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CSAB MCA week of action Day 4: Best Interests

Cumberland Council sent this bulletin at 22-06-2023 08:00 AM BST

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The banner features the Cumbria Safeguarding Adults Board logo on the left, which includes a stylized 'X' made of blue and purple lines and the text "Cumbria Safeguarding Adults Board". In the center, the text "5 minute briefing" is written in large, bold, blue font. Below this, a green horizontal bar contains a white Twitter icon and the handle "@cumbriasab". On the right side, there is a large, stylized 'X' made of blue and purple lines. The date "22nd June 2023" is printed in the bottom right corner.

Cumbria Safeguarding Adults Board

5 minute briefing

@cumbriasab

22nd June 2023

Principle 4: Best Interests

Welcome to Day 4 of our MCA week of action. During the week we have been sharing information and resources to support practitioners application of MCA in practice. Today we will continue with a focus on Principle 4: 'An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.' (section 1(5)) Mental Capacity Act 2005.

Practitioners should refer to the [Mental Capacity Act Code of Practice](#) for further information.

The principle of acting or making a decision in the best interests of a person who lacks capacity to make the decision in question is a well-established principle in the common law. This principle is now set out in the Act, so that a person's best interests must be the basis for all decisions made and actions carried out on their behalf in situations where they lack capacity to make those particular decisions for themselves. The only exceptions to this are around research (see chapter 11 of the Code of Practice) and advance decisions to refuse treatment (see chapter 9 of the Code of Practice) where other safeguards apply.

It is impossible to give a single description of what 'best interests' are, because they depend on individual circumstances. However, the Code of Practice (link above) sets out a checklist of steps to follow in order to determine what is in the best interests of a person who lacks capacity to make the decision in question each time someone acts or makes a decision on that person's behalf.

MCA & Best Interests Decisions

The MCA Code of Practice frequently uses the term the "decision-maker". However, in general, it is important to understand that the Act does not identify any formal decision-makers. Wherever possible, a decision as to what is in the best interests of a person unable to take the relevant decision would be reached informally and collaboratively between those involved in their care or interested in their welfare, whether that be paid/professional or unpaid. The only exceptions to this are where there is an Lasting Power of Attorney (LPA), Advance Decision to Refuse Treatment (ADRT) or the Court of Protection make the decision.



In this [short video](#) you will see how John, who has a learning disability is supported to make his needs known, assess his capacity and identify who the decision maker is for his medical treatment.

Case study

You can access a case study on the [MCA area of our learning zone](#), the case has been anonymised and is not from the local area but will be useful for use in team meetings and training to explore the following questions;

- Where is the Mental Capacity Act relevant in the case?
- Where was the Act applied correctly?
- Were there any missed opportunities?

Best Interest Assessments

39 Essex Chambers have published a guide to [best interest assessments](#). It aims to provide best interests decision makers with a brief overview of the relevant law and principles. Its focus is on how to apply the MCA 2005 principles when assessing best interests and how to record your assessment, primarily in the context of health and welfare decisions.

Advance Decisions to Refuse Treatment (ADRT)

[Advance Decisions to Refuse Treatment](#)

Advance Decisions to Refuse Treatment

Having an ADRT is an additional safeguard for adults who may have lost the capacity to make decisions about their treatment.

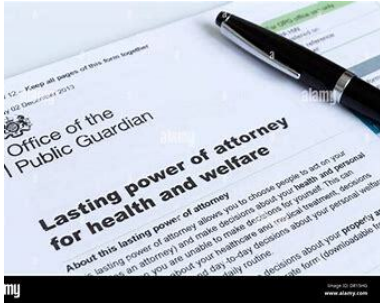
In this [short video](#) Jean with COPD now has dementia. Jean attends the GP surgery with her husband and has an ADRT in place. The GP will discuss with Jean and her husband her previously expressed wishes.



Who is the decision maker?

Jean then attends an appointment with the consultant who suggests surgery for a hip replacement and explores who is the decision maker, assessment of capacity and lasting powers of attorney. Watch here to find out [more](#).

Lasting Power of Attorney



A lasting power of attorney (LPA) is a legal document that lets you (the 'donor') appoint one or more people (known as 'attorneys') to help you make decisions or to make decisions on your behalf.

This gives you more control over what happens to you if you have an accident or an illness and cannot make your own decisions (you 'lack mental capacity').

