

Mental Capacity Act Scenarios

Individuals

1. A person with declining capacity

The story

Mrs Ali lives at home on her own. She owns the house. She and her family had been told that she has dementia. She gets quite a lot of help from her son, Javid, who lives nearby and is unemployed due to ill health. She has been just about coping with everyday tasks, but Javid has noticed that the house is getting very run-down and needs to have some major repairs. He also thinks some work might need to be done to enable her to stay at home rather than going into residential care. Mrs Ali becomes very anxious and confused if he tries to talk to her about money. Javid thinks he should talk to his mother's bank to find out if she has enough money to pay for work on the house, or if she could get a small loan. He is confident she would accept the work being done if he could organise it and she did not have to worry about the money.

A. Mrs Ali has an LPA

Mrs Ali drew up a Lasting Power of Attorney (LPA) for property and financial affairs when she was first told she had dementia. She appointed Javid as her attorney and he made sure the LPA was registered at once with the Office of the Public Guardian. When Javid became concerned about the state of the house, he went to Mrs Ali's bank and showed them the LPA and his identification. They took copies and agreed to discuss his mother's accounts with him. Javid found out that Mrs Ali did not have enough money in her savings account to pay for the work, but that he could arrange a small loan for her, to be repaid from her pension income. He did this, and was then able to talk to her and reassure her about the work that needed doing.

B. Mrs Ali does not have an LPA

Mrs Ali and her son had assumed that he could deal with anything to do with money. She said, "Your father always did all that, Javid; I don't want to get involved now". Javid went to the bank to ask whether his mother had enough money for repairs to the house, but they refused to talk to him. They said that Mrs Ali must come in with Javid and give permission. If any paperwork was needed, Mrs Ali would need to sign it – and they would need to be confident that she knew what she was signing and was really agreeing. Javid knew this wouldn't work, so he gave up.

2. A person with fluctuating capacity

The story

Carol and Eddy's son, Carl, has bipolar disorder. When he is well he is quite capable of managing his own affairs, but when he starts to feel high he often goes on spending sprees and runs up big debts. This makes life difficult for him and his family: their address shows up as problematic on credit checks and once or twice debt collectors have come to the door. Carol and Eddy are not well off and they have sometimes felt they had to borrow money themselves to pay off their son's debts. Carl is very unhappy about this when he is well.

A. Carl has an LPA

Carl wanted to find a way of having help to manage his financial affairs during the times when he is manic. Carol heard through a carer support group that a person in Carl's position could make a Lasting Power of Attorney for financial affairs. She found out that she and Eddy could become attorneys for Carl; when he was well he could manage his own affairs, but the attorneys could step in when needed. Carol and Eddy talked with Carl about this. He was a bit nervous about giving his parents some control over his money, but he thought it could help to avoid the problems he knew he had caused in the past. Carl, Eddy and Carol went together to the local Citizens Advice and talked through the forms. Carl learned that he could say what he wanted to happen. The adviser also helped them to apply for a reduced fee to register the LPA. Next time Carl started to get high, Carol and Eddy were able to speak to Carl's bank and get his cards suspended. They got him a prepaid card so he could only spend an agreed amount each week.

B. Carl does not have an LPA

Carl's mental health continued to fluctuate. Carol went to his bank to ask them for help. They said they could not talk to her about her son's accounts or do anything unless Carl agreed.

3. A person who experiences a sudden loss of capacity

The story

Duwayne and Marcella have been partners for 10 years; Marcella has shared Duwayne's flat for much of that time. She is living mainly at her mother's house at present because her mother needs a lot of support; Duwayne calls in to see her most days and they are in close contact several times a day by phone and text. One day Marcella doesn't hear from Duwayne all day and gets no reply to the messages she sends. Worried, she asks a neighbour to sit with her mum while she goes to Duwayne's flat. There is no-one there, but a neighbour tells Marcella that he found Duwayne collapsed on the doorstep and called an ambulance; they took Duwayne to hospital. Now very distressed, Marcella starts phoning the local hospitals. She finds out which one he is in, but the staff are reluctant to speak to her. She and Duwayne are not married and she has a different address. She goes to the hospital and finds out from the ward sister that Duwayne has had a very serious stroke. He is not able to speak, but the staff can see that he recognises Marcella. Marcella can see at once that there are going to be decisions needed about treatment and care; she also starts thinking about Duwayne's flat and bills, and wondering how all that will be managed.

A. Duwayne has LPAs

Marcella had been given advice about setting up Lasting Powers of Attorney for her mother. She and Duwayne thought it would be sensible to have these for themselves as well and they drew up LPAs (one each for property and financial affairs, and one each for health and personal welfare). They registered the LPAs at once. So Marcella hurried back to the flat and found Duwayne's LPAs, which both nominated her as his attorney. The next day Marcella went back to the hospital and showed them the health LPA. They promised she would be able to make decisions about Duwayne's treatment and care. Marcella then went to the bank and showed them the financial affairs LPA. They allowed her to manage Duwayne's account. She was also able to sort out Duwayne's electricity, phone and insurance.

