

Mental Capacity Act

1. The Hamlet Charter

The Hamlet believes the people we support should be able to explore choice and opportunities as well as being happy and safe. We believe every person over the age of 16, whatever their disability, has the right to make their own decisions wherever possible.

2. Purpose of this policy and why we have it

To support compliance with the Mental Capacity Act 2005.

To provide guidance for staff and volunteers how the mental capacity of a person should be assessed. To outline the procedures for making a decision on behalf of people who lack capacity. Any decisions made on behalf of someone who lacks capacity must be made in their best interest.

3. Scope of this policy

- People over the age of 16 who use, or might use Hamlet services
- Their family and support networks
- Hamlet Staff
- Hamlet Volunteers.

4. Policy

To ensure staff and volunteers understand and work within the Mental Capacity Act's principles:

- Principle 1 – a person must be assumed to have capacity unless it is established that they lack capacity.
- Principle 2 – a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
- Principle 3 – a person is not to be treated as unable to make a decision merely because they make an unwise decision.
- Principle 4 – an act done, or decision made, under the Act or on behalf of a person who lacks capacity must be done, or made in, the person's best interests.
- Principle 5 – before the act is done, or the decision is made, regard must be had to whether the purpose of which it is needed can be effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

And:

- To ensure staff and volunteers understand the importance of supporting people to make their own decisions.
- That every person has the right to make their own decisions unless it can be established that they cannot make that particular decision at that particular time.
- To offer choice and opportunities to the people we support – from day to day decisions such as which colour paint to use, to more complex decisions such as where to live.
- Choice and opportunities will be offered using appropriate communication methods e.g. objects of reference, Easy Read. The person's preferred method of expressing their decisions will be respected.
- To ensure decisions made in the persons 'best interests' staff have considered the full mandatory checklist of factors laid out in the Mental Capacity Act.
- To make an Independent Mental Capacity Advocate (IMCA) referral for large decisions where there are no family or friends that can be appropriately consulted.
- To formally record a person is unable to make a decision and that all principles have been applied.
- People have the right to make a decision that others do not agree with. If there is concern a person is acting in a way that isn't consistent with previous behaviour, or they are making a decision that may put them at risk of harm, then a mental capacity test should be taken.

Under 16

The Act does not generally apply to people under the age of 16 but there are two exceptions:

- The Court of Protection can make decisions about a child's property or finances if the child lacks capacity to make such decisions and is likely to still lack capacity to make financial decisions when they reach the age of 18.
- Offences of ill treatment or wilful neglect of a person who lacks capacity can also apply to victims younger than 16.

Young People age 16-17

Most of the Act applies to young people aged 16-17 years, who may lack capacity to make specific decisions but there are three exceptions:

- Only people aged 18 and over can make an Enduring Power of Attorney.
- Only people aged 18 and over can make an advance decision to refuse medical treatment.

- The Court of Protection may only make a statutory will for a person aged 18 and over.

Assessing Competence in under 16's

The test for assessing whether a child under 16 can give valid consent differs from that of a young person aged 16 or 17. The test for children under 16 is determined by considering whether they are 'Gillick competent'. The concept of Gillick competence reflects the child's increasing development to maturity. The understanding required to make decisions about different interventions will vary considerably. A child may have the competence to consent to some interventions but not others. The child needs to be given the relevant information in an appropriate manner and given as much support as possible to help them make the decision.

5. Implementation and monitoring

- We have a structured programme of activities to improve a person's capacity to make decisions.
- People will be consulted in decision making processes with regular reviews.
- Support Plans will be updated with peoples changing needs and choices.
- Staff will work alongside other professionals, families, and friends of the person who lacks capacity to make significant decisions for themselves and need others to make decisions on their behalf.

6. Legal References (latest version)

- Mental Capacity Act (2005)

This policy should be read in conjunction with other relevant Hamlet policies and accompanying procedures.

Date approved by the Board: January 2021

Date of next review: January 2022

Post holder(s) responsible for this policy: Chief Executive

Signed by Chair of the Board of Trustees:

