Safeguarding Adults in Lambeth

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

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 organisations 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?	✗	As he is not safe on his own, should Mr Jones be admitted to Sunny View Care Home?
✓	Should I have this medication?	✗	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.	Health 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 **intermediate** decisions, to more **complex** decisions

Simple	For example; day to day decisions about daily care
Intermediate	For example; decisions about routine medical interventions
Complex	Decisions such as; Changing accommodation? Restricting contact with others? Receiving covert medication? Receiving serious medical treatment? Receiving care/ treatment against the person's wishes?

*Complex decisions can often involve a **potential breach** on a person's Human Rights, 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

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)

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.
Executive function (or the ability of the adult to carry out what they say they are going to do) should also be included in assessments, **linked to the person's ability to use and weigh information**. The concept of executive functioning is particularly relevant with people who self-neglect, and a judgement on someone's executive function should consider information obtained via multiple assessments or interactions.

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.

Remember – the starting point of the assessment is that the person has capacity. It's up to the decision-maker to disprove otherwise, and provide the necessary evidence.

Best Interests 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** (Principle 4 of the MCA).

The MCA Code of Practice Best Interests checklist outlines what must be considered when making a decision in a person's best interests. It is good practice to consider the persons **present and past wishes, feelings, values and beliefs** at the heart of any best interests decision.

Complicated situations sometimes arise where capacity is not clear or best interest decisions need to be made about a variety of decisions. These situations could involve a number of decision-makers from different agencies. In these situations, it is important for agencies to communicate and work cohesively together so that a uniform approach that considers the overall wellbeing of the person is evident.

Recording the MCA

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
Intermediate/ 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 towards analysing the available options is also helpful.

Further resources

Useful reference material can be found here;
www.39essex.com
www.mentalcapacitylawandpolicy.org.uk

This guidance was developed by the Lambeth SAB Mental Capacity Act Subgroup. The Lambeth SAB would like to give particular thanks to the hard work of David Rowley (Lead Nurse for Adult Safeguarding at Lambeth CCG and Chair of the MCA Subgroup).