
Title:	MENTAL CAPACITY ACT 2005 and DEPRIVATION OF LIBERTY SAFEGUARDS TRAINING STRATEGY 2018	Ref No: 2335 Version 1
Directorate:	Community	Classification: Policy
Responsible for review:	Mental Capacity Act 2005 and Deprivation of Liberty Safeguards Lead Practitioner	Due for Review: 14-09-2021 Document Control
Ratified by:	Care and Clinical Policies Group Meeting	
Applicability:	As indicated below	

Introduction

The Mental Capacity Act 2005 provides a comprehensive legal framework for people who lack mental capacity and cannot make decisions for themselves, or for people who may lack mental capacity to make decisions and need support to empower them to make decisions themselves.

The 'Act' sets out five key principles specifically designed to empower individuals and uphold their civil and human rights, and where there may be a reason to doubt a persons' mental capacity the 'Act' clearly defines a process to assess capacity.

As a safeguard the 'Act' also incorporates a clear process for any person who is contemplating making, or is making a decision on behalf of a person who has been assessed as lacking capacity. The Best Interest Checklist ensures that the person lacking capacity remains central to all decisions, with their views, opinions and values identified, considered and wherever possible reflected in the Best Interest Decision.

The 'Act' applies in England and Wales, for people aged 16 years and over (18 years and over in relation to Advance Decisions and Lasting Power of Attorney). It covers a wide range of decisions and circumstances from day to day decisions, such as what to wear and what to eat, to serious medical treatment, accommodation, and finance and property affairs.

The 'Act' is accompanied by a statutory 'Code of Practice' providing guidance on how it should be implemented in practice. Certain people have a legal duty to have regard to the Code of Practice, including anyone acting in a professional capacity or being paid for their work with people who lack or may lack capacity. It is therefore essential that all health and social care staff are familiar with the 'Act' and the Statutory 'Code of Practice'.

In 2009 the government added new provisions to the 'Act': entitled 'The Deprivation of Liberty Safeguards' (DoLS). These Safeguards focus on the most vulnerable people in our society, those who for their own safety and in their 'best interest' need to be accommodated under care and treatment regimes that may have the effect of depriving them of their liberty, but who may lack capacity to consent to those care arrangements. They provide a legal framework to prevent breaches of the European Convention of Human Rights (ECoHR). It is therefore essential that staff demonstrate compliance with the safeguards within their practice.

The aim of the training strategy

The aim of the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards training strategy is to ensure Torbay and South Devon NHS Foundation Trust is able to support the learning and development of all its staff members. It will provide opportunities for staff to increase their professional competency, skill and knowledge base when supporting people who may have become extremely vulnerable due to an inability to make informed decisions for themselves.

The strategy will provide awareness levels as part of the 'Induction' and 'E Learning' modules and, where appropriate, the opportunity for staff to attend more advanced and practically based 'face to face' learning to further support the implementation of the 'Act' into practice.

The strategy has been developed to support Managers and Leads in all health and social care settings and teams to identify the most appropriate level of training required for each member of their team. There is an expectation that Managers and Leads will refer to the strategy on the appointment of all new staff and build in this essential and highly recommended training as part of all 'Induction' processes, and in addition, monitor that the appropriate level of training has been achieved that is commensurate with role.

Incorporated as part of the strategy is clear guidance placing job roles into categories entitled 'Staff Group A/B/C/D' which is set out below. Once staff identify the right category for their job role, the guidance will further indicate the level of training required and how frequently it should be completed.

If this framework does not have a specific role specified within its groupings or there is uncertainty on the level of training required, it is the responsibility of the employee to discuss this with their Supervisor / Line Manager. The Line Manager will then make a decision on what level of training should be completed.

Torbay and South Devon NHS Foundation Trust is focused on ensuring people receive the right care, in the right place, at the right time and where a person is unable to consent to any proposed care or treatment because of a lack of capacity, all decisions made on their behalf are made in their 'Best Interest' promoting empowerment and upholding their rights.

Documents and legislative frameworks considered as part of the development of this strategy include:

- House of Lords Select Committee on the Mental Capacity Act 2005 Post-Legislative Scrutiny report (2014)
- The 'National Mental Capacity Act Competency Framework' (2016)
- The MCA 2005 Code of practice (2007)
- The MCA 2005 DoLS Code of Practice (2008)
- The Care Act 2016

How the training will be delivered.

