

Introduction to the UK Mental Capacity Act and screening tool developed for outreach teams

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Lambeth



South London and Maudsley
NHS Foundation Trust



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Enabling Assessment
Service London

Mr C

- Patient in a Broadmoor hospital diagnosed with schizophrenia.
- Developed gangrene in foot and refused amputation.
- Sought injunction to restrain doctors.
- Injunction granted with judging holding that C sufficiently understood the nature, purpose, and effects of the proposed amputation, and that he retained capacity to consent to, or refuse, medical treatment.
- Laid out the criteria for capacity, which were subsequently cited in other cases, and have become generally known as “the Re C test”

Background to Mental Capacity Act (MCA)

‘The existing law relating to decision-making on behalf of mentally incapacitated adults is fragmented, complex and in many respects is out of date. There is no coherent concept of their status, and there are many gaps where the law provides no effective mechanism for resolving problems’

(Law Commission 1991)

MCA - Overview

A functional test of capacity

“Best Interest” approach to decision making

Powers of Attorneys / Advance decisions

Court of Protection

Independent Mental Capacity Advocates

MCA - The Principles 1

- A person must be assumed to have capacity unless it is established that he lacks capacity.
- 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.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

MCA – The Principles

2

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.

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.

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What is capacity?

‘....legal capacity depends upon understanding rather than wisdom: the quality of the decision is irrelevant as long as the person understands what he is deciding’

(Law Commission 1991)

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Capacity Test

Decision Specific

Time Specific

Capacity Test is made in the person's best interest.

Stage 1

Must have reason to believe that the person has:

‘an impairment of, or a disturbance of, the
mind or brain’

(MCA Section 2)

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Stage 2

Functional Test of Capacity

Understand the information

Retain the information

Use and weigh up the information

Communicate the decision

Best interest checklist – 1

1. Encourage the person to take part as much as possible
2. Identify all relevant circumstances
3. Find out the person's past and present wishes, feelings, beliefs, values and any other factors they would be likely to consider if they had capacity, including any advanced statements
4. Do not make assumptions based on the person's age, appearance, condition or behaviour
5. Assess whether the person might regain capacity

Best interest checklist – 2

6. If the decision concerns life-sustaining treatment then the best interests decision should not be motivated by the desire to bring about the person's death

7. Consult with others where it is practical and appropriate to do so. This includes anyone previously named as someone to be consulted; anyone engaged in caring for the person; close friends, relatives or others with an interest in the person's welfare; any attorney and any Deputy appointed by the Court.

8. Avoid restricting the person's rights by using the least restrictive option

9. Abide by any valid advanced decision

Mr A

Was found dead in early December 2010 in freezing weather.

He had been sleeping out for several weeks, outreach workers and members of the public had been concerned.

He had declined shelter. Attempts had been made to involve other services.

After his death it transpired that he had previously been known to MH services.

Recommendation of serious case review had been development of guidance and screening tools for street outreach workers.

D

Different Jurisdiction

But...

This screening tool is not primarily carrying out a set legal process in order to implement a specific action. It is about applying a framework for assessment and a set of principles in order to better consider and evidence whether:

1) Someone lacks mental capacity to make a specific decision at a particular time.

2) If they do what action would be in their “best interest”

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THE MENTAL CAPACITY ACT SCREENING TOOL

1

What is the decision the person you are concerned about needs to make, and why do they need to make this decision now?

Decision he needs to make

- Whether to accept shelter

Why now

- placing himself at immediate risk through sleeping rough with insufficient bedding ...
temperature is due to remain below freezing over coming days

2

Is there reason to believe that the person may lack mental capacity to make the decision due to a known/suspected mental health problem, learning disability, brain injury, dementia or intoxication?

Yes, on balance of probability

Specifically when asked about his welfare, he is unable to maintain eye contact and his speech becomes broken

In relation to other issues he has made odd statements that suggest paranoia – for example he has said that a local café (in an area he is new to) had poisoned his sister

He is drinking alcohol heavily in a way that suggests dependence (although concerning statements above have been made at times when not acutely intoxicated)

He has had past psychiatric assessment which whilst not conclusive found him to be guarded

3

Has sufficient information been given to the person to help them understand the decision?

Yes – he has been offered more than one form of shelter, with details about their location.

He has also had the risks of remaining sleeping outside explained to him at length.

4

Have all practicable steps been taken to support the person to make the decision?

Yes, given the urgent time-frame. Outreach team has been visiting him at different times of day, on a daily basis over past two weeks. It has been possible to establish some rapport, more with some workers than others. He has been offered transport and accompaniment to shelters.

We have left him written information too.



5

Is it felt that the person is free from external pressures to make their decision?

To the best of our knowledge.
He appears to be on his own almost all the time,
those people who do interact with him appear to
be expressing concern for his welfare.
It is not clear that anyone else would benefit
whether or not he accepts shelter

6

Can the person understand in simple language the information involved in making the decision?

English is Darren's first language – he appears to understand the information given to him but this is difficult to be certain about this as he struggles to give answers.

In relation to other matters, of less immediate concern, he is entirely fluent.

7

Can they retain the information long enough to make the decision?

There is nothing to suggest or indicate that he has difficulties retaining the information necessary. He recognizes different workers and refers back to past conversations.

8

Can they use or weigh up the information to make the decision?

No. He does not appear able to weigh up the information necessary to make the decision.

He does appear to understand and acknowledge the concerns which we have expressed about his immediate situation, but there appears to be something (possibly paranoid ideas?) that is stopping him from being able to accept this help.

9

Can they communicate their decision (whether by talking, using sign language or any other means)?

Probably. He does appear able to indicate that he does not want to go to, or visit even, shelter – albeit that he cannot express his reasons for this.

10

The decision: does the person on the balance of probabilities have the capacity to make the specific decision at this particular time?

No. We feel that some form of mental impairment – likely to be paranoid beliefs – is stopping him from being able to weigh up the information needed to make a decision about accepting accommodation.

11

How did you decide what was in the person's best interests?

We believe that the immediate risks to his well-being, life even, of remaining in his current situation makes it in his best interest to be

a) inside

b) have his mental health more fully assessed.

12

What action should be taken in the person's best interests?

We would request that mental health professionals formally assess Darren and consider whether the grounds are met for him to be subject to admission to hospital (either under the Mental Health Act 1983 or the Mental Capacity Act 2005).