



ENHANCED HEALTH
IN CARE HOMES
WORKING TOGETHER TO IMPROVE QUALITY

Mental Capacity Act & Deprivation of Liberty Safeguards Training

The Mental Capacity Act 2005

- Five Principles
- Definition of capacity
- Process of assessing capacity
- Best interest assessment
- Lasting Power of Attorney (LPA)
- Court Appointed Deputy
- Advance Decisions to Refuse Treatment (ADRT)
- Independent Mental Capacity Advocate (IMCA)
- Criminal offences
- Deprivation of Liberty Safeguards (DoLS)
- Assessment process for DoLS



Valid Consent

The person must have the capacity to make the particular decision

They must not be acting under duress

They must have received sufficient information to take the decision



The Five Principles

1. Every adult must be assumed to have capacity unless it is proven otherwise

2. All reasonable steps must be taken to assist the person to make a decision

3. Individuals have the right to make unwise decisions, even those others may consider eccentric

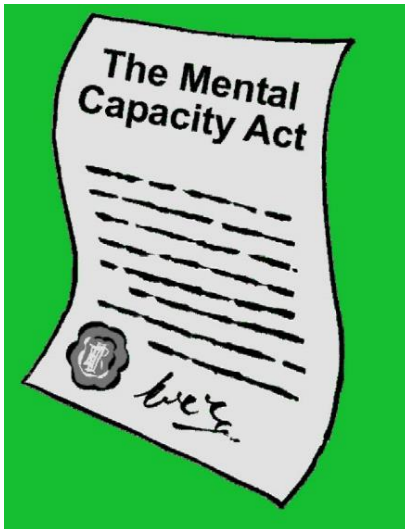
4. All actions on behalf of those who lack capacity must be in their 'best interests'

5. Any treatment should be done in the least restrictive manner of the persons basic rights and freedoms

Capacity Assessment

This is a two part test to assess decision specific capacity:

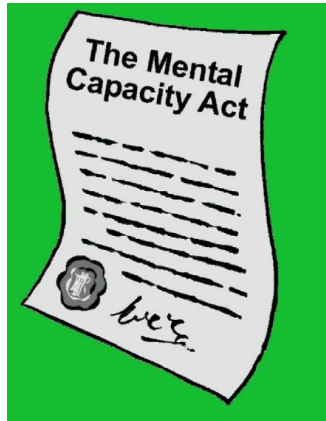
1. Is there an impairment or disturbance in the functioning of the mind or Brain?
2. Does this impairment or disturbance effect the decision making ability at the time a decision needs to be made?



Mental Capacity Act 2005

4 Part Functional test

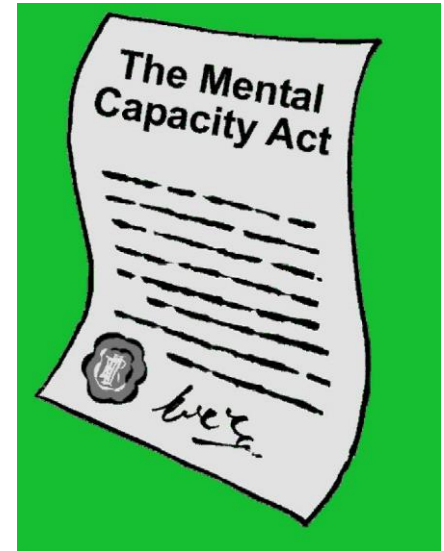
1. Does the person understand the information relevant to the decision?
2. Can the person retain the information relevant to the decision?
3. Can the person weigh up the consequences of making the decision?
4. Can the person communicate a decision, by any means?



Mental Capacity Act 2005

Which Patients may this commonly affect?

- Dementia
- Learning Disability
- CVA/Brain Injury
- Severe Mental Illness
- Anyone planning for the future
- Temporary loss of capacity, unconscious because of an accident or anaesthesia or because of alcohol or drugs



Who can be the Decision Maker?

