



**Royal Cornwall Hospitals**  
NHS Trust

# **Mental Capacity Act Policy**

**V6.0**

**February 2024**

# Summary Flowchart – Assessing Mental Capacity

**What decision needs to be made?**

Concern has been raised that the person may lack capacity:  
A capacity assessment must be undertaken by the professional most appropriate to make a decision, who is known as the Decision-maker (see 4.6) and documented in the patient's medical notes.

**The diagnostic test:**  
Does the person have an impairment or disturbance in their mind or brain?  
Is the impairment or disturbance sufficient enough to cause a lack of capacity?

**NO**

**YES**

The person cannot be assessed as lacking capacity within the MCA

Use Mental Capacity Act (MCA) assessment tool to assess the patients capacity.

Incapacity due to another cause (i.e. duress) can be considered by a court of law

**The functional test:**

- Understand information given to them.
- Retain that information long enough to be able to make the decision.
- Weigh up the information available to make the decision.
- Communicate their decision - this could be by any means.

Contact the RCHT MCA Lead on Tel: 01872 255741 for advice

**Inability to do any one of the above indicates a lack of capacity**

**Person has mental capacity**

**The person can make their own decision:**

- Support them to do so.
- Offer information as required.
- Escalate any concerns to line manager or Safeguarding Services (Tel: 01872 255741).

**Undecided with regards to the person's mental capacity**

Request second opinion mental capacity assessment for Safeguarding Services (Tel: 01872 255741).

**Person lacks mental capacity**

**Decision to be made in person's best interests:**  
Consult with family/friends: if estranged refer to Safeguarding Services IMCA (Independent Mental Capacity Advocate) Tel: 0330 440 9000.

Clearly record best interest decision in healthcare records

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### **Data Protection Act 2018 (UK General Data Protection Regulation – GDPR) Legislation.**

The Trust has a duty under the Data Protection Act 2018 and UK General Data Protection Regulations 2016/679 to ensure that there is a valid legal basis to process personal and sensitive data. The legal basis for processing must be identified and documented before the processing begins. In many cases we may need consent; this must be explicit, informed, and documented. We cannot rely on opt out, it must be opt in.

Data Protection Act 2018 and UK General Data Protection Regulations 2016/679 is applicable to all staff; this includes those working as contractors and providers of services.

For more information about your obligations under the Data Protection Act 2018 and UK General Data Protection Regulations 2016/679 please see the Information Use Framework Policy or contact the Information Governance Team.

Royal Cornwall Hospital Trust      [rch-tr.infogov@nhs.net](mailto:rch-tr.infogov@nhs.net)

# 1. Introduction

- 1.1. The Mental Capacity Act (MCA) provides a statutory framework for assessing whether a person has mental capacity to make certain decisions. It also defines how others can make decisions on behalf of someone who lacks mental capacity. The MCA applies to adults aged 16 years and over.
- 1.2. Within the MCA there are 5 principles that underpin the entire Act and provide a safeguard for people whose mental capacity is called into question:
  1. **Presumption of Capacity:** A person must be assumed to have capacity unless it is proved otherwise.
  2. **Maximising decision-making:** Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity.
  3. **Unwise decisions:** An unwise decision does not in itself indicate a lack of capacity
  4. **Best interests:** Any act done or decision for someone lacking capacity must be made in their best interests.
  5. **Less restrictive option:** When a person lacks capacity any act or decision should aim to be the less restrictive option to the person in terms of their right and freedom of action.
- 1.3. The MCA does not allow permissive decisions to be made in the best interests of a person lacking capacity in relation to the following:
  - Marriage or civil partnership.
  - Sexual relations.
  - Divorce or dissolution of civil partnerships.
  - Placement of a child for adoption or making of an adoption order.
  - Discharge of parental responsibilities not relating to a child's property.
  - Consenting under the Human Fertilisation and Embryology Act.
  - Voting in any election or referendum.
  - Writing a Will.
- 1.4. The Deprivation of Liberty Safeguards 2007 (DOLS) exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's own best interests. The DOLS apply to adults aged 18 years and over. For further information and guidance please refer to the RCHT Deprivation of Liberty Safeguards Policy.
- 1.5. This version supersedes any previous versions of this document.

