

STANDARD OPERATING PROCEDURE	Best Interest Meetings/Decisions
SOP ID NUMBER	TW24-082 SOP
VERSION NUMBER	1.0
APPROVING COMMITTEE	SEG (Safeguarding Effectiveness Group)
DATE THIS VERSION APPROVED	October 2024
RATIFYING COMMITTEE	PARG (Policy Approval and Ratification Group)
DATE THIS VERSION RATIFIED	November 2024
AUTHOR(S) (JOB TITLE)	MCA/DOLS Lead Clinical Lead Learning Disability Services
DIVISION/DIRECTORATE	Think Family Safeguarding Service Corporate Division
WHICH POLICY ASSOCIATED TO?	TW12-039 Mental Capacity Act (MCA) 2005 and Deprivation of Liberty Safeguards (DoLS) TW24-040 All Age Learning Disability and/or Autism Policy
CONSULTED WITH	Learning Disability Services

DATES PREVIOUS VERSION(S) RATIFIED	Replaces TW19-036 SOP 1 Learning Disability and Autism Planned Admissions – NOW WITHDRAWN TW19-036 SOP 2 Learning Disability and Autism Unplanned Admissions Ratified August 2019 – NOW WITHDRAWN
DATE OF NEXT REVIEW	November 2027
MANAGER RESPONSIBLE FOR REVIEW (Job Title)	Named Nurse Safeguarding Adults

Version Control

Version	Date	Amendment

Contents Table

Contents		Page No.
1	Introduction	2
2	Who does the procedure apply to?	2
3	Mental Capacity is decision specific	2
4	Working in the Person's best interest	2
5	Best Interest process	3
6	Documentation	3
7	Last Power of Attorney	3
8	Human Rights Act	4
9	Inclusion and Diversity	4
10	Monitoring and Review	5
11	Accessibility Statement	5

Appendices		
App 1	Equality Impact Assessment	6
App 2	Monitoring and Review Template	7

1 INTRODUCTION

- 1.1. This Standard Operating Procedure (SOP) is required to set out how a person's capacity should be assessed and found to lack capacity, how and who should make decisions on their behalf. This SOP clearly defines the procedure that must be followed when decisions need to be made that involve a person over 16 years of age who may not have the capacity to make the decision for themselves.
- 1.2. The SOP is reflective of the Mental Capacity Act (2005) which is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance the individual's right to make decisions for themselves with their right to be protected from harm if they lack capacity make decisions to do so themselves.
- 1.3. The SOP is intended to provide support in carrying out and recording formal capacity assessments and is not intended as a substitute for the Code of Practice. All professionals involved with working or caring for a person who lacks capacity to make a decision must have regard to the Mental Capacity Act (MCA) Code of Practice.

2 WHO DOES THE PROCEDURE APPLY TO?

- 2.1. All health and social care staff who need to assess a person's capacity to make a particular decision (*The Decision Maker*). The Decision Maker is the person within the Organisation who would normally discuss the decision that is required and will offer them support to make the decision.

3 MENTAL CAPACITY IS DECISION SPECIFIC

- 3.1. The person may have the ability to make simple decisions, but not complex decisions. Once the capacity assessment has confirmed that the person lacks capacity around the specific decision, a best interest decision is required. A best interest decision cannot be established if the decision specific capacity assessment has not been completed.

4 WORKING IN THE PERSON'S BEST INTERESTS

- 4.1. Determining what is in the best interest of person who lacks the capacity make a decision requires the decision maker to:
 - Consider the persons present and past wishes and feelings
 - Be aware of influencing beliefs and values the person holds
 - Consult other people when it is appropriate to do so
- 4.2. Those Decision Makers will normally be those that are responsible for day-to-day care. This will be a professional such as a doctor, nurse or social worker.

5 BEST INTERESTS

- 5.1. The **Best Interests** principles underpin the Mental Capacity Act. In Chapter 5 of the MCA Code, it states that '*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 best interests*'. This principle covers all aspects of financial, personal welfare and healthcare decisions.

5.2 Best Interest Process

5.2.1 Do not make assumptions about someone's best interest merely on the basis of the persons age, appearance, condition or any aspect of their behaviour.

5.2.2 Consider all relevant circumstances and consult with those closest to the person.

5.2.3 Consider the persons past and present wishes and feelings and any beliefs or values they hold which may have a bearing on the decision.

5.2.4 Consider all relevant circumstances. Will the person regain capacity? If so, can the decision wait?

5.2.5 Check if there is an Advanced Decision to Refuse Treatment (ADRT), which applies in the persons clinical situation. Here the person had already decided to decline treatment, and that decision must be respected. If there is any doubt about the capacity of the person at the time of making the ADRT, legal advice should be sought immediately.

5.2.6 If there is a Lasting Power of Attorney (LPA) in place, where the person had appointed a health and welfare attorney, then this attorney will have the power to consent to or refuse treatment.

5.2.7 The MCA sets out who should be, where practicable, be consulted as part of the assessment of best interests. This includes:

- Anyone named by the individual as someone to be consulted on such matters
- Anyone engaged in caring for the person or interested in his or her welfare
- Court appointed deputy

5.2.8 Where there is nobody that fits into the above categories, an Independent Mental Capacity Advocate (IMCA) must be consulted.

5.2.9 Sometimes it is not possible for everyone to come to an agreement on what they feel is in the persons best interests. In these situations, all of the information will be looked at and rationale given as to why there are disagreements. The consultant is the decision maker for any health decisions, the social worker is the decision maker for any discharge destination decisions, unless there is a relevant LPA in place. If next of kin are not in agreement with the final decision then there is the right to approach the Court of Protection regarding complex decisions and the Safeguarding Service should be notified as soon as possible.

