

# MENTAL CAPACITY ACT POLICY & PROCEDURES

Prepared By: Adele Grandon

Date Adopted: October 2016

Job Title: Services Development Manager

Status:

Authorised By: Kate Grant

Last Reviewed: May 2022

Job Title: CEO

Ratified: June 2022

Reviewed by: David Goff

Next Review date: May 2024

Job Title: Support Services Director

Version: 1.4

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## **1. Purpose**

- 1.1 The purpose of the policy and procedures is to ensure all staff are aware of the principles and procedures of the Mental Capacity Act 2005 and work in accordance of its principles and Code of Practice.

## **2. Definitions**

- 2.1 "The Trust" means Jigsaw School, JigsawPlus, Jigsaw Trust and Jigsaw Trading 2013 Limited (Café on the Park)
- 2.2 Heads of Divisions are as follows: Support Services Director; Chief Executive Officer (Trust Shared Services)

## **3. Scope**

- 3.1 This policy relates to the staff and learners at JigsawPlus.

## **4. The Policy**

- 4.1 JigsawPlus recognises that it has a duty to embrace the Mental Capacity Act 2005 and to work within its principles. Where learners have the capacity to make decisions, even if they are unwise, JigsawPlus will aim to work with the learner to assess risks.
- 4.2 The very practical and applied nature of the learning at Jigsaw's services aims to expand an individual's capabilities and thus, their capacity to make informed decisions on a day to day basis. Consideration of the Mental Capacity Act's main strands therefore will inform decisions within the organisation with, and for, learners.
- 4.3 The Mental Capacity Act's main principles are set out in Section 1 of the Act. They are:
- that a person is presumed to have capacity unless proven otherwise
  - until we have taken all practical steps without success, to help the person to make a decision, they cannot be considered to lack capacity
  - an unwise decision does not, of itself, indicate a lack of capacity
  - once it is established that an individual lacks capacity, then a decision will be made for them in their best interests
  - any action or decision will be the least restrictive option in terms of the person's liberty and freedom
- 4.4 The Mental Capacity Act 2005 applies in most decisions, (not otherwise given a statutory age restriction) to people aged 16 and over. The Act is accompanied by a Code of Practice to which there is a duty for all workers to have regard.
- 4.5 Jigsaw has a commitment to training its staff to be aware of the Act, its principles, what it is all about and why it was necessary. It will also ensure that staff in decision making roles are trained in the assessing of capacity and that there is a framework in place for recording assessments and best interests decision making.

## 5. Integrated Procedures - Assessing & Recording Capacity

- 5.1 As stated in the Mental Capacity Act's main principles, a person is presumed to have the mental capacity to make a decision and therefore capacity is not assessed unless it is in doubt.
- 5.2 If there is a doubt that a learner is able to make a decision however, then this should be assessed by the decision maker and recorded on a Mental Capacity Assessment Form. This will depend on what the decision is so the role assessing capacity will vary.
- 5.3 Jigsaw has produced documentation to assist the assessor in this process and staff are advised to closely follow the procedural guidance on a step by step basis outlined on this pro forma.
- 5.4 Mental Capacity assessments are to demonstrate on balance of probability; whether a person lacks capacity to make a decision at a particular time it needs to be made.
  - the assessment should take place when the capacity is in doubt
  - the assessor should be able to justify their conclusions
  - carers need to take 'reasonable steps' to establish that the person lacks capacity... They must also establish that the act or decision is in the person's best interests' (Code of Practice: 4.34)
- 5.5 The steps that are considered to be reasonable (Code of Practice: 4.45)
  - start from the assumption that the person has capacity
  - has there been a previous diagnosis of disability or mental disorder?
  - does the condition now affect the person's ability to make decisions?
  - you have tried to communicate what is happening
  - you have tried to help the person to make a decision through timing or simplification
- 5.6 Practical steps for assessing capacity (Code of Practice 4.49)
  - make every effort to understand the nature or effect of the decision by assessing background information and relevant documentation
  - obtain the views of other professionals involved
  - gain the views of family or friends (but differentiate between what it is THEY want.)
  - explain in the clearest possible way
  - check the person's understanding after a few minutes
  - avoid questions that give a 'YES' or 'NO' response as they are not enough upon which to base an assessment of capacity and understanding
  - be aware that skills and behaviour do not necessarily reflect capacity. Politeness and good social skills do not, of themselves indicate that the person has understood
- 5.7 Once it has been established that, on balance of probability, the person lacks capacity to make a decision at a particular time the decision needs to be made, a decision needs to be made in the person's best interests.

