



## **The Mental Capacity Act 2005: Module 1**

By Professor Anthony Holland

### **Introduction**

The Mental Capacity Act (MCA) 2005 came into force in two stages during 2007 and was fully in force from 1<sup>st</sup> October 2007.

All those in a professional or caring capacity with someone 16 years or older who is 'unable to make a decision for himself in relation to the matter because of an impairment of, or disturbance in the functioning of, the mind or brain' (MCA Section 2(1)) must have 'regard to the Act and to its Code of Practice'.

The MCA is relevant in many different settings and includes issues relating to personal welfare and to a person's property and affairs.

### **Section 1**

In this section, we considered the background and defining principles of the MCA. We examined how:

- The MCA provides for two specific situations:
  - the means whereby those aged 18 years or older with the capacity to do so can make provision for the future if they were to lose the capacity to make decisions for themselves for whatever reason
  - the means whereby others, who require that a decision be made or who wish to act on behalf of a person (aged 16 or over) lacking the capacity to make that decision or to undertake that act, can do so lawfully on that person's behalf.
- It aims to achieve a balance between on the one hand, respecting autonomy and self-determination and on the other hand, providing protection.
- Parliament intended the MCA to be both enabling and protecting.

We considered a number of case scenarios and looked at four points common to all that indicate that the MCA may be relevant to the resolution of their situations. These were:

- age
- impairment of, or disturbance in the functioning of, the mind or brain
- decision(s)/action(s) required
- reasons to suspect lack of decision-making capacity now or in the future

The central principle of respect for individual autonomy and the right to self-determination was covered in more detail, as well as the process required when an adult lacked the ability (capacity) to make a decision, such as consent to treatment.

Prior to the MCA it was case law that informed intervention under such circumstances. However, this dependency on case law had a number of limitations which were also addressed.

We looked at the five principles that Parliament intended to guide the application of the Act, as stated at the beginning of the MCA.

## **Section 2**

In section 2 we looked at the provisions of the Mental Capacity Act. The provisions of the MCA are administered through the Office of the Public Guardian with access to the Court of Protection if necessary.

Two major means provided by the MCA for planning for the future include:

- Lasting Powers of Attorney (LPA) (Sections 9 to 14 MCA)
- Advance Decisions to Refuse Treatment (Section 24 MCA)

We considered substitute decision-making when lacking the capacity to make a decision for oneself and acts in connection with care and treatment.

We also discussed the reasons for, the circumstances and the benefits of the Court of Protection and its powers to appoint deputies.

## **Section 3**

In Section 3 we considered the role of the Office of the Public Guardian and that of the Court of Protection - the administrative and judicial bodies that underpin the MCA.

We addressed the number of different functions and rights belonging to the Office of the Public Guardian and looked at the powers of the Court of Protection.