



Working With Service Users That Might Lack Capacity Policy

Principles 1. The SUN Network will work with the principles of the Mental Capacity Act 2005 by first treating all of the people who use our services and prospective service users on the basis that they are able to take their own decisions.

The five statutory principles are:

- A person must be assumed to have capacity unless it is established that they lack capacity.
- 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.
- A person is not to be treated as unable to make a decision merely because they make an unwise decision.
- 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.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

How to tell if someone can make a decision

There are several things you should consider when assessing if a person can make a decision:

- If the person understands what decision they need to make and why they need to make it
- If the person understands what might happen if they do or do not make this decision
- If the person can understand and weigh up the information relevant to this decision
- If the person can communicate their decision (by talking, using sign language or any other means)
- If the person can communicate with help from a professional (such as a speech and language therapist)
- If there is a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)

You must not treat the person as unable to make a decision just because they make decision you don't agree with.

2. There might be some occasions when The SUN Network staff in the course of their work become involved, or find it necessary to enter into some decision making process on behalf of someone who cannot take a decision at the time that it needs to be taken.

3. The SUN Network will take decisions on behalf of a service user only if there is evidence that they cannot take the decision (at the time it needs to be made) because of mental incapacity. It will co-operate with relatives, carers, services and others involved with the service user in decision making on behalf of a person on the same basis.

The SUN Network Cambridgeshire and Peterborough
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4. It will not take or collude in taking decisions for a service user where, from its point of view, there is insufficient evidence and it does not appear to be in that person's best interests.

5. The SUN Network will only take a decision for one of its service users after it has exhausted every means of enabling the person to take it of their own accord. It will also show that its actions in taking the decision are reasonable, and in the person's best interests.

6. Where The SUN Network has information that suggests the person might be unable to take some decisions at some times it will offer to contribute to an assessment of that person's mental capacity. It recognises that the assessment procedure should follow the two step assessment process recommended in the Mental Capacity Act's Code of Practice.

Stage 1 diagnostic test

First, an assessment needs to be made as to whether there is impairment in the functioning of the mind. The approach is referred to as the 'diagnostic test', which requires evidence of a condition that can be shown to impair functioning such as to render the individual unable to make the decision. This test should be applied at the time the decision is to be made without regard to whether the condition is permanent or temporary. In addition to this, the assessment must be with reference to objective criteria rather than on assumptions drawn from appearance or prejudicial assumptions about that condition.

Stage 2 functional test

Secondly, an assessment needs to be made as to whether a person is unable to make a decision about a specific matter and therefore lacks capacity in relation to that specific matter. This is referred to as the functional test.

7. The SUN Network ensures that it complies with all aspects of the law in the cases of service users who are subject to guardianship proceedings or who need legal protection on account of their lack of mental capacity. It includes here service users, who have assigned powers of attorney or who are subject to Court of Protection proceedings.

Assessment of Mental Capacity

1. The SUN Network ensures that staff will make every effort to be aware of any concerns relating to a person's decision taking capacity and the decisions over which they might need help on account of their possible lack of capacity during their involvement with The SUN Network.

2. The individual is always as fully involved as possible. Decisions are only taken on the basis of the best information available and the agreement of those concerned in the person's care and future. All decisions taken for that person are fully recorded.

Staff Involvement

1. The SUN Network expects its staff to implement the procedures and decisions that are identified in this policy.
2. The SUN Network also expects its staff to involve service users in all decisions that need to be taken by seeking their consent and checking that the actions to be taken are

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consistent with their plan of care (if available to us) if the individual service user lacks capacity at the time.

3. Where the service user needs to take a decision that lies outside of their ability at the time staff must do everything to help the person decide for her or himself.

4. The SUN Network expects its staff to avoid taking decisions on behalf of a service user unless they can show that it is necessary and the service user at the time is unable to take that decision her or himself. Any such incident must be fully recorded.

5. The SUN Network expects its staff to take decisions for service users lacking capacity only because they have reasonable beliefs that they are necessary and in the person's best interests. When in doubt that they can proceed in this way they must seek advice from the Executive Director.

Signed:

Jonathan Wells

Chair of Directors

Date: 1st August 2019

Signed:

Lois Sidney

Executive Director

Date: 1st August 2019

To be reviewed August 2022



Appendix 1:

Record of working with a service user who might lack mental capacity

Name of service user	
D.O.B	
Address	
Where did the incident occur?	
Who was involved?	
<p>Please give details of the incident including: Why there was a reasonable belief that the service user lacked mental capacity, what steps you took to try and empower them to make their own decisions, and how did you establish lack of capacity?</p> <ul style="list-style-type: none">• Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.	



<p>Did you call/involve anyone else? If so who, and what involvement did they have?</p>	
<p>What was the outcome? What decisions were made on behalf of the service user?</p>	
<p>Do you believe the decisions made were in the best interests of the service user?</p> <p>Yes/No</p>	
<p>Name: (print clearly)</p>	<p>Signature:</p>
<p>Date:</p>	