6 DOCUMENTATION

6.1. Any decision made for, or on behalf of, an incapacitated person should hold up to legal scrutiny. Therefore, all aspects of the process must be documented in the person's record. Which may include, health, social and community records.

6.2. The documentation should include:-

6.1.1 The Mental Capacity Assessment and the time and date this was carried out.

6.1.2 Identification of the Decision Maker who will make the decision and if relevant chair a Best Interest Meeting.

6.1.3 Evidence of the consultation with the incapacitated person.

- 6.1.4 Evidence of the date and time that a consultation, with relevant others, took place and any information that they have provided regarding the wishes and feelings of the person.
- 6.1.5 Options discussed together with the benefits and burdens of each option which should include discussion on the least restrictive option for the situation.
- 6.1.6 Clear documentation as to why the option has been selected and the other options rejected.
- 6.1.7 Clear documentation if anyone disagrees with the decision made.

7 LASTING POWER OF ATTORNEY

- 7.1. A Lasting Power of Attorney (LPA) is a legal document which allows individuals to give people they trust the authority to manage their affairs if they lack capacity to make certain decisions for themselves. As such the attorney has significant responsibility and must act in the person's best interest.
- 7.2 The person chosen to make decision on behalf of the donor is known as the **Attorney**. The attorney must also be over eighteen years of age and must themselves have the mental capacity to act as an attorney.
- 7.3 The LPA for Health and Welfare, gives the attorney the power to make decisions about the donor's health and care. It covers day-to-day decisions like food and drink, clothing and activities, and bigger decisions such as where to live, and whether to receive medical treatment. It can only be used when the donor has lost the mental capacity to make the relevant decision for themselves.
- 7.4 The LPA for Property and Finance gives an attorney the authority to make decisions about the donor's property and money. Again, this can be day-to-day decisions, such as paying a bill, or more complex financial decisions, such as selling the donor's property or shares. A donor can choose for it to be used either when they lack mental capacity to make the relevant financial decision for themselves, or as soon as the LPA is registered.
- 7.5 Both types of LPA give the donor flexibility as to what decisions they want the attorney to have the power to make, so it is important for social care and health staff working with an LPA to know exactly what is and is not contained within it.
- 7.6 To be legally valid, the LPA must be registered with the Office of the Public Guardian (OPG) before use. When shown an LPA, you should check whether the LPA is registered. Additionally, to check if an LPA is valid, you can search OPGs Register <https://www.gov.uk/government/publications/search-public-guardian-registers>
- 7.7 There may be times when it is necessary to challenge or object to the LPA's decision if it is felt they're not acting in a person's best interest.

8 HUMAN RIGHTS ACT

Implications of the Human Rights Act have been considered in the formulation of this document and they have, where appropriate, been fully reflected in its wording.

9 INCLUSION AND DIVERSITY

This document has been assessed against the Equality Impact Assessment Form from the Trust's Equality Impact Assessment Guidance and as far as we are aware there is no impact on any protected characteristics.

10 MONITORING AND REVIEW

10.1 This standard operating procedure will be reviewed every 3 years in line with policy monitoring and review arrangements.

11 ACCESSIBILITY STATEMENT

This document can be made available in a range of alternative formats e.g., large print, Braille, and audio cd.

For more details, please contact the HR Department on 01942 77 3766 or email equalityanddiversity@wwl.nhs.uk

Equality Impact Assessment Form

STAGE 1 - INITIAL ASSESSMENT

Appendix 1

For each of the protected characteristics listed answer the questions below using Y to indicate Yes and N to indicate No	Sex (male / female / transgender)	Age (18 years+)	Race / Ethnicity	Disability (hearing / visual / physical / learning disability / mental health)	Religion / Belief	Sexual Orientation (Gay/Lesbian/ Bisexual)	Gender Re-Assignment	Marriage / Civil Partnership	Pregnancy & Maternity	Carers	Other Group	List Negative / Positive Impacts Below
Does the policy have the potential to affect individuals or communities differently in a negative way?	n	n	n	n	n	n	n	n	n	n	n	
Is there potential for the policy to promote equality of opportunity for all / promote good relations with different groups – Have a positive impact on individuals and communities.	y	y	y	y	y	y	y	y	y	y	y	
In relation to each protected characteristic, are there any areas where you are unsure about the impact and more information is needed?	n	n	n	n	n	n	n	n	n	n	n	If Yes: Please state how you are going to gather this information.

Job Title	MCA/DOL's Lead			Date	October 2024
-----------	----------------	--	--	------	--------------

IF 'YES an NEGATIVE IMPACT' IS IDENTIFIED - A Full Equality Impact Assessment STAGE 2 Form must be completed. This can be accessed via <http://intranet/Departments/Equality Diversity/Equality Impact Assessment Guidance.asp>

Please note: As a member of Trust staff carrying out a review of an existing or proposal for a new service, policy or function you are required to complete an Equality Impact Assessment. By stating that you have NOT identified a negative impact, you are agreeing that the organisation has NOT discriminated against any of the protected characteristics. Please ensure that you have the evidence to support this decision as the Trust will be liable for any breaches in Equality Legislation.

Appendix 2

POLICY MONITORING AND REVIEW ARRANGEMENTS

Para	Audit / Monitoring requirement	Method of Audit / Monitoring	Responsible person	Frequency of Audit	Monitoring committee	Type of Evidence	Location where evidence is held
	SOP to be reviewed annually- Sept 2024	Safeguarding Service to complete	Safeguarding Service	Annually	Safeguarding Executive Group	Updated SOP	Safeguarding Service shared drive