## 2. Purpose of this Policy/Procedure

This policy will underpin the implementation of the MCA within RCHT. It will outline the procedures to assess mental capacity, make decisions in the best interests of patients.

## 3. Scope

All clinical staff working in RCHT must hold a formal duty of regard to the Mental Capacity Act, and the related Codes of practice. They will need to take active responsibility for equipping themselves to practice within the law.

## 4. Definitions / Glossary

- **MCA:** Mental Capacity Act 2005.
- **Code of Practice:** Written to support the understanding and application of the Mental Capacity Act 2005.
- **DoLS:** Deprivation of Liberty Safeguards apply to people in England and Wales who have a mental disorder and lack capacity to consent to the arrangements made for their care or treatment, but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary to protect them from harm and appears to be in their best interests.
- **IMCA:** Independent Mental Capacity Advocate.
- **Lack of capacity:** The MCA defines a 'lack of capacity' as an inability to make a particular decision at a particular time due to "an impairment of or disturbance in the functioning of the mind or brain".
- **Decision-maker:** The person who has to make the decision is known as the 'decision-maker' and normally will be the professional such as a doctor, nurse or social worker who is most appropriate to make the decision i.e. for medical treatment the decision maker would be the doctor, for package of care the decision maker would be the social worker.
- **Best interests:** It is the decision maker's responsibility to work out what would be in the best interests of the person who lacks capacity. The Act does not define the term "best interest" however, Section 4 of the Act (supported by the Code) sets down how to decide what is in the best interests of a person who lacks capacity in any particular situation.
- **LPA:** Lasting Power of Attorney. This is a Power of Attorney created by the MCA 2005, appointing an attorney to make decisions about decisions in relation to personal welfare, including healthcare and/or deal with property and affairs.
- **Less restrictive alternative:** Before an act is done or a decision is made on behalf of a person lacking capacity it should be considered whether these purposes can be achieved in a way that is less restrictive of that person's rights and freedom of action.

## **5. Ownership and Responsibilities**

### **5.1. Role of the Chief Executive and wider Trust Board**

The Chief Executive and wider Trust Board have key roles and are responsible for:

- Ensuring the Trust meets requirements set out by statutory and regulatory authorities such as the Department of Health, Commissioners and the Care Quality Commission.
- Ensuring all staff receive Mental Capacity training that supports their role and responsibilities with regard to the Act.

### **5.2. Role of the Chief Executive**

The Chief Executive is responsible for having processes in place:

- Ensuring clinical staff are aware of this policy and adhere to its requirements.
- Ensuring appropriate resources exist to meet the requirements of this policy.

### **5.3. Role of the Executive Directors**

The Executive Directors are responsible for:

- Ensuring all operational managers in their area are aware of this policy.
- Understanding this policy's requirements and supporting its implementation.

### **5.4. Role of the Associate Medical Director/Consultants**

The Associate Medical Director and Consultants are responsible for:

- Ensuring legal frameworks and procedures detailed in this policy are understood and adhered to by medical staff.

### **5.5. Role of the RCHT Safeguarding Operational Group (SOG)**

The RCHT Safeguarding Operational Group is responsible for:

- Monitoring compliance of this policy.

### **5.6. Role of the Ward/Unit Managers**

The Ward/Unit Managers are responsible for:

- Implementing this policy.
- Ensuring relevant assessment tools are readily available to allow staff to carry out the duties prescribed in this policy.

## **5.7. Role of the Members of Clinical Teams**

The Clinical team members are responsible for:

- Complying with the requirements of this and associated policies.
- A legal duty to adhere to the Act and Code when working with, or caring for adults who may lack capacity to make decisions for themselves.

