RELEVANT SECTIONS OF THE MCA

MENTAL CAPACITY ACT (CHAPTER 177A)

PART II
PERSONS WHO LACK CAPACITY

The principles

3. — (1) The following principles apply for the purposes of this Act.

(2) A person must be assumed to have capacity unless it is established that he lacks capacity.

(3) 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.

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

(5) An act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

(6) 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 that is less restrictive of the person’s rights and freedom of action.

Persons who lack capacity

4. — (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to —

(a) a person’s age or appearance; or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.
In proceedings under this Act (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

Subject to section 21, no power which a person (“D”) may exercise under this Act —

(a) in relation to a person who lacks capacity; or

(b) where D reasonably thinks that a person lacks capacity,

is exercisable in relation to a person below 21 years of age.

Inability to make decisions
5. — (1) For the purposes of section 4, a person is unable to make a decision for himself if he is unable —

(a) to understand the information relevant to the decision;

(b) to retain that information;

(c) to use or weigh that information as part of the process of making the decision; or

(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of —

(a) deciding one way or another; or

(b) failing to make the decision.

Best interests
6. — (1) In determining for the purposes of this Act what is in a person’s best interests, the person making the determination must not make it merely on the basis of —

(a) the person’s age or appearance; or
(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the steps specified in subsections (3) to (8).

(3) He must consider —

(a) whether it is likely that the person will at some time have capacity in relation to the matter in question; and

(b) if it appears likely that he will, when that is likely to be.

(4) He must, so far as is reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

(5) Where the determination relates to life-sustaining treatment, he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(6) Where the determination relates to the disposition or settlement of the person’s property, he must be motivated by a desire to ensure, so far as is reasonably practicable, that the person’s property is preserved for application towards the costs of the person’s maintenance during his life.

(7) He must consider, so far as is reasonably ascertainable —

(a) the person’s past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity);

(b) the beliefs and values that would be likely to influence his decision if he had capacity; and

(c) the other factors that he would be likely to consider if he were able to do so.

(8) He must take into account, if it is practicable and appropriate to consult them, the views of —

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind;

(b) anyone engaged in caring for the person or interested in his welfare;

(c) any donee of a lasting power of attorney granted by the person; and

(d) any deputy appointed for the person by the court,

as to what would be in the person’s best interests and, in particular, as to the matters mentioned in subsection (7).
(9) The duties imposed by subsections (1) to (8) also apply in relation to the exercise of any powers which —

(a) are exercisable under a lasting power of attorney; or

(b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.

(10) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (8)) he reasonably believes that what he does or decides is in the best interests of the person concerned.

(11) In subsection (2), “relevant circumstances” are those —

(a) of which the person making the determination is aware; and

(b) which it would be reasonable to regard as relevant.