## **6. Recording Best Interests decisions (Code of Practice 5.15)**

6.1 You need to record:

- How the decision about the person's best interests was reached
- What were the reasons for reaching the decision
- Who was consulted to help work out what is in the best interests
- What particular factors needed to be taken into account

6.2 There are decisions which lie beyond the remit of the Mental Capacity Act 2005. They are decisions relating to:

- consent to marriage or civil partnerships
- consent to sexual relations
- consent to divorce or dissolution of marriage or civil partnership
- consent to a child being placed for adoption or consent to making an adoption order
- discharge of parental responsibilities in areas not connected to a child's property
- consent under the Human Fertilisation and Embryology Act 1990

6.3 The Act is also not applicable in circumstances where treatment is provided under part 4 of the Mental Health act 1983. Where there are complex decisions, conflict over the outcome of assessment or intractable arguments with interested parties, further advice, guidance and second opinions may need to be sought.

6.4 For Individuals who lack capacity regarding changes in accommodation, serious medical treatment, deprivation of liberty or safeguarding and have no family and friends to support them, then the appropriate decision maker from either a local authority or the NHS may apply for representation from the Independent Mental Capacity Advocacy (IMCA) service. This will not be the role of Jigsaw staff.

## **7. Implementation**

### **7.1 Distribution**

7.1.1 This policy and procedure will be available to all learners and their representatives as part of the Learner Handbook.

7.1.2 This policy and procedure will be provided to all staff during their induction.

### **7.2 Training**

7.2.1 All staff will receive training in the Mental Capacity Act during their induction period.

### **7.3 Roles & Responsibilities**

7.3.1 Jigsaw will support staff to complete Mental Capacity Assessments when necessary to the best of its ability.

7.3.2 Jigsaw staff are expected to work in accordance with the Mental Capacity Act's principles and Code of Practice when supporting those learners who lack the capacity to make decisions for which Jigsaw Trust staff are responsible. This is not only an organisational requirement: it is a statutory obligation.

## **8. Policy Review**

- 8.1 This policy will be updated as necessary to reflect best practice and to ensure compliance with any changes or amendments to relevant legislation.
- 8.2 This policy was last reviewed in May 2022.

## 9. Version History

No.	Date	Amendment
1.2	May 2018	No fundamental changes, Appendix 1 updated
1.3	May 2020	No fundamental changes, role titles changed, client changed to learner.
1.4	May 2022	No fundamental changes, role titles changed

## 10. Related Legislation & Guidance

Document	Location

## 11. Related Internal Documentation

Document	Electronic Copy Location
Safeguarding Adults Policy & Procedures	Home page (common drive) / POLICIES / Plus
Anti-Bullying and Harassment Policy	Home page (common drive) / POLICIES / Plus
Health & Safety Policy	Home page (common drive) / POLICIES / Trust
Equality & Diversity Policy	Home page (common drive) / POLICIES / Trust
Behaviour Support Policy	Home page (common drive) / POLICIES / Plus
Accident & Incident Reporting Procedures	Home page (common drive) / POLICIES / Plus
Confidentiality Policy	Home page (common drive) / POLICIES / Trust
Whistleblowing Policy	Home page (common drive) / POLICIES / Trust
Curriculum Policy	Home page (common drive) / POLICIES / Plus

## APPENDIX 1 - CAPACITY TO CONSENT ASSESSMENT

Name of Learner: ..... Date of Birth: .....

### 1. Decision to which this capacity assessment relates (e.g. DOLS)

.....

.....

.....

### 2. Does the learner have a court appointed deputy authorised to make decisions about this issue?

☐ Yes If YES, Deputy can complete consent form ☐ No If NO, proceed with completing this form

### 3. Is there an impairment or disturbance of the learner's mind or brain?

☐ Yes If YES, record the reason(s) below e.g. diagnosis, current symptoms ☐ No If NO, the capacity test as defined in 2005 Mental Capacity Act should not be used

.....

### 4. In your opinion, is the impairment or disturbance of the learner's mind or brain?

☐ Temporary If temporary, consider delaying assessment ☐ Permanent

### 5. Is the person able to understand the information relevant to this decision?

☐ Yes ☐ No If NO, detail attempts to make the information comprehensible to the learner

.....

.....

.....

### 6. Is the person able to retain the information long enough to make the decision?

☐ Yes ☐ No If NO, give reasons for your opinion

.....

.....

### 7. Is the person able to weigh the information as part of the decision making process?

☐ Yes ☐ No If NO, give reasons for your opinion

.....

