



Department
of Health

A CPD curriculum guide for social workers on the application of the Mental Capacity Act 2005

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October 2015

Introduction

The Mental Capacity Act 2005 (MCA) is of principal concern to social workers working with adults. The implementation of the Act transformed the landscape of work with adults and has continued to do so due to case law rulings. This curriculum guide is intended for practitioners, employers, commissioners and educators to support them in working with the law and how it needs to be implemented. It includes curriculum content in terms of the knowledge required to practise safely and effectively and it also identifies the capabilities required to implement the legislation while working within its principles.

The principles of the Mental Capacity Act 2005 are described by Mark Neary (2014: 32) as: 'transformative when applied correctly and genuinely in P's best interests'. This is the starting point for this curriculum guide. To quote at length from the House of Lords post legislative scrutiny:

The Mental Capacity Act was a visionary piece of legislation for its time, which marked a turning point in the statutory rights of people who may lack capacity...
The Mental Capacity Act placed the individual at the heart of decision making...
The Act signified a step change in the legal rights afforded to those who may lack capacity, with the potential to transform the lives of many. (House of Lords Post Legislative Scrutiny 2014).

Social workers are key players in the implementation of the MCA 2005 at all levels; be they pre-qualified social work students at the stage of a first placement or Directors of Services with key roles in commissioning. However, the Post Legislative Scrutiny identified that the implementation of the MCA 2005 has not been adequate. There is a very clear understanding from the highest level of the judiciary and the government that tangible improvements need to be made to enable this empowering piece of legislation to be effective.

The Chief Social Worker held a summit on the MCA in March 2015 bringing together social workers from across England with representatives of other disciplines and sectors including: NHS providers, NHS commissioners, high street banks, high street solicitors, third sector organisations and the police. The aim was to consider how social workers might link up with these organisations in joint working, to better implement the MCA for the benefit of service users. The seminar made a number of recommendations, key among them the need to work in partnership with others.

This curriculum guide will focus on identifying and meeting learning and development needs to equip social workers to implement the MCA at all levels of the Professional Capabilities Framework; from initial training to strategic level. Learning outcomes will draw on the curriculum content.

The curriculum guide and the PCF

We have set out the specific sections of the guide where the PCF domains can be found with some overlaps:

- Values, Rights and Ethics: this relates to Professionalism, Values and Ethics, Diversity, Rights and Justice.
- Knowledge and Legal Context: this relates to Knowledge, Intervention and Skills.
- The MCA Everyday Processes: this relates to Professionalism, Knowledge, Rights and Justice.
- The Statutory Principles: this relates to Knowledge, Intervention and Skills, and Critical Reflection.
- The Assessment of Capacity: this relates to Professionalism, Knowledge, Intervention and Skills, Values and Ethics, and Contexts and Organisations.
- The Assessment of Best Interest: this relates to all nine domains.
- Acting in the person's Best Interests: this relates to all nine domains.
- The MCA/DoLS Interface: this relates to Knowledge, Critical Reflection and Intervention and Skills.
- Theory Research and Case Law: this relates to Professionalism, Knowledge, Intervention and Skills.

Values, Rights and Ethics

Values, Rights, and Ethics must be entirely underpinned by the five Statutory Principles of the Mental Capacity Act:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
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.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
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.
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.

These principles are fundamental to everyone working with people who may lack capacity. In issues of working with mental capacity social workers will also need to have due regard to the first 10 sections of the Care Act 2014. These are:

1. Promoting individual wellbeing.
2. Preventing needs for care and support.
3. Integration of care and support within health services.
4. Providing information and advice.
5. Promoting diversity and quality in provision of services.
6. Co-operating generally.
7. Co-operating in specific cases.
8. How to meet needs.
9. Assessment of an adults needs for care and support.
10. Assessment of a carer's needs for support.