You must be 18 or over and have mental capacity (the ability to make your own decisions) when you make your LPA. LPA's must be registered and there is usually a charge to register, for more information visit the [Gov.uk website](#).

The 2 minute summary and myth busting!

- It's a myth that close family or friends can automatically make decisions on your behalf if you need them to
- A lasting power of attorney means someone you trust can quickly, easily and legally step in
- You keep control by deciding WHO can speak for you, WHEN they can speak for you, and WHAT they can say
- It's not just about money – your choices about your health and care also need protecting
- If things are straightforward, you don't need to seek legal advice
- Registering a lasting power of attorney is probably easier and cheaper than you think.

Health and welfare lasting power of attorney

LPA to give an attorney the power to make decisions about things like:

- your daily routine, for example washing, dressing, eating
- medical care
- moving into a care home
- life-sustaining treatment

It can only be used when you're unable to make your own decisions.

Property and financial affairs lasting power of attorney

Use this LPA to give an attorney the power to make decisions about money and property for you, for example:

- managing a bank or building society account

- managing a bank or building society account
- paying bills
- collecting benefits or a pension
- selling your home

For more information and how to apply [The Office of the Public Guardian have published a leaflet to support practitioners, adults and thier families.](#)

Watch [here](#) to find our how Peter helps his dad Alan to manage his wife's finances, medical decisions and care as she has dementia.

Podcast: Powers of Attorney & Deputies watch & listen now!



You can listen and watch this podcast which covers Powers of Attorney and Deputies in relation to the MCA 2005. The session also covers when you should assess capacity, making best interest decisions and the MCA in relation to safeguarding.

You can access the podcast [here](#)

Thanks go to our colleagues including Neil Ricketts from Norfolk Safeguarding Adults Board for allowing us to adapt the presentation for use locally. Thanks are also extended to Joanne Sedgwick, Advance Practice Lead for recording the session for colleagues across Cumbria

Decision making authorities

LPA v ADRT

You can access a useful guide produced by Edge Training Ltd which compares the process, powers, costs and limitations of each of the decision making roles [here](#).

Next of Kin

The term 'Next of Kin' is often used in Health and Social Care as a euphemistic shorthand for 'Who is the person we communicate with about you and who do we contact when you are dead?' In law the term has no status when you are alive - it is misleading too because it does not clarify if this is the person who is your nearest relative or the person most important to you. Indeed, these are often different people. There is actually only one situation where 'next of kin' is legally valid; this is if you die without leaving a will. In this case, your estate will be passed on to the person or people who are your closest blood relation, also termed as your next of kin.

This helpful [leaflet](#) clarifies how people can plan ways, with those they love, to ensure their wishes are taken into account if through illness they cannot take decisions for themselves.



The Court of Protection



The Court of Protection make decisions on financial or welfare matters for people who can't make decisions at the time they need to be made (they 'lack mental capacity').

The Court of Protection are responsible for:

- deciding whether someone has the mental capacity to make a particular decision for themselves
- appointing deputies to make ongoing decisions for people who lack mental capacity
- giving people permission to make one-off decisions on behalf of someone else who lacks mental capacity
- handling urgent or emergency applications where a decision must be made on behalf of someone else without delay
- making decisions about a lasting power of attorney or enduring power of attorney and considering any objections to their registration
- considering applications to make statutory wills or gifts
- making decisions about when someone can be deprived of their liberty under the Mental Capacity Act

Resources

CSAB are sharing learning resources for practitioners for personal development and can also be useful during team meetings and/or supervision sessions.

CSAB MCA learning zone

You can find a range of information and resources on our [website](#)



Social Care Institute for Excellence

SCIE have produced a whole series of short learning videos for practitioners based on the 5 principles of the MCA. Watch [here](#)

MCA easy read guide

You can access an MCA easy read guide and summary [here](#)

Legal advice and guidance

39 Essex Street Chambers has developed an unrivalled set of resources for those seeking to apply and understand the Mental Capacity Act 2005, as well as to understand the place of mental capacity within the law more generally. There is a dedicated MCA section of the website which gathers together sets of resources which you can [access](#).

Edge Training Ltd resources

There are a series of briefings and information sheets intended to support practitioners working with the MCA. This includes case law updates, guidance and templates find out more [here](#)

Get in touch!

For more information please contact us:

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