



# **Multi-Agency Mental Capacity Act & Deprivation of Liberty Safeguards Competency Framework**

WSAB LD 02

## Document Control

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## Revision History

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## Actions

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## **1.0 Purpose**

This framework has been produced to support partner organisations in the development of a workforce that is competent and effectively trained in Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) practices and which is continuously improving. It outlines the sets of competencies required for particular categories of job roles.

## **2.0 Competency framework rationale**

Previously MCA & DoLS training has been based upon attendance at training at a range of levels. However completion of training does not evidence a worker's competence in any particular area or task, only that they have attended a training course.

This framework sets out a competency based approach to enable all staff working with adults to develop their skills. It is designed to raise standards and promote a consistent and appropriate response to adults whose mental capacity may be in question. It has been devised to provide a baseline for demonstrations of competence by staff who support adults.

## **3.0 What is competence?**

A competence is the combination of the skills, knowledge and experience held by individual staff and this framework aims to ensure that these qualities inform practice in a way that is commensurate with an individual's role and responsibility. Regardless of training, competence grows through experience and the abilities of an individual to learn, adapt and apply care in an appropriate fashion.

## **4.0 What is the role of training?**

All training should be designed to support workers to gain the underpinning knowledge required to achieve competence. It is therefore possible to have a standard expectation of what should be included with MCA & DoLS training (at any given level) regardless of how or by whom the training is delivered.

The use of a competency framework also enables learning from other training to be used. For instance consent training may support some workers to evidence against competency and know when further advice is required regarding an application to the Court of Protection (CoP).

Individual agencies will need to look at existing mechanisms that may contribute to the assessment. From April 2015, the Certificate of Fundamental Care will be necessary for Social Care support workers and Healthcare assistants before they work without supervision. The level one competencies are approximately aligned to these standards.

The competency framework also allows for consideration of other forms of Continuous Professional Development. This could take the form of training but could also include practical experience and workplace learning such as coaching and mentoring.

## **5.0 Who should complete the competency?**

All staff should be assessed as competent against the competencies that are relevant to their job role and level of responsibility. The MCA provides the framework for actions and decision making where people may lack capacity. Whatever their role, all staff involved in decision making with adults must recognise their role in supporting this.

All staff need to demonstrate the first 6 competencies within the framework. Further competencies will be dependent upon job role and level of responsibility.

As the competencies are cumulative, all people working with adults should complete Level one.

## **6.0 What are the timescales for completion?**

Individual agencies are required to set appropriate timescales for their staff to achieve required competence in order to be assured that their staff can practice effectively.

The timescales for successful demonstration of competency will depend upon the job role and responsibilities.

## 7.0 Carrying out the assessment of competence

**Achieving competence requires more than just attending a training course although this may be an element of developing competence.** The assessment of competence should ideally combine a mix of direct observation of practice as well as a process of exploration, discussion and questioning. This could be carried out in supervision or as part of the follow up to training. Assessment should only be undertaken by those competent to do so.

## 8.0 Supporting the assessment of competence

This framework includes guidance (Appendix 2) that can be used to record and assess a worker's competence. There are tools available for particular roles such as the Level 2 & 3 Diploma's in Health and Social Care for example.

Failure to meet required levels of competency will require discussed in supervision and should result in supervisory support and training.

## 9.0 Further developments

To develop an assessment strategy for MCA competencies including:-

- Development of assessor prompts and format for assessment of competence at all levels
- Mechanism for auditing that staff competence is checked by an appropriate manager

## 10.0 Appendix 1

### Mental Capacity Act and Deprivation of Liberty Safeguards Competency levels:

- Managers may need to use discretion when roles may not include particular competencies.

#### Level 1 = Competencies 1 to 6

**Awareness for those front line staff who have face to face contact with individuals/patients/carers/representatives and are likely to interact with clients who lack the mental capacity to make some decisions for themselves**

Including but not limited to: staff, volunteers or informal carers involved in making day to day decisions about care or treatment for people who may lack mental capacity: such as choice of clothing, food and carrying out activities noted on the care plan will be able to:-

