



Understanding the Mental Capacity Act

Wednesday 9th September, 11am-12.15pm

With:

Chair: Lauren Page-Hammick, Homeless Link

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Understanding the Mental Capacity Act

and applying this in practice

Barney Wells

Enabling Assessment Service London.

Goal of the workshop

- To better equip participants from housing to consider the mental capacity and “best interest” of people who they work with.
- For them to feel able to apply this in their own decision making and in their discussions with health professionals.

Approach

- Brief Overview of Mental Capacity Act
- Work through a complex case study
 - Initial focus on the functional test of capacity
 - Subsequent focus on best interest principles
- Discussion and sharing of experience
- Pointers towards other resources

The Mental Capacity Act (MCA)

Introduced to help protect everyone involved in situations where someone is, temporarily or more permanently, unable to make a particular decision for themselves at a particular time.

It includes:

A functional test of capacity

“Best Interest” approach to decision making

Powers of Attorneys / Advance decisions

Court of Protection

Independent Mental Capacity Advocates

Jane 1

Jane is a hostel resident, where Brian works nights.

Brian knows that Jane has a diagnosis of Borderline Personality Disorder, and that she sometimes binge drinks alcohol. He is also aware of her history of taking intentional overdoses.

At the start of his shift Brian is told by colleagues that Jane had difficult news earlier in the day and had then come to the office and left her medication with staff as she “felt unsafe”.

Several hours later Jane comes to the office, she appears heavily intoxicated with alcohol and is tearful – she demands the return of her medication, stating that she “can’t go on any longer” and that “life isn’t worth living”.

Jane 2

Brian is extremely concerned for her safety if she has access to her medication.

He feels that her ability to make decisions about staying safe is impaired by her intoxication and emotional state.

He refuses to give Jane her medication and asks her to meet with his manager to discuss this further the next morning.

He explains his decision to her and also justifies it by writing a progress note that explains his reasons referring to the relevant parts of the MCA: the four-step capacity assessment, and the Best Interests Decision checklist.

MCA - The Principles 1

- A person must be assumed to have capacity unless it is established that he lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

MCA –The Principles 2

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.

Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

What is capacity?

‘...legal capacity depends upon understanding rather than wisdom: the quality of the decision is irrelevant as long as the person understands what he is deciding’

(Law Commission 1991)

Capacity Test

Decision Specific

Time Specific

Capacity Test is made in the person's best interest.

Stage 1

Functional Test of Capacity

(In relation to a specific decision, is the person able to)

- Understand the information
- Retain the information
- Use and weigh up the information
- Communicate the decision

Stage 2

Must have reason to believe that the person has:

‘an impairment of, or a disturbance of, the
mind or brain’

(and this is impacting their ability to make that decision)

(MCA Section 2)

Best interest checklist – 1

1. Encourage the person to take part as much as possible
2. Identify all relevant circumstances
3. Find out the person's past and present wishes, feelings, beliefs, values and any other factors they would be likely to consider if they had capacity, including any advanced statements
4. Do not make assumptions based on the person's age, appearance, condition or behaviour
5. Assess whether the person might regain capacity

Best interest checklist – 2

6. If the decision concerns life-sustaining treatment then the best interests decision should not be motivated by the desire to bring about the person's death
7. Consult with others where it is practical and appropriate to do so. This includes anyone previously named as someone to be consulted; anyone engaged in caring for the person; close friends, relatives or others with an interest in the person's welfare; any attorney and any Deputy appointed by the Court.
8. Avoid restricting the person's rights by using the least restrictive option
9. Abide by any valid advanced decision

Mark – Background 1

38-year-old white British man with a history of difficulties maintaining accommodation.

Previously evictions from temporary accommodation due to service charge arrears and antisocial behaviour e.g. letting people believed to be drug dealers into the accommodation, smoking in communal areas, noise nuisance at night.

Has a history of polysubstance use, primarily crack and heroin which he injects. He has had two toes amputated due to an infection caused by unsafe injecting. Has Chronic Obstructive Pulmonary Disease (COPD).

