

MENTAL CAPACITY ACT 2005

GUIDELINES FOR CAPACITY ASSESSMENTS

(FORM SOC 1708 / CPA : PART 8)

January 2008

Policy and Procedure on the Mental Capacity Act 2005

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Capacity Assessments under The Mental Capacity Act: Guidelines

- 1.1 The Mental Capacity Act 2005 does not introduce the concept of capacity. Capacity has always been part of health and social care practice. However, up to now, capacity may not have been considered as a specific element of most assessments. When it was, there may have been a common practice to refer to a psychiatrist or mental health team for the assessment. This will no longer be the case under the Mental Capacity Act.
- 1.2 Under the Mental Capacity Act, capacity assessments are the **responsibility of the person who has responsibility for the decision**. Throughout this Guidance (and the Mental Capacity Act Code of Practice) the person with responsibility for the decision is referred to as the **Decision Maker**.
- 1.3 The Decision Maker is likely to be the person within the organisation who would normally discuss the decision with the user of the service and support the person to make a decision. The Decision Maker may involve others in the assessment when necessary, though the Decision Maker has the responsibility to arrive at a Best Interests decision on behalf of a user of the service who lacks capacity.
- 1.4 In the course of their work, all levels of health and social care staff will need to assess a person's capacity to make a particular decision and different levels of decision will require different levels of assessment.
- 1.5 This Guidance is intended to provide support on the use of the formal capacity assessment form (SOC 1708 or CPA part 8). All professionals working with anyone who lacks capacity to make a decision must have regard to the Mental Capacity Act Code of Practice (available from the Department of Justice). Cambridgeshire County Council also has a web page dedicated to the Mental Capacity Act.
www.justice.gov.uk/guidance/mca-code-of-practice.htm

2 Principles of the Mental Capacity Act.

2.1 The Mental Capacity Act sets out 5 statutory principles that underpin the legal requirements of the Act. *[MCA 2005 Section 1; MCA 2005 Code of Practice Chapter 2]*

1. Assume Capacity: “a person must be assumed to have the capacity to make the decision in question unless it is established that he or she lacks the capacity to do so.”
2. Seek to prove capacity: “a person is not to be treated as unable to make a decision unless all practicable steps to help her or him to do so have been taken without success”
3. Respect decisions taken: “a person is not to be treated as unable to make a decisions merely because she or he makes an unwise decision”
4. Act in Best Interests: “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 or her best interests”
5. Protect Autonomy: “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 achieved in a way that is less restrictive of the person’s rights and freedoms of action”

3 When to assess capacity?

3.1 The Mental Capacity Act applies to adults (aged 16 years or over).

3.2 There are two broad situations when a person’s capacity might need to be assessed:

- As part of a needs or risk assessment

- When a person needs to agree (or not) to a health or social care treatment or act

3.2 These situations relate to different scales of decisions

- Day to day decisions or risks taken as part of ongoing care relationships (such as bathing, feeding or dressing)
- Significant decisions that have more serious consequences (such as change in accommodation or day care provision; serious medical treatment or Protection of Vulnerable Adult Proceedings)

3.2 A Capacity Assessment may be triggered when there are doubts over a person's capacity to make a decision. Doubts may arise from a person's behaviour or the circumstances of the decision. While each decision needs to be assessed separately, a person's lack of capacity to make decisions in one area of life may give cause to doubt capacity to make a decision in another.

3.3 Assumptions should not be made about a person's lack of capacity to make a decision. A person's circumstances or behaviour or lack of capacity to make other decisions must not be taken as evidence of a lack of capacity to make a particular decision. Where there are doubts, however reasonable and significant, a capacity assessment for the decision in question must still be completed and recorded.

4 **Assessments as part of needs or risk assessments**

4.1 Capacity should be considered as part of a needs assessment. A person with capacity may be making an autonomous lifestyle choice that should be respected (principle 3 of the Mental Capacity Act). A person assessed as lacking capacity is not making an informed choice about a situation and may lack the ability to move out of it. A care plan could be developed according the person's best interests.

4.2 Day to day decisions and risks do not need formal assessments. These assessments can be written in the relevant record. The entries in the record should note the attempts made to explain the decision or action at each time it is required and the attempts made to involve the person in the action. There should also be reference to evidence as to why the person does not have the capacity to make the decision.