Further guidance can be found in the CPD Curriculum Guide on the Care Act:
http://www.thinklocalactpersonal.org.uk/library/Newsletter/TCSW_CARE_ACT_CURRICULUM_GUIDE_2015.pdf

Theory, research and case law

Overall, social workers at all levels need to take a critical analytical approach to research, policy and online resources, in relation to:

- Application of the principles of the legislation to practice.
- Application of current case law to practice.
- Identification of mental capacity law as a dynamic and iterative process.
- Awareness of the complexities involved in the assessment of a person's capacity.
- The utilisation of the balance sheet approach to best interest determinations.
- Optimising decision making through empowering practice.
- Maximising decision-making capabilities through participation and consultation, particularly with family and carers.
- Recording of a clear rationale for decisions made.
- Application of correct legal principles to safeguarding practice.
- Thresholds for intervention: and identification of restraint and deprivation of liberty.

At the pre-qualifying level it is expected that student social workers will be confident alerters. They will know whether an adult is being safeguarded or requires support for their decisions and they will be able to direct and divert to appropriate services.

At this level student social workers will have learned the ability to recognise where safeguarding and capacity issues overlap and where they are of distinct difference. They will know that an assessment of capacity is, or can be, a crucial element of safeguarding but that this does not signal the end of the safeguarding process. They will integrate the principles of 'Making Safeguarding Personal' (2013) and put the person at the centre of the process. It is essential that student social workers understand that MCA affects a much wider group of people than those who are at risk of abuse or neglect.

At the pre-qualifying level they require the opportunity to learn, observe and shadow experienced practitioners to enable them to integrate knowledge and theory into the practice sphere. Specifically, at this stage they must have a clear understanding of safeguarding and how to promote the principles of the MCA.

Students at the pre-qualifying level must have a clear understanding of the following:

- There is a duty to assist persons in making their own decisions wherever possible.
- The two-stage test of capacity and how capacity is determined.
- The need for practice to be compliant with the Human Rights Act, and in particular Article 2 Right to Life, Article 3 Prohibition of Torture, Article 5 Right to Liberty and Security, and Article 8 Right to Respect for Private and Family Life.
- The need for communication to be clear, transparent and explicit in terms of issues of capacity.
- The understanding that in issues of capacity and interventions the least restrictive option must always be sought.
- The interface with the Mental Health Act and The Children Act.
- The ability to assess whether safeguarding principles are being adhered to and how to alert services if they are not.
- Knowledge of who is the decision maker in issues of mental capacity and where the responsibility lies.
- Understanding of the importance of advocacy in issues of working with mental capacity in adult social work.
- Understanding the role of the wider multidisciplinary team and multi-professional team.
- Understanding of who is involved with the person and what their role is; including the family, carers (if applicable) and friends.
- A good knowledge of what constitutes deprivation of liberty and the process that is required to ensure that deprivation of liberty safeguards are in place when necessary.
- A good knowledge is required of the interface between the MCA and criminal offences, in particular wilful neglect and ill treatment.

Assessed and Supported Year in Employment

At the level of Assessed and Supported Year in Employment (ASYE) a social worker working with adults should – with appropriate mentoring and support – be able to:

- Identify concerns and where appropriate undertake a capacity assessment.
- Implement the principles of supported decision making.
- Carry out a best interest determination assessment with mentoring, support and supervision.

At this stage, social workers should have a sound knowledge of the MCA and begin to apply specifics of the legislation as issues of excellent practice. In particular they should work with people using all practicable skills to facilitate communication to ensure desires and wishes about a person's own life are prioritised. This will include a sound knowledge of resources available, and must be exhaustive.

Social workers must know when to involve other professionals in order to enhance and assist communication with people who have communication needs. It is essential that a multidisciplinary approach is taken to ensure that all practicable means are employed to ensure that a comprehensive assessment is carried out. Social workers at this level should be able to implement practical skills into their interventions such as ensuring hearing aids are working for hearing aid users, and using interpreters where necessary. At this stage social workers should be recording their interventions carefully and detailing the steps that they have taken to ensure that accurate and meaningful communication is taking place.

