



Team Domenica Mental Capacity Policy

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Associated Documents

- *Team Domenica Policy for Admissions, Attendance and End of Placements*
- *Team Domenica Policy for the Promotion of Positive Behaviour and Relationships*
- *Team Domenica Safeguarding Policy*

Relevant Legislation and Guidance

- [The Mental Capacity Act 2005](#)
- [The Care act 2014 and amendments](#)
- [Making Safeguarding Personal 2014](#)
- [The Special Needs Code of Conduct \(2015\)](#)
- [Sussex Safeguarding Adults Policy and Procedures](#)
- [Making shared decision-making a reality: No decision about me, without me](#)
- [Making financial decisions for young people who lack capacity: A toolkit for parents and carers](#)

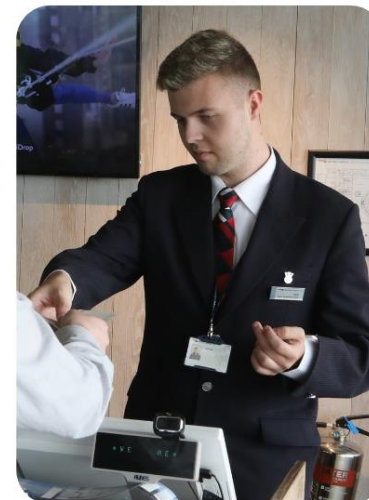
Team Domenica is a social enterprise charity. Our vision is for people with learning disabilities to be valued in the workplace, to reach their full potential and be included as members of society.

Team Domenica is a company limited by guarantee and a charity registered in England and Wales. Registered address: 5-7 Preston Road, Brighton, BN1 4QE | Charity no: 1165494 | Company no: 9862696
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Aim

The aim of this policy is to:

1. Through high-quality, person-centred education and appropriate partnerships with candidates, families, and professional networks, to empower our candidates on their journey to young adulthood by supporting their right to make decisions for themselves, fostering an environment that enables this, and provide the right support for individuals.
2. By providing all staff clear guidance on their responsibilities ensure that policy and practice at Team Domenica comply with the Mental Capacity Act (MCA) 2005 and its associated codes of practice.

Responsibilities

It is the responsibility of **all staff** employed by Team Domenica to follow the principles and practices outlined in this statement, as well as the relevant guidance and law referred to within this policy.

It is the responsibility of **each manager** to support their teams in this, by considering and reflecting on questions about capacity in practice during one-to-ones and team meetings, by modelling through their own practice and by ensuring concerns are escalated as necessary.

It is the responsibility of the **Safeguarding Team**, primarily during their monthly meetings to monitor practice and review individual incidents of note.

It is the responsibility of the **Senior Management Team** to provide strategic direction and resourcing to underpin good practice, including relevant training. The Senior Management Team may, either in response to specific need, or on a longer-term basis, appoint a **Mental Capacity Lead** to oversee practice and compliance. As of September 2023, this role is undertaken by the **Safeguarding Management Team**.

It is the responsibilities of the **trustees** of Team Domenica to provide challenge to, and scrutiny of, the culture and practice of the charity. The full board may delegate this to subcommittees.

The Mental Capacity Act 2005 (MCA)

The following is taken from the [Social Care Institute for Excellence \(SCIE\) website](#):

The MCA has been in force since 2007 and applies to England and Wales. The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:



By empowering people to make decisions for themselves wherever possible, and protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process.



By allowing people to plan for a time in the future when they might lack the capacity.

Key messages:

- The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales who are unable to make all or some decisions for themselves.
- The MCA is designed to protect and restore power to those vulnerable people who lack capacity.
- The MCA also supports those who have capacity and choose to plan for their future – this is every-one in the general population who is over the age of 18.
- All professionals have a duty to comply with the Code of Practice. It also provides support and guidance for less formal carers.
- The Act's five statutory principles are the benchmark and must underpin all acts carried out and decisions taken in relation to the Act.
- Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity – follow the two-stage test.
- The MCA is designed to empower those in health and social care to assess capacity themselves, rather than rely on expert testing – good professional training is key.
- Understanding and using the MCA supports practice – for example, application of the Deprivation of Liberty Safeguards.