5 **Capacity to agree to a social care decision**

5.1 The purpose of this assessment would be to establish whether the person has the capacity to agree (or not) to a care or treatment decision and, if he or she lacks capacity, to establish that a decision can be made in the person's best interests.

5.2 Day to day care or treatment acts do not require formal assessment and should be recorded in the relevant record.

5.3 **Formal Assessments** using the SOC1708 / CPA Part 8 form are required for significant decisions, with 'life altering' consequences: These may include:

- Accommodation change
- Alteration in day care arrangements
- Financial arrangements
- Serious medical treatment

5.4 **Formal Assessments** using the SOC1708 / CPA Part 8 form would be appropriate in other circumstances such as:

- Situations when restraint may have to be considered
- When there are disagreements over needs, treatment or care
- When assessment is required for legal action
- Capacity is an issue in a Vulnerable Adult Protection Process

5.5 Although capacity assessments sometimes require input from other professionals, it is the responsibility of the Decision Maker to co-ordinate and 'own' the capacity assessment overall.

6 Situations where capacity assessments should not be considered

6.1 There are several situations in which the Mental Capacity Act can never be applied. These are explained in the MCA Code of Practice paragraphs 1.8 –1.11 (See also Mental Capacity Act 2005 : Sections 27 –29)

6.2 In circumstances where the care option cannot be delivered - for example because the person refuses to grant access to their home - a capacity assessment may not be appropriate as it would add little to the situation. However, it may add weight to the application of other legislation, such as the National Assistance Act.

6.3 Any decisions taken under the Mental Health Act 1983 and its 2007 amendments over-ride the Mental Capacity Act and capacity assessments are not required.

6.4 The Mental Capacity Act in the main applies to adults over the age of 16 years. Decisions about children under the age of 16 years should be made under the relevant children's legislation or under the jurisdiction of the Court of Protection.

6.5 Capacity assessments should only be carried out for decisions that would ordinarily require the person's consent or agreement. Some decisions do not require consent.

- The decision to discharge someone *from* hospital is not a matter of consent. To be regarded as medically fit to leave hospital is a clinical assessment and does not require the consent of the patient. Likewise, if a person's care needs develop to require high care support that the current care

home is not registered to provide, alternative accommodation may need to be found. The decision to close the existing care home placement is needs led and does not require consent

	Day to Day Decisions (such as...)	Record Using	Decision Maker	Significant Decisions (such as...)	Record Using	Decision Maker
Needs / Risk	Personal care Routine events	Care plan / assessment	Person responsible for care plan	High risks Restraint Disagreements over care need	Form 1708 CPA Pt 8	Person Over-Seeing Care or Treatment
Agreement/ Consent	Help with dressing, bathing, personal care	Care plan / record	Care assistant to level of care training	Accommodation change Day care Finances SMT etc	Form 1708 CPA Pt 8	Person Over-Seeing Care or treatment

7.1 The SOC1708 / CPA Part 8 Capacity Assessment form is to be used for decisions which carry significant or life-changing consequences (see sections 4 and 5 above)

7.1 The SOC1708 / CPA part 8 Capacity Assessment form is to be completed by the Decision Maker who would be the health and social care worker with responsibility for the decision.

7.2 Any Substitute Decision-Making arrangements should be identified before the Capacity Assessment is under taken. Capacity Assessments may not be required under some substitute arrangements.

7.3 Guidance on Legal Implications of Substitute Decision Making Arrangements

Guidance on the legal implications of Substitute Decision-Making arrangements is provided by the Council's Legal Services Adults, Education & Employment Team (email: [mailto:Legal Services](mailto:Legal_Services))

7.4 Lasting Power of Attorney: (Personal Welfare; Property and Affairs)

7.4.1 The LPA form must be registered with the Office of Public Guardian (OPG) before an Attorney can exercise the legal authority to make decisions on behalf of the donor.

7.4.2 If information on whether or not there is an LPA in place cannot be gained in any other way, an application can be made to the Office of the Public Guardian for a search of the register of attorneys. (There is a charge for this of £25 as of January 2008).

7.4.3 There is a charge for registering an LPA with the Office of Public Guardian (currently £150 as of January 2008). Users of the services may be eligible for an exemption or remission of the fees for registering an LPA. Further details can be found on the Website of the Office of the Public Guardian.

7.4.4 For Property and Affairs LPA, a donor with capacity may still hand decision-making authority over to an Attorney. The Attorney could already be in a position to make property and affairs decisions and a capacity assessment would not be necessary. The authority for an Attorney to make a decision under a Personal Welfare LPA is dependent on the donor lacking the capacity to do so.

