

Mental Capacity Act Application in Practice

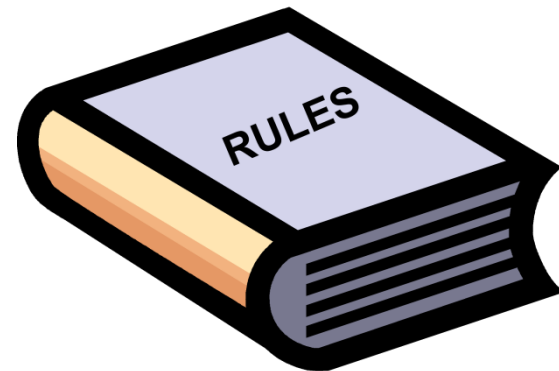
Catherine Lawlor

Mental Capacity Act week October 2017

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RULES OF THE DAY

- Listen and respect the views of others
- What is said in the room stays in the room
- Confidence to share worries, concerns and ask questions
- Be prepared to learn
- Keep to time
- Housekeeping.....



Objectives for Learning

Understand....

- The five principles of the Act.
- The two elements of the gateway.
- The four elements of a capacity assessment .
- Best interest decisions.



Consent

Supreme Court Ruling March 2015- Valid Consent

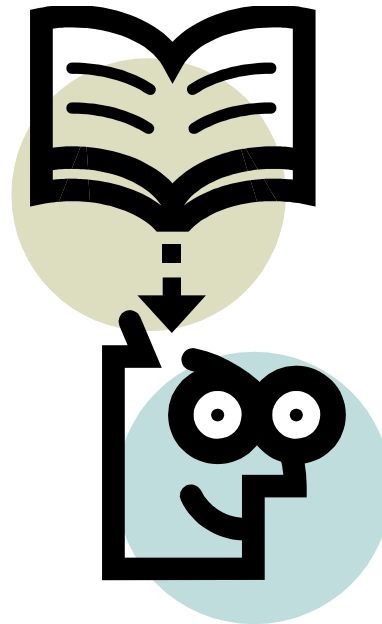
Montgomery v Lanarkshire Health Board [2015] UKSC 11

“patients are now widely regarded as persons holding rights, rather than as passive recipients of the care of the medical profession”

“It would be a mistake to view patients as uninformed, incapable of understanding medical matters or wholly dependent upon a flow of information from doctors. The idea that patients were medically uninformed and incapable of understanding medical matters was always a questionable generalisation”

(Lord Kerr and Reed- lead judgement)

Valid Consent and importance of need to know in 'broad terms'.



So how does it tell us what to do?



Principles

Principle One

Assume Capacity



Principle Two

All reasonable support



Principle Three

Right to make an unwise decision



Principle Four

Best interests

Each of you should look not only to your own interests,
but also to the interests of others.

Philippians 2:4



Lord Justice Mumby

“What good is making someone safer if it merely makes them miserable?”

Local Authority X v MM & Anor (No. 1) (2007)

Principle Five

Least restrictive



Exercise 1

Role play

‘The conversation’

**It is not for the individual to
prove that they have capacity, it is
our responsibility to establish that
they don't.**



Two Stage Gateway (Diagnostic test)