## **5.8. Role of the Individual Staff**

All staff members are responsible for:

- Participating in mandatory training provided by the Trust as and when required.

# **6. Standards and Practice**

## **6.1. The Decision Maker**

- 6.1.1. The capacity assessment should be undertaken by the person who is proposing to undertake the action or make a decision. This person is termed the decision maker.
- 6.1.2. Professionals are the decision makers for actions for which they are responsible.
- 6.1.3. Determining who the decision maker is depends on the decision and not on the circumstances of the individual. This may mean that the decision maker is not the person who knows the individual best.

## **6.2. Provision of Information**

- 6.2.1. All practical and appropriate steps must be taken to help people to make a decision for themselves. Information must be tailored to an individual's needs and abilities. Use simple language and pause to check understanding. Where appropriate, use an interpreter, pictures, objects or illustrations to provide information.
- 6.2.2. Record how information has been provided to the person, including any repetition of information.

## **6.3. Mental Capacity Assessment**

- 6.3.1. Inform the patient that you are undertaking a mental capacity assessment. Ensure you have all the relevant information to hand and available to the patient in a way that is most appropriate for them.
- 6.3.2. Start from a presumption of capacity and make every effort to support and empower the patient to have mental capacity and be able to make their own decision.

6.3.3. A mental capacity assessment must be decision and time specific. A blanket statement with regards to a patient's capacity or lack of capacity is not lawful.

6.3.4. Use the Mental Capacity assessment tool to assist in the assessment and the clear documentation of the assessment outcome.

#### 6.4. The Diagnostic Test:

- Is there an impairment of, or disturbance in, the functioning of the person's mind or brain? And if so:
  - Is the impairment or disturbance sufficient to cause the person to be unable to make that particular decision at the relevant time?

6.4.1. If the patient does not have an impairment or disturbance in their mind or brain they cannot be assessed as lacking capacity within the MCA although case law suggests that incapacity due to another cause (i.e. duress) can be considered by a court of law.

#### 6.5. The Functional Test:

6.5.1. A person must be able to:

- **Understand** the nature of the decision, the purpose for which it is needed and the consequences, risks or outcomes of making the decision - in determining risks the person only needs to consider the reasonably foreseeable risks; it is acceptable for the information to be understood in broad terms.
- **Retain** the information for long enough to make the decision, the information could be forgotten later and the decision would remain valid.
- **Weigh** or use the information, taking into account any risks and consequences when making their decision.
- **Communicate** their decision using any method i.e. hand signals, gestures, writing etc.

6.5.2. If the patient is unable to do any one of the 4 parts of the functional test then they lack capacity to make the decision.

6.6. Mental Capacity Assessments must be clearly recorded. All aspects of both the diagnostic and functional test should be recorded. Including how the person was involved and who was consulted with.

6.7. When completing an assessment for a serious medical decision or change of accommodation staff should use the [CHA4373: Concise Mental Capacity Assessment](#).

- 6.8. Once the tool has been completed it must be filed in the patient's medical records with a patient sticker affixed. A note should be recorded in the medical notes that a mental capacity assessment has been completed, what the decision was, what the outcome was and that a report was produced.
- 6.9. The assessment tool is robust and will include all aspects of the MCA you should be making reference to when assessing capacity.
- 6.10. When undertaking a capacity assessment it is sufficient that the person making the assessment holds a reasonable belief that the person may lack capacity with regard to the particular decision.
- 6.11. Some people may have an illness or condition, which at times, affects their decision making ability. If a person has fluctuating or temporary loss of capacity, where possible, the decision should be delayed until the person has recovered and regained their capacity.
- 6.12. Having decided on and documented that the person lacks capacity to make the specific decision you must ascertain if there is an advance decision, Attorney or Court Appointed Deputy. If any of these are present, guidance should be sought from them. If there is no Advance decision, Attorney or Court Appointed Deputy a decision must be made in the person's best interest.

