

Capacity and Self-Determination (Jersey) Law 2016 (CSDL)

Background: Capacity is someone's ability to make **any** decision for themselves & understand the implications or reasonably foreseeable consequences of the decision. A person lacks capacity if they are unable to make a specific decision at the time it needs to be made **because** they have an impairment or a disturbance in the functioning of the mind or brain that affects making the decision (eg learning disability, dementia, psychiatric illness, brain damage, alcohol, drugs). Capacity is decision & time specific. The CSDL provides a statutory framework for making decisions on behalf of people who lack capacity to make decisions for themselves, or for those who have capacity & want to make preparations for a time when they may lack capacity in future.

Why it matters: CSDL empowers people to make decisions for themselves wherever possible and protects those who lack capacity by ensuring they are at the heart of decision-making about their lives in accordance with human rights such as the right to a private and family life or the right to liberty. Professionals working with or caring for people who may lack capacity need to act within the CSDL. CSDL aims to enable and support people who lack capacity, not restrict or control their lives although CSDL does provide for circumstances where restrictions are necessary (such as to provide treatment or care) and where a person lacks capacity to consent to such restrictions.

Questions to consider: What can be done for people you work with to maximise their capacity to make their own decisions? Can they make the decision at a different time? Do you need to provide them with additional support to understand the information and be able to communicate their decision? Have you given them time to communicate their needs and feel listened to (this may mean meeting with them several times over a period of time). Are you clear about your responsibilities under CSDL? Do all staff working in your organisation have a good knowledge of CSDL? See www.gov.je/capacitylaw for more information and guidance (including the Code of Practice) or email CSDLteam@gov.je



Information: The five core principles of CSDL are:

1. All people (16+) are assumed to have capacity unless it is established that they lack capacity
2. People are not to be treated as unable to make a decision unless all practical steps have been taken to help them make a decision without success
3. People are not to be treated as unable to make a decision merely because they make an unwise one
4. Anything done for or on behalf of a person who lacks capacity must be done in their best interests
5. The purpose for which an act is done or a decision made should be achieved in any way that is least restrictive

Significant Restrictions of Liberty (SRoL)

Part 5 of the Law deals with restrictions on liberty for people who lack capacity. It defines restrictions on liberty and provides safeguards when these become significant. Other jurisdictions refer to 'deprivation' of liberty instead of 'restrictions'. Every effort should be made to prevent significant restrictions on liberty. Where there is no alternative way to provide care or treatment other than through imposing a significant restriction on a person's liberty, this should be for no longer than is necessary and must be authorised.

Best interests: Every effort should be made to encourage and support the person who lacks capacity to take part in the decision-making process. Can you delay the decision if the person may regain capacity? Consider past/present wishes, feelings, beliefs & values in relation to the decision, including ADRTs or other written statement. Are there any other factors the person would likely consider if they had capacity? What are the views of the people who are close to the person?

In order to make a decision, a person must be able to generally *understand* relevant information given about the decision, *remember the information* long enough to make the decision, *consider the pros & cons* of the decision & then *communicate their wishes*. Any assessment of capacity cannot be viewed as universal; it must be linked to the specific decision at the time it needs to be made. If you believe a person lacks capacity, you must be able to provide evidence to support this. When lack of capacity has been determined through capacity assessment, the best interest process should take place. Check to see if there is a legal decision-maker for the decision. Review any Lasting Powers of Attorney or delegates for health & welfare or property & affairs (depending on the decision) and adhere to any Advanced Decision to Refuse Treatment (ADRT).