Further information:

www.publicguardian.gov.uk

<http://www.direct.gov.uk/> (over 50s section)

<http://www.dh.gov.uk/> (Enter 'Attorney' into search box)

Mental Capacity Act 2005 Sections 9 – 14; 22 & 23

Mental Capacity Act 2005 Code of Practice Chapter 7.

7.5 Enduring Power of Attorney

Enduring Power of Attorneys were made before the MCA. All existing EPAs will continue to be made effective under the same basis as they were made. EPAs apply to property and affairs decisions. They need to be registered at the point when the person is assessed as lacking capacity.

Mental Capacity Act 2005 Code of Practice Paragraph 7.5

<http://www.publicguardian.gov.uk/>

7.6 Guardianship

Guardianships are made under section 7 of the Mental Health Act 1983. If there is a Guardianship in place, the Guardian has exclusive rights to make the decisions covered by the Guardianship and a capacity assessment for those decisions would not be necessary.

Further information:

Mental Capacity Act 2005 Code of Practice. Paragraphs 13.16 – 13.21

Mental Health Act 1983 Code of Practice Chapter 13

<http://www.dh.gov.uk/en/index.htm> (Enter 'Guardianship' into search box)

7.7 Ward of Court

If a service user is a ward of court the decision may need to be made by the court itself.

www.hmcourts-service.gov.uk

7.8 Receivership

If a Receivership is in place it is likely that it will be replaced under the MCA by the appointment of a Property and Affairs Deputy. In the meantime, the arrangements of the receivership apply and decisions that regard finances can be deferred to the receiver.

<http://www.publicguardian.gov.uk/index.htm>

7.9 Deputy

A Deputy is appointed by the Court of Protection to make on-going decisions about a person who lacks capacity. If a Deputy has been appointed then the Court will have already accepted that the user of the service lacks capacity to make the decisions requiring the deputy, and no further assessment of capacity would be required for these decisions

Mental Capacity Act 2005 Sections 15 - 21

Mental Capacity Act 2005 Code of Practice Chapter 8

http://www.publicguardian.gov.uk/docs/COP43_web_1007.pdf

7.10 Appointees

If the decision has regard to the user of the service's benefits, then an Appointee would already be in a position to make the decision and a capacity assessment would not be necessary.

<http://www.dwp.gov.uk/advisers/docs/aaarg/index.asp>

7.11 Advance Decisions to Refuse Treatment

If valid and applicable to the decision, an ADRT constitutes the patient's refusal to accept medical treatment and must be followed.

Mental Capacity Act 2005 Sections 24 – 26.

Mental Capacity Act 2005 Code of Practice Chapter 8.

<http://www.direct.gov.uk>

7.12 Advance Statements and Preferred Place of Care statements

The user of the service may have recorded their requests for treatment and care arrangements in an advance statement or a Statement of Preferred Place of Care. These should be taken as strong indications of preferences and wishes though they are not legally binding in themselves.

8 Part 1 Capacity Assessment

Details of Decision Required

- 8.1 Capacity Assessments should be made in relation to a particular decision required at a particular time. In terms of the Mental Capacity Act, capacity relates to a specific decision at the specific time that is required and not to a general ability to make decisions.
- 8.2 'Blanket' statements that indicate that a person lacks capacity to make all decisions are illegal under the Mental Capacity Act.
- 8.3 The assessment is required for each specific decision. Separate decisions for similar circumstance would need separate records. Separate decisions in complex situations would require separate documentation, though they may be assessed within a single assessment process. For example, in accommodation decisions, a person's capacity to decide on accommodation and on financial

management may need to be assessed. Although these aspects would require separate assessment documentation they could be assessed within the same process, for example to ascertain whether someone is able to retain the relevant information (see below).

Mental Capacity Act 2005 Section 2

Mental Capacity Act 2005 Code of Practice Chapter 4

9 Stage 1 : Diagnostic threshold.

9.1 As laid out in the Mental Capacity Act 2005 Section 2(1), Stage 1 of the statutory framework for capacity assessment determines whether or not the person has “an impairment of, or a disturbance in the functioning of, the mind or brain”. Evidence for this can be taken from existing records, as long as it is still current to the matter in question.

