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Mental Capacity Act Policy



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Our services

Whilst our services do not support the *assessments* of individuals who are deemed to lack capacity your role at times may require you to work with parents / carers, children and young people who have been assessed as lacking capacity or have a disability.

The Purpose of the Mental Capacity Act

The Mental Capacity Act 2005 is a comprehensive statutory framework that:

- a. Protects the autonomy of people who have capacity to make their own decisions; and
- b. Protects people who lack capacity, by ensuring that they are always involved in decisions relating to them, and that any decisions made on their behalf are made in the right way.

Everyone working with (or caring for) any individual from the age of 16 who may lack capacity **must** comply with the Act.

Children under 16

The Act does not generally apply to people under the age of 16 but there are two exceptions:

- The Court of Protection can make decisions about a child's property or finances if the child lacks capacity to make such decisions and is likely to still lack capacity to make financial decisions when they reach the age of 18
- Offences of ill treatment or wilful neglect of an individual who lacks capacity can also apply to victims younger than 16.

Young people aged 16–17 years

Most of the Act applies to young people aged 16–17 years, who may lack capacity to make specific decisions however there are three exceptions:

- Only people aged 18 and over can make a Lasting Power of Attorney.
- Only people aged 18 and over can make an advance decision to refuse medical treatment.
- The Court of Protection may only make a statutory will for a individual aged 18 and over.

Defining Mental Capacity

Someone who has Mental Capacity is able to make their own decision at the time when that decision needs to be made.

Section 3 of the Mental Capacity Act says that any individual from the age of 16 is able to make their own decision if they can do all of the following four things:

1. Understand information given to them;
2. Retain that information long enough to be able to make the decision;
3. Weigh up the information available to make the decision; and
4. Communicate their decision.



reconstruct The Mental Capacity Act starts on the premise that everyone is able to make their own decision, and decisions can only be made on their behalf if it can be proven that they lack capacity to do so.

A individual cannot be deemed to lack capacity to make their own decision merely based on:

- a. Their age;
- b. Their appearance;
- c. Their behaviour; or
- d. A physical or mental health condition.

The method of determining whether a individual lacks capacity is the Mental Capacity Assessment. [Click here](#) to access guidance on carrying out a Mental Capacity Assessment.

The 5 Statutory Principles of the Act

There are 5 principles (values) that underpin the Mental Capacity Act. These are defined in section 1 of the Act and set out in the table below.

The principles must be clearly applied when using and making a decision under the Act. If they are not clearly applied any decision that is made on behalf of a individual who lacks capacity is not lawful.

1	Principle	In Practice
1	A individual must be assumed to have capacity unless it is established that they lack capacity.	Every individual from the age of 16 has a right to make their own decisions if they have the capacity to do so. Practitioners and carers must assume that a individual has capacity to make a particular decision at a point in time unless it can be established that they do not.
2	A individual 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.	People should be supported to help them make their own decisions. No conclusion should be made that a individual lacks capacity to make a decision unless <i>all</i> practicable steps have been taken to try and help them make a decision for themselves.
3	A individual is not to be treated as unable to make a decision merely because he makes an unwise decision.	A individual who makes a decision that others think is unwise should not automatically be labelled as lacking the capacity to make a decision.
4	An act done or decision made, under this Act for or on behalf of a individual who lacks capacity	If the individual lacks capacity any decision that is made on their behalf, or subsequent action taken must be done using Best Interests, as set out in the Act.



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	must be done, or made, in his best interests.	
5	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 individual's rights and freedom of action.	As long as the decision or action remains in the individual's Best Interests it should be the decision or action that places the least restriction on their basic rights and freedoms.

There is a Code of Practice to support effective implementation of the Mental Capacity Act.

There is a duty under the Act for all individuals and organisations with a responsibility for making decisions, or carrying out acts when a individual lacks capacity to have regard to the code at all times, regardless of the existence of other guidance.

[Click here to access the Code of Practice for the Mental Capacity Act 2005.](#)

Clear communication

The methods used to engage and involve, parents / carers, children and young people may be slightly different than just simply asking them to say what they like, dislike or would change. The methods used must suit their specific needs.

