

Worksheet 14:

The Mental Capacity Act – Applying the 5 Statutory Principles

1. The presumption of capacity: “A person must be assumed to have capacity unless it is established that he/she lacks capacity”. The Act sets out clearly that individuals have the right to make choices and decisions for themselves (the right to autonomy) unless it is shown that they lack capacity to make these choices and decisions themselves.

‘Capacity’ is not something you have or don’t have. Capacity is about a specific decision which needs to be made at a specific time.

What specific decisions do we make every day?

What decisions might we make just once in our lives?

2. Maximising decision-making capacity: “A person is not to be treated as unable to make a decision unless all practical steps to help them to do so have been taken without success”. Practical steps might include using different means of communication, providing information in an accessible form, or treating an underlying medical condition.

Think about the last BIG decision you made. What information did you need before you were able to make this decision?

3. Unwise decisions: “A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision”. This principle again underpins the right to autonomy, and reflects the fact that we each have our own individual values, beliefs, preferences and attitudes to risk, which may not be the same as those of other people.

Have you ever made an unwise decision – what was it?

What happened as a result of making this unwise decision?

4. Best interest: “An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his/her best interest”. It is not possible for statute to give a single, universal definition of ‘best interest’ because what is in one person’s best interest will depend on that particular individual and his or her personal circumstances.

What role would the family carer of the person with dementia have in helping to determine what would be in their best interests?

Might there be any conflict of interests?

5. Least restrictive alternative: “Before the act is done, or the decision is made, regard must be given as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action”. Is it possible to decide or act in a way that would interfere less with the person’s rights and freedoms?