Five Key Principles of the Mental Capacity Act

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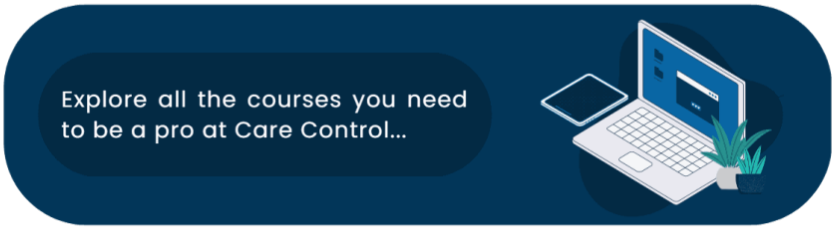

Five Key Principles of the Mental Capacity Act

The Mental Capacity Act is underpinned by a set of five key principles: –

1. A presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have the capacity to do so unless it is proved otherwise

2. Individuals being supported to make their own decisions – a person must be given all practicable help before anyone treats them as not being able to make their own decisions

3. Unwise decisions – just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision

4. Best interests – an act done or decision made under the Mental Capacity Act for or on behalf of a person who lacks capacity must be done in their best interests

5. Least restrictive option – anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Assessing Capacity Based on the Five Core Principles

The law sets out how you can assess someone's capacity to make a particular decision. Anyone carrying out an assessment must apply principles 1, 2 and 3: Principle 1 says that every adult has the right to make their own decisions. You must assume that someone is capable of making a decision unless it's shown that they aren't. You should not assume that someone can't make a decision just because they have a particular disability or condition.

Principle 2 says that before applying the capacity test you must be sure that someone you think may lack capacity has had all the help and support they need to encourage and enable them to make and communicate their own decision. The person should be given all the information they need to make the decision, which should be presented to them in a way which makes it as easy to understand as possible. This may mean, for example, having the information explained to them by someone they understand and trust, and using pictures, Braille or audio tape. The person's decision does not have to be conveyed in any particular way (for example, it doesn't have to be spoken or written or grammatical) so long as it is clear what they have decided. In some instances, this could, for example, mean that blinking or squeezing a hand may be enough to communicate a decision. If, after all the help and support has been given, their capacity is still in doubt then it should be assessed.

Principle 3 says that you should not treat a client as lacking capacity just because they choose to make a decision which you or someone else thinks is unwise. The capacity test concerns the ability to make a decision, not how sensible it is. Deciding to spend up to the limit on two or three credit cards is not a wise thing to do, but it isn't suggested that anyone who gets into debt in this way should have their capacity to make that decision assessed. The test to assess capacity The Mental Capacity Act says that a person should not be assumed to lack capacity just because of their age, behaviour, any condition they have, or because they couldn't make a particular decision in the past. The MCA makes clear that assessing whether someone can make a decision should be about whether they can make a particular decision at a particular time and not about their capacity to make decisions in general. A lack of capacity may be temporary, for example when someone is depressed, or it may just concern some types of issues, for example, a person with a learning disability may have the capacity to decide what they should wear each day, but they may lack the capacity to choose how to invest their money.

There are four key questions you must consider to help you determine whether someone is able to make a decision. Can the person understand information relevant to the decision, including understanding the likely consequences of making, or not making the decision? Can they retain this information for long enough to make the decision? Can they use and weigh the information to arrive at a choice? Can they communicate their decision in any way? If you believe that the

answer to any of these questions is ‘no’, then you can find that they lack capacity to make that decision at that time. It can be difficult to assess capacity as the test relies on the discretion of the person applying it. However, as long as you have a ‘reasonable belief’ that your assessment is correct, you should be protected by the law. Helping people who lack capacity to make decisions

Principle 4 – ‘Best interests’ The principle of always acting in a person’s best interests is a crucial part of the Mental Capacity Act and should be central to any action taken on behalf of someone who lacks capacity. The MCA gives a checklist of key factors that you must consider when working out what is in someone’s best interests. It is not a full list and you should refer to the Code of Practice for more details. Checking ‘best interests’ include the following. Never make assumptions about the person lacking capacity based on their looks, age, appearance, behaviour, or condition alone. How a person appeared last time you met them, or what your receptionist tells you about their behaviour, may be relevant to help you assess whether their condition may fluctuate but should not prejudice your assessment of their capacity in relation to the decisions you are considering. Consider all the relevant circumstances, including looking at other options. For example, if a carer wants a relative with advanced dementia to move into a care home because they think they lack the capacity to make decisions about everyday living, you should advise them that there may be other care and housing options available. Consider postponing the decision if the person may regain the capacity to make it. For example, if a major decision needs to be made for someone who has had a recent stroke; it may be in their best interests to wait until they regain the capacity to make it for themselves. Make sure that the person retains as much control and involvement in the decision-making as possible. If the decision is about treatment needed to keep someone alive (called life-sustaining treatment), the person making the decision must not be motivated by a desire to bring about death. Think about what the person lacking capacity would have decided for themselves by taking into account what is known of their past and present wishes, feelings, beliefs and values, (particularly if they have been written down). For example, a best interests assessment of a person who has always held outspoken views against accepting charity should take this into account when looking at maximising their income even though it may not in the end rule out an application for money from a charity if this is determined as being in their overall best interests. As far as possible consult with others, such as family, friends and any Deputy or Attorney, and take into account what they think would be in the person’s best interests. Any other relevant factors must also be taken into account when assessing what is in someone’s best interests. How issues are weighed up will depend on the individual case, and on things like the urgency and importance of the decision.

Principle 5 – The less restrictive option Principle 5 says that you or anyone else helping a person who lacks capacity should consider all possible options which will limit the person's rights and freedom as little as possible. This means that when you or anyone else does anything to or for a person who lacks capacity you must choose the option that is in their best interests (principle 4) and you must consider whether you could do this in a way that interferes less with their rights and freedoms of action. When deciding on the best course of action to take for someone who lacks the capacity to make a decision, conflict may arise.

Principles 4 and 5 say that although the views of relatives or carers may be invaluable, decisions made should be based on what is best for the person and not on what anyone else wants.