



—BELMATT—  
HEALTHCARE TRAINING

# Mental Capacity Act

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# Course Objectives

- **At the end of the session participants will in relation to MCA be able to:**
  - List the functions of the Mental Capacity
  - Describe the groups that will be affected by the legislation
  - Understand the 5 principles highlighted in the MCA
  - Recognise when to seek further advice and guidance
  - Consider the code of practice when applying the MCA.





# MCA

- The MCA enshrines in law that all individuals over the age of 16 (in England and Wales) have the right to autonomy
- i.e. the full legal capacity to make decisions for themselves including potentially life ending decisions (the minimum age for this is 18yrs), except it can be shown that they
- lack the mental capacity to make the required decision – MCA Code of Practice para 1.2.
- The Act also provides a statutory framework to empower and protect people who may lack capacity to make decisions for themselves and establishes a framework for making decisions on their behalf. This applies whether the decisions are life-changing events or everyday matters - OPG Safeguarding Policy, May 2011 para 8.1.





# MCA and Under 18

In UK law, a person's 18th birthday draws the line between childhood and adulthood (Children Act 1989 s105)

- To a more limited extent, 16 and 17 year-olds can also take medical decisions independently of their parents. Young people aged 16 or 17 are presumed in UK law, like adults, to have the capacity to consent to medical treatment.
- If there are reasons to believe a child aged 16 or over lacks capacity, an assessment of capacity to consent should be conducted and recorded in their notes.





# Capacity and consent in 16 and 17 year olds

- Once children reach the age of 16, they are presumed in law to be competent.
- In many respects they should be treated as adults and can give consent for their own treatment, and refuse, including admission to hospital.
- Parents cannot override consent or refusal from a competent 16/17-year-old.
- Neither can they consent on behalf of their competent 16/17-year-old.





# Children under the age of 16 years who are competent

- For children under 16 years the MCA does not apply. Instead a child needs to be assessed whether they have enough understanding to make up their own mind about the benefits and risks of treatment – this is termed ‘Gillick competence’.
- The term ‘**Fraser guidelines**’ are also sometimes used.
- Although often used interchangeably, they are two different concepts:
  - Fraser guidelines refer to specific guidance that must be followed by the healthcare professional to provide contraceptive advice to a child
  - Gillick competence refers to the ability of the child to give consent and is used more broadly.



# BEST INTEREST

Consider, so far as is reasonably ascertainable—

- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
- (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
- (c) the other factors that he would be likely to consider if he were able to do so.

Take into account, if it is practicable and appropriate to consult them, the views of—

- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
- (b) anyone engaged in caring for the person or interested in his welfare,
- (c) any donee of a lasting power of attorney granted by the person, and
- (d) any deputy appointed for the person by the court,



# People Who Are Affected By The Act

- People working in a professional capacity, e.g. doctors, nurses, dentists and social workers
- People who are paid to care or support, e.g. home care workers and care assistants
- Anyone who is a deputy appointed by the Court of Protection
- Anyone acting as an independent mental capacity advocate (IMCA)
- Anyone carrying out research involving people who may lack capacity.





# Who Else Will Be Affected

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- **Many people with the following:**
  - Dementia
  - Learning disabilities (especially severe learning disability)
  - Brain injury
  - Severe mental illness
  - Temporary loss of capacity, for example because somebody is unconscious because of an accident or anaesthesia or because of alcohol or drugs or an infection
  - and anyone planning for the future.



# Five Principles

- A person must be assumed to have capacity unless it is established that they lack capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success
- A person is not to be treated as unable to make a decision merely because they make an unwise decision
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

\*\*\*Under the Act it is a criminal offence to wilfully neglect or ill treat an adult lacking mental capacity to make a required decision - MCA Section 44(2)



# What Is Lack Of Capacity

- An individual lacks capacity if they are unable to make a particular decision
- This inability must be caused by an impairment or disturbance in the functioning of the mind or brain, whether temporary or permanent
- Capacity can vary over time and depends on the type of decision. It is time and decision specific.



# Assessing Capacity

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- The Act sets out a test for assessing whether a person has the capacity to make a particular decision at a particular time.
- It is a 'decision-specific' test, concerned only with the decision that has to be made.
- For example someone may be quite capable of making decisions about some matters like their weekly food shop, but unable to deal with large sums of money or consent to a necessary operation.



# Two Stage Test

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- It must be determined whether the person has an impairment of the mind or the brain, or some other disturbance that affects the way their brain works, and;
  - If so, whether the disturbance is so great that they lack the ability to make the particular decision
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- In deciding the second part of the test, a person will lack the capacity to make a particular decision if they cannot:
    - Understand information relevant to the decision
    - Retain that information
    - Use or weigh that information when making the decision; or
    - Communicate a decision in any way





# **CASE STUDY**

## **Re C**

# Questions To Be Considered

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- **Does the person have the ability to:**
  - Understand the information?
  - Retain information related to the decision?
  - Weigh, use or assess the information while considering the decision?
  - Communicate the decision by any means?





# What Kind Of Help, Could Someone Need To Make A Decision?

- Provide all relevant information using simple language or other formats e.g. Pictorial, large print etc
- Don't give more detail than required
- Include information on the consequences of making, or not making, the decision
- Provide information on options
- Consult with family and care staff on the best way to communicate and known information about the person's previous views about the particular decision wanting to be made
- Be aware of any cultural, ethnic or religious factors that may have a bearing
- Make the person feel at ease
- Try to choose the best time of day for the person
- Try to ensure the effects of any medication are considered
- Take it easy-one decision at a time
- Don't rush
- Be prepared to try more than once i.e. can the decision be left to another time.





# Court of Protection

- Deputies are appointed to make decisions for people who lack the capacity to do so themselves.
- This applies in situations where formal arrangements have not been made – for example, if a person loses capacity and has not set up a Lasting Power of Attorney or an advance decision.
- A Deputy is usually a friend or relative of the person who lacks capacity, but could also be a professional.
- To become a Deputy you must [apply to the Court of Protection](#). Deputies must make decisions in the best interests of the person lacking capacity.
- These might be about property or financial affairs, such as redeeming an insurance policy or selling a house.
- The Court of Protection also has authority to make official decisions (called orders) about any healthcare, welfare or financial matters.
- Where there is a dispute that cannot be resolved between the professionals, the person and/or their relatives about what is in the person's best interests, the matter should be referred to the Court of Protection for the decision to be made



# FINALLY

- Keep up to date with the guidelines under the amended MCA 2019 Act
- Put the persons interest at the heard of decision-making
- Audit what elements of **our** MCA practice can we strengthen **now**?