

## Important legislation for Planning Ahead

### The Care Act 2014

In the Care Act, the Local Authority must involve people in decisions made about them and their care and support. If your relative has care and support needs and would have difficulty in being involved in processes such as assessments, care and support planning and reviews the Local Authority (LA) must make sure they have an appropriate individual or independent advocate to support them. An independent advocate cannot be someone who is already working with your relative in a paid capacity.

### How the Care Act can help families with planning for the future.

#### Wellbeing

- At the core is the principle of wellbeing which includes specific areas such as protection from abuse and neglect; physical and mental health and emotional wellbeing; family and personal relationships and suitability of living accommodation.
- Principle must be applied more broadly to help people achieve the outcomes that matter to them in their life.
- The Local Authority must promote **wellbeing** when carrying out any of their care and support functions such as an assessment, making a decision for both the cared for and the carer. LA's must establish the impact of caring on the carers wellbeing and whether they are willing and able to continue to provide care.
- Planning for the future during an assessment can contribute to your relative's wellbeing.

Everything a local authority does under the Act: they must promote the well-being of the individual, including:

- personal dignity and treating you with respect
- physical and mental health and emotional well-being
- protection from abuse and neglect
- control over day-to-day life including care and support and the way in which it is provided
- participation in work, education, training, or recreation
- social and economic well-being
- domestic, family and personal relationships
- suitability of living accommodation
- contribution to society

#### Prevention

- The aim of prevention is to ensure care and support does not wait for people to reach a crisis point before responding. This is a statutory duty. Prevention helps people retain skills and reduce their dependency and to plan as it reduces the risk of inappropriate decisions being made under pressure should an emergency occur.

#### Information and Advice

- LA's have a duty to provide information and advice to make it easier for people to make well informed choices about their care and support at a time when they need it.

#### Other points

- LA 's should work with other public services such as health and housing.
- Carers have a statutory entitlement to a Carers Assessment that is separate from the person they are caring for.
- Carers should be supported to look after their own health and have a life beyond caring.
- At an assessment all a person's eligible needs should be identified regardless of whether they are being met by the carer.
- Ability to maintain family or other significant relationships should be considered.

- Duty to provide an independent advocate for those who have substantial difficulty in engaging in the Care Act processes such as assessment or care and support planning.

## Resources

[OxFSN's Guidance on the Care Act 2014](#)

[Home Farm Trust: A guide to the Care Act 2014 and other laws](#)

## The Mental Capacity Act

Mental Capacity is another way of saying the ability to make a decision. It is helpful to understand the **Mental Capacity Act** and the meaning of '**best interests**' decisions as these underpin the way everyone working with people with learning disabilities should approach decision making.

As a family carer the Act is relevant if you need to

- Support your relative to make a decision.
- Make a decision or act on your relative's behalf (acting in their best interest).
- Question or challenge a situation where someone else such as a care manager or support provider makes a decision or assessment of capacity that you do not agree with.

The Mental Capacity Act has **5 key principles** that define the way decision making should be approached.

1. It is assumed that a person has capacity to make a decision unless it is shown otherwise. It is also important to understand that the ability or 'capacity' to make a decision is looked at for each decision: no one is ever assumed to lack capacity for all decisions; before anyone can make a decision on behalf of someone, it needs to be shown that the person does not have the capacity to make that decision.
2. A person should be given as much support as possible to make a decision – this may involve thinking about different ways of asking a question or giving information (see section below on shared decision-making).
3. People have the right to make unwise decisions – the fact that someone makes a decision that seems unwise to others, or that others do not agree with, does not mean that the person lacks capacity.
4. Any decision made on a person's behalf must be made in their best interests.
5. Any decision made on a person's behalf should aim to limit their rights and freedoms as little as possible.

The Mental Capacity Act has a **Code of Practice** that provides guidance to professionals in health, social care, and housing as well as staff providing care.

## Finding out if your relative can make a decision

A person is assessed as being unable to make their own decision if they cannot do one or more of the following four things:

- Show some understanding of the information given to them to make the decision.
- Retain that information long enough to be able to make the decision.
- Weigh up the information and use it to make the decision.

- Communicate their decision – this could be by talking, using sign language or movements such as blinking an eye or squeezing a hand.

## Best Interest decisions

The MCA sets out a process to ensure that a decision made for people who have been assessed as not having the capacity to make it themselves is made in their best interest. Best interest does not mean what you would choose if you were in their situation – it is about knowing their values, wishes aspirations and what you think they would choose if they did not lack capacity.

When it comes to finance, social care, or health, it is likely that professionals will be the decision maker, but they are expected to get the views of people with an interest in your relative's welfare including family members, paid staff and other people who know them well.

When it comes to deciding big decisions such as where your relative may live, a best interest's decision should be held.

## Challenging decisions

You may agree that your relative is unable to make a decision, but you disagree with the suggestions being made on their behalf. In this case it is helpful to keep a written log of what works or does not work for them. If you have gathered this information through person centred planning and have involved other people who are important to your relative it is likely to have more influence.

## Resources:

[Home Farm Trust: Using the Mental Capacity Act](#)

[Gov.UK: Making decisions on behalf of someone](#)

[Mencap: Mental Capacity Act Resource Pack](#)