

Homeshare Good Practice Guide

4.7 Mental Capacity

This guidance sets out the key principles of the Mental Capacity Act and when decisions should be taken on behalf of another person. It's important to note that Homeshare staff should receive training in the Mental Capacity Act however they are NOT required to conduct a formal assessment of the participants mental capacity – this can only be done by Health and or Social Care professionals.

However, the Homeshare staff DO need to be able to make a judgement on whether a potential Homeshare participant is able to:

- understand information relevant to the decision to;
- retain the relevant information long enough to make a decision;
- use or weigh the information to make a decision;
- communicate their decision (by any means).

Sometimes decisions have to be made on a person's behalf, in their best interests. Where a householder lacks the capacity to enter into a Homeshare agreement without assistance, serious consideration should be given as to whether they will be able to participate in Homeshare without compromising their safety, placing unreasonable demands upon the Homesharer or requiring personal care, which is a registered service outside of the scope of Homeshare.

The Mental Capacity Act (MCA) 2005 is important to all health and social care practice.

The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision making within a legal framework. It does this in two ways:

- By empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process.
- By allowing people to plan ahead for a time in the future when they might lack the capacity.

Key Principles of the MCA

The Mental Capacity Act is underpinned by five key principles:

Principle 1: A presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

Principle 2: Individuals being supported to make their own decisions – a person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.

Principle 3: Unwise decisions – people have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.

Principle 4: Best interests – anything done for or on behalf of a person who lacks mental capacity must be done in their best interests.

Principle 5: Less restrictive option – someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all. Any intervention should be weighed up in the particular circumstances of the case.

What is mental capacity and when might you need to assess capacity?

Having mental capacity means that a person is able to make their own decisions. You should always start from the assumption that the person has the capacity to make the decision in question (principle 1). You should also be able to show that you have made every effort to encourage and support the person to make the decision themselves (principle 2). You must also remember that if a person makes a decision which you consider eccentric or unwise, this does not necessarily mean that the person lacks the capacity to make the decision (principle 3). Under the MCA, you are required to make an assessment of capacity before carrying out any care or treatment – the more serious the decision, the more formal the assessment of capacity needs to be.

When should capacity be assessed?

You might need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability.

Lack of capacity may not be a permanent condition. Assessments of capacity should be time- and decision-specific. You cannot decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

Two-stage functional test of capacity

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

Stage 1 – Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,

Stage 2 – Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA says that a person is unable to make their own decision if they cannot do one or more of the following four things:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision.

Best interests decision-making

If a person has been assessed as lacking capacity then any action taken, or any decision made for or on behalf of that person, must be made in his or her best interests (principle 4). The person who has to make the decision is known as the ‘decision-maker’ and normally will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

What is ‘best interests’?

The Act provides a non-exhaustive checklist of factors that decision-makers must work through in deciding what is in a person’s best interests. A person can put his/her wishes and feelings into a written statement if they so wish, which the person determining capacity must consider. In addition, people involved in caring for the person lacking capacity have to be consulted concerning a person’s best interests. If a

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