

Mental Capacity Policy August 2021

SERVICE POLICY STATEMENT

The service delivery and decision making, within the Extra Care Housing Service must comply with the Mental Capacity Act 2005.

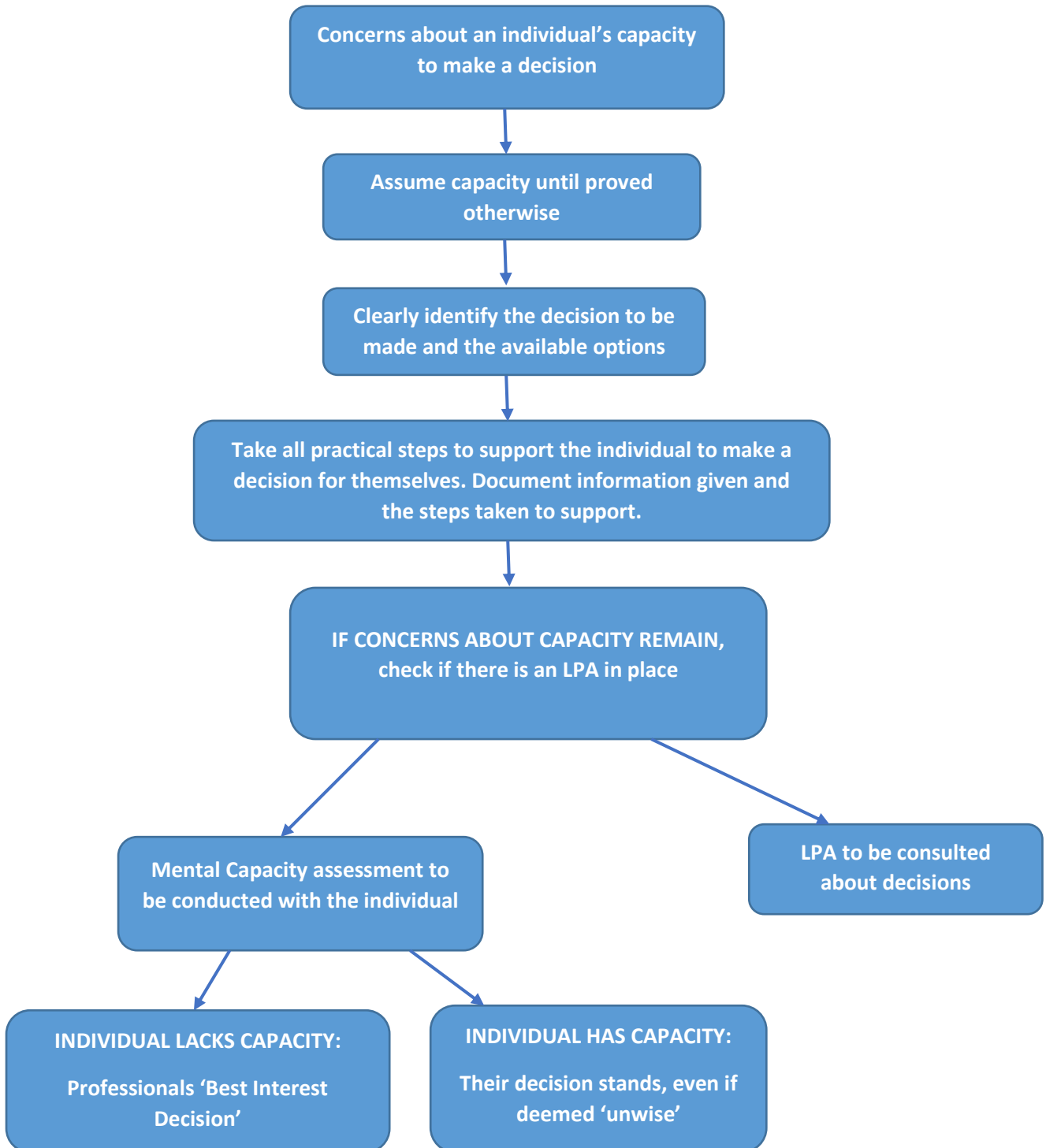
The capacity of the vulnerable adult, to give their informed consent is significant, but not the only factor in deciding what action to take.

Mental Health Act or Mental Capacity Act?

	Mental Capacity Act 2005	Mental Health Act 1983
AGE	Must be over 16 years old	No age limits
CAPACITY	Applies to those who lack capacity as defined by the standard test (can also be used to plan ahead for loss of capacity)	Does not require a lack of capacity
BEST INTERESTS	Decisions must be made in the best interests of the individual lacking capacity. (Protection of others is not included)	Detention in a medical establishment on the grounds of the individual's health & safety or for the protection of others
MEDICAL TREATMENT	Treatment decisions made in the individual's best interests	Treatment for Mental disorders only
RESTRICTION OF LIBERTY	Allows care and treatment including restraint, when necessary to protect the individual from harm. **A Deprivation of liberty must be authorised via DoLS	Allows a range of compulsory powers to detain and treat without consent in the face of resistance. The least restrictive principle must be applied
POWERS OF ATTORNEY	POA can make decisions	POA have no authority over treatment of detained individuals

The 5 Principles of the Mental Capacity Act 2005

- **Assume the person has capacity** unless proved otherwise
- **Support Individuals** to make their own decisions
- **Unwise decisions** should not automatically be attributed to lacking capacity
- Decisions made for a person who is lacking capacity should be done in their **Best Interests**
- Decisions made for a person who is lacking capacity must consider the **Least Restrictive** way of achieving the desired outcome. An individual's freedom should not be limited as far as possible.



