Learning Outcome

1. Understand the current framework for care within the UK

1.1 Explain the current legislation, guidance and Code of Practice which govern care within the UK.

1.2 Evaluate the impact that the current national framework has upon service users

The Mental Capacity Act (2005): Transcript

The Mental Capacity Act of 2005 is another majorly important piece of legislation which has a significant impact on training and practices within health and social care.

The MCA applies to adults in England and Wales. In this case, adults means anyone aged 16 or over. It has two primary objectives:

- To promote empowerment in an individual's decision-making by giving as much autonomy to service-users as possible, and to provide a support structure of safeguarding to ensure an individual's best interests are protected if they lack the capacity for their own decision-making
- To allow people to plan ahead for a future when their mental capacity might diminish.

By giving as much empowerment as possible to the individual service-user regarding their own decision-making, the principles of the MCA are yet another example of the person-centred philosophy which is so important in modern care.

There are a huge number of reasons why a person might have a diminished mental capacity, just like there are a huge number of reasons why a person might receive care. A few possible examples might include a stroke or a brain-injury; dementia; a mental-health problem; a learning disability; or the effects of substance abuse.

So what do health and social-care professionals need to know about the Mental Capacity Act? The most useful thing to remember is that there are 5 key principles which give a framework as to how to approach a service-user's decision-making. The first three principles help practitioners to establish whether or not an individual has capacity. The final two principles guide carers in their actions if they have to intervene and act on a service-user's behalf.

Let's have a look at these principles one at a time.

Principle 1: The Assumption of Capacity

An individual in care does not need to *prove* their mental capacity. Decision-making and assessments start from the assumption that each individual does have the mental capacity to make their own decisions, unless proved otherwise. This is probably the most important underlying principle of the Mental Capacity Act. Again, this shows the idea of putting the person first, and not using their condition, disability or care-need as a starting point. This also includes the discretion that someone may have more capacity to make smaller decisions than major ones, so if it is determined that someone lacks capacity in one situation, it does not mean they will always lack capacity. Similarly, this capacity may change over time and circumstances, so it should be constantly re-assessed.

Principle 2: Individuals must be supported

Carers should give a service-user as much support and encouragement as is needed in order for them to make their own decisions. This might mean providing all information about the circumstances and consequences of a decision, and communicating this is a way that the individual can understand. This principle also extends to guide actions if a person is determined to lack capacity. The individual should still be informed and involved as much as possible, even if a carer or advocate has stepped in to make final decisions on their behalf.

Principle 3: Unwise decisions

To an outsider, a person's decision might sometimes seem unwise. That does not mean the person lacks the capacity to make that decision. This applies in all situations, not just in care. We are all entitled to make our own decisions, even if other people think they might be bad choices. The main condition to remember here is that it must be established that the individual understands the decision they are making. It can be difficult to judge sometimes how wise a decision is, or whether it was made with full understanding, so again it is vital that that carers put the person first, and try to find out as much as possible about their background and their personality, as this will affect their decision-making.

Principle 4: Best interests

Of course, getting to know as much as possible about a service-user has further benefits beyond judging how wise their decisions are. It is also at the heart of the 4th principle, that says that if a person is deemed to lack capacity to make their own decisions, then those acting on the individual's behalf must do so in that individual's best interests, first and foremost. The act gives a "best interests checklist" which asks the decision maker to consider all aspects of the individual's situation, their beliefs and priorities, their wishes prior to losing capacity, the interests of their family, and many more influencing factors. The checklist also asks if the decision can be delayed to a time when the service-user might be better able to make their own decision.

Principle 5: Choose the less restrictive option

When you make decisions for yourself, you usually choose an option which does not restrict your freedom, your rights, your comfort or your dignity. The 5th principle of the MCA stipulates that exactly the same applies to someone who has to make decisions on behalf of another person because of their mental capacity. The carer should always check all choices in a decision-making process, and choose the least-restrictive one in terms of a person's rights and liberties.

Assessing capacity

So, having looked at the 5 key principles of the MCA, we can clearly see that health and social-care practitioners may be faced with difficult decisions if they have to establish an individual's mental capacity. By law, carers need to consider the principles of the MCA and make an assessment before any interventions in a person's care or treatment. Bigger and more drastic changes, such as moving someone out of their own home, require more formal levels of assessment. How should professionals go about this?

The MCA sets out 4 criteria, or questions to ask in order to determine capacity. A person is deemed to lack capacity if they cannot do one or more of the following:

- Understand information given to them
- Retain/remember that information long enough to make a decision
- Evaluate that information in order to make a decision

- Communicate that decision to another person. This does not need to be verbal communication, any means of communication would be acceptable.

As a health and social-care practitioner, you will need to demonstrate that you can take all aspects of the Mental Capacity Act into consideration when discussing care and treatment for a service-user, and you will also need to document how you have adhered to these steps in official records.

Citing and referencing

Finally, remember that you will need to cite and reference this act during your assignments and assessments. Here's a quick reminder of how to do that.

If you are writing in-text about the act as a whole, you need to put the name of the act, including the year, in brackets. You should also write this in italics. Because the year is included as part of the name, you don't need to use a comma.

For example: …protected by recent government legislation (*Mental Capacity Act 2005*).

But if you are referring to one specific piece of information from within the act, you should use the chapter number. You can find this on the government website, legislation.gov.uk.

For example: …offers a definition of what it means to lack capacity to make a decision (*Mental Capacity Act 2005, c 3*).

And when you write your reference list at the end of your paper, you need to include the name of the act and the chapter number, the website URL, and the date when you looked at it. Note the use of italics and brackets here.

For example: *Mental Capacity Act 2005,* c3. Available at https://www.legislation.gov.uk/ukpga/2005/9/contents (Accessed: 27 January 2021)