

1

## Background

### [The Mental Capacity Act 2005 \(MCA\)](#)

provides the legal framework for acting and making decisions on behalf of individuals over the age of 16 who lack the mental capacity to make particular decisions for themselves because of a disturbance or impairment in the functioning of their mind or brain (whether temporary or permanent). It empowers young people to make decisions for themselves whenever possible, and protects those whom lack capacity by providing a legal framework that places individuals at the very heart of the decision making process.

2

## Why it matters

It is important that professionals, families & carers understand there is a legal framework surrounding decision making for young people. The MCA is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives. The aim is to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

3

## Information

The Act's starting point is to assume that anyone aged 16 or over has full legal capacity to make decisions for themselves (the right to autonomy) unless it can be shown that they lack capacity to make a decision at the time the decision needs to be made. The five statutory principles that underpin the Act are as follows:

4

**A person** is assumed to have capacity. It is not for the person to prove they have capacity but for others to provide evidence that they do not. **A person** must be given all practicable support to help make their own decision. **A person** with capacity can make an unwise decision - if a person understands the consequences of their decisions, it is theirs to make.

5

**Acts** done on behalf of someone who lacks capacity must be in their best interests. When considering best interests it is important to check the person's previously expressed wishes, feelings, beliefs and to consult with all interests' parties i.e. family/ carers. **Before an act** is done or a decision is made, it must be considered whether it can be achieved in a way that is less restrictive of the person's rights or freedoms of action

6

## What to do

If you work with young people 16 and over you have a legal duty to have regard to the MCA Code of Practice. We must do all we can to maximise capacity for our young people to enable them to consent where possible. If capacity is in doubt the 2-stage test of capacity must be carried out as set out by the MCA. Contact your MCA/ Safeguarding leads if you require further support/ advice

7

## Questions to consider

What can be done for young people we work with to maximise their capacity to make their own decisions?

Are we clear about our responsibilities under the MCA for young people in our care?

Do all staff working in your organisation with young people or their parents/ carers have a good knowledge of the MCA?

