



Practical Guide to Assessing Capacity and Making Best Interests Decisions under the Mental Capacity Act (MCA) 2005

Version 1

Overview

- Principle 1 of the MCA is the **presumption of mental capacity**. However, if a person's mental capacity to make decisions is in doubt, professionals **MUST** follow the MCA.
- The ethos of the MCA, along with all effective Human Rights based practice, is to work **with** people, rather than do things **for** people
- This brief guide provides practical steps to support professionals in following the MCA process. It is not intended to be definitive guidance - please refer to your **own organisation's** MCA Policy and Procedures, as well as the [MCA Code of Practice](#) for further information.

Identify the decision

- **Remember** – it is the **person's** decision, not the **professional's** decision
- It is helpful to phrase the decision from the **viewpoint of the person**, avoiding any preconceived opinion on what is in that person's best interests.

✓	What should my care arrangements be?
✓	Should I have this medication?

✗	As he is not safe on his own, should Mr Jones be admitted to Sunny View Care Home?
✗	Should Mr Jones receive the necessary medication to alleviate his symptoms?

Identify the decision maker

The decision maker is usually the person best placed to make the decision.

Type of Decision	Likely Decision Maker
Change of Accommodation/ Discharge Care Plan	Funding body or Social Care Professional
Medical Investigation or Treatment	Medical Professional
Daily Care	Nurse, Therapist, Care worker
Managing Risk to Self	Police, Housing Worker, Social Worker
Finances	Funding body, such as Local Authority or CCG

Remember - if the person has a relevant **Lasting Power of Attorney (LPA)** or **Deputyship**, then the LPA or Deputy will be the likely decision-maker.

Consider the nature of the decision

It can be useful to consider the decision on a continuum ranging from simple decisions, through to more **complex** decisions.

Simple	For example; day to day decisions about daily care	
Complex	Decisions such as;	<ul style="list-style-type: none"> Changing accommodation? Restricting contact with Others? Receiving covert medication? Receiving serious medical treatment? Receiving care / treatment against the person's wishes? Financial arrangements?

Complex decisions can often involve a **potential breach** of a person's Human Rights, (such as DoLS which relate to Article 5) requiring more detailed assessment and documentation by the decision-maker.

Identify the available options

Remember – Professional/ Funding Decisions and Best Interest Decisions are not the same thing. In order to assess capacity and determine best interests, you must first identify the available options. The MCA does not simply bestow a 'wish-list' of options for a person to choose from. Available options are often identified following professional decisions and/or funding decisions.

Assess Capacity

The Code of Practice suggests that if we are concerned that a person does not have the capacity to make a decision because of an impairment or disturbance of the functioning of the mind or brain, then we should assess Mental Capacity.

Sometimes when working with individuals who make unwise choices, we should consider the fact that if a person makes an unwise decision it does not mean they lack capacity (*MCA Principle 3.*) **However**, if a person makes frequent unwise decisions, this could indicate fluctuating capacity and should trigger a Mental Capacity Assessment. This is particularly important in adult safeguarding cases relating to self-neglect.

It is helpful to think of the capacity assessment as a **conversation** between the person and the decision maker. The decision maker needs to take all **practicable steps** possible when facilitating the conversation, so that the person has the best opportunity to make the decision by themselves (*MCA Principle 2.*) We cannot prove that someone lacks capacity to make the decision, without taking all practicable steps.

A capacity assessment is not a clinical test and is ideally completed by a decision maker who knows the person, is involved in their care and has awareness of the particular decision at hand. The conversation should commence with the decision maker outlining the important factors of the decision, and then ascertaining if the person can **understand, retain, weigh and communicate** those factors and the overall decision. If the person is unable to understand, retain, weigh and communicate factors related to the decision, and the reason for this is directly linked to an impairment of the brain or mind, then the person is deemed not to have mental capacity to make that decision.

The Mental Capacity Assessment is also known as a two-stage test:

Stage 1 – Diagnostic (Is there a diagnosis to evidence an impairment or disturbance of the functioning of the mind brain?)

Stage 2 – Functional (Can the person understand the information relevant to the decision, retain the information, use/weigh the information as part of making a decision and can the person communicate their decision?)

Consideration must be given to assessing not only decisional capacity but executive capacity. The 'articulate demonstrate method' requires the person being assessed to both articulate their decision and demonstrate how they would carry it out.

Remember – the starting point of the assessment is that the person has capacity (*MCA Principle 1.*) It is for the decision-maker to prove otherwise and provide the necessary evidence.

Best Interest Decision

If a person does not have the mental capacity to make the decision, then a decision is made by the decision-maker in the persons **best interests** (*MCA Principle 4*). The MCA Code of Practice Best Interests checklist outlines what must be considered when making a decision in a person's best interests.

A Best Interest decision should take into consideration the **past and present views of the person, and their values and beliefs**. A decision maker should also consult with individuals who are important in a person's life, such as their family or friends. A Best Interest decision will often be a multi-agency process, with the views of a range of professionals also being consulted particularly around more complex decisions.

When making a Best Interest decision, decision makers should demonstrate consideration of a range of options and where possible should demonstrate that they have considered the least restrictive option (*MCA Principle 5*.) The least restrictive option is not always the option chosen; if this is the case use your best interest decision to evidence that you have considered it but explain why it is not the best interest option.

Remember – Best interest decisions about family relationships are not covered by the MCA and require the jurisdiction of the appropriate Court. Family members would be consulted where appropriate, however would not be involved in the decision making unless appointed as a Power of Attorney.

Remember – “No decision about me without me”

Recording the MCA & Best Interests Decision

When recording the MCA your assessment should evidence how you have proven lack of capacity using the two-stage test.

When recording a Best Interest Decision this should also be documented, to evidence that you have considered the person, consulted appropriately with others including other professionals and that you have considered a range of options including the least restrictive.

Simple Decisions	It is required practice to make reference to Capacity/ Best Interests in care records even for simple care decisions, although detailed recording is not usually expected.
Complex Decisions	More formal documentation is necessary. Recording for these decisions is required to be more in-depth and demonstrate how a particular conclusion was reached during the capacity assessment, as well as best interest considerations as outlined in the Best Interest checklist. A balance sheet approach is suitable in demonstrating your consideration of different options, where you can demonstrate the benefits and burdens of each option in showing how the decision was made.

Further Resources

Useful reference materials can be found here;

www.39essex.com

www.mentalcapacitylawandpolicy.org.uk