

# **Unit 12: Principles of the Mental Capacity Act 2005**

**Unit reference number: Y/616/7297**

**Level: 3**

**Unit type: Optional**

**Credit value: 3**

**Guided learning hours: 20**

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## **Unit summary**

For those who work in person-centred support roles, it is vital to understand how to manage difficult behaviour, especially when individuals may be confused, withdrawn or aggressive. Knowing what can be done to protect people who may not be able to make their own decisions, how it can be legally managed, and the guidance available gives confidence and ensures safe practice.

In this unit, you will learn how decisions are made about whether someone has capacity, the processes that must be followed, when restraint is appropriate and when it is lawful for people to be deprived of their basic human right to liberty. Restraint and deprivation of liberty are serious matters. It is essential that anyone involved in supporting vulnerable adults is aware of the Mental Capacity Act 2005, so that they work within the law that protects both the worker and those they support.

## Learning outcomes and assessment criteria

To pass this unit, the learner needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria outline the requirements the learner is expected to meet to achieve the unit.

Learning outcomes	Assessment criteria
<p>1 Understand the importance of the Mental Capacity Act 2005</p>	<p>1.1 Explain why legislation is necessary to protect the rights of individuals who may lack the capacity to make decisions for themselves</p> <p>1.2 Describe the factors that may lead to an individual lacking the capacity to make a particular decision for themselves</p> <p>1.3 Explain how the Mental Capacity Act 2005:</p> <ul style="list-style-type: none"> <li>• empowers people to make decisions for themselves</li> <li>• protects people who lack capacity by placing them at the heart of the decision-making process</li> </ul> <p>1.4 Describe why effective communication is important when working with a person who may lack capacity to make a particular decision for themselves</p>
<p>2 Understand the key elements of the Mental Capacity Act 2005</p>	<p>2.1 Define the five statutory principles included in the Mental Capacity Act 2005</p> <p>2.2 Describe when a worker must comply with the Mental Capacity Act 2005</p> <p>2.3 Explain how the Mental Capacity Act 2005 gives legal protection to workers providing care and treatment for someone who lacks capacity</p> <p>2.4 Explain 'capacity' as defined in the Mental Capacity Act 2005</p> <p>2.5 Explain 'best interests' as defined in the Mental Capacity Act 2005</p>

Learning outcomes	Assessment criteria
	<p>2.6 Explain what actions need to be taken to ensure a worker acts in an individual's 'best interests'</p> <p>2.7 Identify whose responsibility it is to assess 'capacity' and 'best interests'</p> <p>2.8 Identify the type of 'day-to-day' decisions a worker may find themselves making on behalf of a person who lacks capacity to make those decisions themselves</p> <p>2.9 Explain the circumstances when an Independent Mental Capacity Advocate (IMCA) should be appointed</p> <p>2.10 Explain how the Mental Capacity Act 2005 can assist a person to 'plan ahead' for a time when they may not have capacity to make certain decisions</p>
<p>3 Understand 'restraint' as defined in the s6(4) Mental Capacity Act 2005</p>	<p>3.1 Identify the range of actions that amount to restraint</p> <p>3.2 Identify the factors which make restraint lawful under the Mental Capacity Act 2005</p> <p>3.3 Describe the circumstances where the restrictions or restraint being used amount to a person being 'deprived of their liberty'</p> <p>3.4 Describe the actions that are necessary to ensure that a person is lawfully 'deprived of their liberty'</p> <p>3.5 Explain why a worker should raise their concerns with their supervisor/manager when they think a person may be being 'deprived of their liberty'</p>

## Content

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### What needs to be learned

#### Learning outcome 1: Understand the importance of the Mental Capacity Act 2005

##### Individual

- Someone requiring care or support; it will usually mean the person or people supported by the learner.

##### Reasons for legislation

- Protection from abuse.
- Maintaining human rights.
- Prevention from harm.

##### Factors

- Functional impairment in mind or brain.
- Functional disturbance in mind or brain.
- Permanent, temporary.

##### Empowerment

- Choice.
- Control.

##### Communication

- Verbal in appropriate language, e.g. own language, simplified language.
- Non-verbal, e.g. sign language.
- Other means, e.g. communication boards.
- Effective communication.
- Understand information, retain information, communicate wishes.

#### Learning outcome 2: Understand the key elements of the Mental Capacity Act 2005

##### Statutory principles

- Assume capacity unless established otherwise.
- All practicable steps tried first without success before assuming incapacity.
- Freedom to make unwise decisions.
- Acts and makes decisions in the best interests of the person.
- Explore alternatives to achieve purpose that do not restrict the person's rights and freedom of action.

##### Legal compliance

- Those required to comply with the Mental Capacity Act 2005, including family carers, other carers and everyone who looks after someone who lacks capacity.
- Those legally required to comply with the Mental Capacity Act 2005 and also follow the Code of Practice: an attorney under a lasting power of attorney (LPA), deputy appointed by the new Court of Protection, Independent Mental Capacity Advocates, those carrying out research approved in accordance with the act.
- Professionals acting in their official role (doctors, dentists, nurses, therapists, radiologists, paramedics), social care staff (social workers, care managers), others such as ambulance crew, housing workers, or police officers.
- People who are being paid for acts for or in relation to a person who lacks capacity, including care assistants in a care home, care workers in domiciliary care services, contractors providing a service to people who lack capacity.

