

# The Mental Capacity Act Explained

This leaflet is for parents and carers of young people who are Preparing for Adulthood.



# What is the Mental Capacity Act?

The Mental Capacity Act 2005 (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions. It applies to young people aged 16 and over. Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, deciding on which college to go to). The MCA says:

- ▶▶ assume a person has the capacity to make a decision themselves, unless it's proved otherwise
- ▶▶ wherever possible, help people to make their own decisions
- ▶▶ do not treat a person as lacking the capacity to make a decision just because they make an unwise decision
- ▶▶ if you make a decision for someone who does not have capacity, it must be in their best interests
- ▶▶ treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms.

MCA legislation requires local authorities to provide the appropriate support to enable young people to make appropriate decisions when they reach the age of 16. This will be explained later on in the document.



# The Change and Development of the Parent's/Carer's Role

When the young person reaches the age of 16 the role of parent/carer changes. Your role is now to support the young person to make decisions, rather than making them on their behalf. It can be a difficult process of change for all parents, and particularly difficult for parents who have faced extra challenges when raising their children, such as when dealing with physical or mental disability and/or poor health. This change at the age of 16 allows children to become young adults and to prepare for adulthood and independence.

# Changes in the Decision-Making Process

Young people who have capacity can make their own decisions although they may wish to take advice from important people in their lives, such as parents or carers. If a young person lacks capacity, they remain at the centre of the decision making but it is now a collaborative process, involving important people in their lives and appropriate professionals who may be involved in their lives, such as Social Worker or GPs. All decisions are made in the best interest of the young person, actively seeking their views and wishes wherever possible, and reaching an agreement with everyone involved in caring for and supporting the young person.

This can be a big change and can be particularly difficult for parents or carers when a young person has capacity and makes decisions that parents/carer feels may be unwise, or a decision that puts the young adult at risk.

As reassurance for the parents/carer the local authority would not support any decision which places a young adult in a vulnerable position or at physical or mental risk. We will look at each individual decision from all perspectives and consider the potential benefits and risks of the decision before reaching any conclusions.



# What decisions can the young person make

It is anticipated that decisions will be made one at a time to ensure that proper consideration.

The young person can make decisions on:

- ▶▶ Where I go to learn, i.e. college
- ▶▶ Where I go to work and spend my money
- ▶▶ Where I live and who I live with
- ▶▶ What activities I want to do
- ▶▶ Who my friends are and how I spend my time
- ▶▶ What care and support I get.

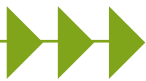
# How is mental capacity assessed?

A young person is assessed by determining whether they may have an impairment of the brain which may cause them to lack mental capacity, such as having;

- ▶▶ Learning disability
- ▶▶ Brain injury
- ▶▶ Mental health issues
- ▶▶ A stroke

Where a young person experiences trauma it will have an impact on them. This can range from disturbing thoughts and feelings, to changes in the brain which may affect the young person's decision making ability. When assessing the mental capacity of a young person to make a decision the assessor will need to take this into account. If the impairment is sufficient that the young person may lack the mental capacity to make a particular decision at the time the decision needs to be made. Mental capacity assessments are usually carried out by the person who is directly involved with the individual at the time the decision needs to be made. This means that different people will be involved at different times but is likely to be the most appropriate professional/s for the young people. Among people who can conduct these assessments are:

- ▶▶ Social worker
- ▶▶ GP
- ▶▶ Health professional
- ▶▶ Mental health practitioner



The assessor will have the skills and ability to communicate effectively with the young person and, if necessary, they will get help to communicate with the young person from people who know them well. This would include parents, other carers, other professionals.

There are five key principles that are taken into consideration when the assessment takes place:

1. We have to assume all people over 16 years old have mental capacity
2. All practicable steps must be taken to support the person in making their decision. For example, use of Makaton if required or an interpreter
3. An unwise decision does not mean that the young person lacks capacity
4. The decision must be in the young person's best interest if they lack capacity
5. The decision for someone who lacks mental capacity must be the least restrictive option.

The young person is deemed to have capacity if they can do the following:

- ▶▶ Understand the information about the decision
- ▶▶ Be able to retain the information and communicate the decision
- ▶▶ Think about any possible the risks that may affect their decision.

Information relevant to the decision being taken can be presented in any way and in as simplified a form as is needed for the young person to understand the information about the decision to be made.



## Best Interests

If the young person is found to lack mental capacity to make a specific decision, then that decision is made with the young person, parent / carer and relevant professionals in their lives about what is in their best interests when making any decisions.

## When an advocate may be needed?

An advocate can help you to make informed choices and decisions, whether they are a family member, carer, friend or professional. An advocate must always act on your behalf to ensure that the care and support needs are met and are appropriate for the young person.

If there isn't an appropriate person in the young person's support network that can act as an advocate, a referral to a professional advocate may be required.



# Support networks

Below we have some local organisations and charities that can provide information and advice on MCA and Best Interest process.

▶▶ **Rethink Advocacy Service**

0300 7900 559

wandradvocacy@rethink.org

www.rethink.org

▶▶ **Mencap London**

020 7454 0454

supportercare@mencap.org.uk

www.mencap.org.uk

▶▶ **People's Hive**

020 8977 5447

www.thepeoplehive.org

▶▶ **The Advocacy People**

0330 440 9000

info@theadvocacypeople.org.uk

www.theadvocacypeople.org.uk





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