



Week 5: Mental Capacity Act and Autism

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Plan for today

Mental Health Act

Mental Capacity Act

Autism

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Key Mental Health Legislation



Mental Health Act

The Mental Health Act 1983
The Mental Health Act 2007



Mental Capacity Act

Mental Capacity Act 2005
Mental Capacity Act 2007t 2007

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Purpose of mental health legislation

- Mental health acts are in place for the following reasons
 - Care and treat individuals with mental disorders
 - It provides a legal framework for individuals, who are admitted within a hospital setting due to a mental disorder.
 - The act could primarily be used to assess and treat the identified mental disorder only
 - Based on the act, individuals could either be brought into hospital or detained either on a voluntary or involuntary basis.
 - However, safeguarding is in place to protect such individuals.



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Powers of Mental Health Legislation

- The powers within the mental health acts could be enforced by the following people only
 - Approved mental health professionals (AMHPS)
 - Approved / responsible clinician (RCs)
 - Doctors and professionals have the capacity and authority to make recommendations



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The principles of mental health

- The mental health act tells professionals what they are required to do. The mental health act code states how an individual is required to do it.
- All professionals are required to abide by the mental health act by **law**.
 - The mental health act code of practice 2008
 - The mental health act code of practice 2015 (revised version)



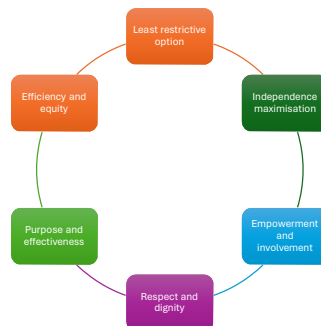
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Key Principles & Code of Practice

- All clients will be assumed to have capacity unless they are assessed and identified to lack capacity.
- An individual's right to make a decision should be empowered. Even if there might be circumstances, where unwise decisions may have been made.
- A person is not to be treated as unable to make a decision unless **all practicable steps** to help him to do so have been taken without success.
- An act done, or decision made, under this Act for or on behalf of a person must be done, or made, in **their best interests**.
- All decisions made in the best interest of the client, **should always adhere to the least restrictive approach, where the freedom and rights of the client is taken into consideration.**

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Summary of key principles of MHA



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The Mental Health Act (2007)

- When a patient can be given treatment even if they do not want it
- When they can be held in a hospital for assessment or treatment for your mental health disorder
- What the patient's rights are
- Treating patients fairly and equally



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Give treatment in the least restrictive way and help people to be as independent as possible

- Keep people in hospital if they really need it
- Keep people in hospital for the shortest time necessary
- Help patients get well and be independent
- Involve patients in planning their treatment care and plan
 - Listen to what is important to them
 - Document their views and wishes
- Give patient information and support to be involved in decisions
 - Involve family and carers if the patient wants them.

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RESPECT.

Respect patients,
family, carers and
friends

Understand that every patient is different and what
this means for their treatment and care.

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Changes to the 1983 MHA

1983 MHA
was about
the rights of
the patient

2007 is about
greater
protection for
the public



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Help people be safe

Treat people in places that are safe

Help them get help by referring to the correct agencies and support

Section 136

- If police need to take someone away from public places to keep them safe from themselves or others.
- Police will keep the person in a place of safety until an approved mental health professional can examine the person
- A police station should only be used as a safe space if there is nowhere else to take that person.

Section 47:

- Ministry of justice orders a person to be transferred from prison to hospital for treatment
- You can be kept under this section for up to 6 months.

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Section 135

You can be placed under this section if there is reasonable cause to suspect you have a mental health disorder and you are being ill treated or neglected

Unable to look after yourself and live alone.

A magistrate can issue you a warrant authorising a police officer (with a doctor and approved mental health professional to enter any premises where you are being kept and take you to a place of safety.

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What are your rights

You don't have a choice in being sectioned

You can apply to be discharged from hospital if you think you are ready

This can be done by applying to the Mental Health Tribunal

You or a family member or carer can apply to the MHT

The final decision is made by either a responsible clinician

The person who has overall responsibility for your care in hospital

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Community Treatment order (CTO)

An order made by an authorised psychiatrist

For a person having a mental illness

Involuntary treatment order while not being detained in approved mental health services.

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Changes in MHA Legislation (1983 to 2007)

	Mental health act 1983	Mental health act 2007
Definition of mental disorder	Mental illness, mental impairment, psychopathic disorder and severe mental impairment.	Any disorder or disability of mind
Professional Roles	- Approved social workers - Responsible medical officer	- Approved mental health professionals - Responsible clinician
Nearest Relative	Roles and duties of nearest relative	- Hierarchy system on how is considered nearest relative - Patient has right to displace nearest relative - Patient has right to apply to courts

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	Mental health act 1983	Mental health act 2007
Treatment	Detainment Rationale: "likely to alleviate or prevent deterioration"	- Detainment Rationale: "appropriate medical treatment test". - Definition of treatment was operationalized - Consent to treatment: second person opinion and restrictions on section 58A treatments
Supervised community Treatments	Section 25 "after-care under supervision"	Supervised Community Treatment for individuals detained under section 3 and 37
Advocacy		Independent Mental Health Advocate for detained patients

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Changes from 1983 to 2007 MHA

The removal of all different categories of mental health

The term 'mental disorder' is categorised as being any disorder or disability of the mind.