9.2 Evidence could refer to:

- Existing & current diagnosis (including dementia, mental health condition; learning disability)
- Head injuries
- Substance use
- Unconsciousness
- Physical conditions that cause confusion.
- Memory impairment
- Cognitive Impairment

9.3 The disturbance or the impairment may be permanent, long term or temporary. It is a matter of whether or not it is the case at the time when the decision is required. There is no suggestion that a non-medically or mental health trained staff member is required to make a formal diagnosis of any condition. Existing evidence would be sufficient

although the assessor is required to record reasonable evidence that the person has an impairment or disturbance.

9.4 If there is no reasonable evidence for an impairment or disturbance of the functioning of the mind or brain, the person cannot be deemed to lack capacity under the Mental Capacity Act. The Capacity Assessment is ended and the Mental Capacity Act cannot be further applied.

9.5 If there is evidence of an impairment or disturbance under stage 1, then the capacity assessment can progress to stage 2. The impairment or disturbance in itself must not be taken to indicate a lack of capacity.
Mental Capacity Act 2005 Section 2

Mental Capacity Act 2005 Code of Practice 4.11 & 4.12

10 Stage 2 : Functional test

10.1 If there is evidence that the person does have an impairment or disturbance in the mind or brain, the second stage of the assessment determines if the person can make the decision in question.

10.2 The Mental Capacity Act 2005 Section 3 defines four elements of a decision. A person needs to:

- Understand the information relevant to the decision
- Retain the information for long enough to make the decision
- Weigh the information relevant to the decision
- Communicate the decision.

10.3 In order to be assessed as having capacity, the capacity assessment needs to demonstrate that the person can achieve all four elements of stage 2. It follows from this that if the capacity assessment demonstrates an over-riding difficulty with a single element then the

person can reasonably be said to lack capacity. Nevertheless, all sections of stage 2 still need to be considered and recorded.

- 10.4 The Act lists the four elements of a decision. In practice, the assessment of capacity can look at the whole process, for example the person's ability to communicate is implied throughout the assessment. Communication difficulties may be the reason that prevents the person understanding information. The same piece of evidence or assessment may support different elements of the process - for example, a person's inability to weigh information may also demonstrate a significant difficulty to understand it.

Understanding

- 10.5 The Decision Maker has an obligation to ensure that the information is correct and that the person is supported to understand it.
- 10.6 The Assessment must include details of how the assessor attempted to help the person understand the information. These may include, amongst others,
- Simplifying language used and providing it in small chunks
 - Using visual aids and prompts
 - Controlling the environment to help the person absorb the information
 - Choosing the time of day when the person is most alert
 - Using translations and interpreters
- 10.7 Cultural and linguistic needs should be considered. Other professionals can be involved, such as speech and language specialists and family, carers and friends should also be consulted.

Retaining

- 10.8 There is no absolute standard against which some one's ability to retain information can be measured; it is a matter of what can be considered reasonable in each decision. The capacity assessment would need to demonstrate that consideration of a person's ability to retain information was relevant to the decision in question.
- 10.9 The SOC 1708 form must record the attempts made to assist the person retain the information. This record may include:
- Use of written or drawn material
 - The user of the service repeating the information in his/her own words
 - Taping the information so that the person can play it back
 - Subsequent meetings to see if the person has retained information previously given.

Weighing

- 10.10 The Code of Practice states that the person must have the ability to weigh up information and use it to arrive at a decision. In some cases the impairment of the mind or brain leads a person to make a decision without understanding or using the information they have been given.
- 10.11 However, the third principle of the Act states that a person may make an unwise decision, one that would mean taking an option that others may not regard as in their best interests. This would not in itself show that the person has not weighed the information.
- 10.12 Weighing information is a matter of understanding the possible courses of action available. In this way, a person would need to show that they understood the different options available, even if they did not intend to follow them. In the case law concerning Mr C, who had a gangrenous leg considered to require amputation, he could establish that he could

consider the treatment as an option, even though he did not intend to consent to it. [*Re C (Adult: Refusal of Medical Treatment)* [1994]1 All ER 819]

10.13 The 1708 and CPA part 8 form must record the attempts made to help the person identify and weigh up various options. The record may include

- The list of options presented to the person, including the 'undesirable' or 'unwise' ones.
- How the pros and cons of each option were identified
- Choosing the time of day when the person was most alert.
- Use of supported decision making tools (such as sheets comparing options or decision trees)
- How the reasons for choosing one option were explored (there may be an underlying reason which could be addressed, for example worries about using a bus might be the reason someone chooses not to attend a hospital appointment)

Communicating the decision

10.14 All practical steps should be taken to support a person communicate their decision. This may involve speech and language specialists. The issue of communication holds throughout the assessment. The requirement to demonstrate that the person can weigh information presupposes that the person can communicate how they have weighed the information. Indeed, the ability to communicate the decision is not simply the ability to indicate the decision, it takes place within the whole assessment process.

