

# Learning Lessons Quarterly Bulletin

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## Mental Capacity Act

Welcome to South Staffordshire and Shropshire Healthcare NHS Foundation Trust's Learning Lessons bulletin.

As a Trust we recognise the benefits that can be had from sharing and cascading learning from incidents and near misses, and know that if this is done effectively it can help to minimise future risk and strengthen the quality of the services we provide.

The Trust is committed to quality improvement, and will continue its strong focus on delivering high quality, safe and effective services. This new quarterly bulletin is an important component of a number of key approaches embraced by the Trust to drive forward the quality agenda.

The ultimate aim of evaluating our services and learning lessons is to improve outcomes for service users. This bulletin is intended to support this aim by communicating and strengthening local and national lessons to be learnt from both positive practice and areas for improvement.

In this issue we are focusing on effective use of the Mental Capacity Act .

We hope that you find this bulletin informative and useful and welcome your ideas and input into future issues.

## Is the Mental Capacity Act 2005 really complicated ?

The MCA 2005 has been law in England and Wales since 2007 however there continues to be a miss understanding about its application and who applies it. In simple terms we are all responsible for applying it and it applies to everyone. Any of us could lose capacity to make decisions at some point in our lives.

SSSFT have had a series of serious incidents that have involved the misuse of the MCA however we are not alone and other NHS trusts are reporting similar therefore we need to consider the MCA and how we can improve awareness and application.

### What is mental capacity and when might you need to assess capacity?

Having mental capacity means that a person is able to make their own decisions. You should always start from the assumption that the person has the capacity to make the decision in question (**principle 1**). You should also be able to show that you have made every effort to encourage and support the person to make the decision themselves (**principle 2**). You must also remember that if a person makes a decision which you consider eccentric or unwise, this does not necessarily mean that the person lacks the capacity to make the decision (**principle 3**). Under the MCA, you are required to make an assessment of capacity before carrying out any care or treatment – the more serious the decision, the more formal the assessment of capacity needs to be.



*When should capacity be assessed?*

You may need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability. Lack of capacity may not be a permanent condition. Therefore If the decision can wait until the person has regained capacity to make the decision then the decision should be delayed.

**Assessments of capacity should be time and decision specific.**

- E.g Decision to accept a specific treatment
- Decision to sell a house
- Decision to stay on the ward informally

*Common Mistake.....*

Generalisation about capacity e.g. statements such as “Mrs Smith lacks Capacity. “

the question will always be “capacity to do what ?”

You cannot decide that someone lacks capacity based upon age, appearance, condition or behavior alone.

*You must prove the person lack s capacity by completing the two-stage functional test*

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

*Stage 1*

Is there an impairment of, or disturbance in the functioning of a person's mind or brain? If so,

*Stage 2*

Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

*If the answer to BOTH questions is “yes” then you must complete a capacity assessment form.*

*The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity?*



## Learning Lessons Features—Making Decisions

The MCA says that a person is unable to make their own decisions if they cannot do one or more of the following four things:

### Four stage Test

1. Understand information given to them
2. Retain that information long enough to be able to make the decision
3. Weigh up the information available to make the decision
4. Communicate their decision – this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision

### *Who should assess capacity ?*

Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity.

The MCA is designed to empower those working in health and social care to do capacity assessments themselves, rather than rely on psychiatrists or psychologists.

However, in cases involving complex or major decisions you may need to get a professional opinion. This could be a general practitioner (GP) or a specialist (consultant psychiatrist or psychologist).

### *Unwise decisions*

We can all make unwise decision however if we have the capacity to make these decisions then we are free to make such decisions. This is exactly the same for the people who use our services.

*Sharon Conlon*  
*Safeguarding Lead Adults and Children*

## Top Tips

### *Key things to remember*

1. Always assume that someone has capacity unless there is a reason to doubt their capacity i.e. disturbance in the functioning of the mind or brain.
2. Clarify the decision that needs to be made, consider if the decision can be delayed.
3. Assess the persons capacity to make a specific decision using the trust capacity assessment forms in RIO
4. Following the assessment determine if the person has capacity to make the decision. Using the 4 stage test . Understand, retain, weigh and communicate

If they have capacity then they are able to make the decision that they have stated (note always consider undue influence, is the person making the decision due to pressure from another person). This can happen in abusive situations therefore you should seek advice from safeguarding if you are concerned regarding undue influence)

If the person lacks capacity then a decision should be made for them however this decision must **always** be in their best interests, family members should be consulted in relation to decision making. If the decision is about their accommodation or treatment then an Independent Mental Capacity Act Advocate should be consulted.

