



<b>Mental Capacity Policy</b>	
Reference: GN22	Effective date: 1 June 2012
Page no: 1 of 3	Approved: October 2022
Revised 26 September 2022	Next revision due: September 2024

## Introduction

The Mental Capacity Act 2005 covers people in England and Wales who can't make some or all decisions for themselves. The ability to understand and make a decision when it needs to be made is called 'mental capacity'. People working with or caring for adults who lack capacity to make decisions for themselves have a legal duty to consider the Code of Practice.

The Act is designed to protect and empower individuals who may lack the mental capacity to make their own decisions about their care and treatment. It is a law that applies to individuals aged 16 and over.

Examples of people who may lack capacity include those with dementia, a severe learning disability, a brain injury, a mental health condition, unconsciousness caused by an anaesthetic or sudden accident. Just because a person has one of these conditions does not necessarily mean they lack the capacity to make a specific decision. Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop).

The MCA also allows people to express their preferences for care and treatment in case they lack capacity to make these decisions. It also allows them to appoint a trusted person to make a decision on their behalf should they lack capacity in the future.

The MCA sets out a two-stage test of capacity.

- 1) Does the individual concerned have an impairment of, or a disturbance in the functioning of, their mind or brain, whether as a result of a condition, illness, or external factors such as alcohol or drug use?
- 2) Does the impairment or disturbance mean the individual is unable to make a specific decision when they need to? Individuals can lack capacity to make some decisions but have capacity to make others, so it is vital to consider whether the individual lacks capacity to make the specific decision.

Also, capacity can fluctuate with time – an individual may lack capacity at one point in time, but may be able to make the same decision at a later point in time. Where appropriate, individuals should be allowed the time to make a decision themselves.

In relation to the second question, the MCA says a person is unable to make a decision if they cannot:

- ◆ understand the information relevant to the decision
- ◆ retain that information
- ◆ use or weigh up that information as part of the process of making the decision

If they aren't able to do any of the above three things or communicate their decision (by talking, using sign language, or through any other means), the MCA says they will be treated as unable to make the specific decision in question.



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## Procedures

### Duties and responsibilities

All employees and volunteers have a duty to be aware of and abide by the Mental Health Capacity Code of Conduct. A copy is saved on the company server alongside this policy. Much of the code refers to settings and situations that will not arise in the context of the day services on offer at the farm. The main principles should be followed. The MCA gives 5 principles

- Everyone has the right to make his or her own decisions. Health and care professionals should always assume an individual has the capacity to make a decision themselves, unless it is proved otherwise through a capacity assessment.
- Individuals must be given help to make a decision themselves. This might include, for example, providing the person with information in a format that is easier for them to understand.
- Just because someone makes what those caring for them consider to be an "unwise" decision, they should not be treated as lacking the capacity to make that decision. Everyone has the right to make their own life choices, where they have the capacity to do so.
- Where someone is judged not to have the capacity to make a specific decision (following a capacity assessment), that decision can be taken for them, but it must be in their best interests.
- Treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms possible, while still providing the required treatment and care.

To help someone make a decision for themselves about their care service the following points should be checked.

- ◆ Providing relevant information
  - Does the person have all the relevant information they need to make a particular decision?
  - If they have a choice, have they been given information on all the alternatives?
- ◆ Communicating in an appropriate way
  - Could information be explained or presented in a way that is easier for the person to understand (for example, by using simple language or visual aids)?
  - Have different methods of communication been explored if required, including non-verbal communication?
  - Could anyone else help with communication (for example, a family member, support worker, interpreter, speech and language therapist or advocate)?
- ◆ Making the person feel at ease
  - Are there particular times of day when the person's understanding is better?
  - Are there particular locations where they may feel more at ease?
  - Could the decision be put off to see whether the person can make the decision at a later time when circumstances are right for them?
- ◆ Supporting the person
  - Can anyone else help or support the person to make choices or express a view?

## Deprivation of Liberty Safeguards

Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. The Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive of their



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liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.

There are no circumstances at the city farm where it is necessary to deprive someone of their liberty.

## **Appendix 1 – Sources and further information**

This policy has been developed with reference to the following sources, which also contain further information.

<http://www.nhs.uk/conditions/social-care-and-support-guide/pages/mental-capacity.aspx#>

<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>