



Mental Capacity and Decision Making

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About MCM

OUR MISSION

Creating meaningful care cultures where people are 'free to be me'. Why? Every Life Matters. Meaning Matters. Moments Matter. People Matter.

OUR VISION

To improve quality of life and lived experience for all people in health and social care services; bringing 'Meaning and Mattering' to the forefront of our interactions by connecting through our story, heart to heart and person to person. Offering a variety of services facilitating the effective and sustainable implementation of person-centred models of care for the health, social/aged and disability care settings.

OUR VALUES



Summary statement of position

Meaningful Care Matters believes that a person living in a care home has the same rights as anyone else.

However, by definition, the fact that someone is in receipt of 24-hour care may mean they have less ability, physically and mentally, to manage their own care and decision making.

The Mental Capacity Act 2005 provides a decision making framework to help protect people who lack full decision making ability. Application of the Act is law in England and Wales. In other countries the responsibility for ensuring ethical decision making, to no lesser degree, is placed upon the care provider.

For most day to day decisions the decision maker will be the care person most directly involved with the person. For decisions involving health care the doctor or health care professional is the decision maker. Where a Lasting Power of Attorney (LPA or EPA) has been appointed they are the decision maker.

Some decision making, on behalf of another person, is excluded from the Act. Those relating to; Family relationships, Mental Health Act matters, voting rights, Unlawful killing or assisting suicide.

Topic

This position paper, referring to the Mental Capacity Act 2005 as law in England and Wales and good practice elsewhere, is designed to help care teams in their work of supporting people to make decisions about moving into and living in a care home.

An amendment to the act (Mental Capacity Act 2019) concerning Deprivation of Liberty is awaiting implementation but currently delayed.

Notwithstanding the personal and environmental influences of daily living Dementia can affect the way we think and behave. Decision making can become impaired: decisions that we would have made prior to developing dementia become much more difficult. We all make decisions every day of our lives and prior to developing dementia we do so relatively easily.

Mental Capacity is decision specific. Being unable to make a decision about one situation e.g. the ability to continue self-care at home, does not mean a lack of decision making ability in another e.g. one's daily routine in a care home.

Purpose of position statement

This position statement amalgamates documents within the Mental Capacity Toolbox which is designed to help care teams support people living with dementia in their decision making.

Main Principles of the Mental Capacity Act 2005

Principle 1: 'A person must be assumed to have capacity unless it is established that he lacks capacity.' (section 1(2))

Principle 2: '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.' (section 1(3))

Principle 3: 'A person is not to be treated as unable to make a decision merely because he makes an unwise decision.' (section 1(4))

Principle 4: '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.' (section 1(5))

Principle 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 person's rights and freedom of action.' (section 1(6))

Policy and environmental context

In the England and Wales, we apply various Acts of Parliament and other guidance identified below but not limited to:

Care Standards Act 2014

The Mental Capacity Act (MCA) 2005 – and supplement Deprivation of Liberty safeguards 2008

The Human Rights Act 1998

Processes

- 1 Position Statement
- 2 Power Point presentation
- 3 Script to accompany PP
- 4 Debrief to training
- 5 Handout
- 6 Mental Capacity Assessment document

Statement of position being taken

Meaningful Care Matters is committed to the belief that, where possible people should be enabled to make decisions autonomously. Where this is not possible, due to an impairment in mental capacity, people are helped to make their decisions, with attention to the 5 principles of the Act identified above.

Only if, despite all efforts to aid decision making, the person is found unable to make their own decision should a decision be made in the person's best interest, '*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.' (page 66. MCA 2005).

- In certain day to day care situations, it may be necessary for a restriction to be placed on a person who lacks capacity, for the sake of their own safety or the safety of others. This may amount to a deprivation of liberty and in such cases a referral to the local authority. (p12. Deprivation of Liberty Safeguards 2008)
- Advanced decisions to refuse treatment is referred to in section 9 of the MCA guidance. (p158. Mental Capacity guidance 2005)
- There are proposed changes for Deprivation of Liberty (DoL's) within a Mental Capacity Act 2019 Amendment. Liberty Protection Safeguards are due to be implemented later in 2020. In the mean time DoL's applications must be made as currently identified by each local authority.

References

The Mental Capacity Act 2005

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf

Deprivation of Liberty Safeguards. Code of Practice to supplement the Main Mental Capacity Act 2005

<https://www.cqc.org.uk/sites/default/files/Deprivation%20of%20liberty%20safeguards%20code%20of%20practice.pdf>

Care Act 2014

http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf

Human Rights Act 1998

[https://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human-rights/Older People Human Rights Expert series pro.pdf?dtrk=true](https://www.ageuk.org.uk/Documents/EN-GB/For-professionals/Equality-and-human-rights/Older%20People%20Human%20Rights%20Expert%20series%20pro.pdf?dtrk=true)

Article. Community Care. Liberty Protection Safeguards.

<https://www.communitycare.co.uk/2020/06/22/government-tells-sector-prioritise-liberty-protection-safeguards-preparations/> by **Mithran Samuel** on June 22, 2020 in **Adults**

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