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TO KEEP ADULTS SAFE



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Working in partnership to increase understanding and implementation of the MCA **Central Midlands**

Paternalism vs Empowerment – Safeguarding and the Mental Capacity Act

brownejacobson
health lawyers

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The five core principles of the Mental Capacity Act are:

- A person must be assumed to have capacity unless it is established that he lacks 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 who lacks capacity must be done, or made, in his best interests.
- Before doing something in best interests, consider whether the best interests can be achieved in a way that is less restrictive.

It should be obvious that these are as much about autonomy and empowerment as protecting people, but often the implementation of the MCA is criticised for being risk averse or paternalistic.

The new Statutory Guidance to the Care Act defines safeguarding as “protecting an adult’s right to live in safety, free from abuse and neglect”, and it includes for the first time “self neglect” in its definition of abuse or neglect.

But the guidance also recognises that “people have complex lives and being safe is only one of the things that they want for themselves”

Making an “unwise” decision doesn’t mean a lack of capacity – if respect for autonomy is going to mean anything – but in practice it can be desperately difficult to work in the lines between “self neglect”, and an “unwise” but capable decision.

One way to tackle this is to recognise that empowerment is also one of the 6 key principles of safeguarding (along with prevention, proportionality, protection, partnership and accountability). And that a capable decision, however “unwise” to refuse services and or put themselves at risk does not mean the end of any duty towards that person. Services and support can be offered on an ongoing basis, and a person with capacity can change their mind at any time. If capacity is lost, then a best

interests decision can be made, though this should be slow to over-ride the person's previously capable decision. And a safeguarding

investigation / process can still offer real value in identifying / tackling other issues, even if the Court of Protection has no jurisdiction.

It is important to get advice and support in dealing with these issues as appropriate.