- Varies depending on the individuals circumstances and the type of care or treatment or decision being considered
- Health and social care staff, family and unpaid carers can be decision makers when decisions relate to carrying out an act on behalf of somebody who cannot consent
- The person delivering the care or treatment makes the decision about whether to deliver that care or treatment





Leslie is 78 years old has dementia and has a long term heart condition, he has been prescribed medication that needs to be administered, but he sometimes refuses to take it. He lives in a nursing home which is funded by the NHS continuing healthcare. His daughter is concerned and has expressed to staff that this medication must be given at all costs.

The staff give Leslie information to explain the reason for the medication, the risks in taking it or not taking it and support him in helping him to make an informed choice about whether or not he continues with the medication.

The information is reinforced by the staff over the next few days . Leslie is able to understand ,explain and retain the relevant information and understands the risks and consequence of what could happen if he does not have the medication.

The staff conclude that he can retain, use and weigh up the information relating to this specific decision

Best interests - (MCA, Section 4; Code of Practice, 5.1-5.69)

Any decision or act must be in a person's best interests

When making decisions, staff should take account of the following:

- equal consideration and non-discrimination
- considering all relevant circumstances
- regaining capacity
- permitting and encouraging participation
- special considerations for life-sustaining treatment
- the person's wishes, feelings, beliefs and values
- the views of other people



Lasting Powers of Attorney - (MCA,

Sections 9-14; Code of Practice, Chapter 7)

Two different LPAs to cover a range of circumstances:

- personal welfare (including healthcare)
- property and affairs (finance)

Who can be an attorney?

- family
 - friend
 - professional, e.g. lawyer
-
- An attorney must be over 18 years old
 - An individual can be an attorney for more than one person
 - Staff should **not** normally act as attorneys



Advanced Decisions

An **advance decision** is prepared when a person has capacity

- It is a decision to refuse specified treatment and is binding
- Other expressions of an individual's preferences are not binding but must be considered
- Staff must be able to recognise when an advance decision is valid
- An advance decision must be written, signed and witnessed if life-sustaining treatment is being refused
- A relevant LPA will override an advance decision if it is made after the decision
- An advance decision can be withdrawn by the individual while they have the capacity or, if the individual does something that is clearly inconsistent with the advance decision or, by the decision maker if treatment is now available that was not available when the advance decision was made

Independent mental capacity advocates (IMCAs)

IMCAs are a local service available to represent the interests of people lacking capacity when making a serious decision about medical treatment or a move and in some adult protection cases if:

- they have no one else to speak for them other than paid carers, and
- their care is arranged by their local authority or NHS

The IMCA has a right to information about the person who lacks capacity but is not a decision maker

IMCA

Independent Mental
Capacity Advocacy

New criminal offences of ill-treatment or wilful neglect - (MCA, Section 44; Code of Practice, Chapter 14)

Offences under this criminal offence means:

- A person has deliberately ill-treated a service user or
- Been reckless in the way they were treating the service user.

This criminal offences can result in a fine and/or a prison sentence of up to five years



Remember..

- In an emergency, decisions will need to be made immediately.
- Where there is doubt as to the appropriateness of treatment, there should be a presumption in favour of providing life-sustaining treatment.



Case Study of Ben



- Who is the decision maker in this case?
- Who should be included in the Best Interests meeting?
- Would an IMCA need to be consulted?

Restriction and restraint

- Restriction is the use of, or threat to use, force to help in an act which the person resists, or the restriction of the person's liberty of movement, whether or not they resist.
- Restraint incorporates physical intervention, chemical intervention, persuasion and diversion techniques.
- Restraint may only be used where it is necessary to protect the person from harm and it must be proportionate to the risk of harm.
- For all restraint – capacity assessment must be recorded in relation to the restraint and a best interest decision documented to evidence why it is required.



Deprivation of Liberty Safeguards

What is a DoL ?

No current statutory definition!!!!

What do we work from?