10.15 The 1708 and CPA part 8 form must record how the person was supported to communicate. This may include:

- Using translation and interpretation

- Consulting family, friends, carers over how best to communicate
- Using non-verbal communication such as diagrams or sign language
- Reducing anxiety: using comfortable, familiar surroundings or involving someone the person is comfortable talking to.

Conclusion : Does the person have the capacity to make the decision?

‘YES’ to ALL of the elements of Stage 2

10.16 If the person is able to complete **all four** elements of a decision then the person has capacity to make the decision as defined by the Mental Capacity Act. The Act cannot be applied and the assessment process is ended. A person with capacity can withhold consent for any or no reason. They can also make an ‘unwise’ decision. This must be respected though not necessarily supported.

No to ANY of the elements of Stage 2

10.17 If, after establishing stage 1, a person is regarded as unable to achieve **any one** of the four parts of the functional test, then they can be reasonably said to lack capacity.

10.18 Almost by definition “reasonable belief” is not intended to be exact or absolute. There are some ‘rules of thumb’ to help arrive at a reasonable belief. One would be to consider if another professional could reasonably be expected to reach the same conclusion. What can be considered reasonable will also be determined by the amount of time available for the decision.

10.19 A person is said to lack capacity under the Mental Capacity Act if they have an impairment or disturbance of the functioning of the mind or

brain and they are unable to achieve at least one of the four decision-making elements defined in stage 2.

10.20 There are a number of consequences as a result of a person being assessed to lack capacity

- If Lasting Power of Attorney has been given for personal welfare, the capacity assessment could be the trigger for the powers of attorney to be active.
- An application could be made to the Court of Protection to appoint a Deputy in the area in which the person is lacking capacity.
- If the criteria are met, the assessment of incapacity would trigger a referral to the IMCA service.
- The decision would need to be taken in the Best Interests of the individual

Mental Capacity Act 2005 Section 3

Mental Capacity Act 2005 Code of Practice 4.13 – 4.32

11 Part 2 Independent Mental Capacity Advocates.

11.1 There is a statutory duty to appoint an Independent Mental Capacity Advocate in certain circumstances. The Decision Maker is responsible for involving the IMCA service and it is to the Decision Maker that the IMCA delivers the report.

11.2 To fulfil the criteria:

- The decision must be about:
 - Serious Medical Treatment or
 - Long Term Accommodation Change

And

- The person must:
 - Lack capacity
 - Have no one else appropriate to consult

- 11.3 Within Cambridgeshire, a referral to the IMCA service is also required when an **Adult Protection proceeding** involves a person who lacks capacity, whether the person is the abused or the alleged abuser.
- 11.4 Regulations made under the Mental Capacity Act also state that IMCAs may be involved in a care review where the user of the service lacks capacity and there is no one else appropriate to consult.
- 11.4 Guidance on the use of the IMCA service is available from:
- Mental Capacity Act 2005 Sections 36 - 41
- Mental Capacity Act 2005 Code of Practice Chapter 10
- Cambridgeshire County Council Practice Guidance on the Use of the IMCA Service
(Available on www.Cambridgeshire.gov.uk/Social/Mental)
- Speaking Up, IMCA Service, Guidelines for Referrers (Available from www.speakingup.org and from Speaking Up IMCA Referral Line 0845 6500081).

12 Part 3 : Best Interests

- 12.1 As laid out in Section 4 of The Mental Capacity Act 2005, any decision made in the person's best interest must be determined against a statutory checklist of considerations.
- 12.2 The process of making a 'best interests' decision must reflect the person's wishes, feelings and beliefs and any aspects that would have influenced their decision if they had had the capacity to make it.
- 12.3 The Best Interests check-list also requires the decision maker to consider:
- The likelihood of the person regaining capacity in relation to the question
 - Involving the person as fully as possible in the decision

- Where the decision relates to life sustaining treatment, the decision maker must not be motivated by a desire to bring about the death of the person.

