

Edel Parsons, West Sussex CCGs.

Application of the Mental Capacity Act for Looked After Children.



What do we know about consent?

Declaration I declare that the information provided is
complete and correct.

Signature



16 & 17 year olds.

- Nobody can consent on behalf of someone over the age of 16.
- MCA ascends parental responsibility >16.
- The Act has several exemptions for those <18 and exceptions for those <16
- There is now case law for DoLS <16 and 17.

Know your 5 principles

- Assume Capacity
- Help people have capacity in all practical ways before deciding they don't have capacity
 - People are entitled to make unwise decisions
- Decisions for people without capacity should be in their best interests
- Decisions for people without capacity should consider less restrictive options

Assessing capacity

- What are the decisions being made when working with looked after children?
- Who is the decision maker



When, how and what?

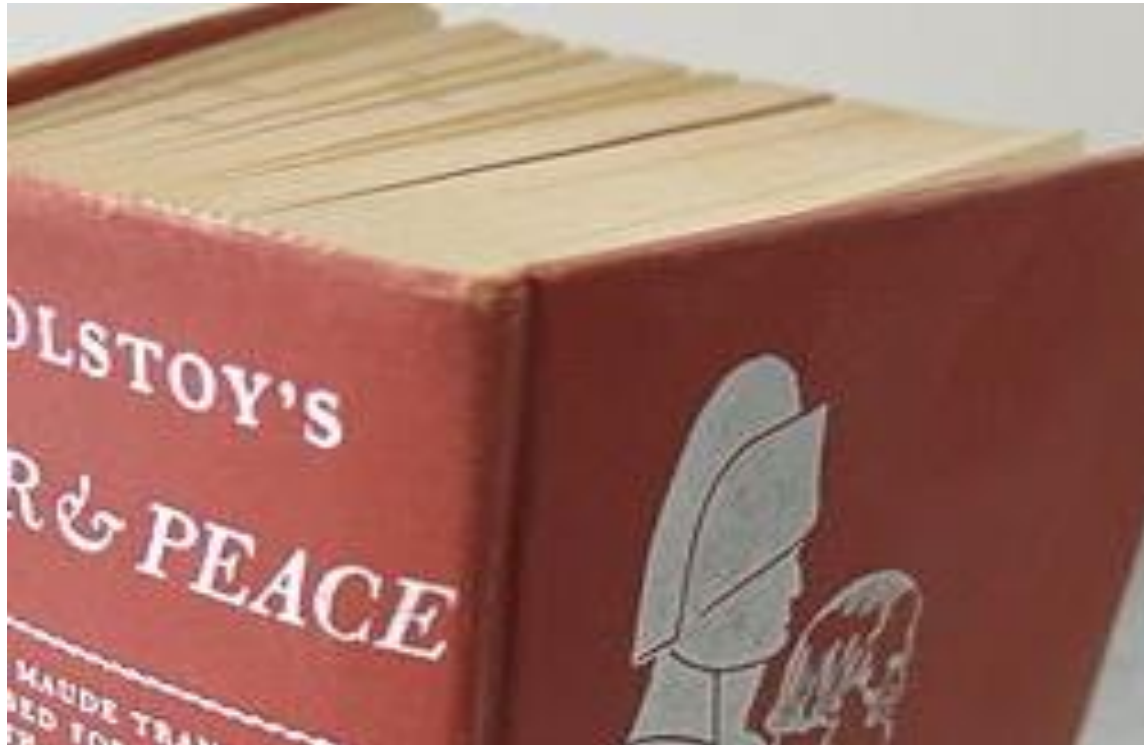
The decision and time specific assessment of capacity.

Required for decisions where there is any indication that a person may not be competent to consent.

1) Diagnostic test: Is there an impairment of, or a disturbance in the functioning of, the mind or brain?

2) Functional test: Is the individual unable to do any of the following –

- Understand the information
- Retain the information long enough to decide
- Balance, Weigh up or use the information
- Communicate their decision (by any means)



What do you need to record?

A script

Valid consent is required for the following (treatment, referral, examination, test). I have given X information in the available options which are (please specify options available including no treatment). I took the following steps to help the person reach the decision. I gave the information on the available options in the following way (details for each option eg leaflet, easy read leaflet discussion) to maximise their understanding. I did this on(date and time). P expressed/did not express concern about the following. I ensured that I took P's views into consideration.

So what next?

The best interests checklist

The decision maker must:

- **Involve the person who lacks capacity**
- **Have regard for past and present wishes and feelings, especially written statements**
- **Consult with others who are involved in the care of the person**
- **Not make assumptions based solely on the person's age, appearance, condition or behaviour**

This can be the biggest challenge in health care.

Wye Valley NHS Trust v Mr B

“Lacking capacity is not an off switch for freedoms”

Case Study

Trina is 17. She has a history of CSE and substance use. She is 20 weeks pregnant. She has so far declined a termination and has been informed that her baby will be taken away from her at birth.

She has just told you that she has now decided that she wants to have a termination; not because she does not want a baby but because she does not want her baby taken away from her.

What is the decision to be made?

Who is the decision maker?

What is your role?

Resources

- <http://easyhealth.org.uk/> - easy read resources
- <http://www.mentalcapacitylawandpolicy.org.uk/new-mcadols-online-resource-for-medical-professionals/>
- http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp - mental capacity decision support tool
- Law commission <http://www.lawcom.gov.uk/>
- LPAs <https://www.gov.uk/power-of-attorney/overview>
- Case law http://www.39essex.com/cop_cases/

Thank you



Any questions?