There are four factors that influence clear communication.

Method

There are a number of different methods of communicating.

Verbal, written, signing, finger spelling, pictures, assistive technology, passports and gestures.

Understanding

Everyone has a different capacity to understand their world. Concepts of time and space cause and effect, abstract thought, are very different between people. There are a host of factors pertaining to the young individual's ability to understand that will affect how 'effective' communication can potentially be.

Issue

Some issues are relatively straightforward and other are far more complex.

Context

Is a very influential factor in how we communicate. You will take whatever steps are necessary to enable the child or young individual to make an empowered decision in whatever context.

Method + understanding + issue + context

You are required to weigh the importance of each factor when developing a useful communication process. Considered together within an overall goal of obtaining an empowered decision, they create a framework through which you can support individuals effectively.

Some examples of communication methods you can use are:

- Symbol / Pictorial Based Service User Questionnaires,
- The 'Talking Mats' Procedure,
- Multi - Media Profiling
- Video or Photographic Evidence
- Communication Diary Passport

Learning disability

Find out the appropriate means of communication E.g. Symbol / Pictorial Based Service User Questionnaires, The 'Talking Mats' Procedure, Multi Media Profiling - Video or Photographic evidence of the individual and Communication Diary Passports.

Use appropriate language and explain difficult concepts. Don't use jargon or abbreviations.

- Avoid long sentences, or double negatives.
- Ensure all engagement is age appropriate.
- Consider the environment and length of time of concentration.
- Use videos, photos, tapes, objects, groupwork, demonstrations appropriately.
- Vary the way information is provided
- Limit the amount of information given at one time
- Use colour coding in written information if this suits their needs
- Make information readily available

Nonverbal

- Turn to face the individual and use plenty of eye contact. This says, 'I'm giving you my full attention' and 'You're important to me'.
- Bend down to your their level. This shows you want to be close and helps them feel secure. It also helps with eye contact, especially for younger children.
- Use your body language to show that you're trying to understand their feelings. For example, if they smile at you, smile back. If they are sad, nod your head and look sad yourself. If they look frustrated, make eye contact and use a calm, reassuring tone of voice.
- Use a relaxed body posture, facial expression and tone of voice when you talk with them. This sends the message that you're ready to listen. It also makes it easy for them to tell the difference when you're not happy with their behaviour.
- Ensure you are using the appropriate communication method that you have been told they use e.g. Makaton

Visual impairment

- Find out their preferred mode of communication from their parent/carer/social worker
- Sometimes email communication is used as they may use text to speech software or the individual may use magnification.
- A font size of 14 is the minimum recommended size and a type such as Arial is recommended because the letter shape is clearer and easier to read for a individual who is visually impaired.
- The colour of print should preferably be in black and white matt finish paper (yellow paper also gives a good contrast).
- When communicating by telephone, voices are sometimes distorted, so it is important to use clear steady speech.

Hearing impairment

- If appropriate, use of a signing interpreter but still address the individual
- Remember to face the individual
- Make sure your face is well lit. Don't stand in front of a window, for example, because the back-light **shadows your face**.
- Speak clearly and slowly and avoid shouting
- If the individual has not understood what you said, repeat and rephrase
- Cut out background noise.
- Don't eat or cover your mouth.

Autism

- Use simple language and avoid jargon
- Be patient and give the individual time to process the information
- Think about environment, limit stimulation and avoid distractions.
- Use appropriate communication (symbols, signs, etc).
- Using "hands- on" tools such as play dough or sand to teach and reinforce concepts
- Using social stories to explain social situations and expectations

Safeguarding

Individuals with additional needs are at greater risk of abuse due to communication barriers, the signs of abuse being misunderstood or minimised, increased isolation and greater dependence on others for their care, a lack of education to help them to stay safe, and inadequate support. It is important to work proactively to protect vulnerable children and adults, be professionally curious and respectfully challenge others if we have concerns.

Follow Reconstructs Safeguarding policy if you have any Safeguarding concerns regards to a child or young individual.

