Waltham Forest's Strategic Partnerships 7minute briefing: The Mental Capacity Act (2005)

For all those working with adults, children and families

Strategic Partnership Boards
SAFETY SAFEGUARDING WELLBEING

1. Background: the Mental Capacity Act (2005)

The MCA and its associated Code of Practice (MCA Code) provide a statutory framework:

- To empower and protect those who may lack capacity to make decisions because of mental impairment. The MCA Code sets out who can take decisions, in what circumstances, and how they should do this
- The MCA also enables adults to plan ahead for a time in the future when they might lack capacity, i.e. appointing a Lasting Power of Attorney (for property and finance and/or health and welfare) and make Advanced Decisions or Statements in relation to treatment and care

2. Who does the MCA apply to?

The MCA potentially applies to everyone involved in the care and treatment of people aged 16+, who have some form of temporary or long-term mental impairment.

The MCA requires that we support the person to make their own decision(s) wherever possible. But in some circumstances, we will need to formally assess the person's Mental Capacity.

If they evidently lack capacity, a Best Interests decision may need to be made on their behalf.

All professionals have a duty to comply with the MCA Code which also provides support and guidance for less formal carers.

3. The 5 Principles of the MCA

The 5 principles are vitally important in relation to applying the legislation and so they should underpin all acts carried out and decisions taken

Principle 1: A person must be assumed to have capacity unless it is established that he or she lacks capacity. However, if a person's mental capacity to make a decision is in doubt, professionals MUST apply the MCA. The ethos of the MCA, along with all effective Human Rights-based practice, is to work with people and empower them where possible, rather than do things for people

Principle 2: A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success. This means you should make every effort to encourage and support people to make the decision for themselves. If a lack of capacity is evidenced on the balance of probabilities, it is still important that you involve the person as far as possible in making decisions

Principle 3: A person is not to be treated as unable to make a decision merely because he or she makes a decision that others believe to be unwise. People have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people

Principles 4: An act done or decision made, for or on behalf of a person who lacks capacity must be done so, or made in his or her best interests

Principles 5: Before such an act is done, or decision 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.

4. It is now recommended that….

Professionals ask themselves - can the person they are working with:

- Understand the relevant information to the decision to be made?
- Retain the information long enough to make the decision?
- Use and weigh the information as part of the decision-making process?

If the answer is yes to the preceding three questions can they

- Communicate their decision by any means?

If the person can do all four of the above then there is no evidence to displace their capacity and so this should be recorded, and the person should make their own decision.

5. Reason to doubt:

However, if they could not do one or more of the above, do you reasonably believe that this is **because** of *an impairment in the functioning of their mind or brain* (traditionally stage one of the two-stage test)? If so, then you would conclude on the balance of probabilities that they lack capacity to make this decision.

You should then proceed to the best interest decision process (please see Assessment of Mental Capacity Guidance document - Best Interests Decision flowchart on page 7.

6. Key Points:

- A mental capacity assessment is **time and decision specific** – one assessment will not cover all decisions. Some people may require a number of capacity assessments in relation to different decisions
- **Be clear** on what decision you are asking the person to make. Does the decision needs to be made now or can it be delayed until they might regain capacity
- **Evidence** the support you gave to enable them to make their decision
- **Show** how you have come to your conclusion on the 'balance of probabilities' - which simply put means 'more likely than not'

7. What can you do now?

- Read & share Mental Capacity Guidance
- Cascade 7 minute Mental Capacity briefing among your networks
- Ask your team if they feel confident around the principles of Mental Capacity, or if they need more information on MCA

Visit www.walthamforest.gov.uk/strategicpartnerships for other useful resources

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Case study on Geraldine:

On revisiting a mental capacity decision in the case of a vulnerable adult with learning difficulties

Geraldine is 39 and has a learning disability (Down's Syndrome). She resides in supported accommodation, and six months ago, she was diagnosed with breast cancer. She has been having chemotherapy as she thinks it will cure her; however, she is experiencing unpleasant and distressing side-effects. The recent tests have shown that the cancer has spread, and her condition is now terminal. Dr Ahmed made an appointment with Geraldine to discuss with her the options for future treatment and care. Geraldine is accompanied to the appointment by her support worker, Cheryl.

Dr Ahmed explains the diagnosis to Geraldine, and tells her that there are two options:

A) To have radiotherapy which may shrink the tumour and extend her life but unfortunately will not cure her. Side effects include soreness and swelling, and will make her feel very tired

B) To not have radiotherapy and make arrangements for specialist palliative care to control her pain and other symptoms, possibly at the local hospice

Dr Ahmed tries to explain in straightforward terms what the radiotherapy will involve and what palliative care can do for her, but Geraldine does not seem to understand, and she becomes confused and upset.

Dr Ahmed asks Cheryl to explain the options to Geraldine in her own words. He then asks Geraldine what is upsetting her. Geraldine says she does not understand why he wants to give her treatment that will not make her better, and also explains that she does not want to leave her home. Cheryl tells Dr Ahmed that Geraldine is very determined about doing things for herself but can take a while to grasp complicated situations, and hates being rushed.

As the decision does not have to be made immediately, Dr Ahmed suggests that he give Geraldine and Cheryl some written information to take away, for Geraldine to learn more from when she is less distressed.

He gives them an easy-to-read leaflet which explains what a patient can expect when they have radiotherapy, together with some information about the local hospice. He also undertakes to contact Geraldine's Macmillan nurse to ask her to visit and talk to Geraldine at home, when she has had time to digest the diagnosis and may feel less pressured than she does in the hospital environment.

Outcome: The following week, the Macmillan nurse reports that Geraldine has decided that she does not want any more active treatment, and would prefer to go into a hospice when the time comes, but wants to stay at home for as long as she can.

Useful information: For further information and/or guidance on case law or how to complete mental capacity assessments

Waltham Forest's Mental Capacity Guidance	39 Essex Resources on Mental Capacity Law	Social Care Institute for Excellence's National Mental Capacity Forum	Independent Mental Capacity Advocates	National Autistic Society and Mental Capacity Law	Mental Capacity Law and Policy