

How does the Mental Capacity Act impact on providers of care and treatment and what must providers do in relation to the Act?

Anyone who is caring for a person who is over the age of 16 and who is being paid for providing that care must follow the principles of the Mental Capacity Act and has a legal duty to follow the Mental Capacity Act Code of Practice. Situations where this will apply will be registered care and nursing homes, hospitals, supported living environments and domiciliary care settings.

This means in practice that when anyone is working with an adult or young person over the age of 16 and they think that this person may lack capacity to make a specific decision they must undertake a mental capacity assessment in relation to that decision as outlined in Chapter 4 of the Code of Practice. If they then establish that a person lacks capacity to make a certain decision they must undertake a best interest decision making process in order to make the appropriate decision on behalf of this person. How to make best interest decisions is outlined in Chapter 5 of the Code of Practice. Any mental capacity assessments and best interest decision making processes that are undertaken must be written down and recorded in all care records and referenced in a person's care plan.

How can I find out information about the Mental Capacity Act?

Locally within Herefordshire:-
For further advice and information contact Herefordshire Deprivation of Liberty Safeguards team by Email at

DoLS@herefordshire.gov.uk or
Phone: 01432 383645

For access to local Multi agency Mental Capacity Act Policy visit the Herefordshire Safeguarding Adults Board on the following web site:
<https://www.herefordshire.gov.uk/safeguarding> adults

Free training can be sourced from SCIE, follow the link
<http://www.scie.org.uk/training/mentalcapacityact/>

Mental Capacity Resources and Services <https://www.scie.org.uk>

[Mental Capacity Code of Practice Act](#)

Mental Capacity Act

A quick guide for professionals



What is the Mental Capacity Act?

The Mental Capacity Act is a piece of legislation that was created in 2005 to support and protect people who may lack capacity to make decisions for themselves. Its purpose is:-

- To provide a formalised legal framework.
- To provide protection to workers who work in care settings for acts of care and treatment.
- To provide a legal process to enable people to make plans for the future for times when they may lack capacity to make decisions for themselves.
- To provide a legal body that people can appeal to if they do not agree with decisions that are being made on their behalf
- To allow other suitable persons to be given the legal authority to make decisions on behalf of a person who lacks capacity to make certain decisions.
- To provide specially trained advocates to deliver support when this is not available from anyone else
- To provide protection from abuse and neglect (the Act creates two new criminal offences of ill treatment and willful neglect of a person who lacks capacity to make relevant decisions).

The Mental Capacity Act is underpinned by the following 5 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 him to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes 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 his best interests.
5. Before the act is done, or the decision is made, regard must be had 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.

Who does the Mental Capacity Act apply to?

The Mental Capacity Act applies to any adult or young person over the age of 16 within England and Wales, therefore anyone who is over the age of 16 who lives in England and Wales needs to be aware of the Mental Capacity Act and how it affects them personally, but also in relation to their actions towards others, both within family settings and work settings.