

Mental Capacity Act (MCA), deputyship and empowerment - THE IMPACT ON OCCUPATIONAL ENGAGEMENT

Adam Ferry is an occupational therapist and Director of **The OT Service** with a background in neurological rehabilitation



Adam Ferry

The Mental Capacity Act (2005) is designed to not only protect but also empower a person deemed to lack capacity for either welfare or property/affairs¹. The protection element is generally well-established and applied but the use of the act to empower individuals may be less explicit.

Let us first consider the idea of using the MCA to empower an individual who lacks capacity, using the NHS 6 C's as a way of providing practical examples to illustrate application:

	MCA principle	Empowering application
Care	4th	Decisions for a person who lacks capacity must be in their best interests. Consider past beliefs, values and wishes.
Compassion	1st	Someone may be able to make some decisions and not others. Don't use assumption of capacity to do nothing or lack of capacity to 'impose' views or decision.
Competence	5th	Actions must be least restrictive as possible. Use positive risk assessments and may mean accepting their attitude to risk is different to yours.
Communication	2nd	Take all steps to support a person to make decisions themselves.
Courage	3rd	People have the right to make unwise decisions. Take care and have courage to understand the balance of choices a person may make trading costs and benefits that are meaningful to them.
Commitment	All	Improving the care and experience of clients and their families requires commitment from all professionals to ensure the empowerment ethos of MCA is reflected in practice.

Table 1 (see left): Adapted from: NHS England (2016) 'Linking the empowering ethos of the Mental Capacity Act principles with the person-centred principles of the 6Cs'

The key statements from the table above are **best interests, least restrictive, right to make unwise decisions**; although they should be very familiar to members of the multi-disciplinary team (MDT) as values of the MCA it is important that we reflect on whether their application is consistent in the context of empowerment as well as protection.

As part of the reflection on the impact of financial deputyship and occupational engagement, let's consider the roles of a deputy for property/affairs and an occupational therapist within the MDT.

OCCUPATIONAL THERAPY

Empowerment forms a strong part of occupational therapy practice, with the overall aim of using client centred, holistic assessment and intervention to maximise independence and engagement in meaningful occupations.

The World Federation of Occupational Therapists define occupation as:

'...the everyday activities that people do as individuals, in families and with communities to occupy time and bring meaning and purpose to life. Occupations include things people need to, want to and are expected to do.'²

The terms 'want' and 'expected' are crucial within the definition in the context of empowerment as they extend the scope of intervention beyond 'need' as may be traditionally covered within statutory services provision.

The occupational therapist's role is therefore to enable participation in everyday tasks and positively assess risk in the context of what is meaningful to the person.

FINANCIAL DEPUTY

A deputy is appointed to support a person make decisions or indeed to make decisions for that person. For property and affairs this means ensuring that finances (including any estate) are secured, protected and managed in accordance with principles of the Mental Capacity Act Code of Practice³.

The Deputy, under the MCA is permitted to make or support decision as per the court's direction, but including a wide range of decisions made, or actions

taken, on behalf of people who may lack capacity to make specific decisions for themselves. These can be decisions about day-to-day matters – like what to wear, or what to buy when doing the weekly shopping – or decisions about major life-changing events, such as whether the person should move into a care home or undergo a major surgical procedure.

Appointment of a deputy for property & affairs is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. But the Act also aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack capacity to make decisions to protect themselves. (MCA Code of Practice).

CHALLENGES

What seem like perfectly aligned values can become challenges when applied from different angles or perspectives. For example, consider the case in table 2; this client has a court appointed deputy for property & affairs who has to ensure that the client, who is at risk of financial abuse, remains safe and his funds last him his lifetime.

Person	The client is male in his mid-twenties who had a TBI as a child resulting in high level cognitive deficits. He is able to function effectively with most daily tasks but has significant executive function difficulties including attention control, working memory, reasoning, problem solving and self-regulation. These difficulties often result in spontaneous decision making, particular in relation to spending.
Environment	The client lives with his wife and young child in a property purchased from capital funds. The client's mother-in-law visits regularly but otherwise he is quite socially isolated with no apparent close group of friends.
Occupation	He spends time driving, although often with no destination, and enjoys being in the car. He has a games console and likes to buy new games. He also uses this for streaming services. He has a lot of spare time and often fills it by spending money online. Accessible funds have recently been significantly reduced to minimise 'waste' spending and re-instate some financial control.

Table 2: Applying PEO model of practice (Law et al, 1996)

Application of the MCA to protect in this case is explicit; limit immediate access to money so that the client and indeed his money are safeguarded. However, the application should consider both protection and empowerment and raises important questions:

1. What is the holistic impact on the person?
2. How is a 'reasonable' weekly budget determined?
3. Is this the least restrictive solution?
4. Does this impact on a therapy plan?

The client is a husband and father, so it is crucial to understand the importance placed on these roles. Limiting access to funds may impact on how he perceives himself and how he is perceived by others. The process of requesting additional funds for spending outside of the weekly budget requires thought. The person needs to be empowered and creating layers of process may create a feeling of passiveness at best or despair at worst.

The determination of budgets with opinions provided about what is reasonable is often subjective. We must never lose sight of how the term reasonable does not mean 'need' and take the person's 'wants and expectations' into account. An imposed budget that does not allow flexibility or take this into account results in the loss of the least restrictive principle.

As part of the therapy plan an occupational therapist will be working to maximise independence. This will include the development of skills to achieve goals which may, as part of daily living activities, include financial management. Significantly limiting access to funds may in some cases inhibit the therapy process by reducing choice and therefore the opportunity to work on reasoning and self-regulation. The therapy plan by nature of being client-centred is intended to empower, therefore application of the MCA in an attempt to protect in this instance would be fundamentally dis-empowering.

Ultimately decisions need to be balanced, ensuring that protection and empowerment are considered in equal measure. Acknowledgement that any decision made 'for' the person, or that restrict the person's options, has an impact on other aspects of occupational performance or engagement is crucial so that consideration can then be made about 'least restrictive' and 'best interest'.

Risk assessment should be built around balanced and positive risk taking to ensure that the person is not occupationally deprived or disempowered by the MCA, instead focusing on the person's potential to reach goals and maintain successful, fulfilling roles through engagement in meaningful occupation.

REFERENCES

- 1 Mental capacity Act (2005) at a glance' (2020): Social care institute for excellence.
- 2 <https://wfot.org/about/about-occupational-therapy>
- 3 Mental Capacity Act (2005) code of practice: Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf



Contact **Adam Ferry**, Director and Occupational Therapist | Tel: **0333 444 0062**
Web: www.theotservice.co.uk