

HOW AN ATTORNEY CAN AVOID BECOMING “C” SICK

Anyone appointed as an attorney, either under a Lasting Power of Attorney or Enduring Power of Attorney, and who is engaged in managing a person’s (donors) affairs should always bear in mind that they must act within the requirements of the Mental Capacity Act 2005 (‘the Act’). This can sometimes be bewildering for an attorney. The overall aim of the Act is to balance the protection of those lacking capacity to make their own decision (or the ability to carry out decisions) against the protection of those providing care and managing affairs. Attorneys must work within the framework of the Act, particularly the 5 principles of the Act. These can be linked with the 6 “C”s – **Compassion, Communication, Courage, Care, Competence and Commitment.**

Principle 1: Assume that a person has capacity to make their own decision unless it is shown that they do not. An attorney should treat the donor with **compassion**, empathy, respect and dignity. Never forget that capacity is variable and can vary depending on the decision actually required. Remember

Principle 2: Take all practical steps to support a person to make their own decision. This is linked with **communication**. Break information down into simple and easy to understand stages to help the donor understand facts and make their own decision by weighing up all the options. They can communicate their decision in a non verbal way if necessary.

Principle 3: A person has a right to make unwise decisions. This means that the attorney must have the **courage** to do the right thing for the donor, even if it is something that they would not have done themselves because they consider it personally unwise. Making an unwise decision is not a presumption of incapacity. The attorney must have the courage to understand and support the balance of choices a person may make.

Principle 4: Any decision made when the donor lacks capacity should be in the donor’s best interests, even if it is not in the best interests of the attorney. The attorney should focus on and **care** for the donor and know that the decision being made is one that the donor themselves would wish for. Never forget that the donor could regain capacity and be horrified at a decision made on their behalf. An attorney should put themselves in the donor’s shoes and not allow their own wishes to influence their actions.

Principle 5: Actions taken for the donor should be the least restrictive ones. The attorney must have the **competence** to understand the donor’s needs and assess the risk of actions they take. If the donor was risk-averse then the attorney should bear that in mind when making decisions.

There is also an underlying principle that attorneys must have the **commitment** to act for the donor in the best way possible at all times. Those who lack the capacity, or the ability, to manage their own affairs are vulnerable to abuse from others and by observing the 5

principles of the mental Capacity Act and the 6 C's any attorney can be sure that they providing adequate support for the donor.

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