ASYEs should be able to:

- Integrate knowledge and theory at a lower level of practice.
- Be clear about the decision making process and be held accountable.
- Implement the principles of 'Making Safeguarding Personal'.
- Implement the principles of the MCA.
- Carry an independent caseload about which they can make informed decisions.
- Have a working knowledge of the section 4 Best Interest Checklist and have the ability to implement it.
- Implement interventions which are based on the principles of the least restrictive option.
- Be a fully functioning member of the multidisciplinary team who is able to advise relevant others on issues pertaining to the MCA.

Social workers

At this stage in accordance with the PCF level descriptors social workers should be able to:

- Exercise higher quality judgements, in situations of increasing complexity, risk, uncertainty and challenge.
- Expect and anticipate, but not prejudge, the issues that may develop.
- Have greater confidence and independence (while accessing support when needed), and use their initiative to broaden their repertoire of responses.
- Have expertise in one or more areas of practice, be familiar with local resource networks and be recognised by peers as a source of reliable knowledge and advice.

In terms of working with the MCA this would mean that a social worker:

- Should be able to consolidate all of the above and specifically.
- Would regularly engage in best interest assessments, and be able to advise other colleagues in issues of the MCA.
- Would develop skills in preparing reports for court and court skills more generally.

PCF levels advanced to strategic

These are the skills and interventions specific to the MCA that are commensurate with the final two levels of social work.

Advanced social workers

At this stage, in accordance with the PCF level descriptors, advanced social workers should be able to:

- Have their practice recognised as exemplary, and provide leadership and professional wisdom to their colleagues and other professionals for work in situations of high complexity.
- Continue to work directly with people who use services, and those who care for them, as well as families and communities.
- Provide constructive challenge to enhance practice, procedures and policies, promote innovation, and introduce new ways of working from recognised sites of excellence.
- Contribute to the development of knowledge and promotion of excellence in their field using evidence-informed practice.

In terms of working with the MCA this would translate into the following tasks and roles:

- Have a supervisory or line management role specific to issues to do with MCA.
- Be able to scrutinise documentation from colleagues and be able to have an auditing role.
- Be able to offer clear, expert advice and have a nuanced understanding of the differences between safeguarding and MCA.
- Train as, and maintain capability as a Best Interest Assessor and its successor roles (ie AMCP role under Law Commission proposals).
- Act as MCA and DoLS Leads for their agencies.

Strategic social workers

At this level, strategic social workers need to ensure that all of the above is implemented and that services are run in compliance with the principles of the MCA embedded and integrated at every level. These social workers will be commissioners of services and will be able to:

- Differentiate between MCA issues, safeguarding issues and issues that arise as a result of poor commissioning.

Delivery of this CPD curriculum

The Mental Capacity Act curriculum is designed to be delivered by a range of providers. However, we strongly recommend that it includes teaching from qualified law professionals.

It is essential that the mode of delivery is tailored to fit the learning needs of the specific audience. This could include: interactive lectures; small group work; case discussions; workshops; role play; and blended learning in the form of online course materials and virtual learning environments such as Blackboard. We strongly recommend that the course includes a hands-on practical session where participants complete a balance sheet exercise. It is also crucial that up-to-date case law materials are used.

Learning outcomes and assessment will need to be tailored to meet the learning needs of each specific audience.

