

National Mental Capacity Forum

Chair's Blog for National Mental Capacity Forum – June 2023

There is something irresistible about being handed an embargoed copy of a document! My enthusiasm was undimmed by the source and title: Ministry of Justice - [*Making financial decisions for young people who lack capacity: A toolkit for parents and carers*](#). It addresses a topic that has received unfavorable media coverage in recent months – parents' experiences of accessing Child Trust Funds. Although it is taken for granted that the parents of young people with particular support needs will be thinking about their futures, the toolkit encourages them to think specifically about money management decisions.

As you might expect in a document of this kind, the Ministry of Justice provides a summary of the relevant provisions of the MCA beginning with its five statutory principles. The accompanying explanations relate to young people. The mandate '*Do not use someone's age, gender, appearance, condition or behaviour to work out their best interests*' is unambiguous. I would have favoured a similar approach to the illustrations. For example, it is a shortcoming that the image of a person in a white coat holding a clipboard illustrates the statement, '*To support someone to make a decision, you should ensure that...anyone else who could support them to make a decision is available*'. I wonder if the juxtaposition of this text and image will inadvertently promote a clinician's perspective over that of others providing support.

The toolkit sets out how the responsibilities of parents and carers change as the transition to adulthood approaches. It encourages parents and carers to think ahead – ideally, when a young person reaches 14 years. If they hang on until the sharp dividing line of 16 years, when the MCA begins to apply, or until 18 years, when they no longer have parental responsibility to make decisions, it may be a shock to discover that the consent of a person of 18 – now an adult – is required to make a decision on their behalf. If an adult of 18 does not have the capacity to provide consent, then relevant legal authority is required. At this point a helpful set of three "Myths and Facts" boxes is introduced. Once again, the content is unambiguous: '*No individual has the automatic right to access the accounts or property of another adult, including if that person is a parent who contributed large sums to their child's account.*' (No, I am not telling you whether this is a myth or a fact!)

A section, '*Managing state benefits*', introduces the role of appointees, attorneys and deputies, each of which are explained in a *Glossary of terms*. A flowchart illustrates the routes to *Obtaining legal authority* which hinge on a person's capacity. This section introduces the Court of Protection. It is followed by a section '*Does the young person have capacity to make decisions for themselves?*' This provides an introduction to a property and affairs lasting power of attorney (LPA) in the event of a young adult allowing someone they trust to make decisions on their behalf. The toolkit emphasises the importance of preparation and recommends beginning the process of making and then registering an LPA with the Office of the Public Guardian before adulthood.

The penultimate section addresses the question: *‘Does the young person lack capacity to make financial decisions for themselves?’* The clue is in the toolkit’s title – young people who do not have capacity are in the spotlight. The section summarises what the Court of Protection does and explains that the court may ask lots of questions. Also, it explains “one-off orders” and “Emergency Interim Orders” and advises familiarity with the Court of Protection’s processes. The final section deals with ensuring that the legal authority to access a Child Trust Fund is in place.

A lot of information is packed into this 25 page document. Although there are no references there are footnotes directing readers to websites for further information. Informative, accessible and concertedly upbeat – young people’s best interests are centre-stage - I understand why the toolkit targets young people with Child Trust Funds. Fingers crossed, its explicit focus should widen support for the MCA and its relevance at the beginning as well as throughout the life course.

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The National Mental Capacity Forum is a joint initiative the Ministry of Justice and the Department of Health and Social Care. The views expressed here are those of the author.