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Governance Policy

Mental Capacity Policy & Statement

DOCUMENT CONTROL PANEL	
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MENTAL CAPACITY POLICY & STATEMENT

1. Purpose & Scope

The purpose of this policy and statement is to provide all trustees, staff, volunteers, stakeholders, and clients with a clear understanding of how We Are Survivors adheres to the requirements of the Mental Capacity Act 2005, and how we ensure that supporting individuals to make informed decisions on their care and treatment, and also how we can assess capacity and the decision making process.

This information applies to England and Wales, and only to adults (18+) unless specifically stated.

We Are Survivors adheres to, and commits to working with all Local Authorities, NHS ICBs, and partner organisations in fulfilling our duties under the Mental Capacity Act 2005.

We Are Survivors has a Mental Capacity Lead:

Name	Role	Contact Details
Caleb Cunniffe	Community Services Director	07538 404 212 0161 236 2182

2. Definition of Terms

The following terms should become familiar terms for all staff:

Capacity: is the ability to make a specific decision at the time the decision needs to be made. Ability to make a decision is informed by, for example, a person's ability to understand the decision and why it needs to be made.

The Court of Protection: makes decisions for people who are unable to do so for themselves (those who lack capacity). It can also appoint someone (called a deputy) to act for people who are unable to make their own decisions. These decisions are for issues involving the person's property, financial affairs, health and personal welfare.

Best Interests: Section 4 of the Act provides a statutory checklist of factors that decision-makers must work through in deciding what is in a person's best interests.

Restrictions, Restraint and Deprivation of Liberty: Section 6 of the MCA defines restraint as the use or threat of force where an incapacitated person resists, and any restriction of liberty or movement whether or not the person resists. Restraint is only permitted if the person using it reasonably believes it is necessary to prevent harm to the incapacitated person or others, and if the restraint used is proportionate to the likelihood and seriousness of the harm.

There is no single definition of a deprivation of liberty. The starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors such as the type, duration, effect, and the manner of implementation of the restriction and / or restraint measures in question.

There is a scale which moves from no restriction, through varying degrees of restriction, to deprivation of liberty; where an individual is on that scale may change over time. The code of practice gives

practitioners a full explanation, and examples of, restriction and deprivation and when it may be appropriate to use either one.

Advance decisions to refuse treatment: Adults with capacity may make a decision in advance to refuse treatment if they should lose capacity in the future. An advance decision will have no application to any treatment which a doctor considers necessary to sustain life unless strict formalities have been complied with. These formalities are that the decision must be in writing, signed and witnessed. In addition, there must be an express statement that the decision stands *"even if life is at risk"*.

Independent Mental Capacity Advocate (IMCA): The statutory IMCA is to help particularly vulnerable people who lack capacity, make important decisions about serious medical treatment and changes of accommodation, and who have no family or friends that it would be appropriate to consult about these decisions.

Decision Maker(s): This is the person who has undertaken, or persons who have undertaken, a best interests process to arrive at a decision on behalf of a person who lacks capacity in relation to the 'decision in question', and they either make the best interest's decision individually or collectively. See the 'CABIP' tool procedure.

Lasting Power of Attorney (LPA): The Act allows a person to appoint an attorney to act on their behalf if they should lose capacity in the future. The attorney must be registered with the office of the public guardian before they can legally act for the person in regard to decisions in connection with their Property & Affairs and / or decisions as to their Personal Welfare, in their best interests.

Public Guardian: is the registering and monitoring authority for LPA's and deputies.

Relevant Person: The customer or patient, as appropriate.

Relevant Person's Representative: The person appointed by the Supervisory Body to represent the 'relevant person' subject to a DOLS Authorisation.

Best Interests Assessor: The professional appointed by the Supervisory Body to undertake certain assessments of the six qualifying requirements upon which the DOLS legislation is founded.

Mental Health Assessor: The professional appointed by the Supervisory Body to undertake certain assessments of the six qualifying requirement s upon which the DOLS legislation is founded.

