Mental Capacity

Dawn Bailey
Named Nurse safeguarding Adults
&
Bonita Sparkes, Clinical Nurse specialist
What is capacity?

- ability to make a decision and to take action based on that decision.
- The medical dictionary defines a person with capacity as:
  “Someone that has sufficient understanding and memory to comprehend the situation a person find themselves and the nature, purpose and consequence of their action”
introduced in England and Wales in 2007 to provide the framework for making decisions on behalf of others.

- It provides a statutory framework for people who lack capacity to make decisions for themselves.

- If you act in a professional capacity for or in relation to a person who lacks capacity then you are required to have regard to the code of practice.

- Doesn't impose a legal duty on anyone to comply, it states that they will have to have given good reasons as to why they have not used it.

- Applies to those aged 16 and over.
What does it cover?

- The MCA covers a wide range of decisions and circumstances from the everyday decisions that someone makes when they get up in the morning – such as what to wear, whether to have a bath or a shower and what to eat right through to the serious life-changing decisions, such as whether to have a serious operation or move home.
Who does it apply to?

People may lose their ability to make the decisions, through illness, injury or disabilities that affect their capacity to make decisions. This could include people:

- living with the long-term effects of brain injury
- with dementia
- with mental illness or those under the influence of drugs or alcohol.
- with a learning disability

It also includes people who are unconscious.
Statutory Principals

- **Assumed** the person has capacity unless it is established that they lack capacity.
- Take all **practicable steps** to help them to make their own decision.
- Person should not to be treated as unable to make a decision just because he makes an **unwise decision**.
- Any decision made, for or on behalf of the individual must be made, in his **best interests**.
- Must be the **least restrictive** option to maintain rights and freedom.
An assessment of a person’s capacity must be based on their ability to make a specific decision at the time it needs to be made, and not on their ability to make decisions in general.

**TIME SPECIFIC**
- Capacity relates to a specific moment in time and may change over time.

**DECISION SPECIFIC**
- Capacity relates to a specific decision.
Assessing capacity (2 steps) MCA Code of Practice 4.11 –4.13

- Is the person unable to make the decision in question at the time it needs to be made? (functional test)

- Is this because of an impairment or disturbance, affecting the way their mind or brain works –whether temporary or permanent? (diagnostic test)
Disturbance of mind/brain

- Can include:
  - conditions associated with some forms of mental illness
  - dementia
  - significant learning disabilities
  - long-term effects of brain damage
  - physical or medical conditions that cause confusion, drowsiness or loss of consciousness
  - delirium
  - concussion following a head injury
  - the symptoms of alcohol or drug use.
Assessing Capacity

If the person is unable to do one or more of the following they lack capacity:

1. **Understand** the information relevant to the decision
2. **Retain** that information
3. **use and weigh** the information as part of the process of making a decision
4. **Communicate** their decision (whether by talking, using sign language or any other means)

**N.B.** All Practical steps should be taken to help decision making (MCA Code of Practice 4.14–4.25)
Best Interest Decision

Best Interests Checklist

- Consider all relevant circumstances
- Consider whether person is likely to regain capacity. If so, can decision wait?
- Permit and encourage the person to participate or improve their ability to participate in decision making
- Consider past and present wishes and feelings (in particular if they have been written down), beliefs and values and any other factors that they may have considered
- Consult other people as far as practical and appropriate and take their views into account, especially anyone previously named by the individual as someone to be consulted, carers, close relatives or close friends or anyone else interested in their welfare
- any Attorney appointed under a Lasting Power of Attorney
- any Deputy appointed by the Court of Protection
A patient could have capacity to decide but may not agree/follow advice – this may be described as an unwise decision and should be recorded.

When you have concerns that someone may not be able to give valid consent – you must ensure that a Mental Capacity Assessment has been undertaken and that the outcome, together with a Best Interests decision are documented.
Case study 1

- 19 year old presented in A and E following OD of Diazepam, paracetamol and codeine
- Self presented
- Consented to bloods
- Bloods taken
- Awaiting MH review
- Patient absconded from department
What would you do?
What happened!

- Security called
- Police called
- Police went to patients home– patient became agitated and police arrested on section 136
- Patient brought back to A and E
- Medics did MCA and put patient under a DoLS
- Patient restrained and medicated
- NAC infusion prescribed and administered
- Patient transferred to ITU
What are your concerns?
What would you have done differently?
What are the lessons learnt?
Case study 2

- Patient presents at GP with headaches
- 42 year old female employed and home owner
- Discloses domestic abuse and does not want any information shared with NOK and partner
- Is receiving an Annual health check and has issues reading and writing
- Has presented with headaches for last 6 months
- Assessed at hospital
- Brain tumour frontal lobe diagnosed with midline shift
- Not metastatic
- Operable
- Refuses MRI and operation
- Low self esteem and diagnosed with depression
- Claims to have no friends or family
What are the concerns around capacity and decision making?
What are you considering in terms of best interest?
What other professionals could help?
Who is making the decision?
What happened

- The hospital and community teams looked at capacity in a time and decision specific way
- Due to the patients undiagnosed LD a formal assessment was carried out
- Independent MCA – easy read materials support from HLT
- Patient lacked capacity around MRI
- IMCA appointed
- Best interest– balance approach used
- Patient sedated for MRI and diagnostic carried out
- GP gave pen portrait of patient and medical team contacted citizens advice employee to get a clear understanding of patients baseline in terms of communication and retaining information
- Patient transferred to Queens square neurology centre
- Independent capacity around consent for surgery
- Patient focused on death and not possible complications of surgery
- IMCA used by Queens Sq. around decision making for consent for surgery
Mr M made a lasting power of attorney appointing his son and daughter as joint attorneys to manage his health and welfare and his finances.

He has now has advanced dementia and has moved into residential care.

The attorneys have to decide what to do with his property.

The son wants to sell the house and invest the money into his fathers care.

Daughter wants to keep it as he likes to visit and spend time there.
What should the attorneys do?
What could you do as a professional?
If the daughter and son are in disagreement should they be removed from the process of decision making?
What happened

- The son and daughter meet with professionals and organisations through the Alzheimer's society to speak with others in similar position
- And advocate was appointed
- A best interest case conference was held
- Further dispute between the attorneys
- Application to the court of protection taken by advocate and professionals
- Attorneys were removed
- Local authority appointed as deputy
- Property kept
Any Questions