

Mental Capacity Policy

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Review Sheet

Last Reviewed

April 2024

Last Amended

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Next Planned Review

Within 12 Months

Policy Owner

Olatoye Akinpelu

Relevant Legislation

- The Care Act 2014
- Equality Act 2010
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice

Mental Capacity Act Summary

The Mental Capacity Act (MCA) is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care and treatment. It applies to people aged 16 and over.

It covers decisions about day-to-day things like what to wear or what to buy for the weekly shop, or serious life-changing decisions like whether to move into a care home or have major surgery.

Examples of people who may lack capacity include those with:

- dementia
- a severe learning disability
- a brain injury
- a mental health illness
- a stroke
- unconsciousness caused by an anaesthetic or sudden accident

But just because a person has one of these health conditions does not necessarily mean they lack the capacity to make a specific decision.

Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop).

The MCA says:

- assume a person has the capacity to make a decision themselves, unless it's proved otherwise
- wherever possible, help people to make their own decisions
- do not treat a person as lacking the capacity to make a decision just because they make an unwise decision
- if you make a decision for someone who does not have capacity, it must be in their best interests
- treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms

The MCA also allows people to express their preferences for care and treatment, and to appoint a trusted person to make a decision on their behalf should they lack capacity in the future.

Professionals' duties under the Mental Capacity Act

The Mental Capacity Act applies to all professions – doctors, nurses, social workers, occupational therapists, healthcare assistants, and support staff.

These staff and their employers have a duty to ensure they know how to use it.

Most trusts and local authorities will have a Mental Capacity Act lead who provides specialist advice on how the Act works.

Principles

Tudom Care Limited complies with the principles of the Mental Capacity Act 2005 by first treating all of the people who use our services and prospective service users on the basis that they are able to take their own decisions.

The Five Statutory Principles

- A person must be assumed to have capacity unless it is established that they lack capacity.
- 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.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- 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.

Assessment of Decision Making

There are several things you should consider when assessing if a person can make a decision:

- If the person understands what decision they need to make and why they need to make it
- If the person understands what might happen if they do or do not make this decision
- If the person can understand and weigh up the information relevant to this decision
- If the person can communicate their decision (by talking, using sign language or any other means)

- If the person can communicate with help from a professional (such as a speech and language therapist)
- If there is a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)

You must not treat the person as unable to make a decision just because they make decision you don't agree with.

- There might be some occasions when Tudom Care Limited staff in the course of their support work become involved or find it necessary to enter into some decision making process on behalf of someone who cannot take a decision at the time that it needs to be taken. In respect of the involvement of a domiciliary care service this is most likely to be related to a care matter.
- Tudom Care Limited will take decisions on behalf of a service user only if there is evidence that they cannot take the decision (at the time it needs to be made) because of mental incapacity. It will co-operate with relatives and others involved with the service user in decision making on behalf of a person on the same basis.
- It will not take or collude in taking decisions for a service user where, from its point of view, there is insufficient evidence and it does not appear to be in that person's best interests.
- Tudom Care Limited will only take a decision for one of its service users after it has exhausted every means of enabling the person to take it of their own accord. It will also show its actions in taking the decision are reasonable and in the person's best interests.
- Where Tudom Care Limited has information that suggests the person might be unable to take some decisions at some times it will carry out or contribute to an assessment of that person's mental capacity.
- Tudom Care Limited ensures that it complies with the all aspects of the law in the cases of service users who are subject to guardianship proceedings or who need legal protection on account of their lack of mental capacity. It includes here service users, who have assigned powers of attorney or who are subject to Court of Protection proceedings.
- Tudom Care Limited familiarises and acts upon any advance directives or *living wills* that its service users have chosen to make in contingency situations where they might lose the ability to take a decision. The agency also attempts to find out about any end-of-life plans so that a service user's wishes are known in the event of their death.

Assessment of Mental Capacity

- Tudom Care Limited ensures that a person's needs assessment and Support Plan contain all the information needed relating to a person's decision taking capacity and the decisions over which they might need help on account of their possible lack of capacity.
- The information included indicates
 - Which decisions the person is able to take at all/most times
 - Those that the person has difficulty in taking
 - Those that the person is unable to take
- In respect of each area of decision taking where there are difficulties or an inability to take decisions, the service user plan of care records the actions to be taken for the person that are deemed in their best interests.
- In making a decision in someone's best interests, the following must be taken into account (except in an emergency, when there is no time). The following checklist is a mandatory requirement under the Mental Capacity Act of matters to consider by a decision-maker:
 - Is the person likely to regain the mental capacity to make this decision and, if so, can this decision wait until then?
 - Do everything possible to encourage the person to take part in the making of the decision, even though they lack the capacity to make the decision
 - Give great weight to the person's past and present wishes and feelings (in particular if they have been written down)
 - Identify any beliefs and values (e.g. religious, cultural or moral) that would be likely to influence the decision in question
 - Include any other factors that would be relevant and important to this person if they were able to make their own decision
 - Be sure that you are not making assumptions about this person's best interests simply based upon the person's age, appearance, condition or behaviour
 - As far as possible, the decision-maker must consult other people who might have views on the person's best interests and what they would have wanted when they had mental capacity, especially the following people:

