

MENTAL CAPACITY ACT 2005

Name: Moonlight Homecare Ltd.

Policy Statement

The Mental Capacity Act 2005 and the accompanying Code of Practice is a vital piece of legislation which aims to make a real difference to people's lives. It should empower people to make decision and protect those who lack capacity by providing a flexible framework that places individuals at the very heart of the decision-making process.

Care Act 2014

Throughout this Act, capacity or lack of it determines how adults will be supported and cared for by ensuring that person centred care is core to how services are delivered. Those services must reflect the needs and preferences of the person requiring care and support and where they lack capacity the Code of Practice must be followed.

The Policy

Within this organisation the Code of Practice referred to above will be used as the guidance on how to proceed in regard to individuals who may lack capacity. Individuals with capacity will be listened to, their needs and preferences taken into account during all aspect of the Care and Support Planning process. We will act in accordance with the five statutory principles, at all times unless guided otherwise by our local Mental Capacity Assessment team or statutory multi-agency partner.

The five statutory principles are:

- 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 them 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 as 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.

Throughout the Code of Practice a person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.

To summarise:

- Every adult has the right to make their own decisions if they have the capacity to do so. Family carers and health care or social care staff must assume that a person has the capacity to make decisions, unless it can be established that the person does not have the capacity

- People should receive support to help them make their own decisions. Before concluding that individuals lack capacity to make a particular decision it is important to take all possible steps to try to help them reach a decision themselves.
- People have the right to make decisions that others might think are unwise. A person who makes a decision that others think is unwise should not automatically be labelled as lacking the capacity to make a decision.
- Any act done for, or any decision made on behalf of, someone who lacks capacity must be in their best interests.
- Any act done for, or any decision made on behalf of, someone who lacks capacity should be an option that is less restrictive of their basic rights and freedoms, as long as it is in their best interests.

These basic tenets must be understood, respected and incorporated into the organisation's practice, at every level, by all members of staff. Anyone who claims that an individual lacks capacity should be able to provide proof. They need to show, that, on the balance of probabilities, the individual lacks capacity to make a particular decision, at the time it needs to be made. This means being able to show that it is more likely than not that the person lacks capacity to make the decision in question.

What is the test of capacity?

To help determine if a person lacks capacity to make a particular decision, the Act sets out a two stage test of capacity, which must be undertaken using the appropriate forms **[INSERT HERE WHERE THESE FORMS ARE ACCESSED FROM]**

Stage 1: Does the person have an impairment of, or a disturbance in the functioning of their mind or brain. IF the person does not have such an impairment or disturbance, they will not lack capacity under the Act.

Examples of impairment or disturbance include:

- Conditions associated with some forms of mental illness.
- Dementia
- Significant learning disabilities.
- The long-term effects of brain damage.
- Physical or mental conditions that cause confusion, drowsiness or loss of consciousness
- Delirium
- Concussion following a head injury, and
- The symptoms of alcohol or drug use

Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?

For a person to lack capacity to make a decision, the Act says their impairment or disturbance must affect their ability to make the specific decision when they need to. But first people must be given all practical and appropriate support to help them make the decision for themselves. (Principle 2)

Stage 2 can only apply if all practical and appropriate support to help the person make the decision has failed.

“Inability to make a decision”

A person is unable to make a decision if they cannot:

- Understand information about the decision to be made (the Act calls this “relevant information”).
- Retain that information in their mind.
- Use or weigh that information as part of the decision-making process, or
- Communicate their decision (by talking, sign language or any other means).

Assessing ability to make a decision

Does the person have a general understanding of what decision they need to make and why they need to make it.

Does the person have a general understanding of the likely consequence of making or not making the decision?

Is the person able to understand, retain and use and weigh up information relevant to this decision?

Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as speech and language therapist) be helpful?

The member of staff who carries out the initial assessment will be trained and competent to do so. All care or support staff will be trained and competent in MCA 2005 as different people will be involved in assessing someone’s capacity to make different decisions at different times on day to day basis. Any assessor will have the skills and ability to communicate effectively with the person, where necessary they should get professional help to communicate with the person.

When assessing capacity the following points are considering.

- Start by assuming the person has capacity to make the specific decision. Is there anything to prove otherwise?
- Does the person have previous diagnosis or disability or mental disorder? Does the condition now affect their capacity to make this decision? If there have been no previous diagnoses, it may be best to get a medical opinion
- Make every effort to communicate with the person to explain what is happening.
- Make every effort to try to help the person make the decision in question.
- See if there is a way to explain or present information about the decision in a way that makes it easier to understand. If the person has a choice, do they have information about all the options?
- Can the decision be delayed to take time to help the person make the decision, or to give the person time to regain the capacity to make the decision for themselves?
- Does the person understand what decision they need to make and why they need to make it?
- Can they understand information about the decision? Can they retain it, use it and weigh it to make the decision?

