

# CAPACITY – GUIDANCE ON MAKING DECISIONS

**We make decisions every day often without even realizing and may take this for granted. Some people are able to make every decision about their own lives. Some people are able to make some decisions and a small number of people cannot make any decisions. Being unable to make a decision is called “lacking capacity”.**

The Mental Capacity Act 2005 (MCA) states that every individual has the right to make their own decisions and provides the framework for this to happen.

The issue of capacity or decision making is a key one in safeguarding adults and it is useful for sports organisations to have an overview of the concept of capacity.

The MCA is about making sure that people over the age of 16 have the support they need to make as many decisions as possible.

The MCA also protects people who need family, friends or paid support staff to make decisions for them because they lack capacity to make specific decision.

To make a decision we need to:

- Understand information
- Remember it for long enough
- Think about the information
- Communicate our decision

A person’s ability to do this may be affected by things like learning disability, dementia, mental health needs, acquired brain injury or physical ill health.

Our ability to make decisions can change and fluctuate:

Here are some examples which demonstrate how the timing of a question can affect the response.

- A person with epilepsy may not be able to make a decision following a seizure.
- Someone who is anxious may not be able to make a decision at that point.
- A person may not be able to respond as quickly if they have just taken some medication that causes fatigue.

These examples all demonstrate the situation where it may appear as though the person cannot make a decision but later in the day, presented with the same decision, they may be able to or at least be involved.

The MCA recognises that capacity is decision specific so no one will be labelled as lacking capacity per se. The MCA also recognises that decisions can be about big life changing events such as where to live but equally about small events such as what to wear to the football match on a cold day.

## What does this mean for sport and activity organisations?

By being aware of the principles of the MCA you will be aware of the importance of people making their own decisions, being involved, having control and taking part in the decision making process.

A person attending a sporting event may well have made many decisions before they arrive or the decision may have been made for them in their best interests. For example, you may see someone not dressed appropriately for the sporting event but whose decision was it?

This could include:

- Do they want to attend the event?
- How are they going to get there?
- Do they need support?
- What equipment do they need to take part in the event?
- Is this particular sport safe for them to take part in?

By understanding the MCA you will be able to understand how you may be part of the decision making process for the person. This could be simply taking more time to explain the rules of the game or noticing that the carer who attends with the participant takes over the decisions making or you could be asked for your opinion of what might be in their best interests.

To support you in understanding the MCA there are 5 key messages:

1. Assume that people are able to make decisions, unless it is shown that they are not – if you have concerns about a person's level of understanding attending one of your events you should check this with them and if applicable people supporting them.
2. Give people as much support as they need to make decisions - you may be involved in this, you might need to think about the way you communicate or provide information, you may be asked your opinion.
3. The right to make unwise decisions as long as you understand the implications – a person may want to play a contact sport even though they are unsteady on their feet. If

they understand the implications then consider how risks can be minimised so they do not miss out, for example by using protective sports equipment.

4. Best Interests - If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests' .This means that the decision must be what is best for the person, not for anyone else. If someone was making a decision on your behalf, you would want it to reflect the decision you would make if you were able to.
5. Find the least restrictive way of doing what needs to be done.

## Making Decisions

When a person needs help to make a specific decision the following should be considered before a decision could be made in their best interests.

- The individual needs all the relevant information to make the decision
- If there is a choice of options, has information been provided on the alternatives?
- The communication needs of the individual have been taken into account and the information presented in a way that makes sense for them
- Different communication methods have been explored, including obtaining professional or carer advice and support
- The risks and benefits have been considered of any decision

## Practice example

Ranj is 20 and has autism. He lives in flat with some support provided by a local care provider. He has a keen eye for detail and prides himself in this ability. Ranj suffers from some muscular discomfort if

he stands for too long and he can be prone to chest infections. Ranj has always had a passion for football and a person he has met at college has introduced him to his local team that he plays with every weekend. Ranj wants to 'run the line' for the team, he knows the rules and this plays to his strength.

Some of Ranj's support team are concerned that he will suffer muscle pain in his legs and will also be more prone to chest infections throughout the winter and with that in mind feel Ranj does not understand the consequences. They feel this gives them the right to overrule Ranj as they are acting in his 'best interests'.

In this case the support team have not checked out with Ranj his understanding. Ranj was adamant that he wanted to continue with his involvement with football and in the long term would like to become a referee.

Ranj raised his concerns and aspirations with his personal advisor at the college. The personal advisor helped Ranj to raise this with his support team.

Ranj's understanding of the consequences was discussed with him. Together they fully weighed up the pros and cons of his involvement versus becoming unwell. Ranj felt that he should be able to decide: he wanted to develop his interest and also make some friends. The outcome was that the coach of the football team gave Ranj some tips on suitable clothing to stay as dry and warm as possible. Ranj also learnt some stretching techniques from the team which helped his muscle tightness. Ranj's support team and the support offered helped him to stay as well as possible whilst empowering him to stay in control of his own decisions.

## Practice example

Doris is 72. She is a long term member of her bowls club and has been offered the opportunity to join a group travelling overseas to watch the first team in a tournament.

Doris is excited to do this and gains a lot of support from her friends who also attend, particularly as they helped her to get to the venue following her recovery from a minor stroke and keep an eye on her.

Doris is really excited and says that she really wants to do this with the club and she is determined to go even though her travel insurance is very expensive. Her family are very concerned about her health and the risks of her becoming unwell on holiday. As well as the cost of the trip and the insurance, they feel she hasn't been herself since the stroke.

The outcome is that the club welfare officer has provided Doris with detailed information about the trip that Doris understands, including the itinerary and the cost. They also discussed the good support network that Doris has within the bowls community. Doris has also visited the GP, who has advised her about her condition and generally staying well whilst travelling.

Doris is able to understand the information and weigh up the consequences and proceeds to book the trip. Looking at all the information about the trip, the family recognise that Doris has the right to make the decision even if they feel it is 'unwise'.

This disagreement with her family has prompted Doris to apply for a Lasting Power of Attorney in order to plan ahead for a time when she may not be able to make decisions.

### What can organisations learn from this?

- These practice examples importantly demonstrate that we should not discriminate or make assumptions about someone's ability to make decisions or pre-empt a best interest's decision merely on the basis of the person's age or appearance, condition or any aspect of their behaviour.
- You could be involved in a minor way or asked for more detail.
- You could influence participants' enjoyment and support their future attendance, for example by adapting the way that you provide information so they can make a decision, or by just being aware of the MCA.
- You may notice that a person is receiving support that is not in line with the MCA and want to address this.