



Bethel

Health & Healing Network

Mental Capacity Policy
SENIOR MANAGEMENT TEAM
VERSION 1.1

Introduction

Bethel Health & Healing Network (Bethel) is a registered charity and company limited by guarantee offering a range of services to promote the health and well-being of the people of Birmingham and its environs. It is a Christian organisation whose focus is on enabling people to maximize their physical, psychological and spiritual potential, by achieving balance, harmony and wholeness within themselves, their relationships and their community.

Policy aims

This policy is intended to guide staff, volunteers and trustees of how to respond to and work in accordance the new regulations set out in the Mental Capacity Act 2005. The policy will:-

- Set out the key principles of the Mental Capacity Act including Deprivation of Liberty Safeguards
- Define what may constitute deprivation of liberty
- Identify those involved
- Set out the changes we have implemented to ensure we fully comply with the mental capacity act
- Set out the actions that Bethel will undertake in order to meet the above regulations and standards

Scope

This policy applies to all staff, volunteers and clients.

Principles

The Mental Capacity Act 2005 [MCA] applies to everyone working in health and social care who is involved in the care, treatment and support of people aged 16 and over who live in England and Wales and who are unable to make all or some decisions for themselves.

The term “Mental Capacity” [or sometimes referred to as “capacity”] is used to describe a person’s ability who to make their own decisions. The MCA says that a person is unable to make a particular decision if they cannot do one or more of the following four things:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information available to make the decision

- communicate their decision.

We might all have problems making decisions from time to time, maybe due to illness, tiredness or indecision. But the MCA is designed to go beyond these types of situations. It is designed specifically to empower and protect an individual who is unable to make a decision because of the way their mind or brain works is affected, for example, by illness or disability, or the effects of drugs or alcohol.

People may lack capacity due to:

- a stroke or brain injury
- a mental health problem
- dementia
- a learning disability
- confusion, drowsiness or unconsciousness because of an illness or the treatment for it
- substance misuse

The MCA covers all types of decisions, big and small. This may be from the day-to-day, such as what to wear or eat, through to more serious or complex decisions, about, for example, where to live, whether to have surgery or how to manage finances or property.

The MCA applies to situations where someone is unable to make a particular decision at a particular time because of the way their mind or brain is affected. When suffering from depression, an individual may be unable to make a decision, but when recovered they can.

And, because someone lacks capacity to make major decisions, this does not mean they are unable to make minor decisions. For example, an individual with a learning disability whilst unable to make a decision about where to live, is able to make other smaller decisions, such as what to eat, wear or do each day.

Key principles

Finally, no one can apply the MCA correctly without knowing its few key principles:

- everyone must be assumed to have capacity to make a decision unless it is shown they do not
- people cannot be treated as lacking capacity unless all practicable steps have been taken to help them make the decision
- people do not lack capacity just because they make an unwise decision
- decisions and acts taken for people who lack capacity must be in their best interests
- consideration must always be given whether their best interests can be served by a different approach which is less restrictive of their rights and freedom.

Assessing Capacity

Some of the service users you will work with will need to make decisions about their own care or the care of dependent. There may be a time when the service user makes a decision that you wouldn't necessarily make yourself.

There are many reasons why someone will make a decision that goes 'against the grain' for instance...

- Cultural differences
- Language differences
- Not enough information to make an informed choice

If you are concerned about a decision that a service user makes, first, record it and then, report it to a line manager or the CEO. Discuss the matter and formulate an action plan to assess capacity.

If the service user makes a decision that puts themselves to others at risk, then you must follow your safeguarding protocols which may mean you may need to involve an external agency immediately before reporting to your line manager. (Please familiarise yourself with the Safeguarding Adults and Safeguarding Children and young people policies)

If you think that a service user lacks capacity, you need to be able to demonstrate it. Staff should be able to show that it is more likely than not – ie, a balance of probability – that the person lacks the capacity to make a specific decision when they need to.

An assessment that a person lacks capacity to make decisions should never be based simply on the person's age, appearance, assumptions about their condition (includes physical disabilities, learning difficulties and temporary conditions (eg, drunkenness or unconsciousness), or any aspect of their behaviour.

It is important to document any decisions you make in assessing capacity, and any reasons for the clinical judgment that you come to. If you feel ill-equipped to make the assessment, then you can involve another experienced colleague or contact your local Independent Mental Capacity Advocacy Service (IMCA) – details below.

When capacity is assessed

Staff may need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability. Lack of capacity may not be a permanent condition. Assessments of capacity should be time- and decision-specific.

Staff cannot decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

Assessing Mental Capacity

The test to assess capacity

You will normally make an of capacity without involving family, friends and/or carers or Independent Mental Capacity Advocate (IMCA) if one has been appointed. This will depend on the situation and the decision that need to be made.

You should never an opinion, without first conducting a proper assessment of the person's capacity to make a decision.

The functional test of capacity

In order to decide whether individual has die mental capacity to make a particular decisions, you must first decide whether there is an of, or brain (it does not matter if this is or

If So, the second question you must answer is does the impairment or disturbance make the person unable to make the particular decision?

The person will be unable to make the particular decision if after all appropriate help and support to make the decision has been given to them they cannot:

- Understand the information relevant to the decision, including understanding the likely consequences of making or not making the decision
- Retain the information
- Use of weigh that information as part of the process of making the decision
- Communicate their decision (whether by talking using sign language or any other means)

Every effort should be made to find ways of communicating with someone before deciding what they lack capacity to make a decision based solely on their ability to communicate. Very few people will lack capacity on this ground alone. Those who do might include people who are unconscious or in a coma or who suffer from the rare-neurological condition known as 'locked-in syndrome'. In many other cases such simple actions as blinking or squeezing a hand may be enough communicate a decision. The input of professionals with specialised skill in verbal and non-verbal communication is likely to be required when making decision in this area.

As assessment must be made the balance of probabilities - is it more likely than not the person lacks capacity? You should be able to show in the service user' s records why have come to the conclusion that the person lacks capacity to make due particular decision.

Appendix 1

This form can be found on <http://www.bsab.org/how-to-report-abuse/>