

Mental Capacity Act 2005
Deprivation of Liberty Safeguards Awareness

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Surname:

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Please complete the above, in the blocks provided, as clearly as possible.

Completing the details in full will ensure that your certificate bears the correct spelling and date.

The date should be the day you finish & must be written in the DD/MM/YYYY format.

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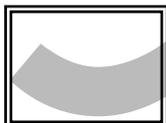
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N.B: We are aware that official practice is to use the terms “service users” or “people using this service” to describe those receiving care. We prefer the term “client” and use it throughout our training package.

Key:



worksheet



example



important

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Learning outcomes.

- Understand what the mental capacity act is and who it is relevant to.
- Recognise the five core principles that guide decisions about mental capacity.
- Identify how a person's ability to make a decision is assessed.
- Understand the term "best interests" and how this is applied.
- Recognise the role of deprivation of liberty safeguards (DoLS) in protecting the rights of vulnerable people.

Fundamental standards.

The fundamental standards are the standards by which CQC will inspect social care. The standards are based on the regulations from the Care Act 2014 and CQC have changed the focus for the purposes of inspection.

The fundamental standards are those standards that no care setting must fall below.

The standards are based on five areas as follows:

- | | |
|--------------------|---|
| Safe. | People are protected from abuse and avoidable harm. |
| Effective. | People's care, treatment and support show quality of life and promote good outcomes, and providers should show evidence to prove it. |
| Caring. | Care should be person centred involving dignity and respect, and compassion. |
| Responsive. | Following correct working procedures as agreed by your workplace and as set out in the client's care plan. |
| Well led. | Management leadership and governance should ensure all of the above happens. Staff training should be recognised and openness and fairness be apparent. |

These areas are known as key lines of enquiry or KLOES. Each KLOE has a set of criteria which CQC use to check whether the fundamental standards are being met.

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The fundamental standards are as follows:

Person centred care. Ensuring that those receiving the care are at the centre of all decisions.

Dignity and respect. Providing the client with dignity and respect in all aspects of their care.

Need for consent. Asking the client's permission before carrying out tasks that affect them.

Safe care and treatment. Following correct working procedures as agreed by your workplace and the client's care plan.

Safeguarding service users from abuse. Following agreed working and safeguarding procedures and being aware of signs and symptoms.

Meeting nutritional needs. Being aware of dietary needs, working with the care plan, ensuring clients have the right equipment and conditions to eat.

Cleanliness, safety and suitability of premises and equipment. Carrying out required checks of premises and equipment, implementing cleaning rotas and carrying out safety checks.

Receiving and acting on complaints. Having a complaints policy and procedure in place that is accessible to all and act in accordance with the policy when dealing with complaints.

Good governance. Ensuring that all aspects of the workplace is overseen and policies and procedures are implemented and monitored regularly.

Staffing. Fit and proper persons employed.
Fit and proper person requirement for Directors is followed.

Duty of candour. Relevant information must be volunteered to all persons who have or may have been harmed by the provision of services, whether or not the information has been requested and whether or not a complaint or a report about that provision has been made.

Our Redcrier manuals will provide your staff with training to support attainment of the fundamental standards.

Unit One

What is The Mental Capacity Act?

The Mental Capacity Act 2005 is a law which received Royal Assent on the 7th April 2007 and came into force on 1st October 2007. The Mental Capacity Act affects the way in which we all work in care. The MCA works with other existing legislation e.g. The Mental Health Act 1983. The MCA can be used to treat people with mental health problems who lack capacity. The MCA cannot be used to detain people or deprive them of their liberty.

The new Act applies to every person who works in a health and social care setting that is involved in the care, treatment or support of people aged over 16 years living in England and Wales, who are unable to make all or some decisions for themselves.

Lack of mental capacity.

This could be due to:

- A psychiatric illness such as dementia.
- Learning disability.
- Mental health problems.
- A brain injury, stroke or many other conditions.

Everyone that works in care, such as Care Home Managers, Care Staff (including domiciliary care workers), Support Workers and any other Health and Social care workers will be affected by the Act. This means they will need to have knowledge of, and abide by, the Act when making decisions or acting for a person, when that person lacks capacity to make a particular decision for themselves.

The rules apply whether the decisions are life changing events or everyday matters.

Acts of personal care can include:- washing & dressing; toileting; eating and drinking; administering medication; medical and dental treatment; and / or emergency procedures.

