

MCA/DoLS Awareness – Guidance Notes

Mental capacity,

- Under the Mental Capacity Act 2005 (MCA), is the ability to make a decision.
- The lack of capacity may be temporary or permanent

Lacking Capacity

A person lacks capacity if

- Unable to make decision
- Because of impairment of or disturbance in functioning of, the mind or brain

A person is not able to make a decision if unable to:

- Understand the relevant information
- Retain the information
- Use the information to make the decision
- Communicate the decision

Factors to be considered in assessing capacity

- General intellectual ability
- Memory
- Attention and concentration
- Reasoning
- Information processing
- Verbal comprehension and expression
- Cultural influences
- Social context
- Ability to communicate.

Will the person regain capacity and when?

- Permit and encourage the person to be involved as fully as possible
- Consider the person's past and present wishes, beliefs and values, other circumstances they would be likely to consider
 - Take account of the views of anyone engaged in caring for them or interested in their welfare

Who is affected by the Mental Capacity Act?

- The MCA applies to all people making decisions for or acting in connection with those who may lack capacity to make particular decisions. The staff who are legally required to have regard to the Code of Practice when acting in relation to a person who lacks, or who may lack, capacity are:
 - people working in a professional capacity
 - people who are being paid to provide care or support
 - anyone who is a deputy appointed by the Court of Protection
 - anyone acting as an IMCA
 - anyone carrying out research involving people who cannot make a decision about taking part.

MCA/DoLS Awareness – Guidance Notes

Care Planning

- Making decisions for people who have been assessed as lacking capacity is an important part of care
- All decisions made on behalf of people who lack capacity need to be made in their best interests.
- Decisions may be made under the Act by people appointed to do so.
- Any acts in connection with care or treatment which are made on behalf of a person who lacks capacity to consent must be done in a person's best interests.
- The person who makes decisions on behalf of someone who lacks capacity is described in the Code of Practice as 'the decision maker'.

Recording decisions about capacity

(Code of Practice, 4.6–4.63)

- All professional staff – that is, social workers, care managers, nurses, doctors etc – involved in the care and treatment of a person who may lack capacity to make a particular decision should keep a record of long-term or significant plans made about capacity
- The record should show:
 - what the decision was
 - why the decision was made
 - how the decision was made – who was involved and what information was used.
- Recording decisions in this way will assist to demonstrate why they had a reasonable belief in the person's lack of capacity and will be submersible if the decision is challenged

The record should be made in the place where you regularly record details about a service user or patient such as a care plan, file or case notes. They will also help colleagues and co-workers who work with this person in the future

For care assistants or support staff making day-to-day decisions on a regular basis, no formal assessment procedures or records are required. Frequent decisions about washing, taking a person to the toilet or helping them to bed do not need to be recorded on every occasion. However, care plans should show that capacity to make decisions about these activities has been assessed at some point, is reviewed from time to time and that such decisions are being made in a person's best interests, and that when that person gains capacity they will be able to consent or refuse consent for themselves.

If a decision is challenged, staff must be able to describe why they had a reasonable belief in the person's lack of capacity at that time. It is therefore advisable to make notes of new decisions in a person's file or case notes. This applies even to those day-to-day decisions which might not previously have been recognised as decisions about capacity.

MCA/DoLS Awareness – Guidance Notes

Further Reading

- Mental Capacity Act

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf

http://cms.walsall.gov.uk/index/social_care_and_health/healthandwellbeing/mentalcapacityact-2.htm

- Court of Protection

<https://www.gov.uk/become-deputy/overview>

- Deprivation of Liberty Safeguards – Code of Practice

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476