B. Duwayne does not have LPAs

The ward sister explained to Marcella that decisions about Duwayne's treatment and care would have to be made by the hospital staff, and later a social worker. They would use 'best interests' principles to decide what to do. They would ask Marcella's opinion; they would also talk to Duwayne's son, although Marcella told them that the two men had fallen out over money and had not spoken for some years. Marcella was worried that Duwayne's son would not know his dad's preferences and might be quite happy for Duwayne to go into a home; the son might then take over the flat and cut Marcella out. These worries increased when it was explained to Marcella that the Court of Protection would decide about Duwayne's financial affairs or appoint a Deputy; she felt the Court would probably appoint Duwayne's son rather than her.

4. A young person becoming an adult

The story

Agata is 17. She is a lively young woman with learning disabilities and is going to college to study drama and dance. One of the tutors notices that Agata seems very keen on a young man in her class and often drapes herself over him; one day the tutor notices them emerging from behind a building, with Agata rather flushed and dishevelled. The tutor is worried about whether Agata understands about sex and consent; she finds an opportunity to talk privately with Agata about this. She suggests Agata should talk to her GP. Agata tells her parents about this and says she is going to see her GP "about the Pill". Agata's parents are upset; they still see their daughter as a child. Agata's mother insists on going to the GP with Agata.

The GP asks Agata if she is happy to talk in front of her mother. Agata says no. Agata's mother tries to insist, but the GP explains that Agata is over 16 and can make decisions for herself if she has capacity. No-one has mentioned capacity to Agata's mother before. The GP gives her a leaflet to read and asks her to wait outside while she talks to Agata on her own. The GP's discussion with Agata leads her to believe that Agata probably does have capacity to consent to sex, and to contraception, though she is a bit confused about some details. The GP thinks Agata could make decisions for herself if she had some support to understand the choices and potential consequences. The GP refers Agata to the local sexual health service, which offers advice in accessible ways to people with

learning disabilities. She said, “Come back and see me again, and we can talk more.” Agata agrees that the GP can talk more to her mother about this, as long as it’s clear that Agata will be the one to decide what she does.

Alternatively

The story

Agata is 17 and has learning disabilities. She does not use many words, but communicates well with people who know her. Agata’s parents, Celina and Tomasz, take her to the dentist for her regular check-up. The dentist says that Agata needs an operation to remove a wisdom tooth that will cause trouble later. He will refer her to the dental surgeon at the local hospital.

A. Well informed parents

Celina and Tomasz have heard a talk at their parents’ network about the Mental Capacity Act. They know that an operation requires consent or a best interests decision. They are a bit surprised that the dentist has not mentioned this. They do not think Agata could give consent herself, so they talk to the dentist about best interests. The dentist agrees and contacts the hospital to set the wheels in motion. Meanwhile Tomasz and Celina find some easy read leaflets about teeth, with lots of pictures, and use these to help them talk to Agata about the operation. They feel that she understands something needs to be done. They are ready to give their views when the surgeon gets in touch to discuss Agata’s best interests, and they are also able to talk about the reasonable adjustments that will be needed to enable Agata to feel OK going to hospital. The decision is made and the operation goes ahead smoothly.

B. Poorly informed parents

Celina and Tomasz agree to the dentist’s recommendation and an appointment is made. They talk to Agata about this, but no-one asks her to consent. Celina and Tomasz assume that they can still make decisions for her. They take her to the hospital and are surprised when staff there say that they do not think Agata has capacity to consent herself and ask if a best interests decision has already been made. Celina and Tomasz don’t know what this means and say that they are Agata’s parents and they will sign the consent form for the operation. The hospital staff say that the operation cannot go ahead until the surgeon has completed a best interests process. Confused and upset, Tomasz complains. Agata becomes upset by the smells and sounds, and all the waiting around.

The ward staff contact the Patient Advice and Liaison Service and arrange for Tomasz and Celina to see someone there. The PALS person explains that the Mental Capacity Act means no-one can consent on behalf of Agata now that she is over 16. The surgeon will need to meet Agata and talk to people who know her and to the dentist. PALS are able to arrange for the surgeon to meet Agata and her parents that day, but the operation has to be re-booked for another day.

The PALS person also introduces Agata, Celina and Tomasz to the acute liaison nurse, who helps them think about reasonable adjustments to be made when Agata comes in again. Agata’s operation goes ahead and is a success.

Roles, rights, responsibilities - scripts

1. Someone with Lasting Power of Attorney for property and financial affairs, trying to deal with a utility company

Hallo, I am phoning on behalf of my dad, Mr X.

Yes, he is here, but he cannot come to the phone. I have Lasting Power of Attorney for my dad's financial affairs.

No, I am not his solicitor. Lasting Power of Attorney means that I can deal with my dad's affairs for him, when he does not have mental capacity to make the decision himself.