All training above level 1 will be accessible via the HIVE (Trust training package) which is located on the ICON front page

- **MCA level 1** 'All staff Induction' will be delivered face to face by an MCA lead practitioner. Staff will complete this level once during their employment with the Trust.
- **MCA level 2 Hive E Learning** Level 2 comprises of 8 E learning modules. Each module focusses on a specific aspect of the Mental Capacity Act 2005 and is delivered via a selection of 8 short films (each lasting no more than 3 minutes) and is accompanied by a set of multiple choice questions.

To support learning the scripts for each film are also provided.

Staff will have the opportunity to log onto the HIVE and undertake the modules at their own pace, as the HIVE will store and save work undertaken each time. This will support staff that will only be able to undertake training in short periods of time and to prevent them being away from their work areas for too long.

On completion of all 8 modules a certificate of completion will be available.

- **MCA level 3.** This level is focused on embedding the MCA into practice. It will be delivered on a face to face basis by the MCA Leads working within the Trust and has been developed to enable real practice led discussion and learning.

It is specifically designed for both health and social care staff who often support people who are vulnerable or for junior staff who work in situations which may be complex or challenging and is particularly relevant for :

- Professionally registered staff
- Skilled non registered staff working at band 5.

Level 3 comprises of 3 separate sessions which will focus in detail on specific aspects of the MCA 2005 and incorporate local guidance tools to support and embed practice. Staff can register for this training via the HIVE

Session 1 will focus on:

- The five key principles and how these relate to practice
- The assessment of capacity and Best Interest decision making process
- The Independent Mental Capacity Advocate
- Recording (documentation)

Session 2 will focus on:

- Lasting Power of Attorney
- Court Appointed Deputy
- Advance decisions to refuse medical treatment
- Advance statements

Session 3 will focus on:

- Restriction and Restraint
- The Deprivation of Liberty Safeguards

MCA Level 4 Best Interest Assessor' (BIA) training will be made available to staff with two years post qualification experience, on a needs basis to ensure the Trust is able to remain compliant with its delegated DoLS function. As per MCA/DoLS regulations BIA training will be available for the following professional groups:

- Nurses
- Social Workers
- Occupational Therapists
- Psychologists

Staff Group Type	Setting Acute wards	Setting South Devon Community Hospitals	Setting Torbay Health and social care Zones	Setting Public Health Adults	Setting Baywide and Specialist	Setting Staff working with children	Setting Out Patient	Method of delivery
Group A All staff employed within TSDFT	All staff	All staff	All staff	All staff	All staff	All staff	All staff	MCA level 1 Awareness Face to Face All Staff Induction Frequency Once
Group B All patient or client facing staff Board and Executive level	All staff	All staff	All staff	All staff	All staff	All staff	All staff	MCA level 2 Practice level Hive ELearning Frequency 3 yearly
Group C	All 101 Bleep Holder Bands 5/6/7/8 Nursing Allied Health Doctors Dentist	Band 5/6/7/8	Band 5/6/7/8	Band 5/6/7/8	Band 5/6/7/8	Band 5/6/7/8	Band 5/6/7/8	MCA level 3 Advanced Putting the MCA into Practice Face to Face Session1 Session 2 Session 3 Frequency 3 yearly
Group D Best Interest Assessors								Bespoke university based qualification Frequency Once Bespoke Legal update days. Frequency Annually

The following matrix has been developed to support staff in identifying the level of training they are recommended to attend and the frequency by which it should be completed

The following provides a comprehensive breakdown of the set of competencies for each level of training, alongside which groups of staff are recommended to complete it.

Each competency standard refers to a combination of skills, knowledge and experience expected of individual staff and aims to ensure that these qualities inform MCA practice in a way that is commensurate with an individual's occupational role and responsibility.

MCA Level 1 Awareness 'All Staff Induction'

Group A/B/C/D to complete on initial employment with the Trust.

Competencies:-

- Demonstrate a basic awareness of the Mental Capacity Act 2005 and the Statutory Code of Practice.
- Demonstrate a basic awareness of the Deprivation of Liberty Safeguards and the statutory Code of Practice.
- Demonstrate an understanding about how to contact people within the organisation that will be able to provide advice and support.
- Demonstrate an understanding about how to access MCA and DoLS related information within the organisations ICON system.