#### **6.13. Advanced Decisions to Refuse Medical Treatment**

6.13.1. An advance decision enables someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment. The person can cancel their decision, or part of it, at any time while they have capacity to do so.

6.13.2. If the advance decision refuses life-sustaining treatment, it must:

- Be in writing (it can be written by someone else or recorded in healthcare notes).
- Be signed and witnessed, and
- Clearly stated that the decision applies even if life is at risk.

6.13.3. Healthcare professionals will be protected from liability if they:

- Stop or withhold treatment because they reasonably believe that an advance decision exists, and that it is valid and applicable.
- Treat a person because, having taken all practical and appropriate steps to find out if the person has made an advance decision to refuse treatment, they do not know or are not satisfied that a valid and applicable advance decision exists.

#### **6.14. Lasting Power of Attorney (LPA)**

6.14.1. A Lasting Power of Attorney (LPA) lets an individual appoint someone to make decisions on their behalf. There are two types and the individual can choose to make one type of LPA or both:

1. Health and Welfare.
2. Property and financial affairs.

6.14.2. Where an attorney has been authorised to make health and welfare decisions the following applies:

- The attorney has authority to make decisions if the person lacks capacity.
- If the person has an advanced decision made prior to the appointment of an attorney the attorney can decide whether to override the advance decision. If the advance decision was made after the appointment of the attorney it must stand.
- Not all attorneys will have been given the power to decide on life-sustaining treatment. The lasting power of attorney form must clearly state this authority.

#### **6.15. Making a Decision in the Person's Best Interests**

6.15.1. A person's best interests may be different to what is in the best clinical interest of the person. A best interest decision must take into account what the person would be likely to choose if they were able, considering their values, wishes and beliefs.

6.15.2. It is the decision maker's responsibility to work out what would be in the best interests of the person who lacks capacity.

6.15.3. The decision maker must do whatever is possible to permit and encourage the person to take part, or to improve their ability to take part, in making the decision.

6.15.4. The MCA places an obligation on the decision maker to consult with others, if practicable and appropriate to do so.

6.15.5. An Independent Mental Capacity Advocate (IMCA) must be instructed, and then consulted, for people lacking capacity who have no-one else to support them, other than paid staff, whenever making a best interest decision regarding:

- The provision or withholding of serious medical treatment.
- The arrangement of accommodation (change of accommodation) in hospital or a care home if:
  - The person will stay in hospital longer than 28 days.
  - They will stay in the care home for more than eight weeks.

## 6.16. Treatment Escalation Plans (TEP) and Do Not Resuscitate decisions.

6.16.1. All Health and Social Care staff must be aware that IMCAs have a statutory right of access to records which the record holder considers may be relevant to the advocates' role. Clinicians and practitioners should be prepared to give such access to files and notes. Those responsible for patient records should ensure that third party information and other sensitive information not relevant to the decision at hand remains confidential.

6.16.2. If required, the IMCA can be contacted via:

- Safeguarding Services on Tel: 01872 255741.
- The Advocacy People on Tel: 0330 440 9000.

**Note:** Decisions made outside of working hours in an emergency situation do not require an IMCA - referrals should be made on the next working day if non urgent.

6.16.3. All best interest decisions should be clearly recorded in the person's healthcare record. Records should include all of the following:

- How the decision about the person's best interests was reached.
- What the reasons for reaching the decision were.
- Who was consulted to help work out best interests.
- What particular factors were taken into account.

6.16.4. Best interest meetings should be held, wherever practicable, when deciding on complex medical treatment or long term accommodation moves.

6.16.5. The [CHA2912: Best Interest Meeting Checklist and Record \(SMARTFORM\)](#) must be completed during a best interest meeting to assist in decision making.

## 6.17. Disputes Process

6.17.1. A challenge to the assessment could come from the patient, their family or from others involved in their care. If the challenge comes from the patient, they may need support from others to assist in their challenge.