MHP Role change

- Created Approved Mental Health Professionals (AMHP's)
- Instead of the Responsible clinicians (psychiatrists on duty) to detain or discharge patients
- Wider professions such as nurses, psychologist, social workers, occupational health will be trained to do so.

Community treatments

Nearest relative and patient's right to displace them

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Resources

[Mental Health Act - NHS \(www.nhs.uk\)](http://www.nhs.uk)

[Mental Health Act 1983 \(legislation.gov.uk\)](http://legislation.gov.uk)

[Mental health act \(easy read\) - NHS \(www.nhs.uk\)](http://www.nhs.uk)

[mental-health-act-1983-code-of-practice-mental-health-act-1983-for-wales-review-revised-2016.pdf \(gov.wales\)](http://gov.wales)

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Mental Capacity Acts

The goal of the mental capacity act is to protect individuals, who may lack capacity to make an informed decisions.

The act is in place to support individuals and their carers to make a decision, based on the best interest of the client.

The key mental capacity acts

- Mental Capacity Act (2005)
- Mental Capacity Act (2007)

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5 key principles

A person must be assumed to **have capacity** unless it is established that they lack capacity.

A person is not to be treated as unable to make a decision unless **all practicable steps** to help him to do so have been taken without success.

A person is not to be treated as unable to make a decision merely because he makes an **unwise decision**.

An act done, or decision made, under this Act for or on behalf of a person must be done, or made, in **their best interests**.

Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be **as effectively achieved** in a way which is less restrictive of the person's rights and freedom of action.

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“C led a life that ‘sparkled’, characterised by impulsive and self-centred decision-making. She had four marriages, numerous affairs and spent money recklessly. Her life revolved around her looks, men and material possessions. Aged 49 she was diagnosed with breast cancer and underwent a lumpectomy and radiotherapy. She also suffered a relationship breakdown, leading to the loss of her business and home and resultant significant debt. C unsuccessfully attempted suicide.... She has been placed on dialysis, but maintains her desire to die. Those caring for her are cautiously optimistic of recovery.... The Medical profession consider that C lacks capacity and wish to enforce treatment on her...in her best interest” (Smith and Parkhouse, 2020, p.87). Based on real life case in London in 2015.

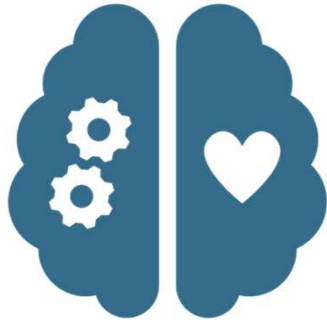
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Discuss whether the medical profession should be allowed to enforce the treatment on C.

Use the information covered so far on Mental Capacity Act in your discussion.


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Mental Capacity

- Capacity is the ability for an individual to make an informed decision and have the ability to recall it.
- An individual would be deemed to lack capacity
 - If they are unable to make a decision
 - Or if an individual finds it challenging to make a decision within a given time period
 - Mental capacity is both time and decision specific.
- **Note:** It might be crucial to assess an individual's understanding of risks associated with a particular behavior, when they are making an informed decision.

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Assessing capacity

Factors to be considered in assessing for capacity

- General intellectual ability
- Memory
- Attention and concentration
- Reasoning
- Information processing
- Verbal comprehension and expression
- Cultural influences
- Social context
- Ability to communicate.

First Stage

- Identifying if there is an impairment or disturbance in the functioning of the individual's brain
- The level of impact such impairment would have on one's decision-making skills.



Second Stage

- It would be determined that an individual is not able to make a decision if:
- They are unable to understand the information about the decision that has to be made
- They are unable to remember information
- They are unable to use the information received to evaluate the consequences of their decision
- Unable to communicate their decision effectively

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Mental Capacity Act (2005)

- The deprivation of liberty safeguard was eventually introduced
 - Providing the least restrictive treatment option
 - Ensure the best interest of the patient is always taken into consideration
 - Ensure an individual has the right to appeal in courts if required
 - Ensure an individual is in place to represent the patient

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Legal Power of Attorney and Safeguarding

- **Independent Mental Capacity Advocate (IMCA)**
 - Works with the decision maker
 - May challenge decision maker
 - Communicates based on client's wishes, beliefs and values.
- **Decision Maker**
 - Next Kin in Family
 - Request through legal documentation
 - Assign specific decision-making power to the decision maker
 - Involve IMCA in decision making process
 - Court may choose one, if one was unable to decide due to lack of capacity
- **Advanced Decision**
 - Decisions based on limitations placed on future treatments



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Are people with ASD more effectively included in our current society compared to before?

1. You could consider recent initiatives or campaigns,
- 2 the changes in Mental Health Act/Mental Capacity Act
3. You could also look at statistics, the recent using NAS's blog on the data in April 2024

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Resources

- [Mental-capacity-act-code-of-practice.pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/mental-capacity-act-code-of-practice.pdf)
(publishing.service.gov.uk)
- [https://leedssafeguardingadults.org.uk/mental-capacity-act/what-are-deprivation-of-liberty-safeguards-\(dols\)](https://leedssafeguardingadults.org.uk/mental-capacity-act/what-are-deprivation-of-liberty-safeguards-(dols))

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