Mark – Background 2

Has in past been given diagnoses of Emotionally Unstable Personality Disorder and dissocial Personality Disorder. At times he presents to A&E in distress stating that he feels suicidal and asking for benzos to calm him down.

He has previously been referred to mental health services but was closed due “to lack of engagement” as when his low mood has passed and he feels more able to cope, he doesn’t attend appointments.

Mark has been placed in one of the Covid emergency hotels. Since his arrival, there have been numerous incidents where he has been intoxicated and refusing to self-isolate. He has been outside the hotel, heavily intoxicated, sharing bottles of alcohol with other residents, and not maintaining distance. Staff have repeatedly spoken to him about the conditions of him staying at the hotel, but little has changed.

Mark – Monday: Poll 1

Mark was once again heavily intoxicated, and argued with staff because he didn't want to come to a keyworking session. He gave back his room key, and stormed out saying he had "had enough of this bullshit, I'm not coming back". Hotel management book him out of the hotel. Later he comes back. He is sober. He says he is sorry for how he behaved and promises he will abide by the rules and engage properly with staff trying to help him to apply to his Local Authority for accommodation.

There is a discussion amongst staff about whether he can simply be allowed to return or – having "booked himself out" – his stay at the hotel needs to be re-considered.

**In terms of his mental capacity,
which of Mark's "decisions" is it most relevant to consider?**

Mark – Monday: Poll 2

Mark was once again heavily intoxicated, and argued with staff because he didn't want to come to a keyworking session. He gave back his room key, and stormed out saying he had "had enough of this bullshit". Hotel management book him out of the hotel. Later he comes back when sober. He says he is sorry for how he behaved and promises he will abide by the rules and engage properly with staff trying to help him to apply to his Local Authority for accommodation.

There is a discussion amongst staff about whether he can simply be allowed to return or – having "booked himself out" – his stay at the hotel needs to be re-considered.

Is there reason to question his capacity to make this decision?

Mark – Monday: Poll 3

Mark was once again heavily intoxicated, and argued with staff because he didn't want to come to a keyworking session. He gave back his room key, and stormed out saying he had "had enough of this bullshit". Hotel management book him out of the hotel. Later he comes back when sober. He says he is sorry for how he behaved and promises he will abide by the rules and engage properly with staff trying to help him to apply to his Local Authority for accommodation.

There is a discussion amongst staff about whether he can simply be allowed to return or – having "booked himself out" – his stay at the hotel needs to be re-considered.

Which element of the functional test of capacity might he have failed?

Mark – Thursday: Poll 4

Mark is back in the hotel. He is coughing heavily, appearing sweaty and clammy, looks very unwell, and is fighting for breath.

He says it's "just a bit of a cold". You explain that you need to contact NHS 111 as he appears unwell and may need to go to hospital. He refuses and says he's going to die anyway so it might as well happen as quickly as possible.

He said that there's no point in trying to keep going as he has nothing in his life to live for. You contact Mark's GP who is concerned that Mark may have Covid-19, and that he is at very high risk of severe illness and complications due to his pre-existing medical conditions. You contact 111, who feel that Mark needs to attend A&E urgently, but he is refusing to go.

Why Mark might lack capacity to make the decision to go to A&E?

Mark – Thursday: Question

Mark is back in the hotel. He is coughing heavily, appearing sweaty and clammy, looks very unwell, and is fighting for breath.