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
1. <b>Describe the Mental Capacity Act 2005 (MCA) and the framework that it provides for acting and decision making</b>	<ul style="list-style-type: none"> <li>Highlight the five guiding principles of the MCA and how to apply them in day to day work</li> <li>Describe when capacity should be assessed</li> <li>Recognise a person has capacity to make decisions regardless of an illness, diagnosis, age or disability</li> <li>Recognise that a person may lack capacity to make one decision whilst having capacity to make another</li> <li>Recognise that the decision is time specific</li> <li>Identify who might be the decision maker</li> <li>Demonstrate where to find policies and procedures relevant to MCA within their own organisation</li> </ul>		
2. <b>Recognise the need to assist a person to make their own</b>	<ul style="list-style-type: none"> <li>Demonstrate the skills and ability to help people make their own decisions wherever possible</li> <li>Demonstrate the skills and ability to communicate with people at an appropriate level to support them in their decision making</li> <li>Recognise when a formal assessment of capacity may be needed and who to contact</li> </ul>		

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<b>decisions</b>			
<b>3. Describe the process of assessing a person's mental capacity in day to day situations in line with the care plan</b>	<ul style="list-style-type: none"> <li>• Understand where to find the assessment of capacity within the care plan</li> <li>• Understand the implications this may have for providing care</li> <li>• Recognise when a formal assessment of capacity may be required and who will undertake this</li> <li>• Be able to explain their reasonable belief that someone lacks capacity</li> </ul>		
<b>4. Highlight the process of making a best interests determination in day to day situations</b>	<ul style="list-style-type: none"> <li>• Demonstrate the need to act on someone's behalf when a person lacks capacity to make the decision themselves (day to day decisions)</li> <li>• Be able to explain how, and why they show that actions are in a person's best interests</li> <li>• Demonstrate how to, and the importance of, involving the person in the decision making process even when they lack the capacity to make the decision</li> <li>• Describe the importance of involving significant others</li> <li>• Recognise the possible risks of making a particular decision</li> </ul>		
<b>5. Understanding the concepts of restrictions and restraint</b>	<ul style="list-style-type: none"> <li>• Demonstrate knowledge of different forms of restrictions and restraint, and when they can be appropriately used</li> <li>• Demonstrate the ability to recognise when to refer to more senior staff</li> </ul>		
<b>6. Understanding the Deprivation of Liberty Safeguards</b>	<ul style="list-style-type: none"> <li>• To understand the 'Acid Test' and who to contact in their own environment for advice</li> </ul>		

## Level 2 = Competencies 7 to 16

### Skills for practitioners who assess and plan care/interventions with individuals who lack the mental capacity to make some decisions for themselves

Including but not limited to: Care Home Managers, Senior care staff, Social Workers, Nurses, GPs, Physiotherapists, OTs, Other Therapists will be able to:-

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<b>7.</b> <b>Understanding of the Mental Capacity Act (2005) and the framework that it provides for action and decision making</b>	<ul style="list-style-type: none"> <li>• Meet competencies 1 – 6</li> <li>• Explain the link between the person’s presenting impairment or disturbance of mind or brain and how this impacts on their decision making ability at the time</li> <li>• Demonstrate knowledge of organisations’ policies and procedures relevant to MCA</li> <li>• Outline the relevance of the Human Rights Act 1998 to adults with care and support needs</li> <li>• Outline the protection that the MCA offers adults with care and support needs</li> <li>• Outline the protection that the MCA offers workers providing care or treatment</li> <li>• Understand and recognise the role of the decision makers and the responsibilities that accompany the role</li> <li>• Recognise the right of individuals to make unwise decisions</li> </ul>		
<b>8.</b> <b>Understanding the need to assist someone in making their own decision.</b>	<ul style="list-style-type: none"> <li>• Demonstrate effective communication with people in supporting them to understand the information relevant to the decision in question</li> <li>• Demonstrate the skills and ability to use different methods of communication to support service users/patients to understand information</li> <li>• Demonstrate ability to support service users and patients to consider relevant information and make decisions e.g. about care packages, medication and treatment within the framework of the MCA</li> </ul>		
<b>9.</b> <b>Understanding the process of assessing capacity</b>	<ul style="list-style-type: none"> <li>• Outline what the MCA means by lack of capacity</li> <li>• Demonstrate knowledge of who should be making the assessment of capacity</li> <li>• Demonstrate ability to carry out a formal assessment of capacity (four stage test)</li> <li>• Demonstrate knowledge of where to record capacity assessments</li> </ul>		

