**Mental Capacity Act Community of Practice**

**Terms of Reference**

Legal Framework

The Mental Capacity Act 2005 was fully implemented on the 1st April 2009 when the Deprivation of Liberty Safeguards came into force.

The Mental Capacity Act 2005 (MCA) came into force fully on 01/10/07. It was amended by the [Mental Health Act 2007](https://www.mentalhealthlaw.co.uk/Mental_Health_Act_2007) with the introduction of the Deprivation of Liberty Safeguards (DoLS). DoLS came into force on 01/04/09.

It is a human rights-based piece of legislation which seeks to balance human rights for individuals who are 16 years and older. It does this by promoting the right to autonomy and self-determination through empowering and supporting individuals to make decisions for themselves as far as possible. It further promotes autonomy by providing a framework through which individuals can think ahead and plan on how their voice can be heard should they lose capacity to make some decisions in the future. It protects the fundamental right to life by providing guidance that ensures decisions are made in the best interests of those assessed as lacking capacity to make specific decisions. It safeguards the right to liberty by providing a lawful process through which individuals who lack capacity to consent to their care arrangements can be deprived of their liberty.

The Practice Environment

Over the past 16 years practitioners in Social Care; Health and the Third Sector have looked to operationalise the MCA in Leeds. This has produced many examples of empowering practice which has improved the wellbeing of citizens. It has also brought challenges.

Challenges have arisen due to the complexity of the nature of impairments in mind or brain experienced by the people that practitioners work alongside. Navigating fluctuating capacity; the frontal lobe paradox and other complex presentations can cause difficulties for practitioners, particularly in the context of the potential exposure to risk that decisions could result in.

Challenges have also arisen at times when working with people who have difficulties with trauma due to adverse life experiences.

The vision is for Leeds to be a trauma informed city. The assessing of capacity and the provision of support for traumatised people to make empowering decisions in the context of abusive interpersonal relationships; alcohol and substance dependence; and self-neglect, for example, can be challenging for practitioners, particularly given that the MCA framework, is arguably, in some respects, structurally unresponsive to trauma.

Case law in relation to the MCA is ever evolving and practitioners need to keep up to date with this in order that practice is in accord with legal developments. Case law with respect to engaging in sexual relations and social media are just two examples where rulings can have an immediate impact requiring the review of a person’s care arrangements.

The MCA exists in a wider framework of practitioners working alongside people to arrive at decisions which promote their wellbeing. Supported decision making, in its broadest sense, is integral to the work of practitioners across Social Care, Health and the Third Sector. The skills and techniques, together with the utilisation of aids and equipment to facilitate this, is a developing area of practice.

If a person lacks capacity with respect to a particular matter and a Best Interests decision is required, ensuring that the wishes, feelings, values and beliefs of the person should of course be central to the decision made. There are times however when decisions, taken in a person’s best interest, are contrary to the persons wishes and feelings. This can be challenging for the practitioners involved. The cases may also involve the complexity of requiring the involvement of the Court of Protection. In a similar vein, decisions may need to be made in the face of significant opposition from family members / friends of the person, requiring the involvement of the Court.

The law also covers:

* What is meant by “lacking capacity” to make a particular decision.
* How and when a person’s capacity to make a decision should be assessed.
* The responsibilities and duties of people who make decisions on other people’s behalf.
* Independent support arrangements for people who lack the capacity to make a decision.
* What people can do if they disagree with a decision made for them or about them.
* When and how certain parts of the health and social care sectors can deprive people of their liberty.

The Act has 5 key principles which must be implemented within a trauma informed approach that balances fundamental human rights:

* We must begin by assuming that people have capacity.
* People must be helped and supported to make decisions.
* Unwise decisions do not necessarily mean a lack of capacity.
* Decisions must be taken in the person’s best interest.
* Decisions must be as least restrictive of individuals rights and freedom as possible.

Purpose of the MCA Practice Community

* To lead a trauma informed implementation of the Mental Capacity Act across the city of Leeds by:
  + Representing a wide range of organisations committed to a greater understanding of and the lawful implementation of the Mental Capacity Act via trauma informed practice.
  + Upholding a set of values and how which will ensure that the MCA practice community in Leeds is human rights oriented and meaningful, that organisations take responsibility for the lawful implementation of the Act and that senior leaders can be reassured that their organisations are confident and competent in this arena.
  + Acting as a practice development resource by gathering learning from across the region and nationally.
  + Bringing together committed and experienced individuals who have a desire to work collaboratively to improve MCA practice, providing an opportunity to build relationships and reduce variance in practice by promoting and sharing experience and best practice.
  + Working as an extra layer of governance for organisations seeking to embed a trauma informed approach to practice approach into the framework of the Mental Capacity Act.
  + Acting in a supportive and advisory capacity for each other to enable the practice community to grow meaningfully and realistically.
  + Supporting and informing evidence based practiced including leading and supporting research projects aimed at improving quality of care through effective use of the mental Capacity Act.

Meeting Structure

The Practice Community will meet on a bi-monthly basis for the duration of 2 hours, the meetings will be co-facilitated by system leaders from Leeds City Council, Leeds Integrated Care Board, Leeds and York Partnership Foundation Trust and Leeds Teaching Hospital Trust.

Meetings will be recorded so that these can be used as a developmental resource.

An action log will be maintained identifying key themes and potential gaps, these will be fed into the Leeds Safeguarding Adult Board or relevant LSAB sub-groups.

Governance

The practice community will report into the Leeds Safeguarding Adult Board to enable each organisation to continue to take responsibility to implement the lawful execution of it’s statutory obligations in terms of the Mental Capacity Act.