6.17.2. In some situations it may be helpful to obtain a second opinion from another professional who has not been involved in the patients care. Where there is still disagreement then the decision maker should contact the RCHT Mental Capacity Lead, based within the safeguarding team, on 01872 255741.

6.17.3. If a disagreement cannot be resolved, the Court of Protection can rule on whether a person has capacity to make the decision or if a specific decision is in the person's best interests.

## **6.18. The Application of the MCA to Children and Young People**

6.18.1. Within the MCA's Code of Practice, 'children' refers to people aged below 16. 'Young people' refers to people aged 16–17. This differs from the Children Act 1989 and the law more generally; where the term 'child' is used to refer to people aged under 18.

### **6.18.2. Children under 16**

The Act does not generally apply to people under the age of 16 but there are two exceptions:

1. The Court of Protection can make decisions about a child's property or finances (or appoint a deputy to make these decisions) if the child lacks capacity to make such decisions and is likely to still lack capacity to make financial decisions when they reach the age of 18.
2. Offences of ill treatment or wilful neglect of a person who lacks capacity can also apply to victims younger than 16.

### **6.18.3. Young people aged 16-17 years**

Most of the Act applies to young people aged 16-17 years, who may lack capacity to make specific decisions but there are three exceptions:

1. Only people aged 18 and over can make a Lasting Power of Attorney.
2. Only people aged 18 and over can make an advance decision to refuse medical treatment.
3. The Court of Protection may only make a statutory will for a person aged 18 and over.

### **6.18.4. Care or treatment for young people aged 16-17**

6.18.4.1. People carrying out acts in connection with the care or treatment of a young person aged 16-17 who lacks capacity will generally have protection from liability, as long as the person carrying out the act:

1. Has taken reasonable steps to establish that the young person lacks capacity.
2. Reasonably believes that the young person lacks capacity and that the act is in the young person's best interests.
3. Follows the principles of the MCA.

6.18.4.2. When assessing the young person's best interests, the person providing care or treatment must consult those involved in the young person's care and anyone interested in their welfare – if it is practical and appropriate to do so.

6.18.4.3. This may include the young person's parents. Care should be taken not to unlawfully breach the young person's right to confidentiality.

### **6.19. Interface of the Mental Capacity Act with the Mental Health Act 1983**

- 6.19.1. Detention of a person under the Mental Health Act is not an indicator that they are unable to make decisions about their care and treatment.
- 6.19.2. If a detained person requires treatment for a physical illness or condition, that is unrelated to their mental health, the RCHT MCA policy and process must be followed.
- 6.19.3. The Mental Health Act should be considered:
- If the treatment is for a mental disorder and the patient has been assessed as having the mental capacity to refuse that treatment.
  - If the treatment or deprivation of liberty is required for the protection of others rather than the protection of the patient concerned.

## **7. Dissemination and Implementation**

- 7.1. This policy is to be implemented and disseminated through the organisation immediately following ratification and will be published on the organisations intranet site document library. Access to this document is open to all.
- 7.2. The policy will be launched via the RCHT daily communication network.
- 7.3. The policy will be available to all external stakeholders via the Documents Library on the Intranet.
- 7.4. This policy document will be held in the public section of the Documents Library with unrestricted access, replacing the previous version which will be archived in accordance with the Trust Information Lifecycle and Corporate Records Management Policy.
- 7.5. Provision of mandatory safeguarding adults training, including the Mental Capacity Act, will be delivered by the Learning and Development Department as outlined in the RCHT Core Training Policy.

## **8. Monitoring compliance and effectiveness**

Auditing of the implementation of the Mental Capacity Act and the use of the Independent Mental Capacity Advocacy across clinical areas will be undertaken to monitor the effectiveness and usage of this policy.

<b>Information Category</b>	<b>Detail of process and methodology for monitoring compliance</b>
<b>Element to be monitored</b>	Documented evidence of consideration and assessment of mental capacity for specific decisions.

