	Mental Capacity Act (MCA) 2005 and LPS Policy and Procedure	Ref:	075
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The aim of this policy is to meet the provisions of the Mental Capacity Act 2005 (occasionally referred to as 'The Act' in this policy) and to meet the legal requirements of the regulated activities that Serendipity Healthcare Ltd is registered to provide:

We aim to ensure adherence to the statutory framework of the MCA, including the five principles, to empower and protect vulnerable people who may lack capacity always to make their own decisions; to support them to plan ahead, if they wish, for a time when they may lose capacity.

We also aim to ensure that those working with an adult who lacks capacity will make specific decisions that are in the person's best interests as explained in the MCA and its code of practice, and the least restrictive of their rights that can be identified as meeting their needs.


We aim to build confidence among staff regarding how and when to assess someone's mental capacity, and how to make best interests decisions, when necessary, whilst also ensuring that staff are aware of their responsibilities and are legally protected through following the principles of the MCA.

Serendipity Healthcare Ltd will ensure staff at Serendipity Healthcare Ltd know, and work within the Act's underpinning principles:

- The presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have the capacity to do so unless it is proved otherwise
- Individuals must be supported to make their own decisions – people must be given all appropriate help before anyone concludes that they cannot make their own decisions
- Individuals must be able to make what might be seen as eccentric or unwise decisions, without this being used as the sole reason to say they lack capacity
- Best interests – anything done for, or on behalf of people who lack capacity must be in their best interests
- Least restrictive option - before any act is done or a decision is made, staff must consider if they have found the option that, while meeting the need, is the least restrictive possible of the person's basic rights and freedoms

We will ensure that staff at Serendipity Healthcare Ltd understand the importance of helping people to make their own decisions:

- Staff know how to present the right information in the right way, including using easy-read or pictures where suitable, and being clear about all the available options
- Staff actively look for the best ways to communicate with an individual, by checking that their vision and hearing are as good as they can be, or querying if an interpreter might be needed
- Staff put the Service User at ease, whether by choosing the right time of day to explain about a decision to the person, or asking whether they would like a relative or friend present
- Staff allow time for the Service User to ponder on the decision, or go away and discuss it with trusted relatives or friends

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When a person lacks the mental capacity to make a particular decision, everything that is done for, or on behalf of that person is in the person's best interests and restricts their rights as little as possible. In working out what is in someone's best interests, staff apply the mandatory checklist of factors laid out in the Mental Capacity Act.

Staff know how the Mental Capacity Act defines restraint. They know that it is lawful to restrain someone who lacks mental capacity in the person's best interests, however staff understand that this must be the last resort after everything reasonably practical has been attempted. The use of restraint is both:

- Necessary to prevent harm to the person and other people, and also
- That it is a proportionate response to the likelihood and seriousness of that harm

They know that any necessary and proportionate restraint must be used for the shortest possible time. They seek to learn from incidents of restraint to find ways to avoid or minimise its use in the future.

Staff know that if restraint of a person lacking capacity to consent amounts to a Liberty Protection Safeguards, it must be specially authorised, to protect the human rights of the Service User by allowing them to challenge the restrictions in the Court of Protection.

Staff are aware Liberty Protection Safeguards will also apply to people in supported accommodation, shared lives accommodation and their own homes.


Staff in a community setting know that Local Authorities will be "The Responsible Body" for people in supported accommodation, shared lives accommodation and their own homes.

Staff at Serendipity Healthcare Ltd know and work within the Mental Capacity Act principles and codes of practice, including how to recognise the deprivation of liberty of someone lacking mental capacity, and how then to proceed.

All staff of Serendipity Healthcare Ltd are given training in the Mental Capacity Act. References to training resources can be found in the Underpinning Knowledge/References section of this policy.

Any assessment of a Service User's mental capacity is decision specific and time specific to decide whether they can make a particular decision at the time it needs to be made. There must never be a generalised statement that someone lacks mental capacity. It is never enough to say that the Service User lacks mental capacity because of a diagnosis (such as dementia), or because of their age, or because of their appearance.

