



Fairfield Farm College

Mental Capacity Policy

Policy Number	New or Reviewed	Date of next Review	Responsibility
P021	October 2018	October 2019	Registered Manager

To provide young people with opportunities to be successful and make a positive contribution within their community.

Policy Statement

The Mental Capacity Act 2005 and the accompanying Code of Practice is a vital piece of legislation which aims to make a real difference to people's lives. It should empower people to make decision and protect those who lack capacity by providing a flexible framework that places individuals at the very heart of the decision-making process. Everyone working with, living with or caring for someone who may lack capacity must follow the Mental Capacity Act (MCA) and the Code of Practice.

Care Act 2014

Throughout this Act, capacity or lack of it determines how adults will be supported and cared for by ensuring that person centered care is core to how services are delivered. Those services must reflect the needs and preferences of the person requiring care and support and where they lack capacity the Code of Practice must be followed. The Care and Support Statutory Guidance updated on 9th July 2018 issued under the Care Act 2014 - Chapter 6.

The Policy

Within Fairfield Farm Trust, the Code of Practice referred to above will be used as the guidance on how to proceed regarding individuals who may lack capacity. Individuals with capacity will be listened to, their needs and preferences considered during all aspect of the Care and Support Planning process. We will act in accordance with the five statutory principles, at all times unless guided otherwise by our local Mental Capacity Assessment team or statutory multi-agency partner.

The five statutory principles are:

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 them 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/she 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 their best interests.
5. Anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedom.

Throughout the Code of Practice, a person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.

These basic principles must be understood respected, and incorporated into the FFC practice, at every level, by all members of staff. Anyone who claims that an individual lacks capacity should be able to provide proof. They need to show, that, on the balance of probabilities, the individual lacks capacity to make a particular decision, at the time it needs to be made. This means being able to show that it is more likely than not that the person lacks capacity to make the decision in question.

All staff should familiarise themselves with the provisions set out in the Mental Capacity Act 2005 and should always remember that the spirit of MCA and DOLS should encourage a person-centered view. The emphasis should be on empowerment and enablement.

Summary

- The Mental Capacity Act came into force in 2005.
- The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales or are unable to make all or some decisions for themselves.
- The Mental Capacity Act was designed to protect and restore power to those vulnerable people who lack capacity.
- The Mental Capacity Act provides legal protection in practice for health and social care staff and support and guidance for Carers.
- The Mental Capacity Act 2005 was amended to provide for a procedure to authorise the deprivation of the liberty of a mentally incapacitated person. This part of the Act is called the Deprivation of Liberty Safeguards (DOLS). The policy and procedure regarding this part of the Act is contained in the Deprivation of Liberty Safeguards Policy and Procedure.
- Guidance on the Act is provided in a Code of Practice. Everyone caring for or working with an adult who may lack capacity to make specific decisions must comply with this Act. Within the Act, a distinction is made between day to day and more complex decisions.
- Consent forms an essential part of the MCA, and at FFC it is fundamental to the care, treatment, support and education given to the young people and service users. The application, assessment, care plan and learner agreement require consent by the young person and if appropriate, a relevant and responsible adult.
- There is a Code of Practice which provides guidance and information as to how the Act works.

What is the test of capacity?

To help determine if a person lacks capacity to make particular decision, the Act sets out a two stage test of capacity, which must be undertaken using the appropriate forms. A Mental Capacity Assessment form can be found at the end of this policy, and on internal system 'People HR'.

Stage 1:

- Does the person have an impairment of, or a disturbance in the functioning of their mind or brain? If the person does not have such an impairment or disturbance, they will not lack capacity under the Act.
- Examples of impairment or disturbance include:
 - Conditions associated with some forms of mental illness.
 - Dementia
 - Significant learning disabilities.
 - The long-term effects of brain damage.
 - Physical or mental conditions that cause confusion, drowsiness or loss of consciousness
 - Delirium
 - Concussion following a head injury, and the symptoms of alcohol or drug use

Stage 2:

- Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?
- For a person to lack capacity to make a decision, the Act says their impairment or disturbance must affect their ability to make the specific decision when they need to. But first people must be given all practical and appropriate support to help them make the decision for themselves. (Principle 2)
- Stage 2 can only apply if all practical and appropriate support to help the person make the decision has failed.
- "Inability to make a decision"
- A person is unable to make a decision if they cannot:
 - Understand information about the decision to be made (the Act calls this "relevant information").
 - Retain that information in their mind.
 - Use or weigh that information as part of the decision-making process, or
 - Communicate their decision (by talking, sign language or any other means).