Mental Capacity Act 2005 Section 4

Mental Capacity Act 2005 Code of Practice Chapter 5

13 Part 3.1 : Best Interests Consultations

- 13.1 The Decision maker is obliged to consult with anyone who may have a relevant interest in the decision or who may offer valuable insight and information as to the person's wishes, feelings and beliefs.
- 13.2 The Decision Maker should consult with **anyone engaged in caring for the person or interested in the person's welfare**. This would include family members and next of kin, as well as anyone else identified as being involved or interested in the person's care or treatment.
- 13.3 It may be that someone involved in the care of the person may not be appropriate to consult because of adult protection concerns or some other reason such as lack of willingness or availability to do so. In these cases, and if the other criteria are met, a referral should be made to the IMCA service.
- 13.4 Further guidance on 'Appropriate to Consult' is contained in:
Cambridgeshire County Council Practice Guidance on the Use of the IMCA Service
(Available on www.Cambridgeshire.gov.uk/Social/Mental)

Speaking Up, IMCA Service, Guidelines for Referrers (Available from www.speakingup.org and from Speaking Up IMCA Referral Line 0845 6500081).
- 13.5 The Decision Maker should also identify if there is someone with **the legal authority to make the decision**. If so, the decision should be deferred to those arrangements (see section 7 above).

- 13.6 The Decision Maker should make reasonable efforts to consult with **anyone the person has named to be consulted**. It should be remembered that a person might lack the capacity to make the decision and yet retain the capacity to name people they trust and would like to be involved in their care.
- 13.7 Consultation should not be limited to those people named by the person to be consulted: **other relevant people** such as neighbours and known friends could offer valuable understanding regarding the person's wishes.
- 13.8 The Consultation should cover what is known of the wishes, feelings and beliefs of the person who lack capacity, in relation to the decision. It should also include the opinion of the person being consulted regarding a best interests decision.
- 13.9 The Supplementary Sheet 'Relevant Party Best Interests Consultation Record Sheet' is to be used to document consultations.

14 Part 3.2 : Best Interests Considerations

- 14.1 Following consultations with relevant parties, the Decision Maker needs to record all the information known or found regarding the person's wishes, feelings and beliefs regarding the decision.
- 14.2 The Decision Maker must have regard to any substitute decision-making arrangements that would require the legal authority to make the decision (See Para 7.3 – 7.11 above)
- 14.3 The Decision Maker should record what is known of the person's past and present wishes, feelings and beliefs in relation to the decision. This should include any attempts made to consult with the person who lacks

capacity and also reference any other supporting evidence such as the relevant party consultation record sheets.

- 14.4 The person may have also recorded preferences for treatment in an advance statement or a Statement of Preferred Place of Care. These should be taken as indications of a person's wishes though in themselves, they are not legally binding.
- 14.5 The Decision Maker also needs to record the person's cultural identity and beliefs as they relate to the decision in question and reference any supporting evidence.
- 14.6 The Decision Maker should also record any other factor that would be relevant to a best interests decision. These may have been identified through the consultations.
- 14.7 The Decision Maker also needs to record the findings of the IMCA report (if the IMCA service has been appointed).
- 14.8 The Code of Practice provides clarification on the Best Interests Check list (Mental Capacity Act 2005 Code of Practice Chapter 5)

15 Part3.3 : Best Interests Decisions

- 15.1 The Decision Maker should record the best interest decision and the reason why that decision most corresponds to the wishes, feelings, beliefs of the person who lacks capacity.
- 15.2 The Best Interests decision must also follow the principles of the Mental Capacity Act. The Decision Maker must demonstrate that the decision is the least restrictive option and the one most protective of the person's overall autonomy.

- 15.3 The Decision Maker must defer to any relevant substitute decision-making arrangement that would reserve the legal authority to make the decision (See Para 7.3 – 7.11 above)
- 15.4 The Decision Maker should also note other available options and record why they were discounted as not being in the person's best interests.
- 15.5 If the IMCA service has been appointed, the Decision Maker must record how the decision relates to the findings within the IMCA report. The Decision Maker is also expected to inform the IMCA service of the decision.
- 15.6 The Decision Maker should have regard to whether capacity will be regained and whether the decision can be delayed.
- 15.7 In recording the Best Interests decision the decision maker should also make note of any potential disagreements and any steps taken to explain the decision to the person.