I can send you a certified copy of the Lasting Power of Attorney if you need that for your records. It is registered with the Office of the Public Guardian.

I can provide you with proof of my identity as well if you need that (for example, a copy of passport or driving licence and a recent bank statement or utility bill).

Please acknowledge that you have received these documents and tell me when you have registered the information on my dad's account. That way I shouldn't have to explain again next time I phone up.

(If there is any difficulty, ask to speak to the manager.)

2. Someone with Lasting Power of Attorney for health and personal welfare, dealing with a hospice

Please take note that I have Lasting Power of Attorney for health and personal welfare for my sister. That means she chose me to make decisions on her behalf when she does not have mental capacity to make the decision herself. She and I talked a lot about what she wants to happen and also what she does not want. So I'm doing my best to make decisions in the way that I think she would have herself.

Yes, we do have a brother. I understand that you might regard him as her next of kin because he is the eldest. But the Mental Capacity Act says that it is up to me to make decisions if my sister cannot, because I have the LPA.

No, I cannot agree that you should contact our brother. My sister is very clear that she does not want our brother to be involved or to come and see her.

Yes, I am aware that I must act in my sister's best interests. But 'best interests' does not mean what you or I think we would choose for ourselves or just what we think would be good for her. We must take full account of what we know about her wishes.

Let me ask you: if my sister had capacity to take part in this conversation and told you that she did not wish you to contact her brother, what would you do?

So I am telling you, on my sister's behalf, that she does not want you to do that. You would cause her great distress if he turned up.

3. Deputy for property and affairs, asked to sign a healthcare consent form

I am surprised that you're asking me to sign this consent form for my cousin's operation. I am appointed by the Court of Protection to make decisions about my cousin's financial affairs. As you know, the Mental Capacity Act doesn't allow anyone to consent on behalf of an adult. We should be having a discussion about my cousin's best interests. Of course I am happy to contribute my views about what he would choose for himself if he could, but you are the decision maker.

4. Deputy for health and personal welfare

Doctor, I've asked to see you to talk about options for my daughter Katie. I've been appointed as deputy for her health and personal welfare. I want to make sure that I understand the options so I can make a decision in her best interests.

Now that Katie has a personal budget we are trying to make sure she has the chance and the support to do things that other young people do. Some of her sister's friends are working as PAs for Katie and she really enjoys going to clubs and gigs with them. But Katie gets really bad period pains and then her periods can be quite dramatic, and sometimes that's stopping her doing things she enjoys. It can be quite embarrassing too if her PAs have to rush her off to get changed. So I want to find out more about the options for managing her periods and I'd really appreciate your views.

MCA challenges

1. 'Unwise' decisions

* Mr P was admitted to the intermediate care unit, which had adopted Shared Decision Making, working with the Advancing Quality Alliance. Mr P had capacity and was supported to make a discharge plan, understanding and accepting the risks of his preferred option. The discharge form was used to record his choices, his capacity and the discussion about risks. This gave staff confidence to support his decisions, even if they seemed unwise.

After Mr P's return home community services were so worried about risks that they called an emergency meeting involving social work, the care agency, the district nurse and Mr P's family. Mr P and his family asked for support from the intermediate care unit staff at the meeting; he was able to assert his preferences and the meeting supported his wishes. He had four precious weeks at home before dying after a short illness.

* First published at: <http://www.england.nhs.uk/6cs/2015/06/02/elaine-ruddy/> Reproduced with permission from Stephan Brusch, NHS England

2. Supported decision making

* Devon nurses use easy read information to educate women with learning disabilities about cervical screening, along with an anatomically correct rag doll. This has been found to be very useful, and can also be used for teaching women how to insert tampons. Books Beyond Words are helpful, and the nurse has access to some explicit photos showing what a smear test involves. Talking mats have also been found helpful for women who are non-verbal.

Devon did some proactive work with twenty-one women who were overdue for their smear tests. Some had capacity and chose not to have a smear; Best Interests meetings were held for those who lacked capacity. One woman had had a hysterectomy, so was not eligible. Five were supported to consent and had smears taken successfully (and one person's mother had a smear too).

* First published at: <http://www.ndti.org.uk/publications/ndti-publications/screening-services-strategy-and-toolkit/>

3. Best interests decision making

* Mrs F was admitted to hospital, very confused and distressed, after a serious fire at home. Deprivation of her liberty was authorised while a best interests meeting was arranged, involving an independent mental capacity advocate.

Mrs F went to residential care while her house was repaired. Her social worker and best interest assessor felt she did not have mental capacity to decide where to live, but acknowledged her strong desire to go home. Best interests meetings were used to make a plan for her return. Mrs F agreed to have a live-in carer, and visited home several times with support to prepare for her return.

Mrs F returned home with the support, as planned. All went well for a few days, but then there was an incident. Mrs F asked to go back to 'the lovely care home to my friends'. She returned and remains there, settled and calling it her home.

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