) of which the person making the determination is aware, and
 - (b) which it would be reasonable to regard as relevant.

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Resources

- 39 Essex guide and monthly report www.39essex.com
- BMA/Law Society book on capacity
- BMA online toolkit
- Hampshire CC toolkit
- SCIE MCA resources
- www.empowermentmatters.org.uk
- BILD etc resources for people with LD
- Apps – Pictalk etc

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