

MENTAL CAPACITY ACT 2005

The Mental Capacity Act 2005 (MCA) came in to force on 1st October 2007. It protects people who can't make decisions for themselves as they do not have the mental capacity to do so. The MCA provides clear guidelines to carers and professionals about who can make what decisions and in what circumstances.

Lack of capacity can be as a result of a severe learning disability, dementia, mental health problems, a brain injury, a stroke or their being unconscious due to anaesthetic or a sudden accident. Capacity can be regained as well as lost.

It is the MCA that gives the Court of Protection the authority it needs to make Orders about personal welfare and also property and financial affairs matters for those who lack the capacity to make their own decisions. It also allows an individual, whilst they are able to do so, to appoint someone to make decisions for them when they no longer have the capacity to do so.

Section 1 of the MCA sets out 5 principles that must be followed by any one dealing with an adult who does or may lack capacity. Those principles are:

1. A person is not to be treated as being unable to make a decision unless all practicable steps have been taken to help him make that decision himself,
2. A person is not to be treated as being unable to make a decision merely because they make an unwise decision,
3. Any decision made or act done under the MCA on behalf of a person who lacks capacity must always be in their best interests, and
4. Before the decision is made or the act is done then there must be due consideration as to whether the purpose for the decision or act can be achieved as effectively in a way that is less restrictive of the person's rights and freedom of action.

These principles must always be considered by a Deputy when making decisions.

The following is a case study of a client our team acts for and is a good example of principles 1 and 2 above:

B is a young man who suffered a brain stem injury following a car accident. As a result of that injury he now has 'locked in syndrome' and requires a team of 13 carers to look after him 24 hours a day.

B does have capacity to make some decisions but all major decisions have to be assessed as they need to be made to ascertain whether B has the specific capacity to make that decision at that time.

B communicates by blinking his eyes in a certain way to indicate a 'yes' and a 'no' to direct questions. He is also able to spell out words to his family and carers by the use of his eyes. With this support it is possible to assist B in making his own decisions where he has the capacity to do so.

The MCA also has a Code of Practice for both Deputies and Attorneys. This Code has statutory force and can be used in action against the Deputy or Attorney in the event they are not fulfilling their duties in a proper manner.

Very importantly the MCA recognises that capacity can fluctuate over time. It is for this reason that the assessment of capacity needs to be made for a specific decision at the time the decision needs to be made.

If necessary a report from a medical professional can be obtained to assist with this assessment.

Our specialist team can provide advice on the MCA and can assist Deputies or Attorneys ensure they are complying with their statutory obligations under the Act.



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