Capacity is time specific and decision specific. The test for capacity must be applied, therefore, to each individual decision at a particular time and does not support blanket decision making for all decisions at all times. The MCA provides a framework to determine whether someone has capacity to make a particular decision and if they do not, a set of considerations to apply when determining what is in that person's best interests. By following the framework in the MCA and properly evidencing the steps that have been taking, anyone making a decision on someone's behalf is protected from complaint.

MCA Principles (1-3 of 5)

It is important that staff familiarise themselves with the 5 principles that underpin the MCA, these can be illustrated via a hand motif:



- 1 Thumbs Up – a positive outlook** **The presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.** Every candidate has the right to make their own decisions about what they do at Team Domenica, on a day-to-day basis and over the duration of the programme. They can also decide how they spend their own time and who they spend time with. Everyone must assume that candidates have capacity to decide and act accordingly. No one at Team Domenica has the right to remove choice from a candidate or deny them the right information to make an informed choice.
- 2 First Finger – point the way** **People must be given all appropriate help before anyone concludes that they cannot make their own decisions.** To do this successfully requires resources and language appropriate to the learner, a curriculum that teaches the right skills and knowledge, experiences that provide opportunity and reflection, procedures and processes that can allow for the time and support necessary. It is important to build networks that can tolerate and hold the process when it might not seem to be going well. An essential part of helping people make informed decisions is explaining the consequences of the options available and signposting them to the information that they might need to know. Similarly, Team Domenica has a duty to teach the boundaries on decision making that are shared by the wider population, such as those determined by law, and all associated rights and responsibilities.
- 3 Middle Finger – up yours!** **Individuals retain the right to make what might be seen as eccentric or unwise decisions.** Having a learning disability does not mean eccentric, idiosyncratic, defiant, individual, unwise, unhelpful, unhealthy choices need policing or ignoring more than anyone else would in the same circumstances. Candidates have the right to make decisions that are right for them in the moment, and for their age and stage of development. They have the right to subvert and defy what others may want from them without anyone imposing their own values upon them whilst making decisions. They may only be able to make part of a decision at one time and need time or support to build on this. Team Domenica has a duty to teach about options and alternatives in a non-biased way, pointing out diversity in approach, experiences, and outcomes available and the usual personal, physical, social, and economic impacts of these. It does not have a right to override or ignore personal choice. A strong learning environment can make “failure” or “error” an opportunity for reflection and development and a strong, person-centred network can make parallel decisions, such as providing additional support, rather than taking steps to simply remove the object or opportunity that might be considered to be “harmful” for them. If decisions do appear to be significantly harmful and others in their network have raised concerns about decision making in this regard, liaise with senior management as to how to progress. If any individual makes a choice that leads to harm to others or a crime, we have policies in place to manage these.

MCA Principles (4-5 of 5)

It is important that staff familiarise themselves with the 5 principles that underpin the MCA, these can be illustrated via a hand motif:



4 Ring Finger – best interests Anything done for or on behalf of people without capacity must be in their best interests. Unless there is a time sensitive decision that needs to be made and you have concerns about the candidate’s capacity to make the decision that cannot be postponed (i.e., something to do with immediate safety issues) it is not the role of Team Domenica to assess the capacity of an adult in general.

When someone is assessed as lacking capacity, decisions must be made in their best interests. The MCA sets out what must be considered by someone making a best-interests decision. This is usually a collaborative process involving the candidate, their families and anyone with an interest in their wellbeing. Staff at Team Domenica are unlikely to be the key decision maker other than in circumstances where a decision must be made at that moment. Staff are referred to [section 4 of the MCA](#) for further information.