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<b>10.</b> <b>Understanding the process of making best interest decisions</b>	<ul style="list-style-type: none"> <li>• Evidence the ability to decide who would be the most appropriate decision maker</li> <li>• Demonstrate how to complete the best interests checklist</li> <li>• Demonstrate the ability to support the person to participate in the process</li> <li>• Demonstrate skills and ability to involve families and carers in best interest decision making, being clear about the limits of their powers</li> <li>• Understand and demonstrate consideration of the risks and any mitigating options/actions required</li> <li>• Demonstrate recognition and assessment of risks, weighing these up to inform the decision making process</li> <li>• Demonstrate the skill and ability to analyse and critically appraise different views from a variety of people to come to a decision</li> <li>• Be able to justify the reasoning for coming to a given decision</li> <li>• Demonstrate ability to work with unwise decisions and ensure on-going support to the person while protecting their autonomy and how this links to safeguarding issues</li> <li>• Recognise what action to take where there are conflicting views, the appropriate legal remedy, or who to escalate the issue to</li> </ul>		
<b>11.</b> <b>Understanding who else can make decisions</b>	<ul style="list-style-type: none"> <li>• Ability to assess whether an advance decision to refuse treatment is valid and applicable</li> <li>• Demonstrate knowledge of advanced care planning and how this impacts on best interests decisions</li> <li>• Understand the roles of attorneys and deputies and can evidence correct involvement</li> <li>• Demonstrate knowledge of who and when to ask for advice</li> </ul>		
<b>12.</b> <b>Understanding the concept of restriction, restraint and deprivation</b>	<ul style="list-style-type: none"> <li>• Understand the difference between restriction, restraint and deprivation</li> <li>• Demonstrate knowledge of least restrictive principles and when it is appropriate to use the above</li> <li>• Demonstrate ability to identify possible lack of capacity and the need to prevent harm to the person when considering the need for restraint</li> <li>• Demonstrate ability to analyse the likelihood and seriousness of harm in relation to the person lacking capacity</li> <li>• Demonstrate ability to understand the concept of proportionality where restraint is involved</li> <li>• Demonstrate ability to develop a care plan to set out how and when restraint could be used</li> </ul>		

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<b>13.</b> <b>Understanding the deprivation of liberty safeguards</b>	<ul style="list-style-type: none"> <li>• Understand the ‘Acid test’, the concept of deprivation of liberty, and the continuum between restriction and deprivation of liberty</li> <li>• Demonstrate understanding of DoLS in relation to your own role and that of others</li> <li>• Understand and facilitate the role of the Relevant Person’s Representative</li> <li>• Demonstrate an understanding of different DoLS processes that may be in place in care homes and hospitals OR in domestic settings, i.e. supported living in own home</li> </ul>		
<b>14.</b> <b>Understanding of the role of an Independent Mental Capacity Act Advocate (IMCA)</b>	<ul style="list-style-type: none"> <li>• Demonstrate knowledge of the statutory eligibility criteria for instruction of an IMCA</li> <li>• Demonstrate ability to consider if a person will benefit from an IMCA where there are discretionary criteria (adult safeguarding, conflict situations, etc.)</li> <li>• Describe the role of an IMCA</li> <li>• Demonstrate the knowledge of local IMCA services and understand how to make a referral</li> <li>• Demonstrate ability to communicate effectively with the IMCA to ensure the person is supported during the decision making process</li> </ul>		
<b>15.</b> <b>Maintaining accurate, complete and up to date records</b>	<ul style="list-style-type: none"> <li>• Demonstrate the ability to record assessments of capacity and best interest decisions in line with good practice and local guidance</li> <li>• Demonstrate awareness of and ability to maintain records to defensible documentation standards</li> <li>• Record any issues reported within safeguarding processes</li> </ul>		
<b>16.</b> <b>Supervision and teaching</b>	<ul style="list-style-type: none"> <li>• Demonstrate the communication skills and ability to support others in the assessment of mental capacity</li> <li>• Demonstrate the communication skills and ability to support others in undertaking the best interests decision making process</li> <li>• Demonstrate the ability to incorporate the requirements of MCA into supervision and 1-2-1 meetings</li> <li>• Recognise when and how to access supervision, training and advice for self around MCA and DoLS</li> </ul>		

### Level 3 = Competencies 17 to 22

Those who have responsibilities for making significant and complex decisions with clients who lack the mental capacity to make these decisions for themselves

Including but not limited to: qualified professionals in health and social care who would be expected to have a role in decisions related to serious medical interventions, changes in accommodation, finances and applications for deprivation of liberty safeguards.

