

Mental Capacity in a Safeguarding Context

Overview of the Mental Capacity Act 2005

- This is a key piece of legislation that provides for decision making when a person is unable to do so for themselves
- Impairment of mental capacity can be impacted by;
 - Acquired (ie stroke) or existing brain injury
 - Mental ill health
 - Dementia
 - Learning disability
 - Substance misuse
 - Impairment through illness or the treatment of illness
- 5 Key Principles;
 - **A presumption of capacity;** Capacity is assumed to be there unless proved otherwise. You cannot assume that someone cannot make their own decisions just because they fit into any of the categories on the last slide for instance
 - **Individuals being supported to make their own decisions;** A person must be given all practicable help they can be to make their own decisions. If lack of capacity is established they should still be involved in the decisions made.
 - **Unwise decisions;** People have the right to make 'unwise' decisions and this is not enough to be a lack of capacity. Values, beliefs and preferences are important and valid.
 - **Best Interests;** Anything done on behalf of someone who lacks mental capacity should be done in their best interests.
 - **Less restrictive option;** Consideration should be given to the way decisions are made and implemented, if actions or decisions can be made in a way that interferes less with the persons rights and freedoms then this should be chosen. Consideration at every point a decision is made should also weigh up whether any intervention is necessary at all.

Key points to consider within your safeguarding role

1. Understand the Mental Capacity Act principles (above), this will guide your decision making if concerns exist
2. Share your concerns early and seek advice and guidance
3. Collaboration and communication, make sure you are using a multi-agency approach and involving professionals who can support the process effectively
4. Consult the 'Mental Capacity Act 2005 Code of Practice' which provides examples and practical guidance
5. Ensure clear record keeping, document concerns and keep clear records of meetings and decision making throughout
6. Seek legal advice if action is necessary, this is a complex legal area and you want to be clear on your actions and way forward, ensure that Deprivation of Liberty Safeguards (DoLS) are fully considered
7. Ensure support and supervision for yourself, it is often distressing to deal with safeguarding concerns and cases and you need to recognise the impact on yourself of going through this process
8. Empower the individual concerned, remember the principles and ensure that the person at the heart of this process is involved as much as possible and understands as much as possible about what is happening.
9. Regularly review the situation, incapacity can change over time and impaired decision making does not apply in all situations, be sure there are regular reviews to continue to provide best practice and effective support