

Mental Capacity Act (2005) Subgroup

Introduction from Chairs of Derby and Derbyshire Safeguarding Adults Boards

Welcome to our first Mental Capacity Act (2005) (MCA) Subgroup Newsletter. It is the aim of the subgroup to publish two Newsletters every year, to update professionals who work with adults and volunteers with care and support needs on key information on the MCA.

The MCA Subgroup sits under the Derby and Derbyshire Safeguarding Adults Boards and the aim of these Boards is to work with partners to:

- stop abuse or neglect
- prevent harm
- reduce the risk of abuse or neglect to adults with care and support needs
- safeguard adults in Derby and Derbyshire in a way that supports them in making choices and having control about how they want to live.

The main purpose of the MCA is to promote and safeguard decision making within a legal framework. The MCA empowers people to make decisions for themselves wherever possible and protects those who are unable to make decisions for themselves.

We would like to thank everyone involved in contributing to the work of the Boards as without these we really believe adults in Derby and Derbyshire would be at greater risk of harm and abuse.

We hope that you find these Newsletters useful and for more information on the work of both Boards, please visit: www.derbysab.org.uk and www.derbyshiresab.org.uk.

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What is the MCA and what does it mean?

The MCA empowers and safeguards the rights of people who do not have the capacity to make decisions for themselves. The MCA applies to people aged 16 and over.

These five statutory principles are at the core of the MCA. All staff working with people who may lack capacity should familiarise themselves with these principles:

- 1) A person must be assumed to have capacity unless it is established that they lack capacity.
- 2) 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.
- 3) A person is not to be treated as unable to make a decision merely because they make an unwise decision.
- 4) 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.
- 5) Before the act is done, or the decision is made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Common MCA Myths

The MCA is sometimes misunderstood. Here are some common myths and facts.

Myth: If I have a concern about a decision a person is making, it is up to them to prove to me that they have the capacity to make it.

Fact: It is the other way around. Assuming capacity is fundamental to the MCA. The person does not have to prove anything. If you are concerned the person may not be able to make the decision, you will need to assess whether the person has the capacity to make the decision.

Myth: If a person is making an unwise decision, you must let them do it.

Fact: Whilst the presumption of capacity is a statutory principle, it is your responsibility to make sure and be satisfied that the person has received and understood all the relevant information especially where their decision may result in significant harm. It would be inadequate for you to record, for instance, "as there is a presumption of capacity, the decision was the person's choice."

Myth: If a person has been assessed as lacking capacity to make a decision then this applies to all future decisions too.

Fact: The capacity to make a decision is time and decision specific: this particular decision at this time because, for example, a person may recover from a physical illness or injury or may be able to make decisions for themselves once they have received focussed support.

Myth: The person needs to have a detailed understanding of every aspect of the decision they are making in order to demonstrate that they have capacity.

Fact: This is not necessary. The person only needs to understand the key information, often called the 'salient factors' relevant to the decision.

Myth: A person with dementia will not have capacity to make any decisions.

Fact: You must not assume someone lacks capacity because they have a particular condition.

Myth: It is not appropriate to help a person to understand their options when assessing capacity. Otherwise, you would be helping them to cheat.

Fact: Principle 2 of the MCA requires you to take all 'practicable steps' to help the person make the decision e.g. explain all the information relevant to the decision at a time and place that is best for the person, with support from family/friend or professional if possible, using objects and pictures that may help the person to understand and make the decision for themselves, where they can.

Myth: A person needs to be able to retain information after the decision has been made.

Fact: This is not true. A person needs to be able to retain the relevant information for long enough to weigh their options and communicate their decision. The MCA says that retaining the relevant information for a short period does not prevent the person from being regarded as able to make the decision.

Myth My next of kin can make decisions for me if I lose capacity.

Fact: The term 'next of kin' is commonly used but does not give people any legal decision-making authority. You can set up a Lasting Power of Attorney (LPA) for property and finance decisions and/or health and welfare decisions. It is the best way to give someone you trust the legal authority to make decisions on your behalf if you are unable to make them.