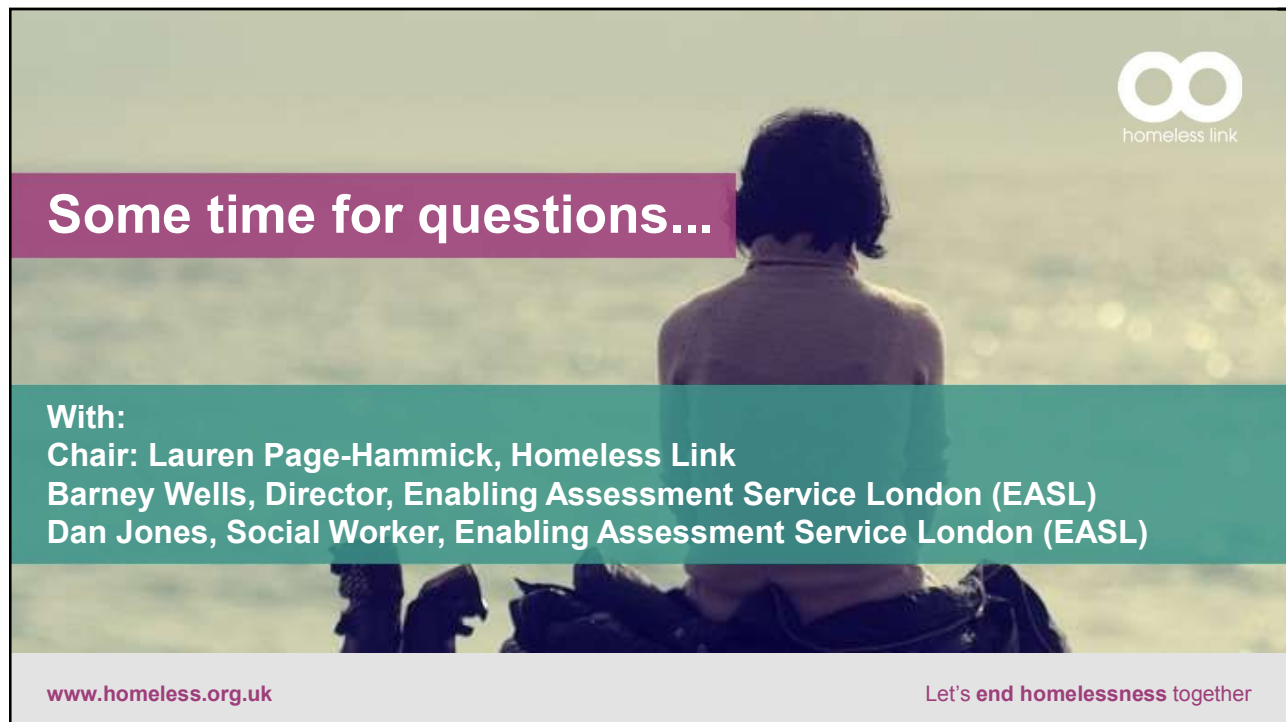
He says it's "just a bit of a cold". You explain that you need to contact NHS 111 as he appears unwell and may need to go to hospital. He refuses and says he's going to die anyway so it might as well happen as quickly as possible.


He said that there's no point in trying to keep going as he has nothing in his life to live for. You contact Mark's GP who is concerned that Mark may have Covid-19, and that he is at very high risk of severe illness and complications due to his pre-existing medical conditions. You contact 111, who feel that Mark needs to attend A&E urgently, but he is refusing to go.

Why might requesting an ambulance to take him to hospital be in his "best interests"?
(Volunteer via Chat function?)

Best Interest Checklist

- | | |
|---|---|
| 1. Encourage the person to take part as much as possible. | 6. If the decision concerns life-sustaining treatment then the best interests decision should not be motivated by the desire to bring about the person's death. |
| 2. Identify all relevant circumstances. | 7. Consult with others where it is practical and appropriate to do so. |
| 3. Find out the person's past and present wishes, feelings, beliefs, values and any other factors they would be likely to consider if they had capacity, including any advanced statements. | 8. Avoid restricting the person's rights by using the least restrictive option |
| 4. Do not make assumptions based on the person's age, appearance, condition or behaviour. | 9. Abide by any valid advanced decision |
| 5. Assess whether the person might regain capacity. | |




homeless link

Some time for questions...

