



Department  
of Health

# Valuing every voice, Respecting every right

Dementia Action Alliance  
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# Mental Capacity Act 2005

Capacity is time and decision specific

The law says that those caring for individuals who may lack capacity must:

- Presume that person has the capacity to make the decision themselves
- Take all appropriate steps to support that individual to make the decision themselves
- Allow the individual to make what may be perceived to be “unwise decisions”
- Provide care/ treatment in the least restrictive way possible
- If the individual is judged not to have capacity, the decision must be taken in their (not the provider’s) best interests

# The challenge.....

- Act has suffered from a lack of awareness and understanding.... Many think the Act to an optional add-on rather than being central to their working lives
- Prevailing cultures of paternalism and risk aversion have prevented the Act becoming widely embedded

Benefits of the Act therefore not fully realised:

- Advance decisions
- LPAs
- Advocacy

# The opportunity

- Fundamental legislation that underpins the culture change and future health and care system we all want to see – that both empowers and protects
- Millions of individuals in England who may lack capacity for specific decisions at specific times
- Application of the MCA can reap REAL benefits for these individuals

# Case study

- Nancy: 86 years old, moderate dementia, lives in a residential care home.
- Life-long smoker. Every week visited by her old neighbour – walk the gardens, have a cigarette and a chat.
- Care home manager, worried that smoking may worsen Nancy's conditions removes the cigarettes. Nancy visibly upset and agitated as a result.
- Social worker in conducting a review, describes the principles of the MCA (inc. unwise decision) and explains that professionals who act in accordance with the MCA need not fear prosecution.
- Nancy given back her cigarettes, sense of well-being improves.

# Work underway

- National call for MCA materials – identify the gold standard and widely disseminate
- ADASS and NHS England to lead work on using commissioning to embed MCA in practice
- CQC putting much greater emphasis on MCA during inspections
- Greater emphasis on MCA during professional training and qualifications

# Biggest potential win: public awareness

- Ensuring that individuals, their relatives and friends are aware of – and demand – their rights in law under the MCA
- Planned work with Standing Commission on Carers, public perception work with the Alzheimer's Society, and work with Local HealthWatch
- “Statement of rights” under the MCA for dissemination

# Concluding thoughts

- The MCA – a force, in law, for realising the health and care system we want to see
- But poor awareness throughout
- How can you take the message out? What can national health and care system partners do to support you?
- Please keep in touch: [Niall.Fry@dh.gsi.gov.uk](mailto:Niall.Fry@dh.gsi.gov.uk)