## What needs to be learned

### Capacity

- Determined by a two-stage test: stage one – proof of impairment that affects the way their mind or brain works, e.g. physical or medical conditions that cause confusion, drowsiness or loss of consciousness.
- Stage two – whether the person is able to make a specific decision when required by understanding and retaining relevant information, using that information to make a decision, and communicating their decision (by any means).
- Assessment of capacity by a person directly concerned with the individual at the time that the decision needs to be made, e.g. care worker assessing if the person can agree to being fed.

### Legal protection

- Protection from liability.
- Limitations to this protection, e.g. unlawful deprivation of liberty or disproportionate restraint.

### Best interests

- Unbiased, comprehensive assessment of all relevant circumstances, including the person's past and present feelings; any relevant written statement made by them when they had capacity, such as advance decisions, their beliefs and values, and the views of anyone named by the person as someone to be consulted on the matter.
- Decisions concerning life-sustaining treatment.
- Likelihood and time of future capacity.
- Encourage the person to participate, or improve their ability to participate.
- Assessment by persons to include family, carers, care workers, healthcare and social care staff, attorneys appointed under a lasting power of attorney or registered enduring power of attorney, deputies appointed by the court to make decisions on behalf of someone who lacks capacity, and the Court of Protection.
- All aspects of financial and personal welfare and healthcare.

### Role of Independent Mental Capacity Advocate (IMCA)

- For people lacking capacity who have no one else to support them other than paid staff, in situations such as when the NHS proposes serious medical treatment.
- When the NHS or local authority propose arranging accommodation (or a change of accommodation) in hospital or a care home, for hospital stays longer than 28 days, or in a care home for more than eight weeks.

### Planning ahead

- Role of lasting power of attorney.
- Role of enduring power of attorney.
- Role of attorneys (duties and responsibilities, standards required), measures for dealing with attorneys who do not meet appropriate standards.

## What needs to be learned

### Learning outcome 3: Understand 'restraint' as defined in the s6(4) Mental Capacity Act 2005

#### Restraint

- Use of or threat of force to secure the carrying out of an act which the person resists; restriction of person's liberty of movement, whether or not the person is resisting.

#### Lawful restraint

- Protection from harm, proportionate to risk, limits on lawful restraint.

#### Deprivation of liberty

- Amendments under the Mental Health Act 2007 section 50, difference between actions that restrict someone's liberty and those that result in a deprivation of liberty.
- The European Court of Human Rights decision on degree of intensity, e.g. type of care provided, how long the situation lasts, its effects, the way a particular situation came about.

#### Lawful deprivation of liberty

- When giving effect to a relevant decision of the court concerning personal welfare.
- For life-sustaining treatment.
- For carrying out any vital act.

#### Reasons for concern

- Breach of human rights.
- Judgements by European Court of Human Rights, e.g. restraint used, including sedation, to admit a person who is resisting.
- Professionals exercised complete and effective control over care and movement for a significant period.
- Professionals exercised control over assessments, treatment, contacts and residence.
- The person would be prevented from leaving if they made a meaningful attempt to do so.
- A request by carers for the person to be discharged to their care was refused.
- The person was unable to maintain social contacts because of restrictions placed on access to other people.
- The person lost autonomy because they were under continuous supervision and control.

## Information for tutors

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### Suggested resources

#### Books

Eales M – *Mental Capacity Act and Deprivation of Liberty Workbook* (CreateSpace Independent Publishing Platform, 2013) ISBN 9781491268933

Graham M – *A Practical Guide to the Mental Capacity Act 2005: Putting the Principles of the Act into Practice* (Jessica Kingsley Publishers, 2015) ISBN 9781849055208

#### Journal

*Community Care*

#### Websites

<a href="http://www.gov.uk">www.gov.uk</a>	<i>Positive and Proactive Care: reducing the need for restrictive interventions</i> (Guidance for all those working in health and social care settings: commissioners of services, executive directors, frontline staff and all those who care for and support people)
<a href="http://www.gov.uk">www.gov.uk</a>	<i>No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse</i> (sets out how commissioners and providers of care services should protect vulnerable adults)
<a href="http://www.gov.uk">www.gov.uk</a>	<i>Reference guide to consent for examination or treatment, second edition</i> (including advance decisions to refuse treatment)
<a href="http://www.gov.uk">www.gov.uk</a>	Independent Mental Capacity Advocacy service (IMCAs) a legal safeguard for people who lack the capacity to make specific important decisions –guidance on IMCAs role
<a href="http://www.gov.uk">www.gov.uk</a>	Mental Capacity Act 2005 Code of Practice
<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Mental Capacity Act 2005

## **Assessment**

This guidance should be read in conjunction with the associated qualification specification for this unit.

This unit is internally assessed. To pass this unit, the evidence that the learner presents for assessment must demonstrate that they have met the required standard specified in the learning outcomes and assessment criteria, and the requirements of the assessment strategy.

To ensure that the assessment tasks and activities enable learners to produce valid, sufficient, authentic and appropriate evidence that meets the assessment criteria, centres should follow the guidance given in *Section 8 Assessment* of the associated qualification specification and meet the requirements from the assessment strategy given below.

Wherever possible, centres should adopt an holistic approach to assessing the units in the qualification. This gives the assessment process greater rigour and minimises repetition, time and the burden of assessment on all parties involved in the process.

### **Unit assessment requirements**

This unit must be assessed in accordance with the assessment strategy (principles) in *Annexe A* of the associated qualification specification.

Assessment of all learning outcomes (knowledge) may take place in or outside of a real work environment.