- DoL's Code of Practice
- Acid Test following the Cheshire West Case (lower threshold)
- Case law since the Cheshire West Case
- The Law Society Guidance



The Acid Test

P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19

person without capacity to consent to their living arrangements for care and treatment

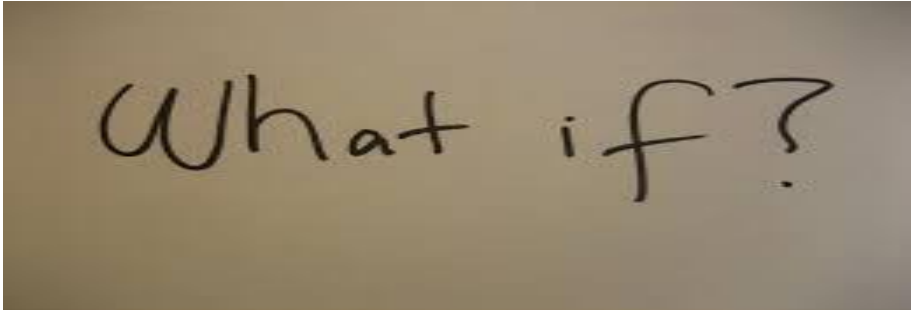
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graph TD; A[person without capacity to consent to their living arrangements for care and treatment] --> B[continuous supervision and control]; A --> C[not free to leave];
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continuous
supervision and
control

not free to leave

Ask the 'What if' question

- What if the person leaves the home?
- What if the person does not return?
- What about family contact?



What if?

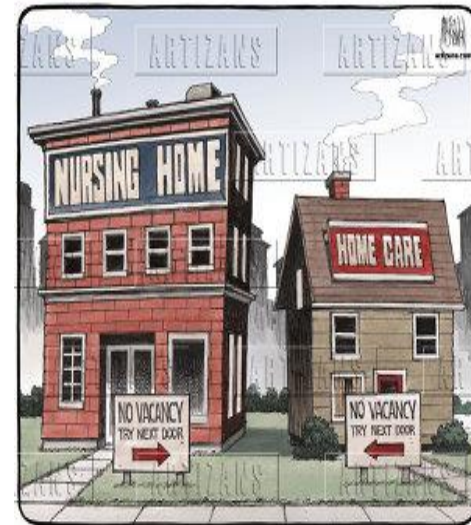
DoLS applies in

Care homes and hospitals-where deprivations are largely but not exclusively authorised through the DOLS process



Supported living and shared lives where deprivations are authorised by the COP

In people's own homes where a care package being provided is imputable to the state and the 'Acid Test' applies, deprivations are authorised by the COP



What do you need to do ?

- Read a summary of the judgement and know what now constitutes a DOL
- When working with patients that meet the 'acid test' criteria you need to recognise a potential DOL in all situations
- Understand your professional role and responsibility (direct and indirect) in recognising and raising potential DOLs with the appropriate agencies
- If in doubt contact the Dols team



Contact numbers

- LCC DoLS Office
01772 535 444
- CCG Safeguarding team
01282 644990 or 01282 644988



Guidance

<http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults/resources/guidance-for-safeguarding-concerns.aspx>

MCA / DOLs e-learning training the LSAB host

<http://www.lancshiresafeguarding.org.uk/lancashire-safeguarding-adults/resources/mca-dols.aspx>

Useful Resources

- *Mental Capacity Act 2005 Code of Practice*
Department for Constitutional Affairs (2007)
<http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>
- Best Interests at end of life
<http://www.scie.org.uk/publications/mca/files/lancspct.pdf>
- Advocacy Focus 0300 323 0965
admin@advocacyfocus.org.uk
- CCG Safeguarding Team 01282 644990, 01282 644988



Useful case law

- CHESHIRE WEST
http://www.familylaw.co.uk/news_and_comment/supreme-court-hands-down-judgment-in-cheshire-west?
- ROCHDALE v KW – LIBERTY
http://www.39essex.com/cop_cases/rochdale-mbc-v-kw/
- TOWER HAMLETS – DIFF TREATMENT
http://www.39essex.com/cop_cases/lb-tower-hamlets-v-tb-ors/
- W CITY COUNCIL – SUPERVISION
http://www.39essex.com/cop_cases/w-city-council-v-mrs-l/
- BOURNEMOUTH – FREE TO LEAVE
http://www.39essex.com/cop_cases/bournemouth-borough-council-v-ps-ds/