In emergencies, it will often be in the person's best interests for you to provide urgent care without delay.

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Five Statutory Principles.

The Act is underpinned by five principles, which are contained within the act and explained in the Mental Capacity Act code of practice:

- A presumption of capacity - All adults have the right to make their own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- The right for individuals to be supported to make their own decisions - people must be given all appropriate help before anyone makes the decision that they are unable to make their own decisions.
- That individuals must retain the right to make what might be seen as eccentric or unwise decisions unless the decision is harmful to others.
- Best interests - anything done for or on behalf of people without capacity must be in their best interests.
- Least restrictive intervention - anything done for or on behalf of people without capacity should be an option that is least restrictive - as long as it is still in their best interests.

The Code of Practice explains how the Mental Capacity Act will work on a day to day basis and provides guidance to all those working with, or caring for, people who lack capacity and should be followed in order to justify any actions and interventions.

One difficult area for service providers is that the Act states that an unwise decision by a client does not always indicate a lack of capacity.

Therefore, unusual behaviour or decisions which may not appear to someone else to be reasonable, does NOT necessarily confirm a lack of capacity.

We all have problems making decisions from time to time, but the Mental Capacity Act is about more than that.

It is specifically designed to cover situations where someone is unable to make a decision because their mind or brain is affected, for instance by illness or disability, or the affects of drugs or alcohol.

For example, someone may be unable to make a decision when they are depressed, but may be able to make the decision when they are feeling better. It may be the case that the person lacks capacity to make a particular decision at a particular time, but this does not mean that a person lacks capacity to make any decisions at all.

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Another example; a person with a learning disability or mental health problem, may lack the capacity to make some major decisions, for instance where they should live, who they live with, how to deal with finances or with regard to their medical treatment. However, this does not necessarily mean that they cannot decide what to eat, wear and what to do each day.

It is very important that you remember at all times that lack of capacity may not be a permanent condition. Assessments of capacity should be time and decision specific.

In the past, it may have been assumed that people with dementia, learning disabilities and severe mental illness were not capable of making any decision, but now it is recognised that a person's ability to make decisions can change according to circumstances and the nature of the decision.

Access to files.

Remember that access to personal information must be in accordance with the law. For example, the **NHS Code of Practice on Confidentiality** provides the following guidance.

“Where the person is incapacitated and unable to consent, information should only be disclosed in the person's best interest, and then only as much information as is needed to support their care.”

Disclosure of, and access to, information is regulated by:-

- Data Protection Act 1998.
- The common law duty of confidentiality.
- Professional Codes of Conduct.
- The Human Rights Act 1998.

How does the Act relate to other Legislation?

The Mental Capacity Act 2005 will apply in conjunction with other Legislation affecting people who may lack capacity in relation to specific matters. This means that healthcare and social care staff acting under the Act should also be aware of their obligations under other Legislation, including (but not limited to) the:-

- Health and Social Care Act 2008.
- Regulated Activities Regulations 2010.
- Data Protection Act 1998.
- Human Rights Act 1998.



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- Disability Discrimination Act 1995.
- Mental Health Act 1983.
- National Health Service and Community Care Act 1990.

Other Acts, for example the Juries Act 1974, have been amended to include the MCA's definition of lacking capacity. A 'lack of capacity' will disqualify somebody from jury service.

Legal tests under 'Common Law' and other legislation.

Although the Mental Capacity Act brings together much of the existing common law and establishes the way in which capacity must be assessed, some decisions will continue to be dealt with under common law.

Common Law, is law established through decisions made by courts when hearing individual cases.

Several tests of capacity have been established following judgements in court. These are known as Common Law Tests, and cover:

- Making a will.
- Making a gift.
- Entering into litigation (take part in legal cases).
- Entering into a contract.
- Entering into marriage.

Excluded decisions.

The following decisions are excluded from MCA:

- Voting.
- Consent to sexual relations.
- Consent to divorce, or ending a civil partnership.
- Consent to a child being placed for adoption.

Unit One Questions

1. Give three reasons for lack of Mental Capacity.

- 1.
- 2.
- 3.

2. At what age does the Mental Capacity Act come into force?

3. What parts of the United Kingdom does the Mental Capacity Act cover?

4. Fill in the two missing words: The Mental Capacity Act is designed to _____ and _____ vulnerable adults.

5. Name a law that affects access and disclosure of information.