

Mental Capacity Act 2005 – Capacity and Consent

1 Policy

1.1 Introduction

The Mental Capacity Act 2005 provides a framework to empower and protect people who may lack capacity to make some decisions for themselves.

The Mental Capacity Act makes clear who can take decisions in which situations, and how they should go about this. Anyone who works with or cares for an adult who lacks capacity must comply with the MCA when making decisions or acting for that person.

This applies whether decisions are life changing events or more everyday matters and is relevant to adults of any age, regardless of when they lost capacity.

The underlying philosophy of the MCA is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests.

The five key principles in the Act are:

- Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Please note that for the purposes of this policy and guidance the term 'people' refers to everyone using Hesley Group services aged 16 years and above. The term 'supporters' may refer to relatives, friends, advocates or social workers.

This Policy and Guidance refers to the Mental Capacity Act 2005 (MCA or the Act). **There is a separate policy and guidance on the MCA Deprivation of Liberty safeguards. Please see ReS 6.4B to read about this.**

This policy and guidance summarises the MCA, the Act's code of practice and how they affect the work of Hesley Group Services.

It is important to note that, whilst the Mental Capacity Act doesn't cover persons aged under 16 years of age, the principles of involving the child/young person and acting in their best interests should remain paramount.

1.2 It is the Hesley Group's policy that the outcomes listed below are met. People who use Hesley Group treatment and their supporters are entitled to expect that:

- they will continue to take decisions over their own lives whenever possible, and be included in such decisions at all times
- if decisions have to be taken on their behalf, they are always taken in their best interests
- care, treatment and support services and their staff are aware of their duties and responsibilities under the Mental Capacity Act 2005 (MCA)
- their human rights will be respected.

1.3 We will know that the policy and guidance is effective when we can demonstrate that:

- Staff are aware of people's rights.
- Care/support plans demonstrate that capacity and consent issues have been taken into account and they are reviewed regularly.
- People's supporters confirm they are consulted and that the person is involved with decision making.
- Records show that when the formal process is indicated, capacity assessments and best interests' decisions have been made in accordance with this guidance and the MCA Code of Practice. To achieve this all staff will be aware of people's rights under the Act through the delivery of training, continuing personal development and regular supervision.

2 Procedures

2.1 All staff working for the Hesley Group will follow the practice guidance set out in Mental Capacity Act 2005 - Capacity and Consent Practice Guidance for Staff, ReS 6.4A.1.