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| **Mental Capacity Act 2005**    **Quick reference guide to assessing mental capacity and to acting in a**  **person’s best interests under the Mental Capacity Act 2005.** |

**This is a quick reference guide. For comprehensive details staff should consult the Code of Practice which supports the Act, which can be downloaded from:** [**www.suffolk.gov.uk/mca**](http://www.suffolk.gov.uk/mca)

# Section 1 - Principles

**The five principles of the Mental Capacity Act 2005 (MCA) have to be taken into consideration in each case;**

1. Presumption of capacity
2. Take all practical steps to help someone make the decision
3. A person is not to be deemed to be incapable of making the decision because the decision that they make is considered to be unwise.
4. Any acts or decisions that are made or taken on behalf of a person assessed to be lacking capacity must be in *their* best interests
5. Any best interests decision must be the least restrictive of the person’s rights and freedoms

**Section 2 – What is meant by lacking capacity?**

Section 2 (1) of the Act states;

**“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”**

Examples of an impairment or disturbance in the functioning of the mind or brain may include the following;

* Conditions associated with some forms of mental illness
* Dementia
* Significant learning disabilities
* The long term effects of brain damage
* Physical or medical conditions that cause confusion, drowsiness or loss of consciousness  Delirium
* Concussion following a head injury, and
* The symptoms of alcohol or drug use

**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 their ability to make decisions in general.**

# Section 3 – Steps to assessing capacity

**Four core questions to establish whether a person has capacity to make a decision:**

1. Is the person able to **understand** the information relevant to the decision?

(Includes information about the reasonably foreseeable consequences of deciding one way or another, or of failing to make the decision)

1. Is the person able to **retain** the information relevant to the decision?

(Retaining information for a short period only, does not prevent a person from being regarded as able to make the decision)

1. Is the person able to **weigh-up** the information as part of the decision making process?

(Can the person consider the associated risks and consequences of actions or inactions?)

1. Is the person able to **communicate** their decision?

(Whether by talking, using sign language or any other means)

**If the answer to ALL the above questions is YES, then the person has capacity to make the decision at the particular time, under the Act.**

**If the answer to ANY ONE of the above questions is NO, then the person lacks capacity to make the decision at the particular time, under the Act. Where a person is assessed as lacking capacity, a best interests decision can be made for them as long as it needs to be made at that time and cannot be put off until a time that they are likely to regain capacity.**

# Section 4 – Best interests decisions

**Staff trying to work out the best interests of a person who lacks capacity to make a particular decision, should use the following checklist;**

1. **Encourage participation** – do all that is possible to encourage the person to take part.

1. **Identify all relevant circumstances** – identify the things that the person would taking into account if they were making the decision or acting for themselves

1. **Find out the persons views** – identify the person wishes, feelings, beliefs, values etc.

1. **Avoid discrimination** – don’t make assumptions about a person’s best interests simply on the basis of the person’s age, appearance, condition or behaviour.

1. **Assess whether the person may regain capacity** – consider whether the person is likely to regain capacity (for example; after receiving treatment) if can the decision wait until then.

1. **Consult others –** do others know the person’s wishes, feelings, beliefs, values etc.

1. **Avoid a restriction of the person’s rights** – consider is a less restriction option exists.

**The best interests principle does not apply where a valid and applicable advance decision has been made to refuse treatment or where there is a Lasting Power of Attorney or a Deputy appointed by the Court of Protection (with the appropriate authority) who is refusing the proposed course of action.**

# Section 5 – Deprivation of Liberty Safeguards (DOLS)

0n 01 April 2009 the Deprivation of Liberty Safeguards (DOLS) were introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007. These safeguards provide a framework for authorising the deprivation of liberty for people who lack the capacity to consent to treatment or care, in either a hospital or care home that, in their own interest, can only be provided in circumstances that amount to a deprivation of liberty. A Standard Authorisation for deprivation of liberty under these safeguards can only be granted if six assessments, completed by a Best Interest Assessor and a Medical Assessor, are all in support of this action.

Suffolk County Council has introduced a multi-agency policy & procedure as a response to these safeguards, details of which are available by following this link: [**MCA Website DOLS Page**](http://www.suffolk.gov.uk/care-and-support/adult-social-care/mental-capacity-and-mental-health/deprivation-of-liberty-safeguards-dols/)

# Section 6 - Further guidance, resources and support

**Referral to IMCA Services:**

If a person is unbefriended and is assessed as lacking capacity and a decision needs to be made regarding serious medical treatment or a change to accommodation an IMCA **must** be instructed and consulted prior to making a best interests decision.

An IMCA **may** also be instructed where a person is unbefriended and is assessed as lacking capacity regarding making decisions concerning care reviews and in adult protection cases; whether or not family, friends or others are involved.

Details regarding the Suffolk IMCA Service can be found at:

[POhWER](https://www.pohwer.net/)

**Support to practitioners:**

**Further information regarding the MCA and the Deprivation of Liberty Safeguards including; guidance documents, booklets, training details and links to associated sites can be accessed and downloaded from the following website:** [**www.suffolk.gov.uk/mca**](http://www.suffolk.gov.uk/mca)

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