

ABOUT THIS TRAINING RESOURCE

This training resource was put together by the Mental Capacity Act Project- a project funded by Dudley, Walsall and Wolverhampton CCGs.

The resource is free to access and shows how the Mental Capacity Act (MCA) is applied in everyday practice through six short films of clinical practice where MCA must be applied and asking the viewer to consider questions relating to the MCA for each scenario.

There are 7 film clips – an introduction clip and six clinical scenarios.

A training pack accompanies the film clips which includes a fact sheet for each scenario- giving answers to the questions posed.

We recommend you watch the introduction first but thereafter- you can view the clips in any order or simply pick out the scenario that you consider most useful to you.

The film clips

- **Introduction-** an animated video that introduces the training DVD.
- **Scenario 1-** Mary is a resident in a care home. Mary has moderate dementia and is refusing treatment.
- **Scenario 2-** Andrew has Korsakoff's syndrome. He has had surgery but is now ready for discharge. The hospital team have concerns about his safety if he is discharged home.
- **Scenario 3-** Ann has end stage Alzheimer's disease and multiple cardio- respiratory problems. This clip shows Anne's consultant meeting with a relative and focuses on what actions should be taken when a person lacks capacity to consent to *Do Not Attempt* Cardiopulmonary Resuscitation (DNACPR).
- **Scenario 4-** Jack is in A&E. He has a head wound. He is intoxicated and is refusing treatment for his head injury.
- **Scenario 5-** David has Multiple Sclerosis. He lives at home with his wife Hannah and has appointed Hannah as his Lasting Power of Attorney for health and welfare. The film is set in a GP surgery and looks at what happens when Hannah wants to use her authority to make decisions on behalf of David.
- **Scenario 6-** Tariq is 22 years old and lives at home with his family. He has learning disabilities. Tariq has a leg ulcer which requires treatment. Health care professionals are finding it very difficult to see him face to face. This clip looks at how the MCA can be applied when families prevent clinical engagement.



Scenario 1- Mary is a resident in a care home. Mary has moderate dementia and is refusing treatment.

- 1. What should Helen do next?**
- 2. What should happen if Mary has capacity to consent to treatment?**
- 3. What happens if Mary is deemed to lack capacity to consent to treatment?**

What should Helen do next?

Helen must explain to Mary the risks and benefits of wound treatment in a way that Mary can understand. Helen must document the methods she used to help Mary make the decision.

Helen must assess Mary's capacity to consent to wound treatment using the 2 stage test and document this in Mary's notes. *See the MCA Project factsheet on assessing capacity and best interest decisions.*

If Mary *has* capacity to consent-

Mary's decision is final. If Mary does not want treatment- it cannot be provided even though we might see this as an unwise decision.

If Mary *lacks* capacity to consent-

Helen must make a best interest decision for Mary. However if Mary is very resistive to treatment Helen must consider whether using any restraint to deliver treatment would be a proportionate response to the risk of harm to Mary (should she not have treatment).

Factsheets relevant to these questions are

- Assessing capacity and best interest decisions
- The 5 Principles
- MCA and Restraint

These factsheets can be accessed at

www.dudleyccg.nhs.uk/mental-capacity-act-project/



Scenario 2- Andrew has Korsakoff's syndrome. He has had surgery but is now ready for discharge. The hospital team have concerns about his safety if he is discharged home.

- 1. What decision was the capacity assessment needed for?**
- 2. Who should be the assessor for this type of a decision?**
- 3. What part of the MCA refers to unwise decisions?**

What is the decision?

Each capacity assessment must always be decision and time specific. In this case the decision being assess is Andrew's capacity to decide on where he wants to be discharged to using the 2 stage test- see fact sheet on capacity assessments.

Who should assess?

The assessor must be the person who is directly involved with the individual at the time the decision needs to be made. As the decision relates to accommodation needs- the assessor will be the Social Worker dealing with Andrew.

What does the MCA say about unwise decisions?

One of the 5 statutory principles of the MCA refers to unwise decisions. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

Factsheets relevant to these questions are

- Assessing capacity and best interest decisions
- The 5 Principles and FAQ factsheets

These factsheets can be accessed at

www.dudleyccg.nhs.uk/mental-capacity-act-project/



Scenario 3- Ann has end stage Alzheimer's disease and multiple cardio- respiratory problems. This clip shows Anne's consultant meeting with a relative and focuses on what actions should be taken when a person lacks capacity to consent to whether the clinicians should or should not attempt Cardiopulmonary resuscitation (DNACPR).

What should happen if a person lacks capacity to make a decision about Cardiopulmonary resuscitation (CPR)?

If a person lacks capacity to consent to / refuse CPR, any previously expressed wishes should be considered when making a CPR decision.

Unless there is a valid and applicable advance decision to refuse CPR or an LPA (Lasting Power of Attorney) for health & welfare which gives the attorney authority to make a decision about CPR, staff must carefully work out what would be in the person's best interests.

The benefit of CPR and the harms and risks it might pose for the patient should be agreed by the healthcare team and discussed with those close to or representing the patient.

Consulting with those close to patients in these circumstances is not only good practice, but is also a requirement of the Human Rights Act, and the MCA.