MCA Level 2 'Hive E learning Practice Level'

Groups B/C/D

It is recommended that staff complete this level as part of their individual induction.

Competencies

- Understand their roles and responsibilities in relation to the Mental Capacity Act (2005) and be able to explain this to others.
- Demonstrate an overall understanding of the five key principles and staff responsibility to support people to make their own decisions wherever possible.
- Understand that people with capacity can make decisions others think are unwise.
- Demonstrate an overall understanding of the assessment framework both diagnostic and functional and apply to practice.
- Demonstrate an overall understanding of the best interest decision making process and apply to practice.
- Demonstrate an overall understanding of the role of an Independent Mental Capacity Advocate (IMCA) and apply to practice.
- Demonstrate an overall understanding of the Lasting Power of Attorney role and apply to practice.
- Demonstrate an overall understanding of the Court Appointed Deputy role and apply to practice.
- Demonstrate an overall understanding of Advance Decisions to refuse treatment and apply to practice.
- Demonstrate an overall understanding of Advance statements and apply to practice.
- Demonstrate an overall understanding of the Deprivation of Liberty Safeguards across all environments.
- Demonstrate an overall understanding on how to seek support and advice within the organisation.

MCA Level 3**Groups B/C/D to complete at face to face Advanced Level.****Competencies:-**

- Understand the five statutory key principles, how they relate/apply to practice and demonstrate compliance.
- Understand the need to assist someone in making their own decision using different methods of communication to help people understand information (e.g. visual aids where relevant)
- Understand the two-stage test of capacity and demonstrate the ability to recognise an impairment or disturbance of the functioning of a person's mind or brain and when an impairment or disturbance is impacting on a person's ability to make a particular decision
- Demonstrate the ability to identify risks and benefits related to a decision and to Clarify the person's ability to weigh the relevant factors in the balance when coming to a decision
- Understand that people with capacity can make decisions others think are unwise or eccentric and demonstrate an understanding of the importance of a robust risk enablement process where appropriate.
- Understand the process of making best interests determinations and demonstrate the ability to follow the statutory 'Best Interests Checklist'. Involve families and carers (being clear about the limits of their powers) and to analyse different views from a variety of people in order to come to a decision when acting in the role of Decision Maker.
- Demonstrate ability to identify Lasting Power of Attorney, Court Appointed Deputy, and Advance Decision to refuse treatment, Advance Statements of preferences, and how to test the validity of each.
- Understand the role of an Independent Mental Capacity Advocate (IMCA) and demonstrate knowledge of the statutory eligibility criteria for instruction, the ability to consider whether a person will benefit from an IMCA and how to communicate effectively with the IMCA to ensure the person is adequately supported during the decision-making process.
- Demonstrate the ability to recognise the use of restraint and restriction in practice and to consider restriction/restraint in the context of the persons' right to protection of their Human Rights, personal autonomy and freedom of movement and choice.
- Recognise a Deprivation of Liberty occurring and demonstrate the ability to act on observations made in practice to indicate that an unauthorised deprivation of person's liberty 'is taking place.
- Demonstrate ability to advise hospital and care home staff of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards legislation.
- Be able to maintain accurate concise and up to date records in line with the requirements of the 'General Data Protection Regulation' 2018.

MCA Level 4 Best Interest Assessors. Bespoke training**Group D to complete A/B/C****Competencies**

- The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks.
- The ability to work in a manner congruent with the presumption of capacity.
- The ability to take all practical steps to help someone to make a decision.

- The ability to effectively assess risk, in complex situations, and use analysis to make proportionate decisions.
- The ability to make informed, independent best interests decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment.
- The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately.

References

- Department of Constitutional Affairs (DCA) (2007) The Mental Capacity Act 2005 Code of Practice.
- DH (updated 2016) Care Act 2014: Care and Support Statutory Guidance. TSO: London.
- House of Lords Select Committee on the Mental Capacity Act 2005 (2014) Mental Capacity Act 2005: Post-Legislative Scrutiny. Report of session 2013-14. London: The Stationery Office Ltd. (Accessed 10/12/14)
- Ministry of Justice (2008) Mental Capacity Act 2005: Deprivation of liberty safeguards – code of practice to supplement the main MCA 2005 Code of practice.

