

# Mental Capacity Factsheet



**Development work on the Mental Capacity Act (Northern Ireland) 2016 (referred to throughout as the Mental Capacity Act (NI)) is ongoing. This legislation and its accompanying guidance will provide Northern Ireland with a detailed framework for dealing with mental capacity issues for people aged 16 and over and will also reform our mental health legislation.**

It will include:

- Core principles relating to 'mental capacity' and 'best interests'.
- Guidance on establishing when a person lacks capacity in relation to a matter and who will be able to do this in different situations.

## Mental Capacity Principles:

**The person is not to be treated as lacking capacity unless it is established that they lack capacity (under the meaning in the Act).**

The starting point for all people aged 16 and over is that they have a right to make decisions about their own lives. However, there is sometimes a need to establish whether an adult may lack capacity in relation to a particular decision, act or intervention.

The Mental Capacity Act (NI) will provide a two stage test for determining whether a person lacks capacity in relation to a matter. It will also establish clearly that determinations of capacity need to be 'decision specific' and 'time specific'.

Some determinations of capacity will be able to be made by family carers, support staff etc. but some bigger decisions will require a formal capacity assessment by a trained professional.

### What can we do now?

- Think of adults, including those with disabilities, as adults. Ensure that our starting point is always to support people aged 16 and over to make their own decisions.
- Never treat someone as lacking capacity for all decisions. Think about every issue separately and whether there are some decisions a person can be supported to make, even if there are others which they are unable to make.
- If there is a concern that someone may be unable to make a big decision, or consent to a big intervention in their life, consult with a professional (e.g. the person's care manager within the local HSC Trust if they have one).

- Guidance on 'supported decision making', and on determining a person's 'best interests' where they are found to lack capacity.
- Additional safeguards for certain decisions and interventions, for example second opinions and involvement of Independent Mental Capacity Advocates.

The working date for implementation of the Act is 2020. In the interim, organisations and groups in Northern Ireland need to consider the concepts of mental capacity and best interests and their impact on practice.

**No unjustified assumptions – whether a person can make a decision for himself or herself cannot be merely on the basis of any condition that the person has, or any other characteristic of the person.**

### What can we do now?

- Never jump to the conclusion that a person cannot make a decision, based on age, diagnosis, disability or any other personal characteristic.
- Acknowledge our own preconceptions and those of others and work to challenge these.

**All practicable support and help must be provided to enable the person to make the decision – the person is not to be treated as unable to make a decision unless this has been done without success.**

### What can we do now?

- Current good practice, including person-centred practice, requires that we do everything possible to support people to be involved in decisions that affect them, regardless of whether they may be found to lack capacity.
- This can include steps such as providing information in a way that is suitable to the person, considering the best time and place to do this and thinking about who are the best people to be involved and support the person's decision-making.
- We can also refer to services such as Speech and Language Therapy and Independent Advocacy where available, to help support communication and involvement in decisions.

**The person must not be treated as unable to make a decision merely because he or she makes an unwise decision.**

### What can we do now?

- Never jump to the conclusion that a person cannot make a decision, on the basis that we don't think that they are making a good decision.
- Reflect on our practice and how open we are to unusual or eccentric decisions that others may choose to make.

## The Best Interests Principle:

**Any act done on behalf of a person who lacks capacity must be in his or her best interests.**

The process for determining the 'best interests' of a person who lacks capacity in relation to a matter will be set out in the Mental Capacity Act (NI). This will require involvement of the person and other relevant people (e.g. family members who the person has asked to be involved) about their past and present wishes and feelings, their beliefs and values, and other factors that they would be likely to consider if able to do so.

### What can we do now?

- Never use the term 'best interests' as shorthand for our own opinion or what professionals or a person's family think is best for them and challenge others who think about best interests in this way.
- Ensure that we involve people in decisions and, where they are unable to make a decision fully for themselves, that their wishes, feelings, beliefs and values are given full consideration.

## Standards and Guidance

Volunteer Now has developed standards and guidance applicable to all organisations providing services or activities for adults. The guidance includes a self assessment checklist which organisations can use as a tool to assess where they are in relation to safeguarding and what they need to do to improve. It also assists with the development/review of safeguarding policies and procedures. To access the Department of Health endorsed minimum standards **Keeping Adults Safe: A Shared Responsibility** visit the publications page at [www.volunteernow.co.uk](http://www.volunteernow.co.uk)

## Keeping Adults Safe Training

Volunteer Now delivers a range of Keeping Adults Safe training modules including:

- **Keeping Adults Safe: An introduction**
- **Keeping Adults Safe: Training for staff and volunteers**
- **Keeping Adults Safe: Recruitment, Selection and Management**
- **Keeping Adults Safe: Policy Development**
- **Keeping Adults Safe: Adult Safeguarding Champion and Appointed Person Training**
- **Keeping Adults Safe: Mental Capacity Roadshows**

For more information or to book, contact Volunteer Now

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