

Stockport Mental Capacity Act - Pocket Card

What is the Mental Capacity Act?

- A law designed to protect adults who are unable to make decisions for themselves.
- It helps people to plan for the future if at a later date they become unable to make their own decisions.
- The act offers protection to care workers and others who either have to make decisions on behalf of people who lack mental capacity or have to provide care that is restrictive.
- The act allows people to make advance decisions about whether they would like future medical treatment if they later lack the mental capacity to consent-however some treatments are excluded.
- The act provides a legal framework for best practice when it comes to acting on behalf of people who are assessed as lacking the mental capacity to make the decision for themselves.

The Five Key principles

1. **Assume Mental Capacity**- always start off by thinking that the individual can make their own decision.
2. **All practicable steps must be taken to help someone one make a decision before they can be assessed as lacking mental capacity** - Give all practicable support to enable the person to make their own decision.
3. **An unwise decision does not in itself indicate a lack of mental capacity** - Never say someone can't make a decision just because someone else thinks it's wrong or bad.
4. **Any act or decisions (health, social care or financial) for someone lacking capacity must be made in their best interests**- When an individual can't make their own decision someone has to make it in the best way for them. Use the check list! Chpt 5 pg 71-72 of the Code of Practice
5. **When a person is assessed as lacking the mental capacity, any act or decision (health, social care or financial) should be the less restrictive option available**- i.e. one that does not limit their rights or freedom more than necessary.

Note: The person does not have to prove they do or do not have capacity and the professional or person assessing capacity has to provide the rationale as to why they lack capacity.

See useful links below for further guidance:

<https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2019/03/Mental-Capacity-Guidance-Note-Capacity-Assessment-June-2020.pdf>

<https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Mental-Capacity-Guidance-Note-Best-Interests-July-2020.pdf>

Mental Capacity Act – 5 Key Principles



- 1. Presumption of capacity;** everyone is different and every decision is different. Somebody may **not** be able to decide whether to move house. They need people to help them make this decision, or to make this decision for them if they can't. But they may be able to decide what to eat and what to wear and they must be allowed to make those decisions.
- 2. Take realistic steps to help me make me make decision;** if a person finds it hard to understand words, it is not enough to just talk to them about the decision. It is not okay to say that it is too hard to involve people. They may be able to make the decision. It is just that they need help with communication.

Information about the decision could be given to them using **signing, photos** or **symbols**.

People who know them well should be there to help them to understand and communicate their decision.

For example: Some people say 'yes' and 'no' by pointing their eyes in different directions. They may be able to make their own decisions, so they need people around them who understand.

- 3. Unwise decisions;** adults have the right to make decisions that other people disagree with. In such circumstances it is important that the person with capacity understands the possible consequences of their unwise decisions and that those discussions are recorded accurately.

Some examples: Going for a walk in the pouring rain, spending too much money on a new TV, Staying up until 4am, Smoking 20 cigarettes a day.

If the person is able to decide these things, and understand the decision, they must be allowed to go ahead.

If a person makes unwise decisions, this is ok, as long as they understand the consequences of what they are doing and such **discussions are recorded accurately**.

4. **Best Interests;** this means that the decision must be what is best for the person, not for anyone else.

They must think about the 'best interest's checklist'; can the decision wait, until a time when the person can make it themselves?

How can the person be helped to make the decision themselves?

What do other people who know the person think?

If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests'.

5. **Is there a less restrictive option;** when a decision is made for somebody, it must give them as much freedom as possible.

An example: There is a man who like to be outdoors. He falls over and hurts himself a lot.

Should his staff:

- a) Keep him indoors all the time where he is safe?
- b) Let him go outside, but wearing protective clothes, to stop him getting hurt?

The answer is b: It would be wrong to stop him doing the things he enjoys, if there is another way to keep him safe that is 'less restrictive'.

See next page for Advocacy Services

Statutory Advocacy Providers in Stockport-who you should go to and when!

Type of Advocacy	What it is used for	Provider contact Details
Care Act Advocate	<p>To support people to understand their rights under the Care Act and to be fully involved in a local authority assessment, care review, care and support planning or safeguarding process.</p> <p>The Act places a duty (section 67) on local authorities to arrange independent advocacy if the authority considers an individual would experience 'substantial difficulty' in participating in (amongst other things) their assessment and / or the preparation of their care and support plan. The duty does not arise if the local authority is satisfied that there is some other person who is an appropriate representative (provided that person is not engaged in providing care or treatment for the individual in a professional capacity or being paid to do so).</p>	Stockport Advocacy
Care Act Advocate-Safeguarding	Where appropriate, the local authority must arrange for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review (SAR) where the adult has 'substantial difficulty' in being involved in the process and where there is no other suitable person to represent and support them.	Stockport Advocacy
Independent Mental Health Advocate – IMHA	Specially trained advocate who can support patients under the Mental Health Act 1983	Stockport Advocacy
Independent Mental Capacity Advocate – IMCA 39A, 39D	<p>An IMCA must be provided for any person aged 16 years or older, who has no one able to support and represent them, and who lacks capacity to make a decision about either;</p> <ul style="list-style-type: none"> • long-term care move • serious medical treatment • adult protection procedures, or • a care review 	TSO- Tameside, Stockport & Oldham IMCA Hub ran by N-Compass
Paid/Independent Relevant Persons Representative- RPR	Person's being deprived of their liberty in care homes or hospitals have a statutory right to have a representative to support them to exercise their rights under the Mental Capacity Act. If there are no appropriate, willing or able friends or family to take on this role, then the Supervisory Body must appoint a paid representative.	TSO- Tameside, Stockport & Oldham IMCA Hub ran by N-Compass
Litigation friend	<p>If the person lacks litigation capacity then the court must appoint a 'litigation friend' to carry on the proceedings on their behalf.</p> <p>The litigation friend will either instruct a solicitor to act on behalf of the person who lacks capacity, or they can talk directly to the Judge to provide the views of the person they are assisting. A litigation friend can be a family member, an advocate or the <u>Official Solicitor</u>, known as the litigation friend of last resort, holding a public office and funded by the Government.</p>	Appointed by the person themselves, RPR or the court directly.
Rule 1.2 representative	A Rule 1.2 Representative is the name given by the court to a person who best placed to secure the participation of a person lacking mental capacity in the relevant proceedings. They will be someone who is able to oversee a person's care and support needs and tell the court about any changes to the person's health or needs. The Rule 1.2 rep is only involved as long as the case is before the Court of Protection and must comply with the court of protection 11 processes.	The Local Authority or the court of protection
Accredited legal Representative -ALR	<p>The court has to give thought in every case to how the person should take part in the case. The appointment of an ALR is another means of involving the person and is one of the 1.2 rule options available to the court.</p> <p>An ALR is a solicitor or barrister who has undergone training and has been proved by the Law Society.</p>	Appointed the court directly or via the acting solicitor declaring they are a trained ALR willing to act.