

Mental Capacity Act 2005 – Capacity and Consent

1 Policy

1.1 Introduction & Overview

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.**

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

The MCA 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 aged 16 or above who lacks capacity must comply with the MCA when making decisions or taking decisions for that person.

The starting point should be to presume that the individual **has** the mental capacity to make the decision. If the person is not being asked to make a decision about their care, support and treatment the MCA will not apply to Hesley Group staff and a referral may need to be made elsewhere, for example the persons funding authority and/or the Court of Protection.

Section 5 of the MCA provides for people caring for others to make decisions for people who lack capacity to make the decision for themselves.

Section 5 does **not** allow somebody to make decisions relating to subjects other than the care or treatment of the person who lacks capacity, nor does it allow somebody to give consent on behalf of a person who lacks capacity to do so.

This policy refers to decision making, capacity and consent. It will support our staff in helping a person understand what decision they need to make, why they need to make it, benefits and drawbacks and what actions may be needed.

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This policy and the MCA apply to every person aged 16 and above, regardless of whether they are being supported in a children's home, a care home for adults or supported living setting.

If any person aged 16 years or above is assessed as lacking the mental capacity to make a decision about or consent to how they receive their care and support in a Hesley Group service, any decisions made on their behalf and actions taken must be in the individual's best interests having gathered all available information and views of relevant people.

Assessment of capacity is **decision specific and time specific**. Decisions made as to ongoing decisions must be regularly reviewed to ensure the situation is unchanged.

If someone is assessed as lacking capacity to make a decision this doesn't mean they are not to be involved or consulted and their wishes and feelings must be taken into account wherever possible. This may include consideration of precedents (how the person responded to similar situations previously).

Some minor day to day decisions may be made with the person without needing to complete consultation and formal best interests' processes, provided there is a record of how the person has been consulted/offered choices.

Some major decisions about, for example, the giving of medication, medical or therapeutic treatment will need to be made by an appropriately qualified practitioner as "decision maker" as part of a multi-disciplinary and consultation process.

Life-changing decisions such as consent to major medical treatment, where to live, or where there is disagreement among supporters about a person's care, may require the involvement of an Independent Mental Capacity Advocate who will independently represent the views of the individual.

The Court of Protection or a Court Appointed Deputy can act on behalf of a person within the agreed guidelines of the Court Order/Deputyship.

People's Human Rights should be respected at all times and balanced against risk of poor outcomes. The MCA, "Common Law" and our own Hesley Group and professional codes of conduct provide the basis of a duty of care to ensure that anything that is done for or on behalf of a person will be done in their best interests.

Certain decisions or actions cannot be undertaken on behalf of a person who lacks capacity by anyone or any public body. These include decisions about marriage or civil partnership, divorce, sexual relationships, adoption and voting on a person's behalf.

The underlying philosophy of the MCA is to ensure that those people 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.

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 will be consulted and supported to take decisions about their own care and support.

Hesley Group staff will work with internal and external professionals and people's family and representatives to ensure adequate information is gathered to make an informed decision where the person lacks capacity.

- Where any decision has to be made on the person's behalf, it will always be taken in that person's best interests.
- Hesley Group care, treatment and support staff are made aware of their duties and responsibilities under the Mental Capacity Act 2005 (MCA) and provided with regular training to ensure it happens in practice.
- People's 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 and evidence shows that individual rights are central to any decision-making process at any level.
- Care/support plans demonstrate that capacity and consent issues have been taken into account and they are reviewed regularly.

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- People's supporters confirm they are consulted and evidence shows that the person is consulted and involved with decision making.
- Records show that when a 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](#).

