**Mental Capacity Act 2005 (MCA) self- assessment tool – training into practice discussion**

**Mental Capacity Act 2005 (MCA) self- assessment tool**

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| **Requirement** | **Evidence**  |  |
| Principle One: a person must be assumed to have capacity unless it is established that he lacks capacity |
| 1. Am I confident that, within the remit of my role, I can:
2. identify the relevant decision(s) to be made, regarding which the person’s consent must be sought? and
3. identify the information relevant to the decision i.e. what the person needs to understand, retain, use/ weigh and communicate in respect of that decision (e.g. the information against which capacity is judged re a range of ‘common’ decisions such as sexual relations, contraception, contact, care/ treatment and accommodation)?
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| 1. Do I proactively record appropriate reliance on the statutory presumption of capacity? (see wording in the local MCA policy)
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| 1. Where the statutory presumption is dislodged (i.e. there is reason to further consider P’s capacity), am I confident in assessing capacity?
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| 1. When assessing capacity, do I use the assessment tool(s) in the local MCA policy, and ensure that completed tools are kept on file and accessible for future reference?
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| 1. Do I ensure that, where relevant, evidence of mental disorder (does not have to be a formal diagnosis) is kept on file and accessible for future reference (e.g. by sourcing this from the person’s GP)?
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| Identify any areas for action re principle one: |
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| Principle Two: 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*(NB for convenience, advocacy has been considered in the context of supporting decision making – it is not the only time advocacy should be considered)* |
| 1. Do I have the skills, and access to a range of tools which support me, to take all practicable steps/ make reasonable adjustments to facilitate the person’s capacitous decision making?
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| 1. Do I routinely record the efforts I make to support the person to make decisions, including encouraging life planning options where appropriate?
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| 1. Regarding advocacy:
2. Do I recognise the statutory triggers for advocacy?
3. In the absence of a statutory trigger, am I clear when I could exercise discretion to appoint an advocate anyway, e.g. to support decision making?
4. Do I know how/ where to source an advocate when necessary?
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| 1. Am I confident in applying valid and applicable Advance Decision to Refuse Treatment (ADRT) and/ or advance statements of wishes? Where these are relevant, are copies retained on file for future reference?
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| 1. Am I confident in identifying the appropriate decision maker for those decisions the person cannot make themselves, e.g. identifying whether:
2. There is a relevant appointed decision maker i.e. attorney appointed under a Lasting Power of Attorney (LPA) or a Court of Protection appointed deputy? Where these are relevant, are copies retained on file for future reference?
3. I can make the decision in reliance on the MCA’s s5/6?
4. The Court of Protection should be asked to make the decision?
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| Identify any areas for action re principle two: |
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| Principle Three: a person is not to be treated as unable to make a decision merely because he makes an unwise decision *(NB for convenience, under this heading, considerations arising from protecting people from their own potentially ‘unwise decisions’ are listed along with protection from the decisions or actions of others)*  |
| 1. Am I confident in identifying when a decision is:
2. a capacitous “unwise” choice not requiring intervention?
3. a capacitous “unwise” choice requiring intervention?
4. an incapacitous ‘choice’ requiring intervention?

Where I am unsure, do I know from whom I can seek help? |  |  |
| 1. In the event that either b) or c) is identified, do I understand local processes designed to secure any necessary support from cross sector colleagues to achieve the best outcome for the person, and how to instigate those processes (within the remit of my role)?
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| 1. In the event that either b) or c) is identified, do I understand when an application to the Court of Protection or via the inherent jurisdiction of the High Court might be needed, and how to instigate an application (within the remit of my role)?

[MCA guidance note Inherent jurisdiction](https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/Mental-Capacity-Guidance-Note-Inherent-Jurisdiction-November-2020.pdf)  |  |  |
| 1. Do I know how to refer concerns regarding the actions of an appointee, an attorney or a court appointed deputy?
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| 1. Can I confidently identify when the MCA’s criminal offences of ill treatment or wilful neglect of a person lacking capacity might apply, and make appropriate referrals for action?
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| Identify any areas for action re principle three: |
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| Principle Four: an act done, or decision made, under the MCA for or on behalf of a person who lacks capacity must be done, or made, in his best interests |
| 1. Am I confident that I can distinguish between a commissioning or treatment decision (the offer of care/ support) and a best interests decision (what to accept, on behalf of the person, from the available options)?
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| 1. When I am the decision maker, am I confident in making best interests decisions, in consultation with relevant parties (applying the MCA’s s4 ‘checklist’)?
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| 1. Within the remit of my role, am I confident in:
2. facilitating best interest decision making processes e.g. selecting a more formal ‘round table’ meeting, or a less formal series of phone calls, as appropriate?
3. responding to best interests disputes, where relevant (including triggering Court of Protection applications where appropriate)?
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| 1. Am I confident in considering rights under the European convention on Human rights which may arise from best interests decision making (e.g. Article 8 rights to respect for private and family life), and ensuring appropriate responses e.g. recording within the person’s care plan?
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| 1. When making a best interests decision, do I use the decision tool(s) within the local MCA policy and ensure that completed tools are kept on file for future reference?
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| Identify any areas for action re principle four: |
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| Principle Five: 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 |
| 1. Am I confident that I can identify restriction/ restraint?
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| 1. Do I routinely consider (and record my consideration of) the ‘less restrictive’ option when care/ treatment planning, or making decisions on behalf of a person?
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| 1. Do I record why any restriction/ restraint is necessary and proportionate within the person’s care/ treatment plan (or ensure that such is recorded by providers)?
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| 1. Am I confident that I can identify where the nature, severity and/ or frequency of restriction/ restraint amounts to a deprivation of liberty (i.e. I know how to apply the “acid test”)?
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| 1. Where a deprivation of liberty is identified, do I understand how to apply, or make referrals to others who can apply, the correct processes to ensure lawful authorisation of it (e.g. via DoLS, Court of Protection or Mental Health Act 1983 processes. Don’t forget to consider the MoU: under heading Adult Services Publications and Policies, at *NB both DoLS and “Re X” applications via the Court of Protection will be replaced by LPS in October 2020*)?
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| Identify any areas for action re principle five: |
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Combined Action Plan (to be completed with supervisor, if required)

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Training Completed to date

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