

Glossary

Best Interests

Under the Act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the decision is referred to as the 'decision maker'. It is the decision maker's responsibility to work out what would be in the best interests of the person who lacks capacity. The Act does not define the term "Best Interests", however, Section 4 of the Act (supported by the Code) sets down how to decide what is in the best interests of a person who lacks capacity in any particular situation

Decision maker

The person who is most appropriate to make a particular decision or who has the specific authority to make the decision

Lack of capacity

The MCA defines a 'lack of capacity' as an inability to make a particular decision at a particular time due to "an impairment of or disturbance in the functioning of the mind or brain"

Lasting Power of Attorney (LPoA)

This is a Power of Attorney created by the MCA 2005, appointing an attorney to make decisions in relation to personal welfare, including healthcare and/or deal with property and affairs

Least restrictive option

Before an act is done or a decision is made on behalf of a person lacking capacity it should be considered whether these purposes can be achieved in a way that is less restrictive of that person's rights and freedom of action.

An extensive glossary of terms around the mental capacity act and best interest decision making can be found at: www.scie.org.uk/assets/elearning/mentalcapacityact/Web/module9/html/glossary.htm#b1

Social Work Team

Name.....

Contact details.....

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

 01904 551550

If you would like this information in an accessible format (for example in large print, in Braille, on CD or by email) please call (01904) 551550

The Mental Capacity Act: Making Best Interests Decisions

You have been invited to attend a meeting to discuss future plans for your friend or relative by their social worker. It is important for you to understand the framework that this discussion will be happening under, and we hope this leaflet will help you to feel prepared for this meeting. This is a short leaflet about a complex subject and there is much more information available. Please do ask your social worker if you need further information or clarification about this topic.

This factsheet is about the Mental Capacity Act (2005) which provides a legal framework for decision making with a person who is currently unable to make some or all decisions for themselves.

What is Mental Capacity?

If you have mental capacity this means you are able to make your own decisions. The Mental Capacity Act is designed to cover situations where someone is unable to make a decision because of the way their mind or brain works or is affected, for instance, by illness or disability, or the affects of drugs or alcohol. A person may lack capacity to make particular decisions at particular times. It does not mean that they lack all capacity to make any decisions at all.

The legal definition says that someone who lacks capacity cannot do one or more of the following four things:

- Understand information given to them about the decision.
- Retain information long enough to be able to make a decision.
- Weigh up the information available to make a decision.
- Communicate their decision.

The five principals of the Mental Capacity Act are as follows:

1. All adults have the right to make decisions for themselves; capacity should be assumed.
2. Everyone should be given all the help they need to make a decision before anyone decides that they cannot make their own decision.
3. People are allowed to make what others may think is an unwise or eccentric decision. This does not mean that they lack the capacity to make that decision.
4. Any actions taken or decisions made on behalf of someone who lacks capacity must be done in their best interests. It is still important to involve the person wherever possible.
5. Anyone making a decision for someone who lacks capacity must consider whether it is possible to do this in a way that would interfere less with their freedoms and rights: that is "least restrictive".

City of York Council

 01904 551673 (hospital s/w)

 01904 555858 (West Offices)

 adult.socialsupport@york.gov.uk

 www.york.gov.uk



Who decides whether someone has capacity?

A health care professional, social worker, relative or carer might need to assess a person's capacity if they have a "reasonable belief" that the person lacks the capacity to make the decision for themselves.

A professional such as a doctor or nurse will assess capacity for decisions about treatment and a social worker for care arrangements or when decisions about accommodation have to be made, where the local authority is responsible for making these arrangements.

Capacity for day to day decisions will be assessed by the carer responsible for this person's care.

What happens if a person lacks capacity to make decisions for themselves?

If a person does not have capacity to make a decision themselves then the person who has to make the decision is known as the 'decision maker'. The decision maker will have to act in the best interests of the person who lacks capacity. Some people will have appointed an Attorney, using a formal document called a Lasting Power of Attorney (LPA). They will become the decision maker in certain circumstances.

If the decision is about accommodation, care arrangements, or similar matters where the local authority is responsible and there is no Attorney, then the social worker involved is the decision maker. The social worker will write an assessment recording how they decided upon your friend or relatives capacity.

How is Best Interests decided upon?

The Mental Capacity Act gives a clear list of what should be considered when making a decision in someone's best interests. This includes the following:

- Will they regain capacity? If so, can the decision be delayed?
- As far as possible the person must be involved in the decision. Their wishes, feelings, beliefs, and values should be taken into consideration.
- Consider what the person would have wanted if they had capacity.
- Carers, family and friends should be consulted. The views of friends are important; however we are required by law to consult a family member. When one is not available an Independent Mental Capacity Advocate (IMCA) must be involved. The social worker can give you more information about IMCAs.

The decision maker will have to weigh up all the factors to decide what is in the person's best interests within the bounds of available options. Thought must be given to options which will least limit the person's rights and freedoms (the least restrictive option) and consideration taken of what would make them happiest.

Taking account of the person's wishes, feelings, beliefs and values and following the least restrictive principle may mean making a decision that involves a degree of risk. A decision should not be made which appears safer but is more restrictive and doesn't take into account what the person wants or would have wanted.

Best interests meetings can happen in different ways. Generally you can expect to have a private room with the social worker. Sometimes you will be joined by other relevant professionals, other involved friends and family, and the person themselves depending on the circumstances. Everyone should have an opportunity to put forward their views. If you wish to challenge a decision please discuss this with the social worker initially. If they can't resolve it the social worker will explain further action you can take to resolve the dispute.

What is Lasting Power of Attorney?

People can choose to appoint an Attorney to act on their behalf should they lose capacity in the future, this is called a Lasting Power of Attorney (LPA). There are two types of LPA:

- A Personal Welfare LPA is for decisions about health and personal welfare, such as where to live, day to day care, or having medical treatment.
- A Property and Affairs LPA is for decisions about finances such as selling a house or managing bank accounts.

If you are an Attorney for your friend or relative their social worker will need to see the registered LPA, and may take a copy of it.

Further information:

Age UK provides a number of services to support older people, including a useful factsheet on Lasting Power of Attorney. Link to LPA fact sheet:

www.ageuk.org.uk/money-matters/legal-issues/powers-of-attorney/

Helpline: Tel: **0800 169 6565** or www.ageuk.org.uk

York Branch: Tel: **01904 627995** or email: ageukyork@ageukyork.org.uk

City of York Council has information on their web site about the MCA:

www.york.gov.uk/info/200244/mental_health/933/mental_capacity_act_2005

Ministry of Justice has produced a series of guidance booklets for different groups of people who need to know about the Mental Capacity Act 2005 and what it means for them. They can be downloaded from:

www.justice.gov.uk/guidance/protecting-the-vulnerable/mental-capacity-act
or ordered by telephoning **0300 456 0300**.

Forms & guidance including LPA forms can be downloaded from www.justice.gov.uk/forms/opg