In these circumstances, it should be made clear to those close to the patient that their role is not to take decisions on behalf of the patient, but to help the healthcare team to make an appropriate decision in the patient's best interests.

Relatives and others close to the patient should be assured that their views on what the patient would want will be taken into account in decision-making but that they cannot insist on a treatment or on withholding or withdrawal of a treatment.

If a DNACPR decision is made on clinical grounds, because there is no realistic chance that CPR will be successful, there is no legal obligation to offer a second opinion, nevertheless, if the patient or those close to a patient do not accept a DNACPR decision a second opinion should be offered, where possible, in the course of good clinical practice.

Key documents relevant to DNACPR are-

Decisions relating to CPR (Oct 2014)- Guidance from the BMA, the UK Resuscitation Council and the RCN

These factsheets can be accessed at

www.dudleyccg.nhs.uk/mental-capacity-act-project/



Scenario 4- Jack is in A&E. He has a head wound. He is intoxicated and is refusing treatment for his head injury.

1. Does Jack have capacity to consent to treatment for his head wound?
2. How can you evidence that Jack can weigh up the facts?
3. If Jack lacks capacity- what could A&E do?

Does Jack have capacity to consent to treatment for his head wound?

Jack is intoxicated so he has impairment to his brain that might impact on his ability to consent to treatment. The A&E doctor must use the two stage test to show if Jack lacks capacity to consent to treatment for his head wound. They must check that Jack can understand the relevant information, retain it for long enough to make a decision, weigh up the facts and communicate his decision- failure to be able to do any one of these things means he lacks capacity for that decision at that time.

How can you evidence that Jack can weigh up the facts?

For someone to have capacity, they must have the ability to weigh up information and use it to arrive at a decision. In this case the assessor would need to ask Jack what his decision is regarding the treatment and then ask why he had made that particular decision. If Jack's reasons do not make sense or do not seem to be based on the relevant facts- he lacks the ability to weigh up this decision.

If Jack lacks capacity- what could A&E do?

- A) Encourage Jack to wait in A&E until he is sober enough to be able to decide if he wants treatment
- B) Use restraint to treat the head wound- this can only be done if the restraint used is a proportionate response to the risk of harm to Jack should the wound not be treated. This must be fully documented in the clinical notes
- C) If Jack refuses to wait in A&E or if using restraint is not a proportionate response to the risk of Jack having no treatment- A&E would need to document this clearly in his record and they would not have any authority to treat Jack.

Factsheets relevant to this scenario-

- Assessing capacity and best interest decisions
- MCA and restraint

These factsheets can be accessed at

www.dudleyccg.nhs.uk/mental-capacity-act-project/



Scenario 5- David has Multiple Sclerosis. He lives at home with his wife Hannah and has appointed Hannah as his Lasting Power of Attorney for health and welfare. The film is set in a GP surgery and looks at what happens when Hannah wants to use her authority to make decisions on behalf of David.

1. What checks must the GP make when given a copy of a LPA?
2. What happens if the GP goes against a decision made by the LPA
3. When does the LPA give authority to the attorney to make decisions?

What checks must the GP make when given a copy of an LPA?

The GP needs to check the Office of the Public Guardian online service to confirm that the LPA has been registered. If it has not been registered – it is not valid

The GP needs to check who the LPA gives authority to and check the scope of decisions given to the attorney to make sure that Hannah is named as the attorney and the LPA authorises Hannah to make decisions about the treatment that the GP wishes to propose.

What happens if the GP goes against a decision made by the LPA?

The GP would not be protected from liability under section 5 of the MCA

When does the LPA give authority to the attorney to make decisions?

A health and welfare attorney can only make decisions about health and welfare when the person lacks capacity to consent / make a decision. So it is important to confirm the person lacks capacity to make the decision before Involving the LPA.

The donor can authorise an LPA for Property & Affairs to make decisions on their behalf when they still have capacity or they can choose to only allow the LPA to make decisions for them when they lack capacity.

Factsheets relevant to this scenario-

- Lasting Power of Attorney
- FAQ factsheets

These factsheets can be accessed at

www.dudleyccg.nhs.uk/mental-capacity-act-project/



Scenario 6- Tariq is 22 years old and lives at home with his family. He has learning disabilities. Tariq has a leg ulcer which requires treatment. Health care professionals are finding it very difficult to see him face to face. This clip looks at how the MCA can be applied when families prevent clinical engagement.

What should happen next?

Do not close the case and make sure partner agencies who are also working with Tariq, have been consulted.

Document a capacity assessment for Tariq's ability to consent to treatment and complete a risk assessment.

Make a best interest decision if Tariq lacks capacity to consent using the checklist set out in the MCA.

Make sure a safeguarding alert has been made.

Seek legal advice- if Tariq is considered to lack capacity to consent to treatment and he is assessed as being at significant risk if treatment is not administered- the case should be taken to the Court of Protection. It is important that the application to the court is not delayed. The Court has the power to authorise the health care professionals to see Tariq and to deliver treatment.

Factsheets relevant to this scenario-
The Court Of Protection

These factsheets can be accessed at

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