

Mental Capacity Act and Care Act Assessments for Practitioner Forum

Gail Heslop

(Principal Social Worker)

25/10/2023



Objectives

- To provide a brief overview of Mental Capacity Act assessments
- To provide a brief overview of Care Act assessments



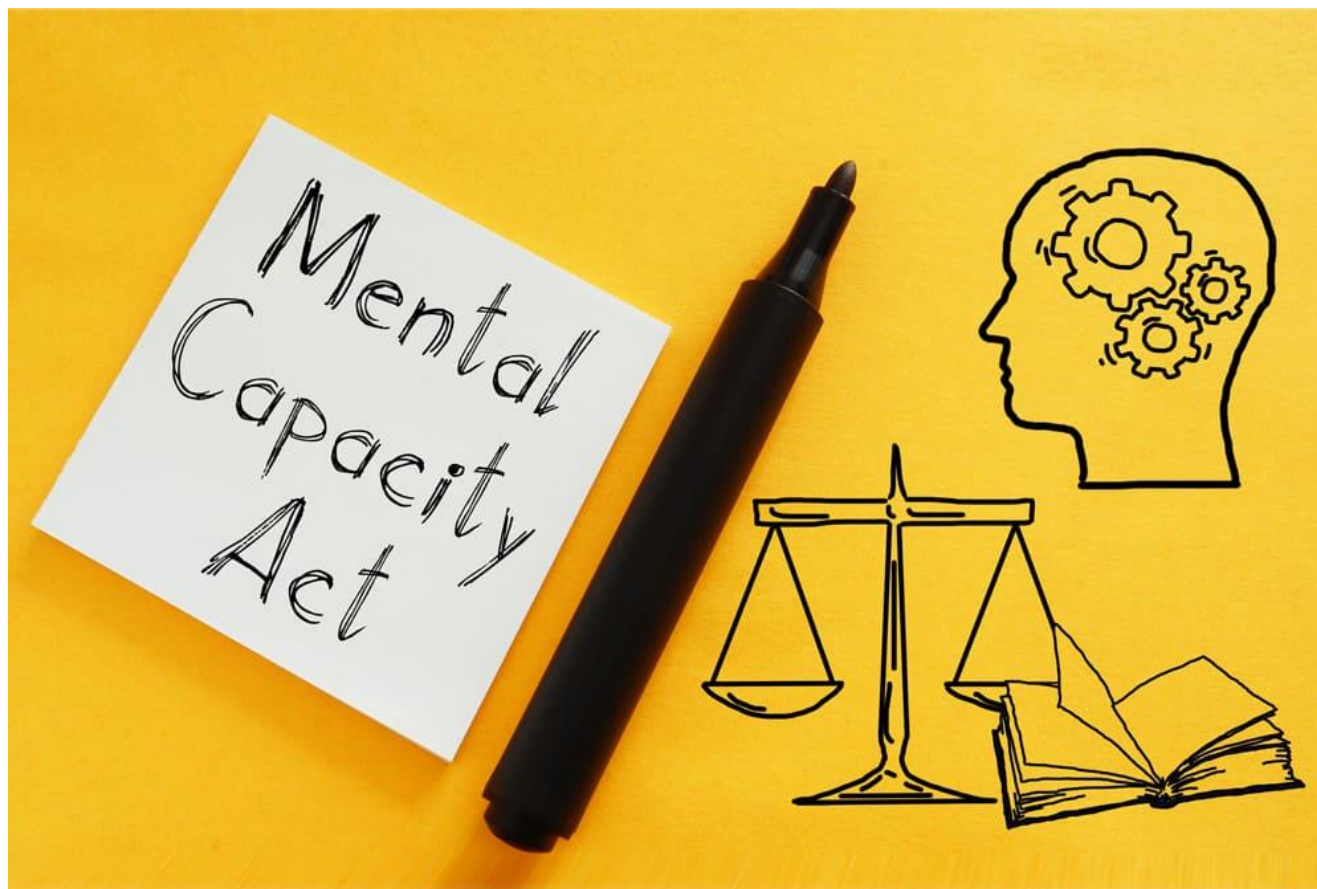
Assessments

Mental Capacity

- **To determine if someone has capacity to make a specific decision at a specific time**
- **Follows the principles of the Mental Capacity Act 2005**
- **If a person is deemed to lack capacity a decision can be made in their best interests (by LPA or deputy if they have one)**
- **Can be completed by anyone**

Care Act

- **To determine someone's eligibility for social care funding**
- **Criteria clearly outlined for practitioner to assess eligibility**
- **Local authority has a duty to assess where it is identified a person or their carer may have needs that could impact on their wellbeing**
- **Only the local authority**



