



# MENTAL CAPACITY POLICY

(Version 1.3)

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**1. AIM:**

This policy will underpin the application of the Mental Capacity Act (MCA) for the company; outline the procedures for staff to feel confident about assessing mental capacity of patients attending the Clinic for a diagnostic ultrasound scan, understand how to make decisions in the best interests of patients including patients who appear to have no family, carer or friends to consult, and what to do if staff are unsure of any given patients capacity to understand the procedure they have been booked for.

**2. INTRODUCTION:**

The MCA (Mental Capacity Act 2005) provides a statutory framework for assessing whether a person has the mental capacity to make certain decisions. It also defines how others can make decisions on behalf of someone who lacks mental capacity. The MCA applies to adults aged 16 years and over.

Within the MCA there are 5 principles that underpin the entire Act and provide a safeguard for people whose mental capacity is called into question:

- **Presumption of Capacity:** A person must be assumed to have capacity unless it is proved otherwise
- **Maximising decision-making:** Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity
- **Unwise decisions:** An unwise decision does not in itself indicate a lack of capacity
- **Best interests:** Any act done or decision for someone lacking capacity must be made in their best interests.
- **Less restrictive option:** When a person lacks capacity any act or decision should aim to be the less restrictive option to the person in terms of their right and freedom of action.

The MCA does not allow permissive decisions to be made in the best interests of a person lacking capacity in relation to the following:

- Marriage or civil partnership
- Sexual relations
- Divorce or dissolution of civil partnerships
- Placement of a child for adoption or making of an adoption order
- Discharge of parental responsibilities not relating to a child's property
- Consenting under the Human Fertilisation and Embryology Act
- Voting in any election or referendum.
- Writing a Will

**3. Definition of Mental Capacity**

**FIVE principles, which apply throughout the MCA which:**

- 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 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 effectively achieved in a way that is less restrictive of the

person's rights and freedom of action. These Principles must be considered and followed in every instance when consideration is being given to using the MCA.

The inability to make a decision due to lack of mental capacity can be defined as:

*'A person lacks capacity in relation to a matter if at the material time he/she is unable to make a decision for himself/herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'*

It does not matter whether the impairment or disturbance is permanent or temporary. A lack of capacity cannot be established merely by reference to:

- a person's age or appearance
- or a condition of his - or an aspect of his/her behaviour, which might lead others to make unjustified assumptions about his/her capacity

A decision regarding a patient's capacity to understand and consent to an ultrasound scan must be based on their ability:

- To understand the information relevant to the decision
- To retain that information
- To use or weigh that information as part of the process of making a decision or
- To communicate their decision (whether by talking, using sign language or any other means)

#### **4. ROLES AND RESPONSIBILITIES**

The Service Director and the Clinical Governance/Managing Director have key roles and responsibilities to ensure the company meets requirements set out by statutory and regulatory authorities such as the Department of Health, Commissioners and the Care Quality Commission. The Clinical Governance lead/Managing Director has overall responsibility to have processes in place to:

- Ensure that clinical staff are aware of this policy and adhere to its requirements
- Ensure that appropriate resources exist to meet the requirements of this policy

#### **5. PROCEDURE / SYSTEMS**

The MCA does not lay down professional roles or require certain qualifications to undertake capacity assessments. The capacity assessment should be undertaken by the person who is proposing to undertake an action or make a decision, in the case of the company this will be the undertaking an 'action' as defined as a Diagnostic Ultrasound scan. This person is termed the decision maker (sonographer/clinician).

#### **Principles of Assessing Mental Capacity**

- Capacity should be judged in relation to a specific decision – some decisions are easier to make than others.
- A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he or she makes a decision that others believe to be unwise.
- A mentally competent adult has an absolute right to refuse to consent to any intervention or medical treatment for a physical condition for any reason, rational or irrational, or for no reason at all, even where this decision may lead to his or her own death.

- An act done, or decision made, on behalf of a person who lacks capacity must be done, or made, in his or her best interests.
- Before such an act is done, or decision 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 invasive or restrictive of the person's rights and freedom of action

The MCA sets out a 2-stage test of capacity:

- 1) Does the person have an impairment of their mind or brain, whether as a result of an illness, or external factors such as alcohol or drug use?
- 2) Does the impairment mean the person is unable to make a specific decision when they need to? People can lack capacity to make some decisions, but have capacity to make others. Mental capacity can also fluctuate with time – someone may lack capacity at one point in time, but may be able to make the same decision at a later point in time.

