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Mental Capacity and Decision-Making:

Supporting Young People to Make Their Own Choices

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The Mental Capacity Act

Why is it important?

Because it applies to adults (over 18) who lacks or might lack capacity around a decision and anyone who makes decisions on their behalf.

Including you as family carers.

As a parent you no longer automatically have the right to make decisions on their behalf once they turn 18.

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The Mental Capacity Act

Why is it important?

The aim of it is to protect the rights of the individuals and to empower them to make choices where they are able to but also to ensure there is a legal framework and process around people who can't make some decisions for themselves.

There is no longer the generalisation that a person doesn't have mental capacity - a person may have capacity for some things but not others.

It is **issue or question** specific.

There is a huge difference between the capacity needed to decide if you want tea or coffee and deciding where to live, whether to have an operation or what to do with your life savings .

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The Mental Capacity Act

What is Mental Capacity?

Whether a person can make a decision.... The ability to decide something...

What does a person need to be able to make a decision? The Legal test is Can P:-

- Understand the information
- Retain or hold the information for long enough
- Weigh the information up
- Communicate the decision (in any way)

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What does the Mental Capacity Act say?

Five core principles:-

1.A person is assumed to have capacity unless it is proved otherwise.

2.A person is not to be treated as unable to make a decision unless all practical steps have been taken to support them to make a decision without success

3.A person is not to be treated as not having capacity because they make an unwise decision

4.An act done or decision made for, or on behalf of, a person who lacks capacity must be done in their best interests (best interests decisions).

5.Before the act is done or the decision made, regard must be had to whether the outcome can be achieved in any other way that is less restrictive of the person's freedoms.

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Headlines

Assumption of Capacity, unless reason to doubt P doesn't have capacity.

The Mental Capacity Act, Code of Practice is helpful and talks about P having a 'general understanding of the decision and the consequences of their decision. Understanding Consequences = ability to weigh up

All practicable steps to support P to make their own decisions

Only if P lacks capacity should a person be making decisions in P's best interests

Any decisions taken on p's behalf, should always be the least restrictive

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Supppрted Decision Making

The Mental Capacity Act and Code of practice talks about and gives examples of how a person should be supported to make or be involved in as many of their own decisions as they can.

Try to break down information into small chunks
Simplify decisions to the crucial parts of the decision
Support with pictures or experiences and consequences
Even if they lack capacity, consider their wishes and feelings, what is important to them?

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Balancing Risk and Independence

The Mental Capacity Act refers to the Least Restrictive decision

Sometimes people have to make mistakes to learn from them!

Take small steps towards independence and reassess how its going frequently. What worked and what didn't?

Balance the likelihood or real harm against the potential benefit of learning from experience, put in some safety nets or safeguards.

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So, who can make a decision if the Person can't?

If a person lacks mental capacity to make a decision, the only person with legal authority to make a decision is an Attorney appointed under a Lasting Power of Attorney (LPA) or a Court Appointed Deputy.

LPA – The person must be able to choose who makes decisions for them if and when they can't. Can be for Finances or Health

Deputy – application to the Court of Protection to be appointed as Deputy for decisions. Can be for Finances or Health but Health is harder to get.

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Capacity Assessments

There is an Assumption of Capacity, unless reason to doubt P has capacity.

A Mental Capacity Assessment or MCA, might be suggested by a professional if they need to know who should make a decision for the person.

Remember:- All practicable steps must be taken to support P to make their own decisions. EG Easy Read documents, using pictures or showing the person what might or might not be the consequence or options.

If you think the MCA is flawed, say so. Explain why you disagree with the assessment.

If the person is deemed to lack capacity for the decision, there might be a Best Interest Meeting and Decision made

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Best Interest Decision Making

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As a family carer, you will probably be making and have made decisions in the person's best interests lots of time informally.

Sometimes though, there might be bigger decisions which need to be formally recorded. For example, for an operation or medical procedure or if professionals disagree with each other or with you.

In those situations, a best interest meeting might be called. If there is no one with legal authority such as a Court appointed Deputy for Health and Welfare or LPA Attorney for Health and Welfare, someone else might be the decision maker. For example, the Local Authority responsible for care and safeguarding or a doctor providing medical treatment.

As family, you should always be involved in those meetings and listened to, unless there is a safeguarding reason not to involve you.

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Best Interest Decision Making - Who makes the decision?

Normally, it is whoever is doing the caring but it could be a care manager, or a social worker or health practitioner.

Social Care Institute for Excellence say…
https://youtu.be/G80LAgnhN-8

Family carers know the person best generally!

Professionals should always record BI decisions formally with pro's and con's for each option

Families should always be involved in any Best Interest Meeting or decision unless there are safeguarding reasons not to.

The British Medical Association has a guide for doctors on this. Page 10 says families and those who care for the person MUST be consulted. https://www.bma.org.uk/media/4z1l3khg/mental-capacity-act-guidance-england-and-wales-updated-feb-2025.pdf

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Consent

To be able to Consent, a person has to have capacity to do so.

They have to understand what the decision is, what the implications of the decisions are now and in the future.

Remember; Capacity is time and issue specific and all practicable steps must be taken to support the person to make the decision themselves.

If the person cant consent, only an LPA attorney or Deputy can. There are some decisions even those Attorneys or deputy cant consent to though. Eg sex.

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Get prepared…

Work with the person to increase their skills and understanding where possible.
Eg money, budgeting.

Try and talk about who they want to help them make decisions.
Use Mencap Easy Read Guides
https://www.mencaptrust.org.uk/guides-lasting-power-attorney

Think about the future and evidencing why you believe the person has or has not got capacity for certain decisions and start to build evidence of it

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How can the MCA help me?

The MCA says a person's family and friends should be consulted about best interest's decisions. If practitioners are excluding you from decisions, ask why?

If a practitioner tells you the person has got capacity to make their own decision and you disagree, ask them how they made that decision? How did they explain the consequences of a decision to P?

Helpful resource https://paradigm-uk.org/wp-content/uploads/2023/06/FINAL-12-June-2023-Practical-Guide-to-Supported-Decision-Making.pdf

HFT Mental Capacity guide
https://www.hft.org.uk/wp-content/uploads/2017/08/Using-the-MCA.pdf

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