Protocol for requesting ambulance support to admit a person to hospital or residential care under the Mental Capacity Act 2005

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Purpose of the Protocol

This protocol is aimed to assist health and social care practitioners to understand the use of the Mental Capacity Act in relation to care home or hospital admissions.

It specifically addresses situations where a person who lacks capacity to give or refuse consent may be resisting admission.

The Deprivation of Liberty Safeguards Code of Practice clearly indicates that it is permissible to convey a person between their home and hospital or residential/nursing care environments using the Mental Capacity Act.

Taking someone to a hospital or a care home

2.14 Transporting a person who lacks capacity from their home, or another location, to a hospital or care home will not usually amount to a deprivation of liberty (for example, to take them to hospital by ambulance in an emergency.) Even where there is an expectation that the person will be deprived of liberty within the care home or hospital, it is unlikely that the journey itself will constitute a deprivation of liberty so that an authorisation is needed before the journey commences. **In almost all cases, it is likely that a person can be lawfully taken to a hospital or a care home under the wider provisions of the Mental Capacity Act, as long as it is considered that being in the hospital or care home will be in their best interests.**

2.15 In a very few cases, there may be exceptional circumstances where taking a person to a hospital or a care home amounts to a deprivation of liberty, for example where it is necessary to do more than persuade or restrain the person for the purpose of transportation, or where the journey is exceptionally long. In such cases, it may be necessary to seek an order from the Court of Protection to ensure that the journey is taken on a lawful basis.

1. Requesting the assistance of the ambulance service

1.1. When requesting the assistance of the ambulance service to transport someone who does not have capacity to consent to the admission, it is important that the ambulance service is aware of the nature of the request.

1.2. Health or social care professionals should contact the Clinical Hub (Ambulance Control) on the non emergency line: 08456 020455. They should make the following information available to the clinical hub:

1.2.1. That the person is to be admitted in their best interest because they lack capacity to consent or refuse the admission.

1.2.2. The name and contact phone number of the person who has made the assessment of capacity and best interest decision in relation to the admission. If that person is not available, then the contact phone number of another professional with knowledge of the situation should be given.

1.2.3. Whether the person is likely to be compliant with the admission and whether the crews are likely to encounter verbal or physical resistance.

1.2.4. What level of persuasion or other methods may be required to facilitate the person's compliance with the transfer?

1.2.5. Who will be available at the time the ambulance crew arrives to assist and support the person and facilitate the transfer.

1.2.6. Whether sedation may be required, and if so, what arrangements have been made for its administration? **PLEASE NOTE: Ambulance clinicians cannot administer sedation.** (Deprivation of Liberty Safeguards may be required please refer to Appendix 'D' for more detail).

1.2.7. Whether it is anticipated that any restriction of movement may be required. If so, information about the extent to which restriction of movement and/or force is likely to be necessary and the nature of any such a restriction of movement. This should include information about what level of restriction of movement/restraint is considered proportionate to the level of risk if the person is not admitted as planned. **Short term restriction of movement/restraint is permissible under the Mental Capacity Act if proportionate to the risk posed if restriction of the person is not employed.**

1.2.8. Information about the urgency and timeframe of the transport should also be given to the clinical hub to assist them to prioritise the demands on the ambulance crews.

1.2.9. Wherever possible, requests should be made within normal working hours and transfers should be carefully planned. Outside working hours, only emergency ambulances are available to respond to requests and the ability to plan the timing of the transport will be reduced due to other service demands.

2. Information that must be available to ambulance crews

2.2 In addition to the above information, the following should also be made available to the ambulance crew, especially where the person is likely to resist the admission:

2.3 Decision makers - G.P, Health or Social Care employee are responsible for communicating information sufficient to merit an auditable assessment of the person's mental capacity to consent to the admission. The Mental Capacity Act Code of Practice advises (4.61) that it is good practice to document Mental Capacity assessments and Best Interest Decision making.

2.4 The assessment should include an assessment of the person's capacity to consent or refuse transport in an ambulance. (See Appendix A) It should include details of others consulted as part of the assessment and whether anyone disagrees with the determination.

2.5 According to section 5 of the mental capacity act, the person who is responsible for carrying out the action must have a reasonable belief that the person lacks capacity for the decision at the time it needs to be made and a reasonable belief that the action is in the person's best interest. For the purpose of ambulance transport, this determination will be made by the ambulance crew; however, they must be assisted in making the decision based on the advice and information provided.

2.6 A written record of the best interest decision including details of who was consulted, what level of restriction is likely to be required and why it is felt that is proportionate to the level of risk to the person.

2.7 The person who completed the above assessment should be present at the time of the transfer wherever possible. If this is not possible, the ambulance crew should be given the person's contact phone number.

2.8 If the person is likely to resist the admission, then a health or social worker involved in the person's care should be present when the crew arrives. It may also be helpful to have either a family member or neighbour present to support the person.

If restraint is needed to remove a patient from their home against their will, the ambulance service may ask the police to be present to assist.

