



Cobalt

Medical Charity

Diagnosis • Research • Education

Registered Charity No: 1090790

Cobalt Health Mental Capacity Act 2005 Policy

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POLICY DETAILS

Version	Revision	Date	Approved By
1.0	Original document	July 2010	
2.0	Reviewed	April 2011	CGC
2.0	Reviewed	June 2013	CGC
2.0	Approved	June 2013	PS
2.0	No amendments needed	February 2016	PS
3.0	Reviewed and updated including section on responsibilities	Feb 2019	PS
3.1	Reviewed	Feb 2022	PS

1. PURPOSE

To ensure that Cobalt Health and its employees discharge their obligations under the Mental Capacity Act.

The Mental Capacity Act 2005 (MCA) provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. It makes it clear who can take decisions in which situations, and how they should go about this. It also enables people to plan ahead for a time when they may lose capacity.

This policy provides a summary of the main aspects of the Mental Capacity Act 2005, which came into force from April 1st 2007 and applies to all staff that comes into contact with patients. The purpose of this document is to ensure that the Charity meets nationally recognised and regionally agreed best practice for working with patients that may lack capacity.

This policy is in line with and should be read in conjunction with the MCA Code of Practice (available on the shared drive in the acts and guidance folder) and professional codes of practice.

Advice and guidance is available at www.dca.gov.uk/legal-policy/mental-capacity

2. AIM & SCOPE

This policy applies to any patient aged 16 years and over where there is concern about their capacity to make a decision about their treatment.

Implementation of this policy will ensure that:

- All clinical staff are able to recognise when there is a need to assess a patient/client's ability to make decisions based on their mental capacity and can act on this assessment.
- All clinical staff are aware of how to assess or undertake a Mental Capacity Assessment and Best Interest Decision and integrate these assessments into their work.
- Clinical staff are aware of and acknowledge Advance Decisions to Refuse Treatment and act on these.
- Cobalt is compliant with the CQC essential standards relating to Mental Capacity



Everyone working with or caring for people, who lack capacity, must comply with the Act, whether they are dealing with every day matters or serious life-changing decisions. Mental Capacity Act (MCA) 2005, policy version 1 page 4 of 19 September 2007.

The Act introduces a new criminal offence of ill-treatment or neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to imprisonment for a term of up to five years.

3. RESPONSIBILITIES

a) The Safeguarding and MCA Leads are responsible for;

- Ensuring the process and procedures are consistent for recording mental capacity and applying the Act.
- Developing internal structures to provide assurance to the organisation that Mental Capacity issues are considered and dealt with in a consistent and effective way.
- Provide systems and structures to support MCA implementation e.g. procedures, training

b) All staff in managerial positions are responsible for:

- The implementation of this policy within their department. They are responsible for ensuring all staff are aware of the policy guidelines at staff inductions.
- They should ensure that all staff involved in supporting patients who may lack mental capacity have access to appropriate training.

c) All Health Professionals are responsible for:

- The member of staff carrying out the imaging procedure is responsible for ensuring that consent to treatment is valid and that full discussions are recorded in the patient's PAS record.
- Where the patient may lack mental capacity for that treatment decision the health professional must carry out a mental capacity assessment and subsequent best interest decision before carrying out the procedure.

4. MENTAL CAPACITY ACT (MCA)

The Mental Capacity Act (MCA) is underpinned by a set of five key principles:-

- (1) **Presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise;
- (2) **Enablement** - individuals must be supported and enabled to make their own decisions and given all appropriate help before anyone concludes that they cannot make their own decisions;
- (3) **Autonomy** - individuals retain the right to make what others might consider unwise decisions;
- (4) **Best interests** - that anything done for (or on behalf of) people without capacity must be in their best interests;
- (5) **Least restrictive intervention** – anything done for (or on behalf of) people without capacity should be the least restrictive of their basic rights and freedoms.