ADASS: Safeguarding Adults – A national Framework of Standards for Good Practice and Outcomes in Adult Protection Work:

<http://www.adass.org.uk/adassmedia/stories/Publications/Guidance/safeguarding.pdf>

CQC Briefing on 2014 Supreme Court Rulings Cheshire West etc:

<http://www.mentalcapacitylawandpolicy.org.uk/resources-2/cheshire-west-resources/>

Mental Capacity Act Directory – a variety of MCA support materials

<http://www.scie.org.uk/mca-directory/>

MIND Guide to the Mental Capacity Act:

<http://www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/>

Mental Health Foundation:

<http://www.mentalhealth.org.uk/>

Essex Autonomy Project:

<http://autonomy.essex.ac.uk/>

SCIE:

<http://www.scie.org.uk/>

<http://www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/>

<http://www.scie.org.uk/mca-directory/>

Mental Law Online:

http://www.mentalhealthlaw.co.uk/Main_Page

Alex Ruck Keene's blog:

<http://www.mentalcapacitylawandpolicy.org.uk/>

39 Essex St:

http://www.39essex.com/court_of_protection/

Court of Protection: Government website:

<https://www.gov.uk/court-of-protection>

Guide to the Court of Protection:

<http://sites.cardiff.ac.uk/wccop/>

This website accompanies a useful book about the Court of Protection:

<http://courtofprotectionhandbook.com/>

Lucy Series blog:

<http://thesmallplaces.wordpress.com>

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- Williams, V., Boyle, G., Jepson, M., Swift, P., Williamson, T., and Heslop, P. (2014). Best interests decisions: professional practices in health and social care. *Health and Social Care in the Community*, 22(1), 78-86.



Department
of Health

A manual for good social
work practice

Supporting adults who have
dementia

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1. This practice guidance

This manual is designed to assist its readers with the very practical and sometimes complicated issues that they may experience in their practice with adults who have different types and stages of dementia. It aims to assist the reader reflect on what they do know, start to fill the gaps in the areas that are new to them and is a resource directory for the reader to use and inform their practice in supporting people living with dementia.

This manual is not designed to focus specifically on high risk, nor safeguarding work (where you should follow your own organisation's safeguarding policies and procedures).

Who is it for?

This resource is targeted at social workers in day-to-day practice supporting adults who have dementia, as well as their carers, families, friends, etc. It is also for senior social workers, as well as social work supervisors and managers who may dip in and out of social work practice with adults who have dementia.

Why has it been written?

The number of people with dementia is increasing rapidly every year. In 2015 there are approximately 850,000 people in the UK living with dementia. By 2025 it's estimated that will increase to around 1 million. Although training materials exist for multiple professions, especially health staff, there is a conspicuous absence in terms of specific resources to help social workers.

The Department of Health commissioned TCSW to produce this learning resource for social workers who work with adults who have dementia (and their carers, families).

Who wrote it?

This manual has been written by The College of Social Work's (TCSW) Professional Practice Team. TCSW ran a number of workshops around England in early 2015 to help identify priorities and helpful resources invited a cross section of participants including social workers, carers, adult social care managers, voluntary sector agencies, charities, academics, learning and development officers, and dementia experts. This resource has been informed by the workshops and subsequent feedback from participants on the drafts.

- The 'Expertise in Dementia Practice Level' outlines the knowledge and skills required for health and social care staff who by virtue of their role and practice setting, play an expert specialist role in the care, treatment and support of people with dementia.

You may wish to use the statements to self assess where you are now, identify the gaps, and develop a plan including the use of this resource as to how you might address some of those gaps.

Values informing practice

The over-arching ethos of the Care Act 2014 is embedded in this resource. There is deliberate emphasis upon person-centred, strengths-based social work which is in keeping with the clear message from the workshops about working towards and with people's strengths and abilities. Social workers practice should be in keeping with an ethical value-base, but also with the principles running through the Care Act and its statutory guidance, which is why each section identified the relevant Care Act principles.

Good assessment requires an approach which is holistic and is strengths based. This means you need to identify and include what the person likes doing, what they are good at, what is important to them. You should consider co-producing positive statements by celebrating what is still possible, what the person can still do, while ensuring their dignity is central. In assessing you should be able to identify the things/goals the person wants to achieve. There can be a challenge here in terms of how you try to reconcile the desired goals of the person with the perceptions of yourself and/or their carers as to what is achievable. This can be common when someone has a dementia.

