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978-1-909-72642-0 — A Clinician's Brief Guide to the Mental Capacity Act

Nick Brindle , Tim Branton , Alison Stansfield , Tony Zigmond

Frontmatter

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Second edition

Nick Brindle, Tim Branton, Alison Stansfield
and Tony Zigmond

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Preface

Although this is a partner volume to *A Clinician's Brief Guide to the Mental Health Act*,¹ the Mental Health Act and the Mental Capacity Act are very different in both their scope (the Mental Capacity Act being much more widely relevant) and provisions. The authority of the Mental Capacity Act is frequently used without the user realising it. For clinicians, it has largely replaced the common law as the authority for providing medical care and treatment to people (over 16 years of age) who lack the capacity to consent for themselves.

This book is designed as an easy-to-read and interesting guide to understanding those parts of the Mental Capacity Act 2005 (MCA), including the 2007 Deprivation of Liberty amendments, which clinicians need in their daily practice. It covers how to assess whether a person lacks capacity; the range, scope and limitations of the various authorities to treat, including 'best interests' decisions, advance decisions and lasting powers of attorney; and the range of safeguards in place, such as the Deprivation of Liberty Safeguards (DoLS), the Court of Protection and Independent Mental Health Advocates. It also includes relevant aspects of the Human Rights Act 1998, the Mental Health Act 1983 and illustrative case law. Although it should be of particular interest to clinicians in England and Wales, it will aid the understanding of everyone who helps care for people who cannot make decisions for themselves or who wishes to make legal provision for their own future care.

More detailed guidance can be found in the Mental Capacity Act and Deprivation of Liberty Safeguards Codes of Practice^{2,3} and many other texts. Acts of Parliament and secondary legislation such as Statutory Instruments can be read and downloaded from the internet. These are readily searchable electronically, so to avoid cluttering the text with numbers we have not cited chapter and verse when using short quotations from Acts.

Acronyms and abbreviations abound in this legislation. We have used very few of these, but readers may find those listed on p. vii useful when reading other sources.

The MCA throughout refers to 'P' and the DoLS provisions to the 'relevant person'. As clinicians, we will refer to individuals as people or patients, depending on which seems the most appropriate.

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PREFACE

It should be noted that the Mental Capacity Act and its accompanying Codes of Practice (one for the main part of the Act, another for the Deprivation of Liberty Safeguards) apply in England and Wales but not elsewhere in the UK. The Mental Health Act, however, has distinct codes for the two jurisdictions.

Preface to the second edition

Compared with the Mental Health Act, the Mental Capacity Act is newer, the scope so much wider and, consequently, the case law remains in a relatively accelerated state of evolution. The output from the Court of Protection has been copious and two important cases relating to the Mental Capacity Act have come before the Supreme Court. In this second edition we have therefore included more in the way of clinically relevant issues that have emerged from the courts since first publication in order to bridge the gap between court judgments and the practising clinician.

The main topics that have been updated in this edition are:

- ▶ the interface between the Mental Health Act and the Mental Capacity Act, identifying the appropriate legal authority to use in clinical decision-making and clarifying the margins of the doctrine of necessity
- ▶ the Supreme Court judgment in relation to ‘Cheshire West’, how this affects the threshold of what is considered deprivation of liberty and the implications of the judgment on health and social care practice
- ▶ assessment of capacity and clarifying the threshold of decision-making incapacity
- ▶ the guidance for clinicians who may become involved in Court of Protection proceedings, which we have expanded and clarified with explanation of specific areas of clinically relevant case law.

Common abbreviations and terms

AC	Approved Clinician
AMHP	Approved Mental Health Professional
BIA	Best Interests Assessor
CQC	Care Quality Commission
CTO	Community Treatment Order
DoLS	Deprivation of Liberty Safeguards
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HM	Hospital Manager
HRA	Human Rights Act 1998
IMCA	Independent Mental Capacity Advocate
IMHA	Independent Mental Health Advocate
LD	Learning Disability (i.e. intellectual disability)
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
ND	Nominated Deputy
NR	Nearest Relative
RC	Responsible Clinician
RMP	Registered Medical Practitioner