Some people lack mental capacity over a long period of time for many kinds of decisions, and it is not necessary to carry out repeated formal capacity assessments. However, capacity must always be reviewed whenever a Service User's Care Plan is being developed or reviewed, or there appears to be some change in their capacity to make decisions, or when they lack capacity for a major decision that needs to be made, for example, about where to live, or whether to have serious medical treatment

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There is no requirement in the Mental Capacity Act 2005 to complete any specific documentation regarding assessments of capacity and subsequent decisions made on their basis. However, paid staff only receive protection from liability when they can prove that they have come to 'reasonable' decisions about capacity and best interests, and some form of documentation is essential evidence of that process.

For day-to-day decisions, Care Workers always work to a Care Plan which is clearly based on assessments of capacity and best interests. For more important decisions, it is certainly good practice for capacity assessments and best interests' decisions to be recorded. This can be done by completing the forms accompanying this policy with the Service User.

Remember that, when assessing a Service User's capacity, the person does not have to prove to you that they have capacity to make a certain decision. It is up to the person who will make decisions on behalf of the Service User to prove that, on the balance of probabilities, the Service User lacks the mental capacity to make this decision.

Do not set out to 'fail' someone; give Service Users all the help you can to enable them to make their own decisions. Take your time: a good capacity assessment is a conversation and must not be rushed. For some people, having a Care Worker or a family member to sit with them during the assessment process may be reassuring and help them relax and feel comfortable.

Make sure that the record of the assessment is completed fully, that it is signed by the assessor and that it is dated. This form must be kept with the Care Plan so it is readily available and can be revisited in the future when reviewing aspects of the Service User's care.


If it is determined that the Service User does not have the mental capacity to make a particular decision at the time it needs to be made, any action taken, or any decision made must be in his or her best interests.

If there is a dispute about best interests, firstly ensure that you have followed the mandatory best interest's checklist, and tried, in particular, to make a decision that is in alignment with what the Service User wants. The following must be considered:

- Family and friends will not always agree about what is in the best interests of an individual. However, they usually have greater knowledge than Care Workers of what this Service User would have wanted, and sometimes of what the Service User now wants
- If you are the decision-maker, you will need to clearly demonstrate in your record keeping that you have made a decision based on all available evidence and taken into account all conflicting views. You will take particular care to look for the option that is the least restrictive of the Service User's rights

If there is a dispute, the following things might assist you in determining what is in the Service User's best interests:

- Involve an advocate who can represent the Service User who lacks mental capacity for this decision, to help their wishes and feelings to be central to the decision-making
- In some situations, a best interests meeting is a good idea, to identify all the possible

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options and explore the pros and cons of each

- Go to mediation
- An application could be made to the Court of Protection for a ruling. This would normally be undertaken by the relevant Local Authority or NHS Trust when a complex and serious decision is to be made. If relatives/friends are not permitted to see or speak to the Service User alone, or sometimes even not allowed to visit, it is essential to resolve the dispute with relatives or friends, or ask the Local Authority urgently to request the Court to make a best interests decision for this person
- You must ensure that all documents you complete are both signed and dated

In making a decision in someone's best interests, the following must be taken into account (except in an emergency, when there is no time). The following checklist is a mandatory requirement under the Mental Capacity Act of matters to consider by a decision-maker:

- Is the person likely to regain the mental capacity to make this decision and, if so, can this decision wait until then?
- Do everything possible to encourage the person to take part in the making of the decision, even though they lack the capacity to make the decision
- Give great weight to the person's past and present wishes and feelings (in particular if they have been written down)
- Identify any beliefs and values (e.g., religious, cultural, or moral) that would be likely to influence the decision in question
- Include any other factors that would be relevant and important to this person if they were able to make their own decision
- Be sure that you are not making assumptions about this person's best interests simply based upon the person's age, appearance, condition, or behaviour
- As far as possible, the decision-maker must consult other people who might have views on the person's best interests and what they would have wanted when they had mental capacity, especially the following people:
 - Anyone previously named by the person lacking capacity as someone to be consulted
 - Carers, close relatives, friends, or anyone else interested in the person's welfare
 - Any attorney appointed under a Lasting Power of Attorney
 - Any deputy appointed by the Court of Protection to make decisions for the person

Reviewed:- 14th October 2025

S.L.Pickles

Director