

Policy & Procedure:

Mental Capacity Act Policy

Introduction

This policy outlines our organisation's commitment to upholding the principles of the Mental Capacity Act 2005 (MCA).

We aim to support individuals who may lack the capacity to make decisions for themselves, ensuring their rights, dignity, and well-being are protected.

Mental Capacity Act 2005 - Overview

The MCA provides a legal framework for assessing capacity and making decisions about the care and treatment of adults who lack capacity to make decisions for themselves. It also provides protections and powers in respect of the decision-making process.

If an individual is incapable of making decisions about receiving treatment (as defined in the MCA), treatment may be provided on a best interest basis in accordance with the provisions of the Mental Capacity Act [2005]. Some people may make provision in anticipation of losing capacity by appointing a deputy decision maker (e.g., lasting power of attorney) or writing an advance statement of wishes or advance decision to refuse treatment (ADRT).

Further information available at:

<https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/mental-capacity-act/>

Deprivation of Liberty Safeguards (DoLS) – Overview

The Deprivation of Liberty Safeguards are an amendment to the Mental Capacity Act 2005 and only apply in England and Wales. The Mental Capacity Act allows restraint and restrictions to be used in certain circumstances. Restraints and restrictions must only be used if they are in a person's best interests and are necessary and proportionate to the situation.

Extra safeguards are needed if the restrictions and restraint used will deprive a person of their liberty. These are called the Deprivation of Liberty Safeguards.

The Deprivation of Liberty Safeguards can only be used if the person will be deprived of their liberty in a care home or hospital. In other settings the Court of Protection can authorise a deprivation of liberty.

Purpose

The purpose of this policy is to ensure that all staff have an awareness of and comply with the legal requirements of the MCA and associated DoLS, while following the instructions and principles set out in this policy.

Scope

This policy applies to all staff who may come into contact with individuals who may lack capacity.

Adherence to Mental Capacity Act key principles

We will adhere to the following key principles of the Mental Capacity Act:

1. **Presumption of Capacity:** We will always assume that an individual has capacity to make decisions unless it is proven otherwise.
2. **Support Decision-Making:** We will provide individuals with appropriate support to enable them to make their own decisions, wherever possible.
3. **Unwise Decisions:** We will not assume a lack of capacity solely based on an individual making a decision that we consider unwise.
4. **Best Interests:** If an individual lacks capacity, we will make decisions in their best interests, considering all relevant factors.
5. **Least Restrictive Option:** Any decisions made on behalf of an individual who lacks capacity will be the least restrictive option available.

Proxy decision makers and ADRT

Lasting Power of Attorney (LPA)

Sometimes a person will want to give another person authority to make a decision on their behalf. A power of attorney is a legal document that allows them to do so. Under a power of attorney, the chosen person (the attorney or donee) can make decisions that are as valid as one made by the person (the donor).

Court Appointed Deputy (CAD)

The Court of Protection may appoint a deputy to act on behalf of the person who lacks capacity. These appointed deputies have legal powers to make decisions in the best interest of the incapacitated person in line with the Court of Protection delegated authority.

Advanced Decision to Refuse Treatment (ADRT)

The MCA provides a statutory basis for advance decisions, previously often referred to as advance directives or living wills. With an advance decision, a capable adult can specify that at a later time, and in certain circumstances, if they lack capacity to consent, specific treatment is not to be carried out or continued. An advance decision cannot request certain or specified treatment.

In cases where an ADRT is in place, staff must ensure that the ADRT is valid and applicable to current circumstances.

Assessments for Individuals with Proxy decision makers

If a referral is made for an individual who has a Proxy decision maker the decisions of the Proxy (individual holding the LPA or designated CAD) must be treated as if they are the individual's own decisions.

Assessing Capacity

Key values:

- We will assess capacity on a case-by-case basis, considering the specific decision at hand.
- We will use clear and simple language to communicate with individuals and avoid making assumptions about their understanding.
- We will involve the individual in the decision-making process as much as possible.
- We will provide individuals with information and support to help them make informed decisions.
- We will consider the individual's past and present wishes and feelings.
- We will involve family members, carers, or other relevant individuals in the decision-making process, with the individual's consent.

If a member of staff believes an individual may lack capacity the case should be escalated to the Clinical director for further guidance and support. Further advice may be sought from the referring General Practice before proceeding with any judgement on an individual's capacity.

Anyone who claims that an individual lacks capacity should be able to provide evidence of why they have reached that decision.

Making Decisions in Best Interests

If an individual is decided to lack capacity, we will make decisions in their best interests, considering all relevant factors, including:

- The individual's past and present wishes and feelings.
- The views of family members, carers, or other relevant individuals.
- The individual's beliefs and values.
- Any relevant medical or social factors.

Any decisions made on behalf of an individual (and the decision-making process with reasoning), must be clearly documented in Semble.

Supporting Decision-Making

- We will provide individuals with information and support to help them make informed decisions.
- We will consider the individual's past and present wishes and feelings.
- We will involve family members, carers, or other relevant individuals in the decision-making process, with the individual's consent.

Reviewing Decisions

- We will regularly review decisions made on behalf of individuals who lack capacity to ensure they remain in their best interests.
- We will consider any changes in the individual's circumstances or capacity.