Being person centred means that you recognise people and their carers come with a range of expectation, perceptions and anxieties. You are able to manage their expectations, provide reassurance where that is possible and be honest in managing the many uncertainties (about care, finance etc.). It is also about how you discuss and support positive risk-taking, enabling the person to live as freely as possible.

An obvious point but one that needs to be emphasised is “Whilst assessing you should not presume anything.”

Assessment is not a one-off process and in relation to dementia, social workers need to think about how care plans are implemented. Attempts at phased changes and taster sessions with different activities or services will allow the person to maintain autonomy, with what support feels right for them. How have you communicated the plans to carers and have they understood the rationale as well as the specifics?

Similarly you need to plan how you end your involvement with the person. What is going to be appropriate for this person, does it need to be phased? You need to be clear on why you are finishing your work, what happens next, who they can contact about what, and they should be advised about how and when to re-contact your service in the future.

Communication skills

Social workers should be honest with those who have dementia and their families. You should be open about what you can and can't achieve within the boundaries of your job. You need to be open about how dementia is described seeking and using the person's own definition.

Do not assume the person can not communicate or comprehend, even with a mid-stage or late stage dementia. Avoid using jargon, acronyms, abbreviations, and the day-to-day work language social workers sometimes forget might be frightening for others outside this field. Take into account that the person and their carer may have levels of anxiety and distress when trying to communicate with you. Remember this can mean the person may need more time to understand what is being asked. The Dementia Project have a useful blog about this <http://dementiaproject.net/blog/?p=189>. Try not to leap in with answers – be comfortable with the silence which may be a necessary part of them getting to the point where they can find the right words to respond to your questions. It's ok to wait. You may need to use pictorial aids to communicate. It is important you find ways to help the person communicate even if this may be at a limited level.

You need to be mindful of how you describe things, for example, 'end of life' may make sense rather than 'palliative'. Consider appropriate descriptions like 'latter years' (there may

The person's support network

Meaningful social work with dementia involves³ working alongside family, carers, and friends. You will have to be able to co-ordinate appropriately and respectfully and use skills of diplomacy accordingly.

Remember that an adult with an early stage dementia may want to expand their own (pre-existing) support network. This assets and strengths-based approach should be your starting point. IRISS have published a useful paper setting out what strengths based approach is <http://www.iriss.org.uk/resources/strengths-based-approaches-working-individuals#content>

A person may want to connect with others by attending groups (eg. Peer support, mentoring groups etc) or to engage via technology using web based forums, blogs social media etc).

You may there are disagreements in the network, you will need to be able to assist people experiencing shock and other emotions. This might also bring into play the need to de-escalate difficult situations, keeping the person at the centre and ensuring they retain as much control as possible.

You will need to know your boundaries around confidentiality but also when to refer to more specialist teams. Family dynamics may be in the mix and various differing agendas. Social workers told us that in practice, they felt it was important not to take everything at face value and to give consideration to any gender, race, sexuality, disability and age issues.

You should be able to explain and interpret the different manifestations of dementia to the person's loved ones, for example, the person may start having problems sequencing (following the order of things). This is so that those supporting can provide the sort of help that enables the person to carry out the tasks they can still manage themselves. You might need to educate others (including family and carers) around body language and how this might be perceived by the person. The behaviour of those around the person, verbal or otherwise, will have an impact for them. You should be able to judge when your social work educative role is required.

Exercise/learning activity:

1. How do you currently communicate with people who have dementia?
What might you do differently?
Which of your social work skills do you need to develop to communicate with someone in the later stages of dementia?
2. How do you evaluate the success of your communication skills?
3. How do you seek feedback from the person and their carers?

³ With the person's agreement, depending upon whether you are in the realms of completing a [Mental Capacity Act \[2005\]](#) assessment.