Mental Capacity Assessments

Mental Capacity Assessments are carried out, with the vulnerable adult and conducted by a Social Worker or similar professional Practitioner. Capacity assessments may be a lengthy process, as the individual is supported to gradually understand as much as possible about the options being explored.

It is important to understand that a Capacity assessment is completed with reference to specific tasks or decisions, and that a blanket decision about capacity is not generally made.

For example, an individual may lack capacity around finances but may be deemed as having full capacity for making decisions about their dietary arrangements.

Issues arising from a lack of mental capacity for decisions relating to day-to-day care interventions, including administration of medication, personal care and food & drink should be set out within the care and support plan.

The test to assess capacity

Two-stage functional test of capacity

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

Stage 1. Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,

Stage 2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA says that a person is unable to make their own decision if they cannot do one or more of the following four things:

- 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 talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities – is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision.

Lasting Powers of attorney (LPAs)

Adults over the age of 18 years can authorise another adult over the age of 18 years to make decisions on their behalf in the event of a loss of capacity. Lasting powers of attorney can be made for financial and / or for health and welfare matters.

Once the LPA has been registered with the Office of the Public Guardian (OPG) the appointed attorney will have authority to make a decision on behalf of the individual, if the individual lacks capacity to make the decision, including consenting to medical treatment.

Extra care housing staff must ask to see evidence of a power of attorney, to check that the power has been registered and that the relevant decision falls within the scope of the power. A copy of the LPA should be filed on site for reference.

Powers of attorney must act in the donor's best interests and if professionals have concerns about an attorney's actions, the matter must be referred to the Safeguarding Team who will liaise with the Office of the Public Guardian.

Information Sharing

Adults have a general right to independence, choice and self-determination including control over information about themselves. In the context of adult safeguarding, these rights can be overridden in certain circumstances. Emergency or life-threatening situations may warrant the sharing of **relevant** information with **relevant** emergency services, without consent.

The law does not prevent the sharing of sensitive, personal information **within** organisations, nor does it prevent sharing of personal information between organisations where the public interest served will outweigh the individual's interest.

The Extra Care Housing Service will share safeguarding information with the right people, at the right time in order to:

- Prevent death or serious harm
- Coordinate effective and efficient responses
- Enable early interventions to prevent the escalation of risk
- Prevent abuse and harm that may increase the need for care and support
- Maintain and improve good practice in adult safeguarding
- Reveal patterns of abuse that were previously undetected
- Identify low level concerns that may identify people at risk of abuse
- Help people to access the right kind of support to reduce risk and promote wellbeing
- Help identify people who may pose a risk to others, and where possible, work to reduce offending behaviour

Self Neglect & Hoarding

Extra Care Housing Staff should engage with individuals who are not looking after themselves, whether they have capacity or not. Not doing so can have serious implications for the health and wellbeing of the individual concerned and can put other Tenant's, visiting family & friends and staff at risk of harm from fire, gas, water leaks and infestation.

Risk Assessments must be in place exploring all associated factors.

The policy recommends multi-agency partnership working to determine the most favourable approach for achieving engagement with the adult, in conjunction with the care and support plan for delivering the agreed goals and achieving the best outcome or solution. The Extra Care Housing Service should involve the following professionals as part of the partnership approach:

- Social Worker
- GP
- Tenancy & Housing Officer

- Mental Health Team
- London Fire Brigade
- Dietician
- Family / NOK

In the event that the individual is refusing support, a Safeguarding enquiry should be raised.

Best Interests Decisions

Once it has been established that an individual is lacking mental capacity to make a decision, a 'Best Interests' decision is made on their behalf. This decision will be made through a professionals 'Best Interest Meeting' and will follow the Best interest Checklist which requires:

- Avoidance of discrimination
- Encouragement of participation by the individual
- Consideration of all relevant circumstances relating to the decision
- Consideration of the Individual's views
- Consultation with all involved parties (to include professionals and family/friends)
- Assessment of the likelihood of the Individual regaining capacity
- The Least restrictive options to be used.

Key messages

The Mental Capacity Act (MCA) 2005 applies to everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales who are unable to make all or some decisions for themselves.

The MCA is designed to protect and restore power to those vulnerable people who lack capacity.

The MCA also supports those who have capacity and choose to plan for their future – this is everyone in the general population who is over the age of 18.

All professionals have a duty to comply with the Code of Practice. It also provides support and guidance for less formal carers.

The Act's five statutory principles are the benchmark and must underpin all acts carried out and decisions taken in relation to the Act.

Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity – follow the two-stage test.

The MCA is designed to empower those in health and social care to assess capacity themselves, rather than rely on expert testing – good professional training is key

If capacity is lacking, follow the checklist described in the Code to work out the best interests of the individual concerned

Understanding and using the MCA supports practice – for example, application of the Deprivation of Liberty Safeguards

Useful Contacts

Croydon Adult Support: Croydon.AdultSupport@croydon.gov.uk

Croydon Safeguarding Team: Safeguarding.Adults@croydon.gov.uk

Croydon DoLS Team: DoLS.Croydon@croydon.gov.uk