~ Anyone previously named by the person lacking capacity as someone to be consulted

~ PAs, close relatives, friends or anyone else interested in the person's welfare

~ Any attorney appointed under a Lasting Power of Attorney

~ Any deputy appointed by the Court of Protection to make decisions for the person

- The individual is always as fully involved as possible. Decisions are only taken on the basis of the best information available and the agreement of those concerned in the person's care and future. All decisions taken for that person are fully recorded and made subject to regular review.
- Service users who lack mental capacity as any others, are only subject to any form of restraint when by not doing so would result in injury or harm to them or to other people. All incidents where restraint has been used follow our procedures for reporting and recording.
- The Mental Capacity Act defines restraint of a person lacking mental capacity to consent to the action for which restraint is needed as:

The use, or threat of use of force to make someone do something they are resisting, or the restriction of a person's freedom of movement, whether they are resisting this or not.

Capacity should be assessed when a person's mental capacity to consent to their treatment or care is in doubt. Capacity may be called into question for a number of reasons including:

- o An individual's behaviour or circumstances.
 - o Where concern about capacity has been raised by someone
 - o Where a person has been previously diagnosed with an impairment or disturbance that affects the way their mind or brain works
 - o A previous mental capacity assessment has shown lack of capacity to make a decision.
- The MCA sets out a two-stage test for assessing whether a person lacks capacity to take a particular decision at the time it needs to be made. It is a 'decision-specific and time-specific' test
 - o Firstly, is there an impairment of, or disturbance in the functioning of a person's mind or brain? (This may be temporary or permanent)
 - o Secondly, **BECAUSE OF** this impairment or disturbance, is this person unable to make a particular decision

Use of Restraint

The MCA defines use of restraint in Section 6(4) as:

Use of force–or threaten to use force–to make someone do something they are resisting, or Restrict a person’s freedom of movement, whether they are resisting or not.

The Act only provides protection from liability in using restraint only under certain conditions:

- The person taking action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity, and
- The amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood of serious harm.
- Less restrictive options should always be considered before restraint. The Act describes a proportionate response as one that means using the least intrusive type and minimum amount of restraint to achieve a specific outcome

The MCA only gives limited liability for use of restraint. Actions may not be lawful where there is an inappropriate use of restraint or where a person who lacks mental capacity is deprived of their liberty without appropriate authorisation.

Carer Involvement

- Tudom Care Limited expects its staff to implement the agreements and decisions that are identified on an individual's Care Plan.
- Tudom Care Limited also expects its staff to involve service users in all day to day decisions that need to be taken by seeking their consent and checking that the actions to be taken are consistent with their plan of care if the individual service user lacks capacity at the time.
- Where the service user needs to take a decision that lies outside of their ability at the time staff must do everything to help the person decide for her or himself.
- Tudom Care Limited expects its staff to avoid taking decisions on behalf of a service user unless they can show that it is necessary and the service user at the time is unable to take that decision her or himself. Any such incident must be fully recorded.
- Tudom Care Limited expects its staff to take decisions for service users lacking capacity only because they have reasonable beliefs that they are necessary and in the person's best interests. When in doubt that they can proceed in this way they must seek advice from their line manager.
- Where there are concerns raised about Mental Capacity the Registered Manager will inform the allocated care manager or social services and discuss a referral for an assessment to take place and an independent mental capacity advocate (IMCA) to be appointed.

Lasting Power of Attorney (LPA)

Staff must be aware of any LPA in place for Service Users in their care; they must know which individuals have been given powers to make which specific types of decisions.

The Act allows a person aged 18 and over, who has capacity to make this decision, to appoint attorneys to make decisions in their best interests (rather than leave this to health or care professionals) if they should lose capacity in the future. There are two types of LPA, one to make health and welfare decisions, and the other to make finance and property decisions. The provision replaces the previous role of Enduring Power of Attorney (EPA) though, where these exist, they are still valid for financial and property decisions

Training

We know that choice has become increasingly important for service users and we will attempt to advance this principle throughout our operations. We will ensure that every service user who receives our service has positively opted to use our services.

We will try to provide service users with the chance to exercise choice about the support workers with whom they interact and will change the worker in instances when the service user requests it. We are particularly sensitive to matching workers and service users where issues of gender, culture or ethnicity play a role.