

Drs. BALL, PURCHAS, LIN, MURTHY, SMITHSON & MOON

Associate: Drs Hutchinson and Keast

'To Improve the Health, Wellbeing and Lives of those we care for'

Email: enquiries.probusurgery@nhs.net

www.probusurgery.co.uk

VAT registration number 668 4114 21

Mental Capacity Act Policy

Amended by Spencer Casey

Probus GP Practice

Mental Capacity Act Policy

Contents

Mental Capacity Act Policy 3

Purpose and definitions..... 3

Scope..... 4

Roles, rights, and responsibilities 4

Principles of this policy 5

Distribution 8

Training..... 8

Monitoring and reporting..... 9

Summary of NHS legal and mandatory documentation 9

Versions..... 9

Bibliography 9

Purpose and definitions

The purpose of this policy is to provide guidance for staff and assurance to patients that xxx is committed to continually providing high quality healthcare for all patients and supporting the

staff who provide this care. The aim of the policy is to provide a framework of understanding for our approach to the principles of the Mental Capacity Act.

All patients regardless of age, gender, ethnic background, culture, cognitive function, sexual orientation, or marital status have the right to have their privacy and dignity respected.

The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment, and support of people aged 16 years and over living in England and Wales who are unable to make all or some decisions for themselves.

The MCA is designed to protect and restore power to vulnerable people who lack capacity.

The MCA also supports those who have capacity and choose to plan for their future.

Scope

This policy applies to all employees of xxx, contractors, seconded staff, placements, and agency staff.

Roles, rights, and responsibilities

Clinicians

Clinicians have a responsibility and duty to comply with the Mental Capacity Code of Practice.

Practice manager

To update the policy, ensure that it is aligned with national guidelines, distribute appropriately, and ensure that staff are trained at induction and at regular intervals so that they are aware of the principles of the Mental Capacity Act and the content of the practice policy.

Principles of this policy

This policy adheres to local and national guidance and policy including the principles of the Mental Capacity Act as it relates to primary care. The Mental Capacity Act contains the following principles:

Presumption of capacity — adults should always be presumed to have the capacity to make a decision, unless the healthcare professional can prove otherwise.

Maximising decision-making capacity — the person must be given all practical support before it can be decided that they lack capacity. Support may involve extra time for assessment, repeating the assessment if capacity fluctuates, or using an interpreter, sign language, or pictures.

The freedom to make seemingly unwise decisions — if the person makes a seemingly unwise decision, this in itself is not proof of incapacity. Proof of incapacity depends on the process by which the decision is made, not the decision itself.

Best interests — any decision or action taken on behalf of the person must be in their best interests. If the decision can be delayed until the person regains capacity, then it should be. A decision taken on another's behalf should take account of their wishes, including those expressed in an advance decision, and their beliefs and values. The decision-making process should involve, when appropriate, family, carers, and significant others.

The least restrictive alternative — when a decision is made on the person's behalf, the healthcare professional must choose the alternative that interferes least with the person's rights and freedoms while still achieving the necessary goal.

Mental capacity issues in young people

For young people aged 16–17 years who lack capacity, we accept that parents can consent on their behalf if the decision to be made is felt to be within parental control.

For young people under the age of 16, they may have the capacity to consent – or refuse – such treatment, depending on their maturity and ability to understand what is involved. We are aware

that this age group is not specifically covered by the Mental Capacity Act 2005, but we apply the same principles.

In deciding whether a child has capacity to consent, each health professional needs to assess that they can understand the nature, purpose, and possible consequences of investigations or treatments proposed, and the consequences of not having treatment.

Only if they are able to understand, retain, use, and weigh this information, and communicate their decision to others can they provide valid consent.

Healthcare professionals should be aware, however, that they are able to give treatment regardless of whether parental consent has been given, as long as the principles of the Mental Capacity Act (2005) are followed, and the decision is judged to be in the young person's best interests.

Mental capacity issues in people who cannot give consent

We follow the General Medicine Council advice on how best to treat people who lack capacity to make decisions.

