

Cumbria Safeguarding Adults Board

Mental Capacity Act 2005

Remember the FIVE principles of the Act

1. Assume the person has capacity unless you have the reasonable belief capacity may be impaired
2. Do not treat the person as unable to make a decision unless all possible steps to help them have been taken
3. taken
4. An unwise decision does not mean the person is unable to make a decision
5. An act or decision on behalf of a person who lacks capacity must be in their best interests
6. An act or decision on behalf of a person who lacks capacity must aim to be the least restrictive

Help the person decide for themselves

Assess the person's capacity:

- **Can** the person understand the information? (have reasonable adjustments been made that enables the information to be delivered in a way that promotes the person's ability to understand; BSL, translation, easy read, picture cards etc.)
- **Can** the person retain the information long enough to make the decision?
- **Can** the person use and weigh up the information as part of the decision making process?
- **Can** the person communicate the decision by their own means?

Carry out the 2-stage assessment of capacity

Does the person have a condition that is affecting the functioning of the mind or brain? Examples;

- Mental health illness (dementia or personality disorder)
- Has a Learning Disability or Cognitive Impairment
- Effects of brain damage (ABI)
- Head injury
- Stroke or Acute Cerebral Infarction affecting cognition
- Delirium
- Intoxication – Drugs/Alcohol

If **YES**, then there is belief that the patient **LACKS CAPACITY**. Complete a Capacity Assessment

Make a Best Interests decision on behalf of the person, and record as evidence of lawful decision-making.

- **Avoid** discrimination or restriction of the person's rights
- **Assess** whether they may regain capacity - if includes life-sustaining treatment do not make assumptions about the quality of life
- **Encourage** the person to participate and consider the view. Consult others; family members, consider IMCA if no family
- **Enquire** regarding legal status of Lasting Power of Attorney for Health and Welfare and request documentation

Identify whether the decision involves restraint or restrictions

Evidence should be recorded. Restraint/Restrictions only used if:

- The person **LACKS CAPACITY** to **CONSENT** and it is in their **BEST INTERESTS** to be protected
- Restraints/restrictions are **necessary** to prevent harm, and a **proportionate** response to the prospect of **harm severity**.

The person cannot be deprived of liberty except under the Deprivation of Liberty Safeguards (DoLS), Mental Health Act or a Court Order.