5. Everyone can make advanced decisions regarding their future care and treatment if they have capacity to make an advanced directive at the time of making it. Advanced directives must be honoured where they exist.

## Recommendations from Trust SIs

The following were recommendations from investigations in to serious incidents in which the Mental Capacity Act was identified as an issue:

- ◇ Advanced Decisions must be developed collaboratively with all parties and supported by an effective documented assessment of capacity.
- ◇ Include on the advance directive a statement regarding the assumption of capacity for the witnesses
- ◇ Re-inforce the need for decision and time specific approaches to capacity and that capacity should always be presumed unless there are reasons to doubt
- ◇ The need to complete MCA 2 document only when capacity is in doubt, specific to a decision that needs to be made at a particular point in time

## National Resources



Patient Safety First is a national campaign and is sponsored by the National Patient Safety Agency and the NHS Institute for Innovation & Improvement. The campaign aims to make safety of patients everyone's highest priority with no unavoidable deaths and no unavoidable harm. The Campaign website contains a range of simple, yet effective ideas for improving patient safety within organisations. The link to the Patient Safety First Campaign website is: <http://www.patientsafetyfirst.nhs.uk>

## Central Alerting System

The Central Alerting System (CAS) is a web-based cascading system for issuing patient safety alerts, important public health messages and other safety critical information and guidance to the NHS and others, including independent providers of health and social care. Risk management distribute relevant alerts to directorate risk co-ordinators for cascading. Further information about alerts can be found at: <https://www.cas.dh.gov.uk/Home.aspx>

### Preventing suicide in England

A cross government outcomes strategy to save lives

NHS Government

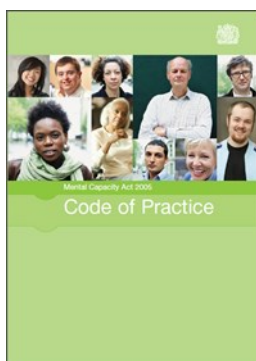
On 10th December 2012 the Department of Health issued "Preventing Suicide— A Cross-Government Outcomes Strategy to Save Lives. The strategy is intended to provide an approach to suicide prevention that recognises the contributions that can be made across all sectors of our society. It draws on local experience, research evidence and the expertise of the National Suicide Prevention Strategy Advisory Group, some of whom have experienced the tragedy of a suicide within their families. The strategy identifies who are worried that a having to cope with the also makes more primary care in



measures to support families – those loved one is at risk and those who are aftermath of a suicide. The strategy explicit reference to the importance of preventing suicide and to the need for

preventive steps for each age group.

Further information can be found at the following link: <http://www.dh.gov.uk/health/files/2012/09/Preventing-Suicide-in-England-A-cross-government-outcomes-strategy-to-save-lives.pdf>



### Mental Capacity Act Code of Practice:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/224660/Mental\\_Capacity\\_Act\\_code\\_of\\_practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224660/Mental_Capacity_Act_code_of_practice.pdf)

## Literature:

Mental Capacity Act—Making Decisions :

<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>

Mental Capacity Act Toolkit

<http://www.google.co.uk/url?url=http://www.bma.org.uk/-/media/files/pdfs/practical%2520advice%2520at%2520work/ethics/mental%2520capacity%2520act%2520tool%2520kit.pdf>



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This Bulletin is available on the Trust website at :

[http://  
www.southstaffsandshropshealthcareft.  
nhs.uk/Default.aspx](http://www.southstaffsandshropshealthcareft.nhs.uk/Default.aspx)

Or alternatively

A hard copy can be obtained by contacting the Trust Risk Management Department on 07850 257888 ext 5953

- We welcome your feedback on this Learning Lessons Bulletin to help us to ensure that future editions are helpful and informative
- We would also welcome your ideas for future features or areas of learning you feel are relevant to be cascaded across the Trust

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