### 8. Is the person able to communicate their decision in any way?

☐ Yes If YES, describe how the decision has been communicated to you ☐ No If NO, describe why not, and the efforts made to assist them to communicate.

.....



**NB:** If the learner has an impairment of mind or brain (YES to q.1) AND the answer is 'NO' to ANY of questions 3, 4, 5 or 6, then the learner may lack capacity with regard to the decision being made. Mental capacity is judged by the assessor(s) at the time of their appraisal. This tool acts as an aid to documentation only.

### Outcome

I am satisfied that the learner has been unable to make a decision in this case. As far as is reasonably possible, I have considered the person's past and present wishes, any beliefs and values that would be likely to influence the decision in question. As far as possible, I have consulted other people as appropriate, I have considered the learner's best interests in accordance with the requirements of the Mental Capacity Act. **The outcome of the decision:**

☐ The learner has capacity

☐ The learner lacks capacity

If the learner is deemed to have capacity, he/she should be assisted to complete the necessary consent forms. If the learner lacks capacity, please proceed with the completion of this form.

### Who has helped with completion of the form?

Name: .....

Role: .....

Signed: .....

Date: .....

Name: .....

Role: .....

Signed: .....

Date: .....

### If the learner is found to lack capacity for the decision in question, is a best interests meeting required?

☐ Yes

☐ No

A best interests meeting may be needed where an adult (16+) lacks mental capacity to make **significant decisions** for themselves and needs others to make those decisions on their behalf. It is particularly important where there are a number of agencies working with the person, or where there are unresolved issues regarding either the person's capacity or what is in their best interests and a consensus has not been reached. Issues around a person's capacity should however ordinarily be resolved before a best interests meeting is convened. do they have a family member who would be willing to be consulted as part of the best interest decision making process?

☐ Yes If YES, please complete Form 2 below

☐ No

If NO, consult family representative to gain consent, in absence of family contact social services representative or IMCA (Independent Mental Capacity Advisor).

### To be completed by Representative or Advocate

- I have been consulted by JigsawPlus about the mental capacity of the learner named above with regards to the decision(s) stated above
- I understand and agree that s/he is unable to give consent to the decision specified in this form, based on the criteria set out in this form

Any other comments (including any concerns about the decision)

.....

.....

Name: .....

Relationship to Learner: .....

Signed: .....

Date: .....

## BEST INTERESTS FORM – FORM 2

There is a statutory requirement for anyone undertaking an assessment to have regard to the Code of Practice for the Mental Capacity Act. Where an individual lacks capacity to validly consent, a decision MUST be made in their best interests. References given below refer to the relevant paragraphs of the MCA Code.

**What is the Best Interests Principle and who does it apply to?** The Best Interests Principle is set out in the MCA (2005). The MCA Code of Practice (s.5) states 'Any act done or decision made for or on behalf of a person who lacks capacity must be done or made in their best interests'. Best Interests includes medical, social, personal and financial best interests. Certain decisions such as consenting to sexual relations, divorce, marriage or adoption are excluded. Please consult the Statutory Care & Support Guidance and the MCA Code of Practice.

### 2. Service user details

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Case/Ref/NHS number:** \_\_\_\_\_

**Present Address/Location:** \_\_\_\_\_

**Home Address (if Different):** \_\_\_\_\_

3. Views of relevant/interested parties. Prior to making a decision in an individual's best interests, the decision maker must take into account the views of others. The views of each party MUST be recorded. It is appropriate to hold a best practice meeting where the decisions facing the service user are complex and cannot be easily made by the decision-maker or where there are differing opinions about what outcome is in an individual's best interests.

**Present and Past wishes of the Individual – as far as they are able to express them, including any relevant advance decision or advance directive**

Views of partner/spouse

**Views of family (Note there may be differing views held by family members and conflicts of interest. All should be taken into account)**

**Views of any advocate or IMCA**

Views of any donee of Lasting Power of Attorney or Court of Protection Deputy – **note the type of LPA/CoPD will be relevant**

**Views of any other relevant party (Please state whose views are being recorded)**

4. Outcome of Best Interests Decision This decision is made by the decision maker, having taken into account the views of all relevant parties and considered what is the least restrictive option.

Details:

5. Reason for the Best Interests Decision. The Court will expect the Decision-Maker to have used a balance-sheet approach in reaching a conclusion about what is in the individual's best interests. It is vitally important that the minutes of any best practice meeting are attached to this record and are fit for purpose and scrutiny.

Details:

**6. Details of the Best Interests Decision Maker**

Name	Role	Date	Signature