- Be aware that the fact that a person agrees with you or assents to what is proposed does not necessarily mean that they have capacity to make the decision.

Anyone assessing someone's capacity will not assume that a person lacks capacity simply because they have a particular diagnosis or condition. There must be proof. The following questions will be asked.

- Does the person have a general understanding of what they need to make and what they need to make it.
- Do they understand the likely consequences of making or not making the decision?
- Can they understand and process the information about the decision? Can they use it to help them make a decision.

Complex decisions

When assessing someone's capacity in making a complex decision, we will get a professional opinion when necessary. This may be the G.P a specialist, speech a language therapist and in some cases a multi-disciplinary team.

Record of a person's capacity to consent to the provision of service

Records of assessment will be kept as individual plans and be part of the care plan review. Care staff will keep records in the daily notes of the steps they take when carrying out an assessment for the individual.

Professional records

When professionals carry out an assessment of a person's capacity to consent or make a particular decision the relevant professional records are kept in the Service User's plan.

Challenging a " finding of lack of capacity"

When a situation arises that a Service User responsible person challenges the result of the assessment of capacity, the first step is to raise the matter with the person who carried out the assessment. If the Service User has been assessed to lack capacity they should have support from family, friends or an advocate.

- The assessor must give the reason why they believe the person lacks capacity to make the decision
- Provide objective evidence to support their belief
- The assessor must show they have applied the principles of the Mental Capacity Act.
- If possible a second opinion from an independent professional or expert in assessing competence should be sought.
- If the disagreement cannot be resolved the person who is challenging the assessment may be able to apply to the Court of Protection.

Best interest decision

One of the key principles of the MCA 2005 is that any decision made on behalf of a person who lacks capacity must be done or made, in that person's best interests.

This organisation follows these rules:

- For most day to day actions or decisions the decision maker will be the carer most directly involved in Service User care as recorded in care plan
- Where a decision involves the provision of medical treatment, the G.P or other health care staff are the decision makers. All decisions are recorded in care plan.

- Where nursing or paid care is provided, the nurse or paid carer will be the decision makers.
- If a Lasting Power of Attorney has been made or a deputy has been appointed under a Court order, the attorney or deputy will be the decision-maker, for decisions within the scope of their authority
- Whenever possible, the person who lacks capacity will be involved in the decision-making process. A record is kept in the Service User file and includes:
 - How the decision about the person best interest was made
 - What the reason for reaching the decision were
 - Who was consulted to help work out best interests
 - What particular factors were taken in to account

For major decision based on best interests of a person who lacks capacity the responsible person is also given a record of the decision.

FACTORS which may indicate that a person may regain capacity in the future:

- The cause of the lack of capacity can be treated, either by medication or some other form of treatment or therapy
- The lack of capacity is likely to decrease in time (for example, where it is caused by the effect of medication or alcohol, or following a sudden shock)
- A person with learning disabilities may learn new skills or be subject to new experience which increase their understanding and ability to make certain decisions
- The person may have a condition which causes capacity to come and go at various times (such as more forms of mental illness) so it may be possible to arrange for the decision to be made during a time when they do have capacity.
- A person previously unable to communicate may learn a new form of communication

Advocacy

This organisation will encourage the Service User or responsible person to use an advocate if:

- the person who lacks capacity has no close family or friends to take an interest in their welfare, and they do not qualify for an independent Mental Capacity Advocate
- family members disagree about the person's best interests
- family members and professionals disagree about the person's best interests
- there is a conflict of interest for people who have been consulted in the best interests assessment (for example, the sale of family property where the person lives)
- the person who lacks capacity is already in contact with an advocate
- the proposed course of action may lead to the use of restraint or other restriction on the person who lacks capacity
- there is a concern about the protection of a vulnerable adult

Advance decision

If the Service User has made an Advance Decision to refuse treatment while they still have capacity to do so and before they need that particular treatment this Advance Decision is kept in their file and health care staff must be informed and they must respect this decision if it is valid and applies to proposed treatment.

Restraint

This organisation understands that someone is using restraint if they:

- use force or threaten to use force to make someone do something that they are resisting.

- restricts a person's freedom of movement, whether they are resting or not

Restraint can be physical, medical and mechanical.

This organisation is aware that:

An action intended to restrain a person who lacks capacity will not attract protection from liability unless: the person taking action must reasonable believe that restraint is necessary to prevent harm to the Service User who lacks capacity the amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and seriousness of harm.

Addition staff must refer to and follow the organisations Restraint Policy.

Related Policies

Advocacy

Adult Safeguarding

Dignity and Respect

Deprivation of Liberty Safeguards

Meeting Needs

Restraint

Training Statement

This policy must be continually updated until clarity of the Cheshire West Judgement, via a Supreme Court Review is completed.

This policy will be reviewed by the Registered Manager.

Signed: Nassir Hassan

Date: 12/12/2025

Review Date: 12/12/2026