<b>Information Category</b>	<b>Detail of process and methodology for monitoring compliance</b>
	<p>The use of the Mental Capacity assessment tool when serious medical decisions, long term accommodation changes and any other significant decisions are required.</p> <p>The documentation of Best Interest processes/meetings.</p> <p>The views and participation of the patient and carers.</p> <p>The accurate use of the Independent Mental Capacity Advocate (IMCA).</p>
<b>Lead</b>	The audit will be undertaken by members of the RCHT Safeguarding Operational Group (SOG) following the designation of a lead auditor by the SOG Chair.
<b>Tool</b>	Audit documentation will capture and record evidence regarding the identified elements to be monitored.
<b>Frequency</b>	<p>The audit will be undertaken on an annual basis.</p> <p>Following the audit a report is authored.</p>
<b>Reporting arrangements</b>	The completed audit report will be presented and discussed at the Safeguarding Operational Group (SOG).
<b>Acting on recommendations and Lead(s)</b>	<p>Where the report indicates sub optimal performance the Chair of the Safeguarding Operational Group (SOG) will nominate a group member to produce an action plan.</p> <p>The Safeguarding Operational Group (SOG) will be responsible for monitoring progress and will undertake subsequent recommendations and further action planning for all deficiencies identified within agreed timeframes.</p>
<b>Change in practice and lessons to be shared</b>	<p>Required changes to practice identified will be documented in the action plan outcomes. The membership of the Safeguarding Operational Group (SOG) will identify a lead to take each change forward across divisions as appropriate.</p> <p>Lessons will be shared with all relevant parties.</p>

## 9. Updating and Review

This process is managed via the document library; review will be undertaken every three years unless best practice dictates otherwise.

## 10. Equality and Diversity

10.1. This document complies with the Royal Cornwall Hospitals NHS Trust service Equality and Diversity statement which can be found in the [Equality Diversity And Inclusion Policy](#) or the [Equality and Diversity website](#).

10.2. Equality Impact Assessment

The Initial Equality Impact Assessment Screening Form is at Appendix 2.

## Appendix 1. Governance Information

Information Category	Detailed Information
<b>Document Title:</b>	Mental Capacity Act Policy V6.0
<b>This document replaces (exact title of previous version):</b>	Mental Capacity Act Policy V5.0
<b>Date Issued / Approved:</b>	February 2024
<b>Date Valid From:</b>	February 2024
<b>Date Valid To:</b>	February 2027
<b>Author / Owner:</b>	Amy Williams, Complex cases, Mental Health and Wellbeing
<b>Contact details:</b>	01872 255741
<b>Brief summary of contents:</b>	This policy informs RCHT clinical staff about the legislation and code of practice that supports the local procedural arrangements for working with patients who have impaired mental capacity. It includes guidance on patients who may require the support of the Independent Mental Capacity Advocacy Service.
<b>Suggested Keywords:</b>	Mental Capacity Act, Code of Practice, MCA, Capacity, Independent Mental Capacity Advocacy, IMCA.
<b>Target Audience:</b>	<b>RCHT:</b> Yes <b>CFT:</b> No <b>CIOS ICB:</b> No
<b>Executive Director responsible for Policy:</b>	Deputy CEO and Chief Nurse Officer
<b>Approval route for consultation and ratification:</b>	Safeguarding Operational Group (SOG)
<b>Manager confirming approval processes:</b>	Zoe Cooper, Consultant Nurse for Integrated Safeguarding Services
<b>Name of Governance Lead confirming consultation and ratification:</b>	Zoe Cooper

