The Mental Capacity Act is simply my favourite law – The excitement of reading its’ principles back in 2005 led me to literally lick the page. Principle 3 ‘The right to make unwise and eccentric decisions and not presuming that a person lacks capacity because of said decisions’ – is, without doubt, the most challenging and empowering I have ever read in legislation.

I was expecting an enormous and rapid shift in practice – perhaps impatient for the tradition of ‘care’ to move from paternal, ‘we know best’ approach to ensuring that people who may have care and support needs having their rights upheld. Each time I light a roll up, I too make an unwise decision and yet I know that although I may be forced to stand by an old bin in a blizzard to continue with this rather unpopular habit, there is no-one who can force me to stop. My capacity is not in question, nor am I living with formal support and so can assume the power to act any way that I see fit as long as I respect the rights of others.

It was with gusto and wild enthusiasm that I brought this law into all aspects of my training – wanting to see the over cautious, risk averse practice be forced to change once and for all. The rights of a person living in residential care with diabetes who chooses to eat donuts for breakfast, the person with liver disease to continue to drink alcohol and the rights of a person to make their own decisions about leaving the home as and when they please. The carer is in a dilemma, and one that I understand – Our desire to keep safe the person, to fulfil our duty of care can often mean we override the persons rights to make decisions that may put them at risk. Life is full of risks, it is trite to imagine we can or should attempt to remove them. Risk assessment is a way to encourage a person to take control over their lives, raise self-esteem and fulfil potential. The role of the care provider or support team, is to make sure the person is as in control of their own decision making as possible, aware of their rights and supported to direct their own support. Of course, safeguarding those who are at risk of abuse is vital to this process and understanding the difference between safeguarding and protection. To recognise that ‘we’ cannot dictate outcome when a person has capacity, but ensure that the person is offered all the necessary support to remain at the centre of the process – And to know that when a person lacks capacity to make their own decision, that their best interests a pivotal to all safeguarding interventions.

As both a practitioner and a trainer, I have spent many years observing that in order to ‘protect’ a person from abuse, those that intervene will often infringe the persons’ rights to control outcome. In which case the person continues to face abuse from the very services that are there to protect them. It is often with good intention that practitioners ‘over-protect’ – this is no criticism of the support teams who are facing pressure from families and even the press to make sure those deemed as vulnerable are safe. The Mental Capacity Act is there to change all that – but here we are in 2014 and still there is a presumption that a loving husband who insists that his diabetic wife cannot have donuts is still the decision maker, or a parent of a learning disabled adult presumes they can dictate the lifestyle of their child, the fear of the carer that the person they support will meet some accident or ill health because of what is seen as poor decision making.

The Mental Capacity Act is there to remind us that it is not what we ‘allow’ the person to do, but whether or not we have the right to stop them. Our duty of care remains that we must provide information, education, opportunity and choice – and when appropriate, we may need to protect whilst respecting the rights and freedoms of the person. In many ways, if we all worked in this way – safeguarding would bleed into all aspects of our support and progress the ideology of person centred planning.

Let us all start with the Mental Capacity Act each and every time we intervene, support and safeguarding all those who rely on us for their care and support.