We therefore:

- Make the care of our patient our first concern.
- Treat patients as individuals and respect their dignity.
- Support and encourage patients to be involved, as far as they want to and are able, in decisions about their treatment and care
- Treat patients with respect and not discriminate against them.

All health professionals must also consider:

- Whether the patient's lack of capacity is temporary or permanent.
- Which options for treatment would provide overall clinical benefit for the patient.

- Which option, including the option not to treat, would be least restrictive of the patient's future choices and in the patient's best interests.
- Any evidence of the patient's previously expressed preferences, such as an advance statement or decision, beliefs, and values.
- The views of anyone the patient asks you to consult, or who has legal authority to make a decision on their behalf or has been appointed to represent them.
- The views of people close to the patient on the patient's preferences, feelings, beliefs, and values.

We also follow the Mental Capacity Act recommendations and checklist for professionals in order to assist them with the decision in a person's best interests.

At all times, our staff will therefore:

- Encourage participation and do whatever is possible to permit or encourage the person to take part.
- Identify all relevant circumstances, in other words, consider the elements an individual lacking capacity might weigh if they were making the decision themselves.
- Find out the person's views – including their past and present wishes and feelings, and any beliefs or values, for example from advance statements.
- Avoid discrimination – do not make assumptions based on age, their underlying condition, their appearance, or other factors that may not be relevant.
- Assess whether the person might regain capacity – if they might, could the decision be postponed or is this a time-critical decision that cannot wait.

The summary of these discussions will be recorded in the patient's notes.

We have a standard consent form that is available on TeamNet.

We store copies of completed consent forms in the patient record.

Distribution

Employees will be made aware of this policy via TeamNet.

Patients will be made aware of this policy using patient leaflets and on the practice website.

Training

All staff will be given training on the Mental Capacity Act at induction and at regular intervals thereafter.

Any training requirements will be identified within an individual's Personal Development Reviews. Training is available in the Training module within TeamNet.

Equality and diversity impact assessment

In developing this policy, an equalities impact assessment has been undertaken. An adverse impact is unlikely, and on the contrary the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.

If, at any time, this policy is considered to be discriminatory in any way, the author of the policy should be contacted immediately to discuss these concerns.

Monitoring and reporting

Monitoring and reporting in relation to this policy are the responsibility of the practice manager.

The following sources will be used to provide evidence of any issues raised:

- PALS.
- Complaints.
- Significant and learning events.

Any incidents relating to the Mental Capacity Act will be monitored via incident reporting.

Summary of NHS legal and mandatory documentation

Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/contents>

Mental Capacity Act 2005 <http://www.legislation.gov.uk/ukpga/2005/9/contents>

Versions

Document review history

Version number	Author/reviewer	Summary of amendments	Issue date
1.0	Clarity Informatics	Policy written	4.5.2020
2.0	Spencer Casey	Reviewed	05/08/2021
3.0			
4.0			
5.0			
6.0			
7.0			

Bibliography

NHS Health A to Z. Consent to treatment <https://www.nhs.uk/conditions/consent-to-treatment/>

Royal College of Nursing. Capacity <https://rcni.com/hosted-content/rcn/first-steps/capacity>

Care Quality Commission. Regulation 11: Need for consent <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-11-need-consent#guidance-links>

RCN. Principles of consent guidance for nursing staff <https://www.rcn.org.uk/professional-development/publications/pub-006047>

British Medical Association. Getting consent adults with capacity <https://www.bma.org.uk/advice/employment/ethics/medical-students-ethics-toolkit/6-consent-to-treatment-capacity>

General Medical Council. Consent: patients and doctors making decisions together <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/consent>

Medical Protection Society. Consent – The basics – England

<https://www.medicalprotection.org/uk/articles/eng-consent-the-basics>

Hall, D.E., Prochazka, A.V., Fink, A. S. Informed consent for clinical treatment CMAJ 2012;

184(5): 533-540 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3307558/>

Mental Capacity Act 2005 www.legislation.gov.uk/ukpga/2005/9/contents

UK Government. Mental Capacity Act code of practice

www.gov.uk/government/publications/mental-capacity-act-code-of-practice