5. PRINCIPLES WHICH UNDERPIN THE MENTAL CAPACITY ACT (MCA)

In order to protect those who lack capacity and to enable them to take part, as much as possible in decisions that affect them, the following statutory principles apply:-

- You must always assume a person has capacity unless it is proved otherwise;
- You must take all practicable steps to enable people to make their own decisions;
- You must not assume incapacity simply because someone makes an unwise decision;
- Always act, or decide, for a person without capacity in their best interests;
- Carefully consider actions to ensure the least restrictive option is taken.

6. ASSESSMENT OF CAPACITY

Defining capacity

Capacity is the ability to make an informed decision. Consequently, there are two basic questions for staff to consider; is there an impairment of or disturbance in the persons mind or brain? (Examples of impairment or disturbance can include, brain injury, learning disability, physical or medical conditions that cause confusion, drowsiness or loss of consciousness etc.) If so, is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

A person is unable to make a decision if they cannot;-

- Understand information relevant to the decision.
- Retain information related to the decision to be made.
- Use or weigh up that information as part of the process of making the decision.
- Or communicate the decision, whether by talking, using sign language or any other means.

The following criteria need to be applied when assessing capacity in relation to a specific decision:-

- Does the person understand what decision they need to make and why they need to make it?
- Can the person understand the consequences of making, or not making, this decision?
- Can the person understand, retain, use and weigh information relevant to the decision?
- Can the person communicate their decision by any means (i.e. speech, sign language)?

Defining a lack of capacity

- A person lacks capacity in relation to a matter if at that particular time s/he is unable to make a decision for him/herself in relation to the matter because of an impairment, or a disturbance in the functioning, of the mind or brain.
- It does not matter whether the impairment or disturbance is permanent or temporary.
- A lack of capacity cannot be established merely by reference to:
 - (a) A person's age or appearance, or
 - (b) A condition or an aspect of their behaviour, which might lead others to make unjustified assumptions about their capacity.

7. HOW TO ACT IN SOMEONE'S BEST INTERESTS

- Do not make assumptions about capacity based on age, appearance or medical condition;
- Encourage the person to participate as fully as possible;
- Consider whether the person will in the future have capacity in relation to the matter in question;
- Consider the person's past and present beliefs, values, wishes and feelings;
- Consider the least restrictive options.

8. WHAT ELSE DO YOU NEED TO CONSIDER

MCA Code of Practice: Professionals must have regard to the Code and record reasons for assessing capacity or best interests. Please see point nine below and point 1 above for guidance on accessing the code of practice.

9. WHERE TO FIND GUIDANCE

The full text of the Act and the Code of Practice is available on website address: www.dca.gov.uk/legal-policy/mental-capacity

10. EQUALITY IMPACT ASSESSMENT SUMMARY

Cobalt is committed to promoting equality, diversity and fair treatment to all staff, patients and visitors regardless of race, nationality, ethnic origin, gender, marital status, mental or physical disability, religion or belief, sexual orientation, age or social exclusion.

We do this by making sure that all of our processes, policies and procedures undergo an impact assessment to make sure that they do not disadvantage any groups from our community.

EIA undertaken by: Nigel Benatar

Title and Department: Head of Governance

Outcome:

Policy promotes equality, equal opportunities and improved relations and will be reviewed in 3 years' time	✓	Full Equality Impact Assessment to be carried out	
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Signed:

Date: February 2022

11. APPENDIX 1

Mental Capacity Act - Cobalt Health

Functional Test for Capacity

Patient/User Name.....

DOB.....

ID No.....

Diagnostic Threshold

Does the patient/service user have an impairment of or disturbance in the functioning of the mind or brain? **Yes/No**

(If the answer is **NO** then capacity is not at issue. If **YES** then record nature of disturbance)

Tick applicable condition

Neurological Disorder

Learning Disability

Mental Disorder

Dementia

Stroke

Head Injury

Delirium, Unconsciousness

Substance Use

Other (please *record*).....

NATURE OF DECISION

Record in the space below the nature of decision at issue for the person being assessed

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