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Further guidance

<https://www.pathway.org.uk/resources/learning-resources/mental-health-resource/>

<https://www.homeless.org.uk/our-work/resources/guidance-on-mental-capacity-act>

pathway.org.uk/resources/learning-resources/mental-health-resource/


- SOCIAL FRANCHISE
- PALLIATIVE CARE
- MENTAL HEALTH**
- UCL MSC MODULE IN INCLUSION HEALTH
- ONLINE INCLUSION HEALTH COURSE
- HOMELESS HOSPITAL DISCHARGE NURSING

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Do you work with people sleeping rough?



Many homeless patients seen by Pathway teams face mental health problems. Pathway supported the opening of the UK's first homelessness service within an inpatient mental health unit; and our teams liaise with partners in mental health services, and include mental health professionals in the team.

However, many outreach workers face problems when supporting people who have mental health problems who are sleeping rough. This mental health and homelessness guidance is designed to address this.

Mental health guidance for outreach workers

Pathway worked with The Greater London Authority, Lambeth Council, South London and the Maudsley NHS Foundation Trust and Thames Reach to publish tools and guidance to help outreach workers supporting people sleeping rough.

The publication includes practical tools guiding workers through the use of the Mental Capacity Act and Mental Health Act. It has been regularly updated to include statutory changes, the most recent update was published in autumn 2017.

The tools and guidance are for everyone who works with clients or patients on the streets. The Faculty for Homeless and Inclusion Health endorsed this work to help us all respond to the needs of vulnerable people on the street.

Download the guidance documents and forms

Download the guidance - [Mental Health Service Interventions for People Sleeping Rough](#)
[Mental Capacity Act Screening Tool](#)
[Mental Health Act Screening Tool](#)
[Hospital Homelessness Mental Health Admission Plan](#)

[Appendix 1 - Autism Spectrum Disorders](#)
[Appendix 2 - Acquired Brain Injury](#)
[Appendix 3 - Psychosis](#)

THE MENTAL CAPACITY ACT SCREENING TOOL

Name of person: _____

DOB: _____

Rough sleeping location: _____

Date of assessment: _____

1
 What is the decision the person you are concerned about needs to make, and why do they need to make the decision now?

2
 Is there reason to believe that the person may lack mental capacity to make the decision due to a known/suspected mental health problem, learning disability, brain injury, dementia or intoxication?

3
 Has sufficient information been given to the person to help them understand the decision?

THE MENTAL CAPACITY ACT SCREENING TOOL

4
 Have all practicable steps been taken to support the person to make the decision?

5
 Is it felt that the person is free from external pressures to make their decision?

6
 Can the person understand in simple language the information involved in making the decision?

7
 Can they retain the information long enough to make the decision?

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homeless.org.uk/our-work/resources/guidance-on-mental-capacity-act

The Mental Health Interventions for Rough Sleepers tools and guidance are designed to help teams respond to the mental health needs of people sleeping on the streets. Homeless Link thanks Pathway, Lambeth Council, South London and Maudsley NHS Trust, Thames Reach, the Greater London Authority and EASL for sharing these resources.

Using the Mental Capacity Act

An overview on using the Mental Capacity Act, aimed at staff supporting vulnerable people. This plain English guide takes you through key principles, assessment, decision-making, capacity assessments and Best Interests decision-making.

Downloads

- Using the Mental Capacity Act 2018.pdf | 218K

Mental health service interventions for people who sleep rough

Tools and guidance on assessing the risks associated with rough sleeping, use of the Mental Capacity Act, use of the Mental Health Act, developing a hospital admission plan, and raising safeguarding adults alerts - developed by Lambeth Council in partnership with South London and Maudsley NHS Foundation Trust, Thames Reach and the Greater London Authority. The three forms in Word can be downloaded and completed electronically by frontline workers.

Downloads

- Mental Health Interventions for People Who Sleep Rough - v2.pdf | 3488K
- Mental Capacity Act (MCA) screening tool for street outreach teams.doc | 34K
- Mental Health Act 1983 screening tool.doc | 27K
- Hospital admission plan.doc | 30K