

Mental Capacity Act Steering Group Expectations of MCA materials

Purpose

The Department of Health-led Mental Capacity Act Steering Group (MCASG) was established in October 2013 and contains representation from the major national organisations with a role in MCA implementation.

The ultimate purpose of the MCASG is to progress the joint programme of work detailed in the Government's response to the House of Lords Select Committee (Valuing every voice) and to act as a national focal point for our continuing efforts to implement the Mental Capacity Act and the Deprivation of Liberty Safeguards.

At its 26 November 2014 meeting, the MCA Steering Group decided that it was important to have a shared view on the key elements that good standard MCA materials (practice guidance, education and training materials, information leaflets etc.) should look to address.

The following seeks to meet this need. It is not an exhaustive list and clearly different materials will necessarily have different content. We would encourage those producing MCA materials to use this document as a prompt.

Core principles

As a minimum, MCA materials should cover the core MCA 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, 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 to whether the purpose of the act/ decision can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Important further messages

- Proficiency in conducting capacity assessments – understanding the formal test including the causative nexus test (impairment or disturbance in the functioning of mind or brain because of which the person is unable make the specific decision in question).
- The time and decision specific nature of capacity. That capacity fluctuates and re-assessment is required as appropriate.
- The need to fully involve all appropriate people in reaching a best interests decision – especially family, friends and carers.
- The use of a balance sheet approach to assist with best interests decision making
- The vital importance of supporting individuals to make their own decisions. Robust understanding of how information can be presented in different forms, how friends, families and carers can be involved to help the individual understand the choices they face.
- Understanding that the MCA provides a framework for empowering individuals – allowing them choice and control over their own lives and supporting their independence.
- Understanding the tension between risk-averse practice (that seeks always the safest option) and the obligation to allow individuals to live their lives as they would wish.
- The principle of the assumption of capacity does not exempt professionals from conducting robust assessments and asking challenging and searching questions in relation to individuals who are making choices that are problematic or manifestly contrary to their well-being
- Awareness of the option to make an advance decision to refuse treatment (should an individual lose capacity to make that decision in the future) including life sustaining treatment decisions.
- Awareness of the benefits of making a Lasting Power of Attorney (LPA) – and the existence of health and welfare LPAs as well as financial affairs LPAs.
- An understanding of the role of deputies appointed by the Court of Protection.
- An understanding of levels of decision making from day to day care and treatment to complex decisions.

- The need to be aware as to the existence of potential advance decisions, LPAs and any other materials that might provide a better understanding of the individual's past wishes, feelings and preferences.
- Understanding of what represents restrictive practices and the need to seek to reduce these wherever possible.
- As understanding of when restrictive practices might be of an extent that results in a potential deprivation of liberty – and an understanding of how this can be authorised by either the Deprivation of Liberty Safeguards (DoLS) or the Court of Protection if the deprivation is necessary for care and treatment and in the best interests of the individual concerned.
- Understanding of how proper application of the MCA supports person-centred, quality and compassionate care. An understanding of how the MCA supports wider culture change.
- Understanding that awareness and understanding of the MCA is a basic professional responsibility for those working with individuals who may lack capacity.
- Understanding that the MCA should under no circumstances be used as an excuse not to intervene and provide care and support to an individual who requires it.
- Understanding that the MCA provides protection from liability for those who make best interests decisions for individuals who may lack capacity.
- Understanding of the importance of good record keeping in recording capacity assessments and best interests decision-making.
- Understanding of the key link between consent to treatment and the need to assess capacity.
- Understanding that in emergency situations – for example, where life is at risk – the presumption should always be to provide care/ treatment.
- Understanding of the role independent advocacy can play in supporting individuals to make their own decisions and the positive contribution advocates can make to best interests decisions. Awareness of right in specific circumstances to an Independent Mental Capacity Advocate (IMCA).
- Understanding that the MCA applies to individuals aged 16 and over. Understanding of the needs of those transitioning to adulthood who may lack capacity.
- Understanding of how the MCA and the Mental Health Act interface – and that MCA principles should be applied wherever possible to those subject to the MHA.
- A clear awareness of who is the decision maker in differing situations.