What is more likely is that we will be consulted by other agencies and, on occasion work with families and other agencies on specific issues such as management of finances, or issues around dietary choices. The opinion of those that work closely with an individual, such as teaching and training staff as to what is in someone’s best interests (and importantly what their understanding of the candidates wishes, feelings, beliefs and values are about the decision) may be sought if another agency is carrying out an assessment. In those situations, information provided by Team Domenica will be factual, open and based on the best interest principle, even when this may not be optimal for Team Domenica itself. If a candidate has been assessed as not having capacity in all, or in specific areas, then a plan will be developed to make it clear to all staff which decisions are to be made applying the best-interests framework (i.e., not directly by the candidate – although their wishes, feelings, beliefs and values will certainly be taken into account) and who will make these and in what circumstances. In all other situations choices can and must be made by the candidate because there is a presumption that everyone has capacity. It is very unlikely that any person, candidate, or staff, who is assessed as not having capacity to make the majority of decisions will be involved in the activities of the organisation. Most of our candidates are more likely than not to have capacity to make most day-to-day decisions, and some may lack capacity to make more complex decisions such as management of all of their finances, or decisions about where they should live, if the decision involves complex information to weigh up.

5 Little Finger – least intrusive actions Anything done for or on behalf of people without capacity should be an option that is less restrictive of their basic rights - as long as it is still in their best interests. If someone does lack capacity to make a particular decision, at Team Domenica, the types of decisions we will be supporting our candidates to make will be low level with minor consequences. In those types of situations, decisions made in their best interests should try and best reflect the wishes and feelings of the candidate, to best promote autonomy and control over a situation.

Practice at Team Domenica – consent

As referred to in principle 4 on page 6 of this policy, staff at Team Domenica will rarely get involved in assessing a candidate's capacity. If staff do have concerns about the capacity of a candidate, they should make a report via MyConcern of the concern and contact the Safeguarding Leads, Deborah Rayner Grey, and Sara Fletcher, who will offer guidance as to what to do next.

If a staff member believes that a decision was about to be taken that was more than just an unwise decision, could be harmful and the candidate lacked capacity to make that decision in the moment, you can consider what would be in their best interests and act.

You must immediately record the thought process involved as to a) why you consider they lacked capacity for that decision at that moment, and b) how you considered what decision was in their best interests. Then refer to contact the Safeguarding Leads, Deborah Rayner-Grey, and Sara Fletcher for any follow up action.

[Log into MyConcern](#)



Consent

One decision Team Domenica assumes candidates can make is consenting to those areas relevant to their time on programme, such as the uses of their image and/or data. This does not always need to be written consent as they can refuse at any time, making it important that staff re-check consent at relevant opportunities. If the candidate lacks capacity to give consent the relevant person will make a best interest decision. Parents (and/or key others) should be consulted but should not be relied upon to provide consent (once the student is over 18 and not therefore within the bounds of Parental Responsibility) unless they have been appointed Deputy by the Court of Protection, or they have a valid Lasting Power of Attorney appointing them as their attorney (the candidate must have had capacity at the time they appointed the attorney). Even then we must check the Deputyship Order or Lasting Power of Attorney to ensure that the relevant consent is covered by the Deputyship Order or Lasting Power of Attorney. Advice can be sought in this regard from the relevant Trustee.

The relevant people from the education and pastoral teams, along with those from our marketing department, are responsible for producing accessible documents and supporting the use of these so that candidates can, on enrolment and during induction, provide informed consent for the use of images and our necessary actions in the case of medical emergencies. Part of this responsibility is to both share and seek information with families, carers, and supporters so that any risks can be managed. Candidates should be made aware of information sharing, and that they have the right to access and understand any information recorded or communicated about them.

Consent should then become an ongoing consideration in the mind of staff, especially when it comes to information sharing. It is helpful if staff remind themselves and candidates that they, always, represent Team Domenica and are in role, rather than acting as individuals.

Practice at Team Domenica – deprivation of liberty and liberty restrictions

When someone lacks capacity to decide where they should live and what care and support to receive, and they receive their care in an environment where they are under the continuous control and supervision of care staff and not free to leave their environment without permission or close supervision, they are likely to be 'deprived of their liberty'. If this is the case, that deprivation of liberty must be authorised either by the Court of Protection, or under the 'Deprivation of Liberty Safeguards' framework set out in the MCA.

It is highly unlikely that any of our candidates will be subject to this regime, however, Team Domenica has a role in challenging decisions made by other organisations.

There may be other restrictions that are in place that we need to be aware of. Some young adults are assessed as lacking capacity to make decisions around internet use and subject to a plan arising from a best-interests decision. Sometimes this has been authorised by the Court of Protection in the event the young person does not agree to it. Team Domenica should be alerted to anything, such as restrictions on contact, that will have an impact on how we support the candidate on a day-to-day basis. While we may be asked to feed into best-interests decisions around these types of issues, Team Domenica should not be asked to lead on them.

There might be some immediate circumstances at Team Domenica where an individual may feel that their liberty has been temporarily restricted. One example could be that an individual has been scared by a noise or event and moves away, appearing to be unaware of the dangers of the nearby road. Another person may see this, reach out and grab their arm, pulling them away from traffic. That restriction was intense, but fleeting and so long as it is established that it was an action done in their best interests, there will be no issue. This must be reported as set out in the next column on this page.

Another example is that unsafe environmental conditions mean that candidates are told they must stay out of a room or area and staff members will be supervising to ensure this happens.

Any incident or situation where any restriction is placed on the liberty of a candidate is a safeguarding concern that must be reported.


The safeguarding team will review the situation by asking the following questions:


- Were the actions reasonable and proportional?
- Were the actions taken to avoid greater harm?
- Were the actions the least intrusive possible to avoid any harm?
- What is the candidate view of these actions?
- What steps are necessary to reduce the risk of the situation being repeated?
- Does this situation require referral to other agencies?


Practice at Team Domenica – safeguarding


The Team Domenica Safeguarding Policy asks staff to note any concerns they have about the welfare of individual candidates on MyConcern. Please ensure you have read the most up to date version of the Team Domenica Safeguarding Policy.


When a concern arises, best practice is to inform the candidate and seek their agreement. If a candidate does not agree that the incident should be taken further, the staff member needs to assess the impact of both reporting and not reporting immediately. Considerations include:

-  The level of risk - in the case of crime and/or serious harm there is a duty that may supersede the right of the candidate to agree to the report.

-  What it is that the candidate is not consenting to, for example they may not wish to have a report written but may be happy for the incident to be discussed with the Safeguarding Team.

-  What reasons the candidate may have for not agreeing – are there issues relating to their capacity to consent to a referral / further action being taken?

-  The time frame necessary to work in the best interest of the candidate and with regards to their capacity in the moment. An example might be coming back to the candidate later, checking in and calmly explaining why you feel the information should be shared rather than doing this during or directly after any incident.

-  Seeking advice, such as calling the Safeguarding Team to discuss the situation to decide next steps while only giving basic details at this point.

Once a concern has been reported, the Safeguarding Team should (within the boundaries of safe practice and the law) involve the candidates in the actions and outcomes.

Practice at Team Domenica – written information

Candidates have the right to view information written about them.

Staff should keep this in mind and only record necessary, respectful and factually accurate information within the systems devised, for the necessary functioning of Team Domenica.

The organisation should be transparent with candidates about the records that are kept and make this information accessible to candidates (if requested).



Practice at Team Domenica – working with wider networks

Each candidate will have their own network of people who know them and support them in their lives and in their attendance at Team Domenica. As young adults many (but not all) candidates have significant support with their family, whether they live with them or not.

Team Domenica values strong partnership with families, carers or support staff as the most effective way of supporting the individual wellbeing and learning for each candidate. However, the way that individuals interact with their network inevitably changes over time and Team Domenica will actively support candidates in their developing sense of their adulthood and independence.

This means that not all the types of information shared by a school, or 16-19 college will be shared by Team Domenica. Candidates, not parents, will be the primary contact with the organisation and the focus of our communication. Mentors and pastoral staff will strive to forge positive relationships with families and others, but this should not include substantial calls, correspondence, or meetings about the candidate without their participation.

Similarly statutory meetings, such as an annual review of the Education, Health and Care Plan must involve the young person to the maximum extent possible and they should not be disallowed from meetings just so that decisions can be made about them without their input.

The Special Needs Code of Conduct (2015) states:

Young people over compulsory school age have the right to participate in decisions about the provision that is made for them and be consulted about provision in their areas, although there is nothing to stop them asking their parents, or others to help them make the decision.

(Annex 1 of the Code specifies where decisions making by the young person is prioritised and where that by the parent or carer is the focus.)