

MENTAL CAPACITY POLICY

Principles

1. Employ My Ability complies with the principles of the **Mental Capacity Act 2005** by first treating all of the people who use our services and prospective students on the basis that they are able to make their own decisions.

The five statutory principles are:

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

How to tell if someone can make a decision

There are several things you should consider when assessing if a person can make a decision:

- if the person understands what decision they need to make and why they need to make it
- if the person understands what might happen if they do or do not make this decision
- if the person can understand and weigh up the information relevant to this decision
- if the person can communicate their decision (by talking, using sign language or any other means)
- if the person can communicate with help from a professional (such as a speech and language therapist)
- if there is a need for a more thorough assessment (perhaps by involving a doctor or other professional expert)

You must not treat the person as unable to make a decision just because they make decision you don't agree with.

2. Employ My Ability will not make decisions on behalf of a students unless there is evidence that they cannot take the decision (at the time it needs to be made) because of mental incapacity. It will co-operate with relatives and others involved with the students in decision making on behalf of a person on the same basis.
3. It will not take or collude in making decisions for a students where, from its point of view, there is insufficient evidence and it does not appear to be in that person's best interests.
4. If Employ My Ability has information that suggests the person might be unable to make some decisions at sometimes, it will contribute to an assessment of that person's mental capacity. This will be done by reporting our concerns to the students appropriate support team. It recognises that the assessment procedure should follow the two step assessment process recommended in the Mental Capacity Act's Code of Practice.

Stage 1 diagnostic test

First, an assessment needs to be made as to whether there is impairment in the functioning of the mind. The approach is referred to as the 'diagnostic test', which requires evidence of a condition that can be shown to impair functioning such as to render the individual unable to make the decision. This test should be applied at the time the decision is to be made without regard to whether the condition is permanent or temporary. In addition to this, the assessment must be with reference to objective criteria rather than on assumptions drawn from appearance or prejudicial assumptions about that condition.

Stage 2 functional test

Secondly, an assessment needs to be made as to whether a person is unable to make a decision about a specific matter and therefore lacks capacity in relation to that specific matter. This is referred to as the functional test.

Assessment of Mental Capacity

1. Employ My Ability ensures that a person's needs assessment and student plan contain all the information needed relating to a person's decision making capacity and the decisions over which they might need help on account of their possible lack of capacity.
2. The information included indicates

EMA Policies /Generic

- a) Which decisions the person is able to make at all/most times,
 - b) Those that the person has difficulty in making
 - c) Those that the person is unable to make.
3. In respect of each area of decision taking where there are difficulties or an inability to make decisions, the student's plans and records detail the actions to be taken for the person that are deemed in their best interests.
 4. The individual is always as fully involved as possible. Decisions are only taken on the basis of the best information available and the agreement of those concerned in the person's support and future. All decisions taken for that person are fully recorded and made subject to regular review.

Staff Involvement

1. Employ My Ability expects its staff to implement the agreements and decisions that are identified on an individual's plan.
2. Employ My Ability also expects its staff to involve students in all day to day decisions that need to be made by seeking their consent and checking that the actions to be taken are consistent with their plan of support if the individual student lacks capacity at the time.
3. Where the student needs to make a decision that lies outside of their ability at the time staff must do everything to help the person decide for her or himself.
4. Employ My Ability avoid making decisions on behalf of a Student unless they can show that it is necessary and the student at the time is unable to make that decision her or himself. Any such incident must be fully recorded.
5. Where there are concerns raised about Mental Capacity the Operations Director will inform the allocated care manager or social services and discuss a referral for an assessment to take place and an independent mental capacity advocate (IMCA) to be appointed.

Training

We know that choice has become increasingly important for students and we will attempt to advance this principle throughout our operations