16 Counter-Signing Assessments

- 16.1 The Capacity Assessment form includes space for the form to be 'signed off' by a senior member of staff or the relevant line manager. In Care Management situations line managers will be required to sign off capacity assessment forms and thereby endorse the assessment of the decision-making care manager.
- 16.2 Any capacity assessment for a decision requiring funding or panel approval will be returned if it has not been counter-signed or completed appropriately.

GLOSSARY OF TERMS

Advance Decision to Refuse Treatment	A decision made to refuse specified medical treatment in advance of the time when a person may lack capacity to refuse. Specific regulations apply to advance decisions to refuse life sustaining treatment (Mental Capacity Act Code of Practice : Chapter 9)
Advance Statement	A person may request preferences for their treatment and care. Such requests should be taken as strong indications of a person's wishes though they are not legally binding
Adult Protection Procedures	Procedures devised by local authorities along with other relevant agencies, to investigate allegations of abuse or ill treatment of vulnerable adults. Section 44 of the Mental Capacity Act 2005 introduces the Criminal Offence of Ill Treatment or Neglect.
Appointee	Someone appointed under Social Security Regulations to claim and collect social security benefits or pensions on behalf of a person who lacks the capacity to manage their own benefits.
Attorney	Someone appointed under either Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA) to have the legal authority to make decisions within the scope of the arrangement on behalf on the person (donor) who lacks capacity.
Best Interests	Any Decision made, or anything done for a person who lacks capacity to make specific decisions, must be in a person's best interests. There are standard minimum steps that must be followed when working out someone's best interests. These are set out in section 4 of the Mental Capacity Act.

Capacity	The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Mental Capacity Act.
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decisions. The Court of Protection has the same powers and authority as the High Court and it is therefore able to set precedents in relation to mental capacity.
Court of Protection Visitor	Appointed to report to the Court of Protection on how attorneys or deputies are carrying out their duties.
Decision Maker	In the Code of Practice, a person making a decision on behalf of someone who lacks the capacity to make the decision themselves, is referred to as the 'decision maker'. It is the Decision Maker's responsibility to work out what would be in the best interests of the person who lacks capacity.
Deputy	Someone appointed by the Court of Protection with ongoing authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Mental Capacity Act.

<p>Enduring Power of Attorney</p>	<p>A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an attorney to deal with the Donor's property and affairs. Existing EPAs will continue to operate under the MCA. A person does not have to lack capacity for the attorney to make decisions on their behalf.</p>
<p>Independent Mental Capacity Advocate (IMCA) Service</p>	<p>A service to help particularly vulnerable people who lack capacity to make important decisions about serious medical treatment or changes in accommodation and who have no one else appropriate to consult about these decisions.</p>
<p>Lasting Powers of Attorney</p>	<p>A Power of Attorney created under the Mental Capacity Act (Section 9(1)) appointing an attorney to make decisions about the Donor's personal welfare (including healthcare) or deal with the Donor's property and affairs.</p>
<p>Office of the Public Guardian</p>	<p>The Public Guardian is an officer established under section 57 of the Mental Capacity Act. The Public Guardian is supported by the Office of the Public Guardian, which will supervise Deputies, keep a register of Deputies, LPAs and EPAs, and investigate any complaints about Attorneys or Deputies. The OPG replaces the Public Guardianship Office (PGO) that has been in existence for many years.</p>
<p>Personal Welfare</p>	<p>Personal welfare decisions are any decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity. Many acts of care are to do with personal welfare.</p>

Property and affairs	Any possessions owned by a person (such as house or flat, jewellery or other possessions), the money that have in income, savings or investments and any expenditure. Attorneys and deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.
Receiver	Someone appointed by the former Court of Protection to manage the property and affairs of a person lacking the capacity to do so. Existing receivers continue as deputies with legal authority to deal with the person's property and affairs.
Restraint	The use or threat of force to help do an act that the person resists, or the restriction of the person's liberty of movement, whether or not they resist. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm.
Statement of Preferred Place of Care	A patient-held care plan for people with life limiting illness who wish to have their choices and preferences recorded in relation to their care and ultimate place of death. A Statement of Preferred Place of Care should be taken as an indication of a person's requests. While not legally binding, every effort should be made to follow it.
Two Stage test	Using sections 2 and 3 of the Act to assess whether or not a person has the capacity to make a particular decision for themselves at time the decision is required.

Local Mental Capacity Act Contacts:

T.B.A