5 Principles

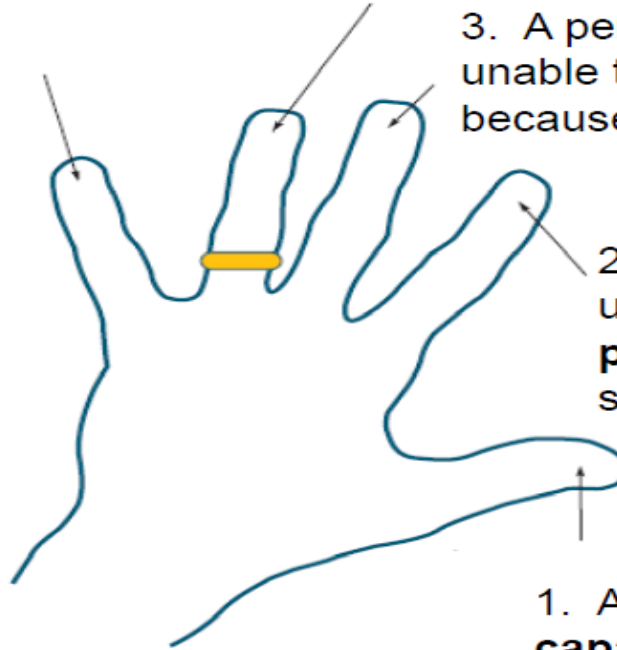
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is **less restrictive** of the persons rights and freedom of action.

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**.

3. A person is not to be treated as unable to make a decision merely because he makes an **unwise decision**.

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.

1. A person must be **assumed to have capacity** unless it is established that they lack capacity.



social care
institute for excellence

Presumption of capacity

- **(2) ‘A person must be assumed to have capacity unless it is established that he lacks capacity’.**
- **REMEMBER: You must not assume someone lacks capacity based on appearance, disability or other protected characteristics. Doing so could breach the Equality Act 2010**
- ✓ **Do: Consider triggers**
- ✓ **Do: Consider concerns of others**
- ✓ **Do: Consider your own observations/concerns**

Less Restrictive

- (6) ‘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’.
- **REMEMBER: It is ‘less’ not ‘least’.**
- ✓ **DO: Consider all options**
- ✓ **DO: Record less restrictive options that have been explored**
- ✓ **DO: Consider how you balance meeting the persons needs vs their views/wishes**

Unwise decisions

(4) 'A person is not to be treated as unable to make a decision merely because he makes an unwise decision'.

REMEMBER: An unwise decision does not evidence lack of capacity

- ✓ **DO: Record all options/information shared with the person, including: risks for each option, option of doing nothing/risks.**
- ✓ **DO: Offer ways to reduce risks and ensure the person is clearly aware of your concerns and those of others. Record the person's responses.**

Maximise Capacity

- (3) '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'.

REMEMBER: YOU need to support the person to demonstrate their capacity it is not their responsibility.

- ✓ **DO** Consider communication i.e. written, pictorial aids, interpreter.
- ✓ **DO:** Consider environment i.e. noise free, preferred space
- ✓ **DO:** Consider whether decision can be delayed

Best Interests

- (5) ‘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’.
 - **REMEMBER: Consider what the person’s present and past views and wishes were.**
 - ✓ **DO: Discuss the options with the person**
 - ✓ **RECORD: The person’s past and present views and wishes and if not actioned your rationale.**
 - ✓ **YOU MUST: Consult anyone the person identified***
- *if there are safeguarding concerns you can exclude the person identified. Make sure you record this.**

Who completes capacity assessment

Everyone!!

Day to day decisions – care provider

Medical –GP/lead clinician/nurse

Tenancy –housing

Social care –social worker

Dental care - dentist





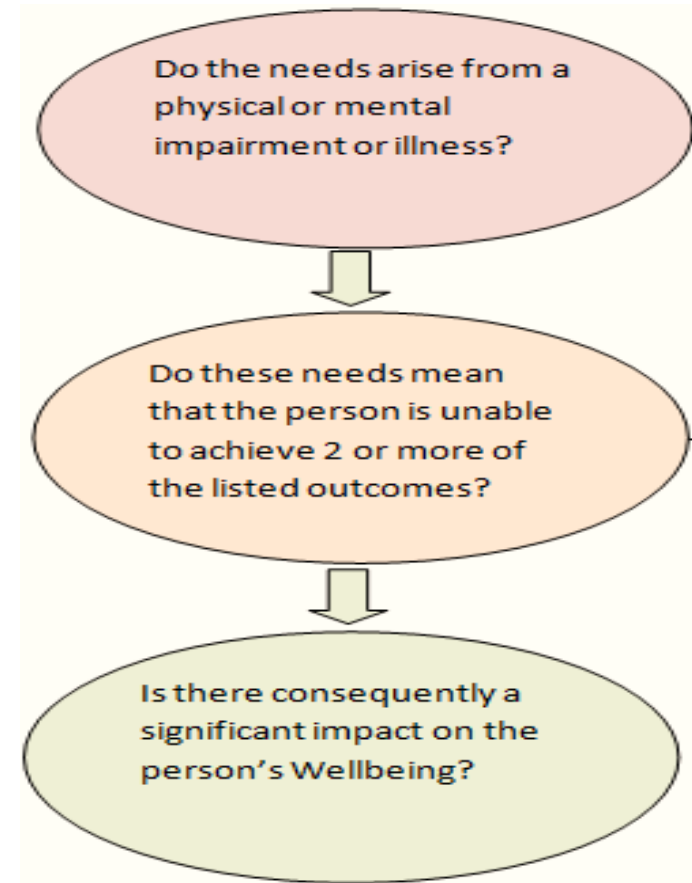
General duties under Care Act

- Promoting individual wellbeing
- Preventing needs for care and support
- Promoting integration of care and support with health services
- Providing information and advice
- Promoting diversity and quality in provision of services
- Co-operating
- Safeguarding adults at risk of abuse or neglect