Standard Authorisation: A Managing Authority must request a Standard Authorisation when it appears likely that, at some time during the next 28 days, someone will be accommodated in its care home or hospital in circumstances that amount to a deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights.

3. Our Statement

We Are Survivors believes male victims/survivors of sexual abuse, rape and sexual exploitation have the capacity to make decisions for themselves, unless it is evidenced otherwise.

We will not make decisions for people, unless evidenced that an individual does not have the capacity and then it must be in the best interests of the person and the least restrictive alternative.

We will not make assumptions about survivors' ability to make decisions just because of any mental health or mental capacity diagnosis, or the way their condition fluctuates. We will also not make assumptions about an individual's lack of capacity based solely on our view of any unwise or unhealthy decisions they are making or made. We will always recognise the maladaptive/unhealthy coping mechanisms that survivors so often deploy as part of their post-abusive experiences.

If survivors are not able to make decisions (*"lack mental capacity"*), we believe that they should be supported to take part in the decision-making process and that any decisions taken on their behalf should be based on their known wishes. The systems and bodies that safeguard the affairs of people who lack capacity should be as open and simple to deal with as possible.

We also believe that male victims/survivors of sexual abuse, rape and sexual exploitation should have the opportunity to make their wishes clear at the earliest possible stage in any mental health or mental capacity diagnosis, if they would like to do so.

4. Our Belief System

Mental capacity refers to whether a person is able to make decisions for themselves and male victims/survivors of sexual abuse, rape and sexual exploitation can often deploy maladaptive and unhealthy coping mechanisms that over time can result in them experiencing mental health issue symptoms such as depression, which can cause problems in making decisions and occasionally, issues relating to affected memory, concentration, planning, judgment and mental agility.

However, none of these symptoms in themselves mean someone lacks mental capacity.

The Five Principles of the Mental Capacity Act (2005) outlined in section 1 are:

01. **A presumption of capacity:** A person must be assumed to have capacity unless it is established that they don't.
02. **Individuals being supported to make their own decisions:** 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.
03. **Unwise decisions:** A person is not to be treated as unable to make decisions merely because they make an unwise, unhealthy or maladaptive decision.
04. **Best interests:** An act carried out or decision made under the MCA 2005 for or on behalf of a person who lacks capacity must be done in their best interests.
05. **Less restrictive option:** 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 as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Holding these five principles, every member of staff holds the underpinning belief in every action taken that every adult:

- has a right to make their own decisions, even unwise decisions, and be it assumed that they have capacity to do so unless proven otherwise
- must be given all practicable help before anyone treats them as not being able to make their own decisions

- has the right not to be treated as lacking capacity merely because they make a decision that others deem 'unwise'
- who lacks mental capacity must have anything done for or on behalf of them be done in their best interests
- who lacks capacity must have those making a decision for them to consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all

These principles are vitally important for male victims/survivors of sexual abuse, rape and sexual exploitation and in providing support for their carers.

5. Assessing Capacity

When assessing capacity, the following points from the Code of Practice should inform practice:

When do I assess capacity?	• When there is doubt about the person's ability to make a specific decision • At the time the decision needs to be made • If there is more than one decision to be made then a capacity assessment should be done for each decision

Who conducts the capacity assessment?	The code of practice is not prescriptive about who should assess capacity, but the following points may be of help.
	• For most routine decisions the person who assesses capacity will be the person directly concerned with the individual at that time.
	• More complex or sophisticated decisions may require a particular professional to lead the assessment. This may be:
	  ○ The professional proposing the decision
	  ○ The person who would be the decision maker if they lack capacity
	  ○ A specific named professional, e.g., a solicitor in relation to legal transactions

How sure does an assessor need to be?	• Capacity is decided on the balance of probability, this is called the 'reasonable belief test' in other words you should be surer than not.
Where should an assessment be recorded?	However assessments are recorded, the most important thing is to ensure they are evidence based. • Routine assessments can be recorded in any appropriate documentation for example medical notes or care plans. • Specialist or more complex assessments should be undertaken by the MCA Lead, in association with GP or specialist service.

6. Supporting Someone to Make a Decision

Before deciding that someone lacks the capacity to make a decision, all practical and appropriate steps must be taken to help them make the decision themselves.

The Mental Capacity Act Code of Practice includes four main points to help someone make a decision:

1) Provide relevant information
    - Does the person have all the relevant information they need to make a particular decision?
    - If they have a choice, have they been given information on all the alternatives?
2) Communicate in an appropriate way
    - Could information be explained or presented in a way that is easier for the person to understand (for example, by using simple language or visual aids)?
    - Have different methods of communication been explored if required, including non-verbal communication?
    - Could anyone else help with communication (for example, a family member, support worker, interpreter, speech and language therapist or advocate)?
3) Make the person feel at ease
    - Are there particular times of day when the person's understanding is better?
    - Are there particular locations where they may feel more at ease?
    - Could the decision be put off to see whether the person can make the decision at a later time when circumstances are right for them?
4) Support the person
    - Can anyone else help or support the person to make choices or express a view?

After all steps have been taken to support someone to make their own decision, if the person is assessed as lacking capacity to make that decision, then a 'best interests' decision must be made. The person who makes the 'best interests' decision is called the 'decision maker'. Who the decision maker is will depend on the situation and the type of decision. For most day-to-day decisions the 'decision maker' is likely to be the person who is supporting the person.

If it is a decision about healthcare, it will be the relevant health professional.

Whoever is the decision maker, it is important they talk with others involved with the person, and involve the person themselves as much as possible, to get a good understanding and therefore make the best decision they can.

The Mental Capacity Act sets out a best interest's checklist, which must be followed when making a best interest's decision:

1) Will the person regain capacity?
2) Involve the person.
3) Consult all relevant people.
4) Consider all the information.

5) Do not make any assumptions.
6) Consider past, present and future wishes.
7) Always pick the very least restrictive option.

When a best interest's decision is being made, the person must still be involved as much as possible.

7. Independent Mental Capacity Advocate (IMCA)

If a person has no family or friends for the decision-maker to ask about important decisions like serious medical treatment or changes of accommodation, then an Independent Mental Capacity Advocate must represent the person's views.

They are a legal safeguard for people who lack the capacity to make big decisions.

8. Professional Awareness of Male Victims/Survivors' Legacy and Impact Issues

The lack of awareness of issues relating to male survivors generally amongst health and social care professionals causes concern: even more so when assessment of mental capacity is being looked at. It is vital that professionals do not make assumptions based on some of the legacy and impact issues.

Victim/survivors may need adequate time to answer questions or help and support from other professionals or carer in order to make their wishes clear. Side effects of some mental health medication can also cause confusion, and immobility, all within a very brief period of time, which need to be considered.

As well as being given independent support to assist in making or communicating decisions if they need it, it is important that risk assessments are thorough, to ensure that capacity is assessed accurately. This might include postponing an assessment until the circumstances are right and ensuring that re-assessments take place regularly.

9. Ensuring Safeguards are in Place

There may be disagreements between carers, family members, professionals or others concerned with the welfare of someone who lacks mental capacity. Balancing these concerns and deciding between them may be difficult, but it is vital that everyone acts to protect and safeguard those who lack capacity.

This can be helped by ensuring processes are open and clear to all, and there is regular scrutiny of the systems and bodies that have been created to aid people who lack capacity.

People should not be deterred from adopting legal protection for people who lack capacity because of high costs.

Independent advocates aim to work with individuals to make sure that the person is actively involved, and decisions are taken in their best interests, and availability of these services is essential.

Everyone involved in the day to day care and support of a person lacking capacity should be vigilant as the person may be more vulnerable to abuse and also less able to tell people when it is happening.

Information should be clear on the obligations on professionals involved in care and treatment of people who may lack capacity.

10. Acknowledgement

We Are Survivors actively recognises The Mental Capacity Act 2005 and works within all Greater Manchester local authority 'Mental Capacity Act Policy and Procedures'.

Should the capacity of an individual be brought into question within We Are Survivors services, we strive to include local authority social services to ensure that the best possible outcome for the individual is reached.