Information Category	Detailed Information
<b>Links to key external standards:</b>	<a href="#">Human Rights Act 1998</a> <a href="#">Mental Capacity Act 2005</a> <a href="#">Mental Capacity Act Code of Practice</a> <a href="#">Mental Health Act 1983</a> <a href="#">Mental Health Act 2007</a> <a href="#">Mental Health Act 1983: Code of Practice</a> <a href="#">Care Act 2014</a>
<b>Related Documents:</b>	<a href="#">Adult Safeguarding Policy</a> <a href="#">Enhanced Care for Adults Policy</a> <a href="#">Management of Information, Records and Data Quality Policy</a> <a href="#">Restrictive Practice Policy</a> <a href="#">Management of Violence and Aggression Policy</a> <a href="#">CHA2912: Best Interest Meeting Checklist and Record (SMARTFORM)</a> <a href="#">CHA4373: Concise Mental Capacity Assessment</a>
<b>Training Need Identified:</b>	Yes - RCHT is responsible for ensuring all clinical staff are offered training with regards to the key aspects of the Mental Capacity Act 2005 included within this policy.
<b>Publication Location (refer to Policy on Policies – Approvals and Ratification):</b>	Internet and Intranet
<b>Document Library Folder/Sub Folder:</b>	Safeguarding Services / Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS)

### Version Control Table

Date	Version Number	Summary of Changes	Changes Made by
11/07	V1.0	RCHT Mental Capacity Act Policy published	Not known
10/10	V1.1	Revision required to include comprehensive guidance on Independent Mental Capacity Advocacy and Deprivation of Liberty Safeguards	Lerryn Udy, Divisional Quality Facilitator in conjunction with the Safeguarding Adults Operational Group membership

Date	Version Number	Summary of Changes	Changes Made by
20/09/11	V1.2	Review of RCHT Mental Capacity Act and consultation completed.	Mary Mallett, Safeguarding Adults Named Nurse
31/10/12	V2.0	New Mental Capacity level 3 assessment guidance. Updated and reviewed practical process, DoLS information and included brief section on Consent.  Policy brought in line with the RCHT policy template.	Lerryn Hogg, Mental Health and Wellbeing Specialist Nurse in conjunction with Mary Mallett, Safeguarding Adults Named Nurse
03/12/13	V3.0	Complete review.  Amended DOLS process and flowchart Amendments made to all sections.  Inclusion of additional sections such as staff development and training.	Lerryn Hogg, Mental Health and Wellbeing Specialist and Mental Capacity Lead
28/11/14	V3.1	Para 7 'Deprivation of Liberty Safeguards' removed.	Lerryn Hogg
24/10/16	V4.0	Change in the tool used to assess mental capacity.  MCA flowchart included.	Lerryn Hogg
June 2020	V5.0	Full Update as follows:  Change of name	Lerryn Hogg, Advanced Nurse for Mental Health and Complex Cases
February 2024	V6.0	Full Update as follows:  Change of name and contact numbers.  Amendments to mental capacity flowchart.  Removal of Desuto tool information and links.  Update of mental capacity assessment tool.  Link to best interest checklist added.	Amy Williams Complex Case, Mental Health and Wellbeing Specialist and DoLS Lead.

**All or part of this document can be released under the Freedom of Information Act 2000.**

**All Policies, Strategies and Operating Procedures, including Business Plans, are to be kept for the lifetime of the organisation plus 6 years.**

**This document is only valid on the day of printing.**

## **Controlled Document.**

This document has been created following the Royal Cornwall Hospitals NHS Trust [The Policy on Policies \(Development and Management of Knowledge Procedural and Web Documents Policy\)](#). It should not be altered in any way without the express permission of the author or their Line Manager.

## Appendix 2. Equality Impact Assessment

### Section 1: Equality Impact Assessment (EIA) Form

The EIA process allows the Trust to identify where a policy or service may have a negative impact on an individual or particular group of people.

