



WHAT IS MENTAL CAPACITY & WHY DOES IT MATTER?

A Guide for people living in Gloucestershire



Gloucestershire
COUNTY COUNCIL

WHAT IS MENTAL CAPACITY & WHY DOES IT MATTER?

The Mental Capacity Act (MCA) sets out in law how people who may lack mental capacity can be assessed and protected.



If you have mental capacity, it means that you are able to make your own decisions. This means you are able to understand and think through information and make a choice based on that information. We all have problems making decisions from time to time.

The MCA is there to support people to make their own decisions, provide a clear simple test to assess their capacity and to help them to have legal ways to plan for the future. It also legally sets out what needs to be considered when decisions need to be made for people who are unable to make them for themselves.

A lack of mental capacity could be due to a stroke or brain injury, a mental health problem, dementia, a learning disability or substance misuse. In all these instances a person may lack capacity to make particular decisions at particular times. It doesn't mean that they lack capacity to make any decisions about their life. Lack of capacity can be temporary.

ASSESSING CAPACITY



The MCA provides a test for people to use to make a judgement about whether a person has capacity to make their own decisions. To assess whether someone can make a decision, an assessor must look at whether the person:

- can understand information given to them about the decision;
- retain that information;
- balance or weigh information about options and then communicate their decision.

No one can be labelled 'incapable' because they have a learning disability, brain injury or anything else. Who assesses capacity depends on the difficulty of the decision. For day-to-day decisions a carer/family member could assess capacity. But for more complex decisions, such as consent to treatment, a healthcare professional must assess capacity.



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BEST INTERESTS

When it has been established that an individual does not have capacity to make a decision, a decision must be made in the individual's best interests by the decision-maker. To do that, they must listen to what the person wants, ask the people who know them best and involve any carers.

The decision-maker is whoever is making the decision. For medical decisions, this is usually a doctor, or for accommodation decisions a social worker. The MCA Code of Practice provides a best interests checklist for decision-makers to use.



PLANNING AHEAD

The MCA introduced a number of ways to help people plan for a time when they may lack capacity to make some decisions. This includes Lasting Power of Attorney, Advance Decisions & Advance Statements.

LASTING POWER OF ATTORNEY (LPA)



Since October 2007 a person can appoint an attorney to act on their behalf should they lose capacity in the future. The powers are similar to those of the previous Enduring Power of Attorney (EPA), but cover health and welfare decisions as well as property and finance decisions. LPAs must be registered with the Office of the Public Guardian (OPG). There are two types of LPA:

- A property and financial affairs LPA - this gives a persons attorney authority to make decisions about their finances.
- A personal welfare LPA - this gives a persons appointed attorney authority to make decisions about their healthcare and personal welfare.

Age UK provide a very helpful free booklet 'Powers of Attorney' (see link at end of the leaflet).

ADVANCE DECISIONS

Since October 2007, adults who have capacity can make an 'Advance Decision' to refuse a particular medical treatment. Advance Decisions, previously called 'Living Wills' are legally binding. You can't use an Advance Decision to ask for treatments, including any which would end your life.

You can refuse any treatment so long as you are clear about the type of treatment and you can refuse treatments that would sustain your life. If you make an Advance Decision to refuse treatment it's a good idea to discuss this with a health care professional who knows your medical history.

ADVANCE STATEMENTS

You can also write down or tell others about your wishes, feelings and preferences about your future treatment or care. These statements must be taken into account when deciding what is in your best interests, but they are not legally binding in the same way as Advance Decisions. These statements can be about anything.

Gloucestershire's Advance Care Planning document *Planning for your future care* contains more information about all of these and other ways of planning for the future.

Available from www.guide-information.org.uk
Tel: 0800 0151 548



DEPUTIES

If someone hasn't planned ahead and made an LPA, and it is necessary to give someone on-going authority to deal with a series of long term issues, the Court of Protection can appoint a Deputy to make decisions on the person's behalf. This must be someone who is 18 years or over. They can be a relative, friend or a professional such as an accountant, a solicitor, doctor or social care professional.

Deputies can be appointed to take decisions on welfare, healthcare and finance issues for people lacking capacity. Deputies replaced the previous system of Receivership.



THE COURT OF PROTECTION

The Court of Protection oversees the Act and has its own procedures and nominated judges. It is especially important in resolving complex or disputed cases where lack of capacity or best interests are an issue.

PUBLIC GUARDIAN

The Public Guardian and their staff register LPAs. They supervise Deputies and provide information to help the Court with decisions. They work with other agencies to consider any concerns about how an Attorney or Deputy is operating.

PROTECTING PEOPLE WHO LACK CAPACITY

The MCA introduced a new criminal offence of ill-treatment or wilful neglect of a person who lacks capacity. If you think someone is abusing, ill-treating or neglecting a friend or relative you can contact the police or the Adult Helpdesk on 01452 426868.

For more information visit
www.gloucestershire.gov.uk/safeguardingadults

ADVOCACY SERVICES IN GLOUCESTERSHIRE

There is a statutory responsibility to provide an Independent Mental Capacity Advocate (IMCA) for adults who may not have capacity and don't have anyone else who can advocate on their behalf. This includes decisions about where the person lives and serious medical treatment. An IMCA can also assist with a care review or where a person is subject to a safeguarding concern. It is the responsibility of staff in the NHS or local council to refer for an IMCA.

There are other forms of independent advocacy available for people who don't meet the criteria for an IMCA. An advocate can be contacted on **0800 644 6448**. This call is free using a landline.



It is the responsibility of staff in the NHS or local council to instruct an IMCA.

FURTHER INFORMATION

The following websites will provide you with more information on the MCA.

Age UK

provide a number of services to support older people, including a useful factsheet on the Mental Capacity Act and Planning for the Future. You can also ring their helpline for advice.

Tel: 0800 169 6565

www.ageuk.org.uk

SCIE MCA Website

provides a wide range of information and advice about the MCA:
<http://www.scie.org.uk/publications/mca>

The Ministry of Justice

has produced a series of guidance booklets for different groups of people who need to know about the Mental Capacity Act 2005 and what it means for them. They can be downloaded from:

www.justice.gov.uk/guidance/protecting-the-vulnerable/mental-capacity-act or ordered by telephoning 0300 456 0300.

Forms & guidance including LPA forms can be downloaded from www.justice.gov.uk/forms/opg

The Gloucestershire County Council website

provides basic information about the MCA and access to some helpful leaflets www.gloucestershire.gov.uk/mca

The Alzheimer's Society

provides a wide range of information on mental capacity with a focus on people with dementia.

Tel 0856 300 0336

www.alzheimers.org.uk

Carers UK

provide a booklet 'What every carer needs to know: a guide to mental capacity' aimed at carers who look after people who may not be able to make decisions for themselves about health and social care issues. It includes case scenarios to illustrate real life examples that commonly arise.

Tel 020 7378 4999

www.carersuk.org (and type 'mental capacity' into the search)

MCA e-learning:

If you would like to learn more about the MCA through e-learning please do the following:

1. Log on at www.kwango.com
2. Insert user name: GCCUsersPatients
3. Insert password: GlosKWA23
4. Then select the MCA course.

Help & Advice:

For help and advice on issues to do with mental capacity call GUIDE & PALS on 0800 0151 548.

If you have any general queries please contact the Gloucestershire County Council Adult Helpdesk on 01452 426868.



This leaflet can be downloaded from
www.gloucestershire.gov.uk/mcapolicy