

***Is the Mental Capacity Act working? Perspectives
from research and evaluation***

Toby Williamson

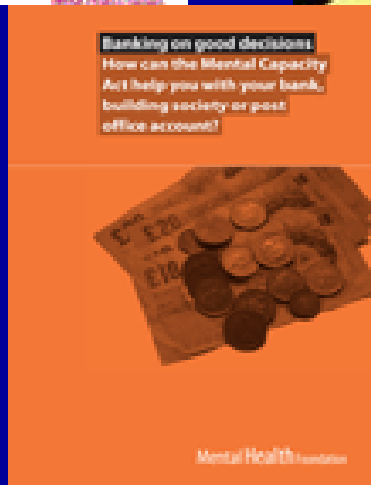
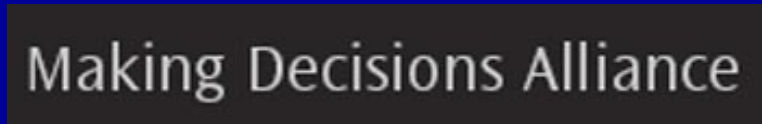
Head of Development & Later Life

Mental Health Foundation

Mental Health Foundation

- UK wide charity – incorporates the Foundation for People with Learning Disabilities
- We carry out research and development projects, provide information, and seek to influence and improve individual lives and organisations at both local and national levels
- Our work addresses life long mental health issues, problems and conditions, and issues affecting people with learning disabilities
- No local branches/members or direct services

The Mental Capacity Act (MCA) and our work



Policy
Research
Guidance
Information
Audit & review

The MCA and some views from research

Mostly medical (psychiatric) research

- Awareness, understanding and awareness of the MCA increasing e.g.
 - In old age psychiatry (Shah et al, 2009)
 - In palliative and neurological care settings (Wilson et al, 2010)
 - Across health and social care settings for people with dementia (EVIDEM study – ongoing)
- But some concerns e.g.
 - Advance care planning (Wilson et al)
 - Residential care (EVIDEM)
 - Service user and carer concerns (Manthorpe et al 2009)

The MCA and some views from research

Some studies on extent and affect of mental capacity in different patient populations e.g.

- Compulsory psychiatric patients more likely to lack capacity 94% than voluntary patients (24%) – (Owen et al, 2009)
- Most common mental capacity issue (80%) among older inpatients concerned discharge planning (Mujic et al, 2009)

The MCA and some views from research

- 50% of people from black and minority ethnic groups in old age psychiatry did not have an interpreter present when having their mental capacity assessed despite having language difficulties (Shah et al, 2009)
- 83% of psychiatric patients gave retrospective approval for treatment given to them when they lacked capacity (Owen et al, 2009)

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WHAT IS MENTAL
CAPACITY?

AUDIT YOUR
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through the AMCAT

CASE STUDIES
*examples of assessment
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*Mental Health Foundation,
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Assessing Mental Capacity

This site has been developed to help staff working in health and social care (including those in the private and voluntary sectors) as well as unpaid carers, to improve the way they assess mental capacity.

Mental capacity refers to the ability to make a decision. Visit our [what is mental capacity](#) page for more information.

The Assessment of Mental Capacity Audit Tool (AMCAT) is a simple online tool to help staff and others evaluate, reflect and learn about an assessment of mental capacity they have done. Audit an assessment using AMCAT.

- Read our case studies
- Useful resources and websites
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Reasons for assessing mental capacity (1)

	%
• Dementia	- 38
• Mental illness	- 27
• Learning disability	- 18
• Brain injury	- 8
• Intoxication due to alcohol or drugs	- 5
• Lack of consciousness	- 1
• None of the above	- 2

What was the decision about?

- A change in the person's accommodation - **26%**
- Property or financial – **12%**
- Decision making in general or more than one of the above – **10%**
- Consent to serious medical treatment – **10%**
- Another medical or healthcare matter – **8%**
- Potential deprivation of the person's liberty (DOLS) – **7%**
- Adult safeguarding – **6%**
- An 'everyday' issue (e.g. what to eat) – **6%**
- Intimate personal care (e.g. washing) – **4%**
- A care review – **4%**
- Other – **3%**
- A significant social care event (e.g. going on holiday) – **2%**
- The person taking part in research – **1%**

Reasons for assessing mental capacity (2)

- Because the person was having a problem making a decision – 33%
- Because of the person's disability, history, diagnosis or illness – 29%
- Because the person was making a decision that you or someone else thought was unwise – 25%
- Because of the person's age, their appearance or their behaviour – 9%
- None of the above – 4%

Assuming capacity

Before starting the assessment did you think the person was able to make the decision?

- Yes – 48%
- No – 52%

Was it relevant to involve someone who could tell you how best to communicate with the person?

- Yes, but I did not do this – 3%
- I was unsure but I did not involve someone – 3%

Was it relevant to have someone to support the person to make the decision – such as a relative, friend or advocate?

- Yes, but I did not do this – 5%
- I was unsure, but I did not do this – 3%

Was it relevant to check if there were any cultural, ethnic or religious factors which should have been taken into account?

- Yes, but I did not do this – 3%
- I was unsure, so I did not do this – 4%

Was it relevant to ask for specialist advice about the persons' capacity?

- Yes, but I did not do this – 4%
- I was not sure, so I did not seek specialist advice – 4%

Did you ensure the person had all the relevant information, including possible alternatives, to make the decision?

- Yes, and this is what I did – 83%

Did you explain the information in a way that was easy for the person to understand?

- Yes this is what I did – 86%

How did you decide about the person's decision making capacity?

- I looked at all of the information from the assessment and made my decision on the balance of probability – 76%
- I wasn't sure so I based my decision on previous knowledge or other information about the person – 12%
- I gave the information to someone else and asked them to decide – 9%
- Other – 3%

Was it possible to delay the decision until the person could make the decision themselves?

- Yes, but I did not do this – 3%
- I was unsure if it was possible to delay the decision until the person could make the decision themselves but I did not do this – 5%

How did you record your assessment?

- I made a detailed written note about the process and the outcome – 71%
- I made a brief written note of the assessment and the outcome at a later time (e.g. in a hand-over book, daily record sheet, the person's file or records) – 15%
- I didn't record it – 5%
- It was recorded by someone else (for instance in the minutes of a care review meeting) – 5%
- I told someone else what I had done – 4%

Challenges still to be fully met?

- Embedding the MCA in everyday practice
- Financial decision making – and accommodation (tenancies to support independent living)
- Role of families carers and friends – especially as deputies and attorneys for health and welfare decisions
- Advance planning
- Deprivation of Liberty Safeguards
- Mental capacity and personalisation

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