11. Document Control Information

This is a controlled document and should not be altered in any way without the express permission of the author or their representative.

Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.

If printed, this document is only valid for the day of printing.

Ref No:	2335		
Document title:	Mental Capacity Act 2005 and Deprivation of Liberty Safeguards Training Strategy 2018		
Purpose of document:	To ensure Torbay and South Devon NHS Foundation Trust is able to support the learning and development of all its staff members.		
Date of issue:	14 September 2018	Next review date:	14 September 2021
Version:	1	Last review date:	
Author:	Mental Capacity Act 2005 and Deprivation of Liberty Safeguards Lead Practitioner		
Directorate:	Community		
Equality Impact:	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
Committee(s) approving the document:	Care and Clinical Policies Group Meeting		
Date approved:	18 July 2018		
Links or overlaps with other policies:	All TSDFT Trust Strategies, policies and procedure documents		

	<i>Please select</i>	
	Yes	No
Have you considered using Equality Impact Assessment?	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have implications regarding the Care Act? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have training implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have financial implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Is this document a direct replacement for another? <i>If yes please state which documents are being replaced:</i>	<input type="checkbox"/>	<input type="checkbox"/>

Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
14 September 2018	1	New	Care and Clinical Policies Group Meeting

The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on iCare

http://icare/Operations/mental_capacity_act/Pages/default.aspx

Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)		Version and Date	
Policy Author			
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users <input type="checkbox"/>		Staff <input type="checkbox"/>	Other, please state... <input type="checkbox"/>
Could the policy treat people from protected groups less favourably than the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes <input type="checkbox"/> No <input type="checkbox"/>	Gender Reassignment	Yes <input type="checkbox"/> No <input type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input type="checkbox"/>
Gender	Yes <input type="checkbox"/> No <input type="checkbox"/>	Pregnancy/Maternity	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Sexual Orientation	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Religion/Belief (non)	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Marriage/ Civil Partnership	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language ⁵ used throughout?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Are the services outlined in the policy fully accessible ⁶ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Does the policy encourage individualised and person-centred care?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes <input type="checkbox"/> No <input type="checkbox"/>
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)			
Who was consulted when drafting this policy?			
Patients/ Service Users <input type="checkbox"/>		Trade Unions <input type="checkbox"/>	Protected Groups (including Trust Equality Groups) <input type="checkbox"/>
Staff <input type="checkbox"/>		General Public <input type="checkbox"/>	Other, please state... <input type="checkbox"/>
What were the recommendations/suggestions?			
Does this document require a service redesign or substantial amendments to an existing process? <i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>			Yes <input type="checkbox"/> No <input type="checkbox"/>
ACTION PLAN: Please list all actions identified to address any impacts			
Action	Person responsible	Completion date	
AUTHORISATION:			
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form		Signature	
Validated by (line manager)		Signature	

Please contact the Equalities team for guidance:

For South Devon & Torbay CCG, please call 01803 652476 or email marisa.cockfield@nhs.net

For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdht@nhs.net
This form should be published with the policy and a signed copy sent to your relevant organisation.

- ¹ Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
- ² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
- ³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
- ⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated
- ⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives
- ⁶ Consider both physical access to services and how information/ communication is available in an accessible format
- ⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Clinical and Non-Clinical Policies – Data Protection

Torbay and South Devon NHS Foundation Trust (TSDFT) has a commitment to ensure that all policies and procedures developed act in accordance with all relevant data protection regulations and guidance. This policy has been designed with the EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 18) in mind, and therefore provides the reader with assurance of effective information governance practice.

The UK data protection regime intends to strengthen and unify data protection for all persons; consequently, the rights of individuals have changed. It is assured that these rights have been considered throughout the development of this policy. Furthermore, data protection legislation requires that the Trust is open and transparent with its personal identifiable processing activities and this has a considerable effect on the way TSDFT holds, uses, and shares personal identifiable data.

Does this policy impact on how personal data is used, stored, shared or processed in your department? Yes No

If yes has been ticked above it is assured that you must complete a data mapping exercise and possibly a Data Protection Impact Assessment (DPIA). You can find more information on our [GDPR](#) page on ICON (intranet)

For more information:

- Contact the Data Access and Disclosure Office on dataprotection.tsdf@nhs.net,
- See TSDFT's [Data Protection & Access Policy](#),
- Visit our [Data Protection](#) site on the public internet.