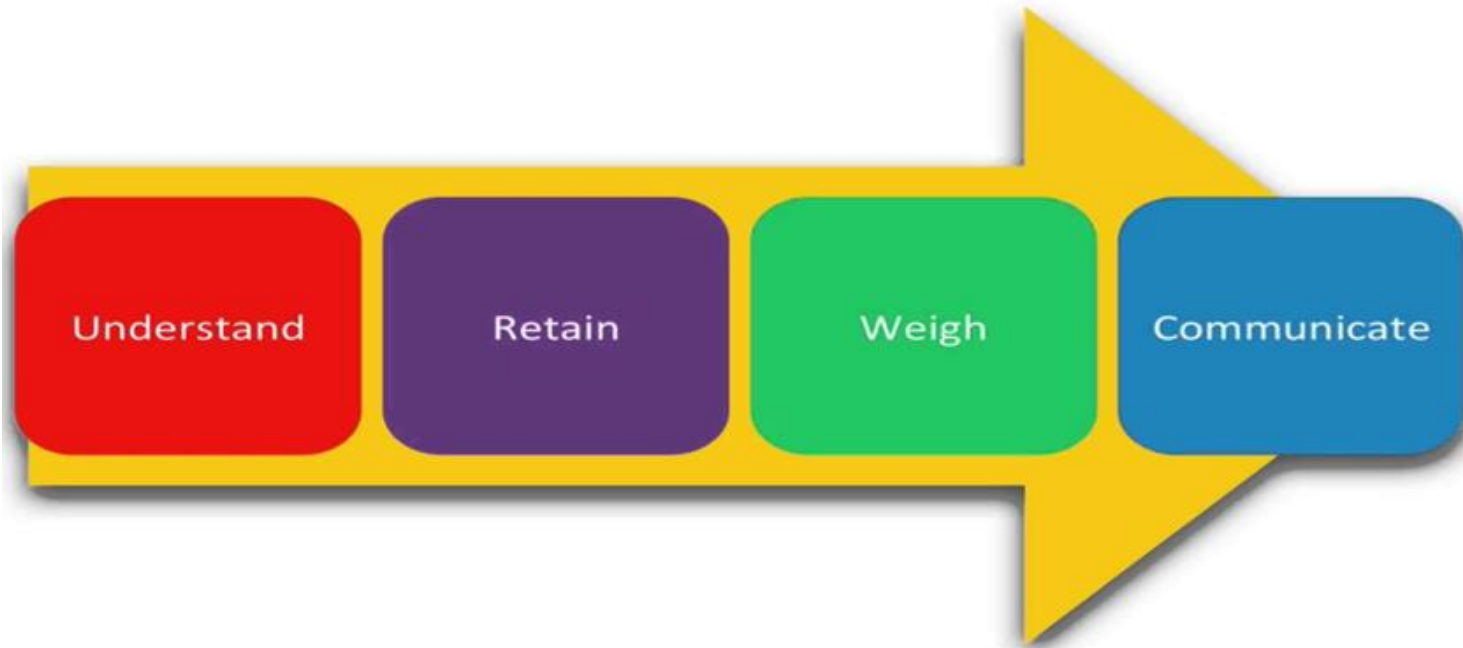
1. Is there an impairment or disturbance in the functioning of the brain or mind?
2. And, does this affect their ability to make this decision?



The four elements of a Capacity Assessment (Functional Test)



The Four Elements of a Capacity Assessment (Functional Test)



If an individual cannot do any one of the above they are assessed as not having capacity.

Activity 2

‘Best interest decision making’

<https://www.scie.org.uk/mca-directory/trainingcourses/nhs-workbook/4darren.asp>

Best Interest

“The purpose of the best interests test is to consider matters from P’s point of view. That is not to say that his wishes must prevail, any more that those of a fully capable persons must prevail.”

Supreme Court 30th October 2013

How do you determine best interest??

Do they have an LPA/EPA?

What else should be considered?





What is expected of Care Workers?



Restraint

Section 6 of the Act

Defined as:

‘the use, or threat of the use of, force to secure the doing of an act which the person resists, or a restriction on the persons liberty of movement, whether or not they resist’



Restraint must be

- Necessary
- Proportionate
- Must not amount to a ‘deprivation of liberty (DoL)’



Consider need for Deprivation of Liberty Safeguards (DoLS)

- Nature of restraint
- How often
- Duration
- Does it amount to DoLS

MCA- CRIMINAL OFFENCE

- It is an offence under the Act to ill-treat or wilfully neglect a person lacking capacity
- Punishment ranges from a fine to 5 years imprisonment
- Care home and hospital staff have been fined, subject to community service orders or jailed for offences
- *Winterbourne..*



Nearly done.....

5-2-4

5 Principles

2 Diagnostic test

4 Functional test

Further details / Reading resources

- <http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>
- www.mentalhealthlaw.co.uk
- www.bailii.org/ew/cases/EWHC/COP/
- www.39essex.co.uk/
- www.cqc.org.uk/
- www.publicguardian.gov.uk
- www.hscic.gov.uk
- www.mentalcapacitylawandpolicy.org.uk/
- <https://thesmallplaces.wordpress.com>
- <http://www.scie.org.uk/mca-directory/>
- [MCA Code of practice](#)
- [MCA DoLS code of practice](#)

Any Questions??

- धन्यवाद. Thank you. Multumesc.
Medaasi. Dziekuje

Diolch yn fawr! 😊

Go raibh maith agat