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<p>17. Ability to make a request for a standard or complete an urgent authorisation for Deprivation of Liberty Safeguards</p>	<ul style="list-style-type: none"> <li>• Meet competencies 1 – 16</li> <li>• Explain what constitutes a deprivation of liberty</li> <li>• Complete DoLS applications with supporting information</li> <li>• Describe when and how to access legal advice for submission of application to Court of Protection (CoP) e.g. for patients living in the community</li> <li>• Understand the process following submission of an authorisation request and maintain control of the process</li> <li>• Understand, explain and evidence the implication of any conditions imposed</li> <li>• Understand the role of the Relevant Persons' Representative and requirements on providers</li> <li>• Demonstrate and evidence the process for review of a DoL</li> <li>• Demonstrate and evidence the process when a DoL may be terminated</li> <li>• Understand the requirement for and process behind notifications to CQC</li> <li>• Understand and evidence the process for notifications to the Coroner, where required</li> </ul>		
<p>18. Ability to support service users/patients to make complex decisions such as consent to treatment, end of life decisions, a decision to stay or move</p>	<ul style="list-style-type: none"> <li>• Demonstrate knowledge of and ability to explain the necessary steps to support service users/patients to make complex decisions</li> <li>• Demonstrate knowledge of Enduring and Lasting Powers of Attorney, Court-appointed Deputies, Advance Decisions to refuse treatment and how to test the validity of each</li> <li>• Demonstrate the legal hierarchy for decision making and when an application to the Court Of Protection should be considered</li> </ul>		

<p><b>accommodation, hospital discharge, financial and safeguarding decisions within the MCA framework</b></p>			
<p><b>19. Know how to make a more formal best interest decision</b></p>	<ul style="list-style-type: none"> <li>• Evidence of mental capacity assessment relevant to the decision</li> <li>• Evidence of formal best interest decision making</li> <li>• Evidence that representatives or an IMCA have been involved and appropriate paperwork has been completed</li> <li>• Completed documentation which supports decisions made and appropriate actions taken</li> </ul>		
<p><b>20. Know how to complete consent to treatment forms for adults who lack mental capacity in accordance with MCA where there is an Attorney or Donor in place</b></p>	<ul style="list-style-type: none"> <li>• Ability to demonstrate requirement for and ability to complete relevant consent to treatment forms and supporting documentation</li> <li>• Ability to communicate with and document discussion with relevant representatives</li> <li>• Describe when further advice should be sought from the Court of Protection</li> </ul>		
<p><b>21. Have the skills to chair a multi-disciplinary best interests meeting</b></p>	<ul style="list-style-type: none"> <li>• Proven experience of managing conflicting views and challenges</li> <li>• Minutes of multi-disciplinary meetings</li> <li>• Review of outcomes of multi-disciplinary meetings and how these have been documented</li> </ul>		

<p><b>22.</b> <b>Have the ability to understand wider implications of best interests decisions</b></p>	<ul style="list-style-type: none"> <li>• Evidence managing the impact and implications of a best interests decision on the person, their representatives and the organisation</li> <li>• Evidence that the identified risks have been considered in line with the best interest decision</li> <li>• Describe what actions need to be undertaken as a result of the decision</li> </ul>		
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## Level 4 = Competencies 23 to 24

Executive and Senior Managers, Chief Executive, Owner Manager, Head of Service and above who need to:-

Competence	Suggested Evidence to be Pertinent and Proportionate to Role	RAG rating	Agreed actions
<p><b>23.</b>  <b>Lead the development of effective policy and procedures for Mental Capacity Act and Deprivation of Liberties Safeguards</b></p>	<ul style="list-style-type: none"> <li>• Demonstrate an understanding of the MCA and the framework that it provides for actions and decision making</li> <li>• Be aware of the impact of MCA, DoLS, Safeguarding and Human Rights legislation on the organisation and society as a whole</li> <li>• Promote the principles of MCA and DoLS within the organisation you represent</li> <li>• Provide evidence that the principles are embedded within the organisation</li> <li>• Support multi agency working to develop a consistent intra and inter-agency approach to the implementation of MCA and DoLS</li> <li>• Have a strategic understanding of the scope of MCA and DoLS across the whole organisation</li> <li>• Provide leadership to the workforce stating clear aims and objectives in the implementation and application of MCA and DoLS</li> <li>• Provide assurance that contractual arrangements with service providers include meeting the requirements of MCA legislation</li> <li>• Lead on and support a proactive approach to MCA and DoLS within the organisation</li> <li>• Be able to account for the organisational practice</li> </ul>		
<p><b>24.</b>  <b>Ensuring continuing staff competence</b></p>	<ul style="list-style-type: none"> <li>• Provide evidence of the organisation's MCA and DoLS training in response to training needs analysis</li> <li>• Provide evidence of the inclusion of MCA and DoLS in the regular audit programme and work of the quality/performance teams</li> </ul>		