Assessing ability to make a decision

- Does the person have a general understanding of what decision they need to make and why they need to make it.
- Does the person have a general understanding of the likely consequence of making or not making the decision?
- Is the person able to understand, retain and use and weigh up information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as speech and language therapist) be helpful?

The member of staff who carries out the initial assessment will be trained and competent to do so. All care or support staff will be trained and competent in MCA 2005 as different people will be involved in assessing someone's capacity to make different decisions at different times on a day to day basis. Any assessor will have the skills and ability to communicate effectively with the person, where necessary they should get professional help to communicate with the person.

When assessing capacity the following points are considered:

- Start by assuming the person has capacity to make the specific decision. Is there anything to prove otherwise?
- Does the person have previous diagnosis or disability or mental disorder? Does the condition now affect their capacity to make this decision? If there have been no previous diagnoses, it may be best to get a medical opinion
- Make every effort to communicate with the person to explain what is happening.
- Make every effort to try to help the person make the decision in question.
- See if there is a way to explain or present information about the decision in a way that makes it easier to understand. If the person has a choice, do they have information about all the options?
- Can the decision be delayed to take time to help the person make the decision, or to give the person time to regain the capacity to make the decision for themselves?

- Does the person understand what decision they need to make and why they need to make it?
- Can they understand information about the decision? Can they retain it, use it and weigh it to make the decision?

Be aware that the fact that a person agrees with you or assents to what is proposed does not necessarily mean that they have capacity to make the decision.

Anyone assessing someone's capacity will not assume that a person lacks capacity simply because they have a particular diagnosis or condition. There must be proof. The following questions will be asked:

- Does the person have a general understanding of what they need to make and when they need to make it.
- Do they understand the likely consequences of making or not making the decision?
- Can they understand and process the information about the decision? Can they use it to help them make a decision.

Complex decisions

When assessing someone's capacity in making a complex decision, we will get a professional opinion when necessary. This may be the G.P, a specialist, speech and language therapist, and in some cases a multi-disciplinary team.

Challenging a " finding of lack of capacity"

- When a situation arises that a Service User responsible person challenges the result of the assessment of capacity, the first step is to raise the matter with the person who carried out the assessment. If the Service User has been assessed to lack capacity they should have support from family, friends or an advocate.
- The assessor must give the reason why they believe the person lacks capacity to make the decision and provide objective evidence to support their belief.
- The assessor must show they have applied the principles of the Mental Capacity Act.
- If possible a second opinion from an independent professional or expert in assessing competence should be sought.
- If the disagreement cannot be resolved the person who is challenging the assessment may be able to apply to the Court of Protection.

Professional records

When professionals carry out an assessment of a person's capacity to consent or make a particular decision, the relevant records are kept in the Service User's personal file.

Best interest decision

One of the key principles of the MCA 2005 is that any decision made on behalf of a person who lacks capacity must be done or made, in that person's best interests. Fairfield Farm Trust follows these rules:

- Where a decision involves the provision of medical treatment, the G.P or other health care staff will make a decision based in the individual's best interests. All decisions are recorded within the Young Persons care plan.

- If a Lasting Power of Attorney has been made or a deputy has been appointed under a Court order, the attorney or deputy will be the decision-maker, for decisions within the scope of their authority
- Whenever possible, the person who lacks capacity will be involved in the decision-making process. For major decision based on best interests of a person who lacks capacity the responsible person will liaise with the local authority, families and will record findings.

Factors which may indicate that a person may regain capacity in the future:

- The lack of capacity is likely to decrease in time (for example, where it is caused by the effect of medication or alcohol, drugs, or following a sudden shock)
- If a person is temporarily incapacitated, for example under the influence of alcohol, drugs or at crisis, responsible person would make a decision based in their best interest at that time. This may include positive intervention (Proact Scip)
- A person with learning disabilities may learn new skills or be subject to new experience which increase their understanding and ability to make certain decisions
- A person previously unable to communicate may learn a new form of communication

Advocacy

Fairfield Farm Trust will advise the Service User or responsible person to use an advocate should:

- The person who lacks capacity has no close family or friends to take an interest in their welfare (ie: Health & Welfare/ Property & Financial)
- Family members disagree about the person's best interests
- Family members and professionals disagree about the person's best interests
- There is a conflict of interest for people who have been consulted in the best interest's assessment (for example, there is a conflict in decision where there is a breakdown in family relations)
- There is a concern about the protection of a vulnerable adult

This policy should be read in conjunction with:

Statement of Purpose

Employee handbook

Deprivation of Liberty Safeguards Policy

Dignity & Respect Policy

Medication Policy

Positive Behaviour policy.

Safeguarding

Staff Training & Development Policy

Student Welfare & Protection record keeping policy.

The Protection of Vulnerable Adults

This policy is supported by the following legislation and is not exhaustive:

Children Act 1989

Data Protection Act 2018

Equality Act 2010

Equality Act 2010: Chapter 1 (protected characteristics) Chapter 2 (prohibited conduct) and Chapter 3 (services and public functions)
The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015
Health and Safety at Work etc. Act 1974
Human Rights Act 1998
The Local Authority Social Services and National Health Service complaints (England) regulations 2009
Mental Capacity Act 2005
Safeguarding Vulnerable Groups Act 2006

If completed, the forms following this page should be attached to the Service User's care plan.

BY ORDER OF THE BOARD

Tanya Takle
Registered Manager
September 2018

Mental Capacity Act: Assessment

Each MCA decision should be made as the result of a separate assessment and in compliance with the MCA 2005.

Details of Lasting Power of Attorney, if any:

Yes/No

Details of any Court appointed deputies:

Yes/No

Details of any Independent Mental Capacity Advocate:

Yes/No

Details of any Advance decisions to refuse treatment:

Yes/No

Other relevant details:

Yes/No

Accountability signature (Named Nurse or Key Worker to print name and sign):

Date of
form
completion:

Mental Capacity Act: Plan of Care

Service User's Name:	Admission date:
Assessed Need and Service User view:	
Aim of care:	
Staff instruction(s):	
Accountability signature (person completing to print name and sign):	Date of form completion:
Signature (Service User or Advocate to print name and sign):	Date of form completion:

MENTAL CAPACITY ACT: ASSESSMENT FORM - ASSESSING A PARTICULAR DECISION

Assessment to ascertain whether or not

_____ (Service User)

has the mental capacity in relation to a particular decision whilst living at:

Fairfield Farm College (FFC Trust)

Date of Admission/Commencing Service:

Person Undertaking Assessment:

The Decision being made is:

Position of person completing the form:

Signature:

Date:

MENTAL CAPACITY ACT: ASSESSING MENTAL CAPACITY

Note: You must always act from the assumption that the person has capacity to make the decision in question. However, if you are not certain that someone has capacity and that they may regain capacity shortly, then ask yourself the following questions.

Does the decision need to be made without delay?	Yes or No
Is it possible to wait until the person does have the capacity to make the decision for him or herself? (For example, a person may be drowsy or disorientated because of the medication they are taking.)	Yes or No
<p>If the answer to the Question 1 is Yes AND Question 2 is No then proceed to the assessment.</p> <p>If the answer to Question 1 is No then delay the making of the decision and make a diary note to review the person's capacity to see if they can then make the decision at a later date.</p> <p>If the answer to Question 1 is Yes but the answer to Question 2 is Yes revisit the matter to when a decision is needed and consider if the decision can be delayed.</p>	

MENTAL CAPACITY ACT: TEST OF CAPACITY

Part A	
1. Is there an impairment of, or disturbance in, the functioning of the person's mind or brain (it does not matter if this is permanent or temporary)	Yes/No
2. If yes, does the impairment or disturbance make the person unable to make the particular decision?	Yes/No
If the answer to both those questions is NO then the person has the mental capacity to make their own decisions.	
If the answer is YES to either question, proceed to part B.	

Part B	
1. Is the person able to understand the information relevant to the decision, including understanding the likely consequences of making, or not making the decision?	Yes/No
2. Is the person able to retain that information?	Yes/No
3. Is the person able to use or weigh that information as part of the process of making the decision?	Yes/No
4. Is the person able to communicate their decision (whether by talking, using sign language or any other means)?	Yes/No
If the answer to any of these four questions is NO then the person does not have the mental capacity to make a decision.	

MENTAL CAPACITY ACT: DEMONSTRATING BEST INTEREST IN MAKING THE DECISION

1. How is making this decision in the best interest of the Service User?

2. Who else have you consulted (e.g. family member, doctor or other staff member)?

Decision made:

Person completing this form:

Position of person completing this form:

Signature:

Date:

Key Lines of Enquiry Table

Key Line of Enquiry	Primary	Supporting	Mandatory
How are people protected from bullying, harassment, avoidable harm and abuse that may breach their human rights?	✓		✓
Is consent to care and treatment always sought in line with legislation and guidance?	✓		✓

Note: All Fairfield Policies are reviewed annually, more frequently, or as necessary.