

Mental Capacity and the Dental Team

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Learning Outcomes

- Define the term mental capacity
- Discuss the core principles of the Mental Capacity Act (MCA)
- Explain how mental capacity is assessed
- Identify best interests checklist

Why do we need to be aware?

- The Mental Capacity Act is a vitally important piece of legislation, and one that makes a real difference to the lives of people who may lack mental capacity.
- It empowers people to make decisions for themselves wherever possible, and protects people who lack capacity by providing a flexible framework that places individuals at the very heart of the decision-making process.
- It ensures that they participate as much as possible in any decisions made on their behalf, and that these are made in their best interests.
- It also allows people to plan ahead for a time in the future when they might lack the capacity, for any number of reasons, to make decisions for themselves.

Who is affected by the MCA?

- Everyone working with and/or caring for an adult who may lack capacity to make particular decisions must comply with this Act and its Codes of Practice.
- The Act directly affects the lives of two million disabled people, older people and their carers. It affects the way people are supported wherever they live.
- It is important that registered persons and other professionals promote awareness of the Act and are aware of their own responsibilities under it.
- The Code of Practice provides additional information about how to put the Act into practice.

MCA - some facts

- Applies to those over 16
- Applies in England and Wales
- Received Royal Assent in 2005
- Became fully operational in 2007
- 2009 – Deprivation of Liberty Safeguards added
- 2014 – review and report by the House of Lords committee

Key Findings - House of Lords Committee report (2014)

- The empowering ethos has not been delivered
- Capacity not always assumed
- Assessments of capacity not done well
- No time/effort for supported decision making
- Unwise decisions face institutional obstruction
- Prevailing cultures of risk averseness (social care)
- Culture of paternalism in NHS
- Clinical judgements or resource led decisions more important than P's wishes and feelings
- Least restrictive option not adequately considered

The Mental Capacity Act 2005

- The Mental Capacity Act 2005 is designed to protect the rights of individuals and empower vulnerable people
- It is person centred ensuring the individual who may lack the ability to make certain decisions remains the focus of any decisions made on their behalf
- The Act also protects the decision maker

A person who lacks the capacity...

- A person who lacks the capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken
- Capacity can 'fluctuate' with time

What kind of decisions?

- The Act covers a wide range of decisions
- These can be day to day matters
- Or they may be decisions about major life changing events like moving to a care home or having a surgery/medical/dental treatment

The 5 Principles of the MCA

1. A presumption of capacity: the ability of a person to make decision for themselves
2. The right for individuals to be supported to make their own decision
3. People are allowed to make unwise decisions

Assessing Capacity

Who?

- Anyone may be in a position where they need to make an assessment of capacity
- Should be someone with sufficient knowledge to explain clearly to the patient what they need to know
- The general rule is that the professional who is proposing to undertake the treatment is the “assessor”
- The assessor should have the skills necessary to communicate effectively with the person

Assessing Capacity

How?

2 Stage Capacity Assessment

- **Stage 1:** Diagnostic assessment
- The assessor is required to identify whether the person might have a impairment which may affect their ability to make decisions
- **Stage 2:** Functional assessment
- Does the impairment mean a person cannot make a decision at this time?

- MCA Code of Practice Chapter 4

Examples of impairment

- Conditions associated with some forms of mental illness
- Dementia
- Significant learning disabilities
- Long term effects of brain damage
- Confusion, drowsiness or loss of consciousness.
- Delirium
- Concussion following a head injury
- Symptoms of alcohol or drug use

Capacity?

- 1 Understand information given to them
- 2 Retain that information long enough to be able to make a decision
- 3 Weigh up the information available to make a decision
- 4 Communicate their decision –
this could be by any possible means, talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand

Capacity Assessment

Remember

- The patient does not have to come up with the same decision as you, or the decision you think is best
- Assessment of capacity is a judgement about the 'quality' of their decision-making, not the 'quality' of their decision

Capacity Assessment

- The assessment is done 'on the balance of probabilities' – in other words 'is it more likely than not that the person lacks/doesn't lack capacity for the decision'?



5 Principles of MCA

1. A presumption of capacity: the ability of a person to make decision for themselves
2. The right for individuals to be supported to make their own decision
3. People are allowed to make unwise decisions
4. If someone lacks capacity, anything done on their behalf must be in their best interests

Best Interest Checklist

- To make no assumptions
- To take into account all relevant circumstances
- To think about timing (fluctuating capacity or whether the person may recover capacity to make the required decision)
- To ensure participation
- To take into account the person's wishes, beliefs and values
- To consult others

Others??

- Anyone named by the person as someone to be consulted
- Anyone engaged in caring for or interested in the persons welfare
- Any donee of a Lasting Power of Attorney
- Any deputy appointed by the Court of Protection

IMCA

- Independent Mental Capacity Advocate
- A statutory requirement to safeguard when there is no other person to consult except paid staff

Independent Mental Capacity Advocates (IMCA)

- An IMCA safeguards the rights of people who are facing a decision about change in long-term accommodation, and serious medical treatment decisions, and lack capacity to make a specified decision (at the time it needs to be made), and who is “unbefriended”
- IMCA’s must have specific experience, IMCA training, integrity and a good character and be able to act independently
- IMCA services are provided by organisations that are independent from the NHS and local authorities

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5. The least restrictive option – all alternatives must be considered, chosen option least restrictive of rights and freedom

Case Study

- **Paul** is 62 years old with Alzheimer's disease and osteoarthritis. He needs help with eating meals and all personal care.
- Paul is assessed by the Community Dentist, who is unable to do more than a brief exam and notes several decayed broken down teeth with sinuses.
- Paul lives in a care home and the staff say he seems to be in severe dental pain and is sometimes refusing to eat, they have noticed holes in his teeth when they attempt brushing.
- Paul has a brother who lives in Australia and has no contact, there are no other family or friends.

Case Study

- **Decision to be made** – Can Paul consent to EUA and comprehensive Dental Treatment under GA
- **2 stage capacity Assessment** – dentist concludes that Paul lacks capacity
- As Paul has no family nearby referral for IMCA required –
- **IMCA appointed** – makes contact with the referring dentist, meets the patient and staff at the care home
- **Best Interests Meeting organised** - this includes the decision maker (dentist), the care home manager, another carer who has knows Paul well, dental nurse, anaesthetist and IMCA The IMCA sends a report to the dentist (decision maker)
- **Best Interests Decision** made for Paul to have EUA and all his dental treatment carried out in a single visit under GA

Record keeping

Records of assessment and decisions must show

- The details of the two stage capacity assessment
- Why, when and how best interests decisions were made
- The people involved in making the decision
- CQC can look at written records of this process to confirm that you are complying with the Act's requirements *(CQC Guidance on MCA)*

Record keeping

- When providing “**routine**” examination or treatment – **don’t** need **formal** capacity/assessment tools...
- But you do need to evidence your MCA compliance
- Record your capacity assessment and best interests decision making in the dental records

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