



Working With Service Users Who May Lack Capacity

1. Principles

The SUN Network will work with the principles of the Mental Capacity Act 2005 (MCA) by first treating all 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 of the MCA 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.

2. Practice

The SUN Network staff are not operating in roles where they provide health or social care and are not employed by the NHS, the local authorities or any care provider. They are not therefore expected to make decisions about mental capacity themselves and are not trained nor qualified to do so.

This policy aims to ensure that all staff are simply aware of the Mental Capacity Act and its implications for them.

Capacity assessments require the following questions to be explored by suitably qualified staff:

- 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).

If The SUN Network staff become aware of a situation where they are supporting an individual to speak up about their experiences and they are not sure whether that person understands what they are agreeing to do, they should bear the Mental Capacity Act in mind. An example might be a person with dementia wanting to get involved in a recruitment panel or co-production of written material.

Without undertaking a formal Mental Capacity assessment, the staff member should consider whether the individual genuinely understands the task they want to do and is able to contribute meaningfully and effectively. If the conclusion is that they cannot, the staff member should tactfully explain to the person and, if necessary, anyone providing care to them, that they are not suited to this role. Staff should be clear that in doing this they are acting with awareness of the Mental Capacity Act, but not carrying out any formal statutory assessment.

If they are in any doubt about their role and responsibilities they should discuss the situation with the Executive Director. Cambridgeshire Council Adult Social Care has an MCA team which is available for advice via mca.dls@cambridgeshire.gov.uk

3. Final points.

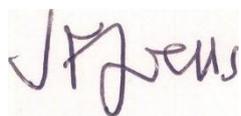
Staff may encounter a situation where an individual they are working with appears to be required to make decisions or undertake actions which they do not understand and which may not be in their best interests. In such situations, it would be reasonable for staff to ask care provider colleagues whether they consider the individual to have capacity. This is the limit of the staff member's role with regard to capacity.

It should be noted that there is a complex overlapping relationship between the MCA and the Mental Health Act. The latter may be relevant when it is a question of an individual with a mental disorder of a nature and/or degree to warrant detention in hospital for assessment and/or treatment in the interests of their health or safety or protection of others.

Further information can be found via the link below.

<https://www.mind.org.uk/media-a/2908/mca-2005-2017.pdf>

Agreed by the board: 19th July 2022



Jonathan Wells
Chair of Directors

Date: 1st August 2022



Lois Sidney
Executive Director

date: 1st August 2022

Review Date: 1st August 2025

Original Policy: August 2019