Date of this Policy	Next planned review date
10/12/2020	10/12/2022

3 Standard Forms, Letters and Documents

- 3.1 [Practice Guidance for Staff, ReS 6.4A.1](#)
- 3.2 [Practice Examples of Levels of Decision Making where Person does not have Capacity to Decide, ReS 6.4A.2](#)
- 3.3 [Checklist for Management Assessment and Recording of Capacity and Best Interests Decisions, ReS 6.4A.3](#)
- 3.4 [Mental Capacity Act Form 1, Record of a Mental Capacity Assessment, ReS 6.4A.4](#)
- 3.5 [Mental Capacity Act Form 2, Record of Actions Taken to Make a Best Interest Decision on Behalf of Someone Who Lacks Capacity, ReS 6.4A.5](#)
- 3.6 [Mental Capacity Act Form 3, Record of Best Interests Meeting, ReS 6.4A.6](#)
- 3.7 [The Balance Sheet Approach to Making Best Interests Decisions, ReS 6.4A.7](#)
- 3.8 [Best Interests Decision Balance Sheet Template, ReS 6.4A.7a](#)
- 3.9 [MCA Compatibility and Accommodation Guidance, ReS 6.4A.8](#)
- 3.10 [Supplementary Information about the Mental Capacity Act 2005, ReS 6.4A.9](#)
- 3.11 [Making Decisions Leaflet – A guide for people who work in health and social care, Office of the Public Guardian, ReS 6.4A.10](#)
- 3.12 [Making Decisions Leaflet – A guide for advice workers, Office of the Public Guardian, ReS 6.4A.11](#)

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- 3.13 [Making Decisions Leaflet – An Easy-read Guide, Office of the Public Guardian, ReS 6.4A.12](#)
- 3.14 [Making Decisions Leaflet... about your health, welfare or finances. Who Decides When You Can't?, Office of the Public Guardian, ReS 6.4A.13](#)
- 3.15 [Making Decisions Leaflet – A guide for family, friends and other unpaid carers, Office of the Public Guardian, ReS 6.4A.14](#)
- 3.16 [Help with Managing Money Leaflet – If you, or someone you care for lacks mental capacity, the Money Advice Service, ReS 6.4A.15](#)
- 3.17 [Making Decisions Leaflet – The Independent Mental Capacity Advocate \(IMCA\) Service, Office of the Public Guardian, ReS 6.4A.16](#)
- 3.18 [Checklist for a Person's Consent to Interventions by a Clinician, ReS 6.4A.17](#)

4 Other Documents to be Referred to

- 4.1 [Hesley Group Safe Administration of Medicines Policy – EMAR, ReS 5.6E](#)
- 4.2 [Policy and Guidance Mental Capacity Act 2005 Deprivation of Liberty Safeguards \(MCA DOLS\), ReS 6.4B](#)
- 4.3 [Working with Court Appointed Deputies, ReS 6.4C](#)
- 4.4 [Positive Behaviour Support Policy – Adult Services, ReS 5.1A](#)
- 4.5 [Positive Behaviour Support - Children's Services, ReS 5.1B](#)
- 4.6 [Care and Health Support Policy, ReS 5.3](#)
- 4.7 [Safeguarding Adults At Risk - Policy and Guidance, ReS 2.1](#)
- 4.8 [Fullerton House School Safeguarding and Child Protection Policy, ReS 2.1A](#)
- 4.9 [Wilsic Hall School Safeguarding and Child Protection Policy, ReS 2.1B](#)
- 4.10 [Wheatley House Safeguarding and Child Protection Policy, ReS 2.1C](#)
- 4.11 [Communication Policy, ReS 5.5](#)
- 4.12 [Hesley Group Alternative and Augmentative Communication Policy, ReS 5.5A](#)
- 4.13 NICE guidance – Decision making and mental capacity, Quality Standard, published 11 August 2020
<https://www.nice.org.uk/guidance/qs194>
- 4.14 Link to Code of MCA Practice
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597

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- 4.15 Link to Mental Capacity Act 2005
<http://www.justice.gov.uk/guidance/mental-capacity.htm>
- 4.16 Link to office of the Public Guardian
<http://www.publicguardian.gov.uk/> Up to date information and leaflets about the Act including the 'Making Decisions' leaflet that explains about IMCAs and their role.