The MCA says a person is unable to make a decision if they cannot:

- 1) Understand the information relevant to the decision
- 2) Retain that information
- 3) Use or weigh up that information as part of the process of making the decision.

### **When to assess capacity**

There should always be the assumption that a person has capacity to make the decision in question. In addition every patient must be assisted/facilitated to make the decision in question. If there is evidence to suggest that a person may lack capacity then an informal assessment of capacity should be carried out.

### **Fluctuating capacity**

Some people may at times be able to make their own decisions, but have a mental health problem or other condition, which affects their decision-making ability. Where there is fluctuating or temporary loss of capacity, an assessment of capacity has to be made at the time the scan. If it is possible, the scan should be delayed until the person has recovered and regained their capacity.

### **The Assessment of Capacity within the clinic setting**

Anyone caring for or supporting a person who may lack capacity could be involved in the test to assess capacity. The more significant the decision, the greater the number of people likely to be involved. Who is involved will depend on individual circumstances, Specialist or expert opinion may be helpful, but knowledge of the person concerned, for example that of their family or friends is very important

The presumption is always that a person has capacity to make a decision. Deciding that a person lacks capacity is a serious decision. However, in many cases, the assessment of capacity is relatively straightforward and, with appropriate guidance, could and should be performed by the senior professional responsible for the particular decision in relation to which capacity is being assessed.

When there is doubt about a patient's capacity to consent to an ultrasound scan then the lead clinician on site at that time must complete the 'Assessment of Capacity' form (Appendix 1) in the presence of the patient concerned, a family or friend who may be present and another staff member as witness to the procedure to ensure proper process. If the lead clinician decides that the patient does not have the capacity at that time to be able to provide informed consent to a scan then the lead clinician must defer back to the referrer who has requested the scan be done. It will be the referrer whose care the patient is under to determine if the scan can be done without the informed consent of the patient concerned.

**7 QUALITY CONTROL and AUDIT**

Records are to be kept of any assessments of mental capacity performed within the clinic setting that must include a full record of the process of deciding mental capacity, copies of forms and a record of all personnel present and involved. Any incidences of mental capacity assessments will be discussed at the clinic’s bi monthly governance meetings, to ensure thoroughness of processes and any lessons learned are documented.

**8. REFERENCES**

- **Mental Capacity act 2005**
- **Capacity assessment sheet referenced from West Hertfordshire Hospitals NHS Trust (Document Date 2009)**

**9. APPENDICES / RELATED DOCUMENTS**

**Assessment of Capacity**

Reference must be made to the Mental Capacity Act 2005, Sections 1 and 2, and the Code of Practice Chapter 4, in order to complete this assessment.

<p><b>Name of Patient:</b></p> <p><b>Hospital Number:</b></p> <p><b>Address:</b></p>
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1.	What factors are present which indicate an assessment of capacity should be carried out?
2.	What practical steps have been taken to help the person make the decision?
3.	What is the focus of the assessment, what decision needs to be made?
4.	Fluctuating Capacity, does the decision need to be made now? Can it wait?
5.	Have you explained the purpose of this assessment?

6.	Has the patient understood the information relevant to the decision?
7.	Has the patient been able to retain the information long enough to be able to make the decision?
8.	Has the Patient been able to use and weigh that information? Do they understand the risks and benefits of making/not making the decision?
9.	Has the Patient been able to communicate the decision?
10.	Following the assessment of capacity, is there evidence the patient lacks capacity?
11.	<p>If the Patient does not have capacity, they cannot consent, therefore, decisions must be made in their best interests. And a decision recorded on a Best interests form.</p> <p>Do they require involvement of the IMCA? (refer to IMCA criteria)  <b>If you have not referred them to the IMCA, State reason why not:</b></p>
12.	If the patient has capacity – what is their decision? Use patients own words.
	<p><b>Name of assessor (print):</b></p> <p><b>Job Title:</b></p>

	<b>Date of assessment:</b> <span style="float: right;"><b>Time of assessment:</b></span>
	Reference Mental Capacity Act 2005, Code of Practice.

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