For guidance please refer to the Equality Impact Assessment Policy (available from the document library) or contact the Equality, Diversity, and Inclusion Team  
[rcht.inclusion@nhs.net](mailto:rcht.inclusion@nhs.net)

Information Category	Detailed Information
<b>Name of the strategy / policy / proposal / service function to be assessed:</b>	Mental Capacity Act Policy V6.0
<b>Department and Service Area:</b>	Safeguarding Services
<b>Is this a new or existing document?</b>	Existing
<b>Name of individual completing EIA</b> (Should be completed by an individual with a good understanding of the Service/Policy):	Amy Williams, Complex Case, Mental Health and Wellbeing Specialist and DoLS Lead.
<b>Contact details:</b>	01872 255741

Information Category	Detailed Information
<b>1. Policy Aim - Who is the Policy aimed at?</b>  (The Policy is the Strategy, Policy, Proposal or Service Change to be assessed)	This policy underpins the implementation of the MCA Act within an acute hospital environment in line with the statutory framework. It will outline the procedure for assessment of capacity, the ability to make decisions in the best interests of patients including patients who appear to have no family or friends to consult, the use of restraint and how to approach an advanced decision for refusal of treatment.  It applies to all RCHT staff involved in the care, treatment and support of people over the age of 16 who are unable to make all or some decisions for themselves.
<b>2. Policy Objectives</b>	To ensure the appropriate implementation of the guidance contained within the policy that informs health professionals about the local procedural arrangements for working with patients who have impaired mental capacity
<b>3. Policy Intended Outcomes</b>	To empower and protect vulnerable people who may not be able to make their own decisions. To ensure the legalities and statutory responsibilities within the Mental Capacity Act and associated legislation are embedded into clinical practice.

Information Category	Detailed Information
4. How will you measure each outcome?	Documentation audit, reported incidents of deviation from the Policy, Safeguarding Vulnerable Adults abuse concerns involving care of RCHT in-patients with impaired capacity and patient experience feedback.
5. Who is intended to benefit from the policy?	All patients who may have impaired capacity. All RCHT staff involved in the care, treatment and support of people over the age of 16 who may be unable to make all or some decisions for themselves.
6a. Who did you consult with?  (Please select Yes or No for each category)	<ul style="list-style-type: none"> <li>• Workforce: Yes</li> <li>• Patients/ visitors: No</li> <li>• Local groups/ system partners: No</li> <li>• External organisations: No</li> <li>• Other: No</li> </ul>
6b. Please list the individuals/groups who have been consulted about this policy.	<b>Please record specific names of individuals/ groups:</b> RCHT Safeguarding Operational Group (SOG).
6c. What was the outcome of the consultation?	Approved.
6d. Have you used any of the following to assist your assessment?	<b>National or local statistics, audits, activity reports, process maps, complaints, staff, or patient surveys:</b> No.

<p><b>7. The Impact</b></p> <p>Following consultation with key groups, has a negative impact been identified for any protected characteristic? Please note that a rationale is required for each one.</p> <p>Where a negative impact is identified without rationale, the key groups will need to be consulted again.</p>
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Protected Characteristic	(Yes or No)	Rationale
<b>Age</b>	No	For individuals under 16 years of age, the Safeguarding Children team should be contacted.
<b>Sex</b> (male or female)	No	
<b>Gender reassignment</b> (Transgender, non-binary, gender fluid etc.)	No	

Protected Characteristic	(Yes or No)	Rationale
<b>Race</b>	No	
<b>Disability</b> (e.g. physical or cognitive impairment, mental health, long term conditions etc.)	No	
<b>Religion or belief</b>	No	
<b>Marriage and civil partnership</b>	No	
<b>Pregnancy and maternity</b>	No	
<b>Sexual orientation</b> (e.g. gay, straight, bisexual, lesbian etc.)	No	

**A robust rationale must be in place for all protected characteristics. If a negative impact has been identified, please complete section 2. If no negative impact has been identified and if this is not a major service change, you can end the assessment here.**

I am confident that section 2 of this EIA does not need completing as there are no highlighted risks of negative impact occurring because of this policy.

Name of person confirming result of initial impact assessment: Amy Williams, Complex Case, Mental Health and Wellbeing Specialist and DoLS Lead.

**If a negative impact has been identified above OR this is a major service change, you will need to complete section 2 of the EIA form available here:**  
[Section 2. Full Equality Analysis](#)