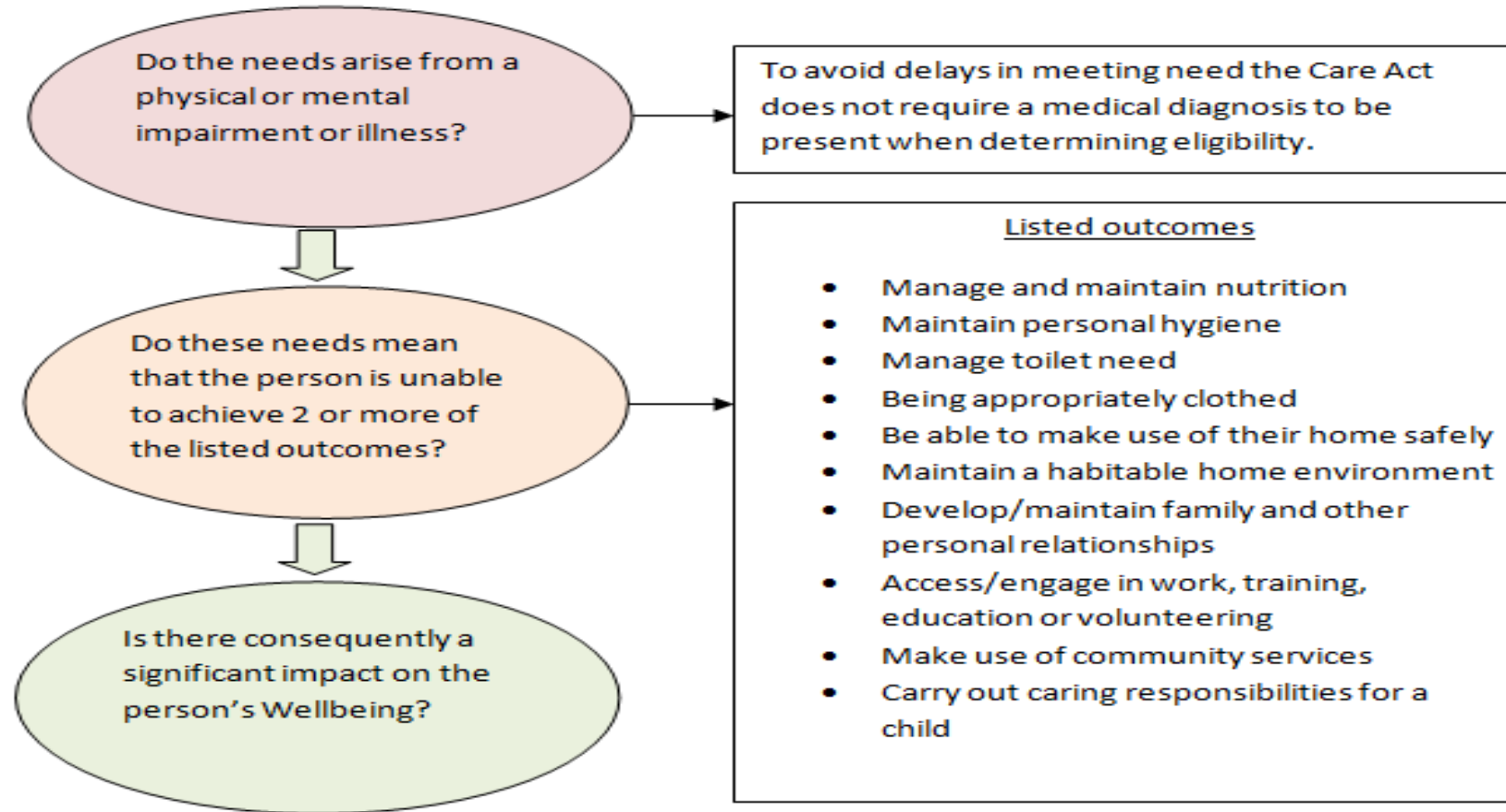


Care Act Assessment Criteria

- **The Care Act 2014 sets out local authorities' duties when assessing people's care and support needs**
- **An eligibility determination can only be made on the basis of an assessment of needs.**
- **When determining eligibility, local authorities must consider whether all three conditions are met.**



Care Act Section 9 Assessment



Questions

