

MENTAL CAPACITY

The Mental Capacity Act 2005 is intended to promote good practice on a daily basis when working with a woman or man who may lack capacity to make decisions.

In brief, the act covers the making of decisions concerning the welfare and finances of people who are unable to make these decisions for themselves.

Phoenix House is committed to ensuring that at all times, that our staff works in full compliance with the Mental Capacity Act 2005 as well as the accompanying code of practice.

KEY PRINCIPLES

The key principles as stated in section 1 of the act are as follows:

- A person is assumed to have capacity unless it is established that they lack capacity
- All practical steps to help a person make decisions must have been undertaken (without success) before treating them as unable to make decisions
- A person is not to be treated as unable to make a decision merely because they make an unwise decision
- Any decision or action made on behalf of a person who lacks capacity must be based on their best interests
- The least intrusive or restrictive action should be pursued wherever possible.

DEFINITION OF LACK OF CAPACITY

Section 2 of the act states that a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

A decision as to whether a person lacks capacity has to be decided on the balance of probabilities.

Section 3 of the act states that a person is unable to decide for themselves if they are unable:

- to understand information relevant to the decision (provided in an accessible manner)
- to retain that information (even if for only a short period of time)
- to use or weigh that information as part of the process of making the decision
- to communicate their decision

BEST INTEREST

In section 4 of the act, Best Interest is identified by a number of points. A person making a determination on behalf of a person who lacks capacity must:

- permit and encourage the person to participate as fully as possible in any decision or act
- where the decision relates to life saving treatment the decision maker must not be motivated by a desire to bring about their death
- the decision maker should seek to ascertain:
 - the persons past and present wishes and feeling
 - the beliefs and values that would be likely to influence his decision, if he had capacity
 - any other relevant factor

Phoenix House always work with the view of empowering our service users to gain independence. However, it is important to note that any actions taken by staff is done with the service user's best interest as the basis for any such decision. In any such situation, our staff assesses the service user's capacity to make that decision for themselves at that particular moment in time when the decision needs to be made.

Wider and more complex decisions, or decisions about an issue that is likely to be ongoing, should always be taken in consultation with other people who are involved in the service user's care to gain a broad and agreed consensus. The outcome of the decision should always be clearly recorded in the service user's support plan or other suitable place, and kept under regular and ongoing review.