



BRIEFINGS FOR CARERS

THE MENTAL CAPACITY ACT 2005

What is the problem?

Having mental capacity means being able to make your own decisions. Sometimes people with learning disabilities have decisions made for them, even though they could have made, or contributed to, the decision themselves.

What is the Mental Capacity Act 2005?

The Mental Capacity Act 2005 (MCA) affects people who are aged 16 and over, and living in England and Wales. It tells us:

- What to do to help someone make their own decisions about something
- How to work out if someone can make their own decisions about something
- What to do if someone cannot make decisions about something sometimes.

The key principles of the MCA

1. Start off by thinking that everyone can make their own decisions.
2. Give people all the support you can to help them make decisions for themselves.
3. If a person is able to make a decision for themselves, you should not stop them just because you think it is a bad decision.
4. If someone is not able to make a particular decision, it must be made in their 'best interests' - there is formal process for this.
5. If you are doing something or deciding something for another person that is in their 'best interests' you must try to maximise their freedom and rights as much as possible.

What does this mean for carers?

You might need to **assess capacity** where a person is unable to make a particular decision at a particular time. You must not assume they cannot make the decision just because they have learning disabilities, or they haven't been able to make similar decisions in the past.

The MCA says that a person is unable to make their own decision if they cannot:

- understand information given to them or
- retain that information long enough to be able to make the decision or
- weigh up the information available to make the decision or
- communicate their decision in any way.

You must help them as much as you can with this.

If someone does not have the capacity to make a decision for themselves, check if they have a **decision-maker**. This would be if they have a Lasting Power of Attorney, an advance decision to refuse treatment, or if they have a Deputy. If so, they would make the decision.

Otherwise, others must decide what would be in the person's **best interests**. To work out what is in a person's best interests there is a checklist (below).

The more important the decision (e.g. about life-saving treatment) the more formal the decision-making process should be.

Always remember to fully record the decision-making process, the decision made, and its outcome.

Best Interests Checklist

- Will the person be able to make the decision themselves sometime in the future? If so, could the decision wait?
- What are the wishes of the person?
- What are their beliefs and values?
- What other factors should be considered?
- What do other people who know the person well think would be in their best interests?
- What would be the least restrictive option?