It is important to keep in mind that neither the ambulance crew nor the police are obligated to assist if they disagree with the assessment of capacity, the best interest decision, or the proportionality of the response.

If the situation is likely to be complex, the person requesting ambulance assistance may wish to discuss the situation with the Clinical Supervisor on duty at the Clinical Hub. Clinical Supervisors are a group of experienced health professionals. They can be contacted on: 08456 047263.

3. Good Practice guidance for admissions to hospital or residential care using the Mental Capacity Act 2005

In arranging hospital admissions, it is important to recognise the difference between the Mental Capacity Act 2005 and the Mental Health Act 1983 (as amended 2007). All parties should be clear which Act is being relied upon to facilitate admission.

This protocol is not designed to explain the principles of the mental capacity act, how to assess capacity or how to make best interest decisions. For further guidance on these points, staff must refer to the mental capacity act code of practice and their own agency policy and procedures.

Health and social care staff with a duty of care toward the person, have a duty to follow the 5 principles of the mental capacity act. Where a person lacks capacity to make a specific decision, health and social care workers must apply the statutory best interest checklist. They must consider what intervention may be necessary to keep a person safe. Sometimes what is in a person's best interest will not be the same as the person's stated wishes.

For a summary of the Mental Capacity Act, please see Appendix B.

4. Assess Capacity to Consent to Admission

When arranging an admission, the decision maker should ensure that they consider whether the person has given consent to the admission. If there is any doubt over whether the person has mental capacity to consent to the admission, this should be assessed.

Arranging admission to hospital will usually be carried out by a GP.

Arranging admission to residential care will usually be carried out by a social care worker. An exception to this would be where the admission is to be funded by the NHS.

If Capacity is in doubt, it should be assessed. Compliance & Consent

The first principle of the mental capacity act is that a person must be assumed to have capacity unless it is established that he lacks capacity. However, compliance should not be automatically interpreted as consent. If there is a reason to doubt the person's capacity, such as confusion, disorientation or lack of understanding of the reasons for the admission, capacity should be assessed and recorded.

If a person cannot give informed consent, the admission should be carried out under the framework of the mental capacity act including a recording of why the admission is considered to be in the person's best interest and who was consulted as part of the decision-making process.

5. Where a person has mental capacity to refuse admission

If a person has capacity to decide where they should reside and capacity to give or refuse consent to the proposed care or treatment, they cannot be compelled to leave their home.

The third principle of the mental capacity act states that a person is not to be treated as unable to make a decision merely because he makes an unwise decision. However, in this case, health and social care professionals still have a duty of care toward the person. Care and treatment should be offered to the person and support given to assist them to understand the risk to their health and welfare of refusing admission.

If there is a significant risk to a vulnerable person from self-harm or self-neglect, a multiagency meeting should be held to discuss a risk management plan for the person including how health and social care can ensure they have fulfilled their duty of care toward the person.

All physical conditions should be treated in accordance with normal procedures. If the person has a mental disorder of a nature and degree that warrants assessment or treatment in hospital for that mental disorder, then a Mental Health Act assessment may be requested.

6. Where a person does not have mental capacity to give or refuse consent

If a person does not have mental capacity to give or refuse consent and they are indicating they do not wish to be admitted (either verbally or by any other means), this should be taken into account when deciding whether the admission is in the person's best interest.

Further information about considering a person's wishes in relation to his or her best interest can be found in Appendix C.

A person may be admitted to residential care against his or her stated wishes using section 5 of the mental capacity act. Those facilitating the admission must be clear that any intervention is necessary to keep the person safe and proportionate to the risk of harm to the person.

7. Where a person who lacks capacity objects to admission to hospital

If a person lacks capacity to consent to being admitted to hospital for treatment of a mental disorder AND he or she is objecting to the admission or the proposed treatment, a Mental Health Act assessment must be requested.

8. Deprivation of Liberty

Admitting a person to a residential care home or hospital against their stated wishes does not necessarily mean that the person is detained or deprived of their liberty in that place. However, where a person needs to be detained or deprived of their liberty in a hospital or care home in order to keep them safe, additional safeguards must be applied.

For more information about the deprivation of liberty safeguards see Appendix D.

9. Where a person is resisting admission

The fifth principle of the mental capacity act states that before an act is done or a decision made in a person's best interest, regard must be had to whether the outcome can be as achieved in a way that is less restrictive of the person's rights and freedoms. Being admitted to residential care against ones stated wishes is a restriction of the person's freedom.

If a person is to be admitted into residential care in their best interest, every effort should be made to encourage the person to comply with the admission and to avoid the use of force, restriction or restraint. Such measures may include employing the support of a trusted person such as a friend or neighbour who may help to put the person at ease.

Experience often shows that professionals engaging positively with the person and making use of a range of interpersonal and professional skills may be successful in avoiding the need for restrictions or force.

Consideration must be given to whether the proposed intervention is necessary to keep the person safe and also whether it is proportionate to likelihood and seriousness of harm which would otherwise occur. For example, it may not be necessary for the person to leave their home the same day. Consideration could be given to alternate arrangements to keep the person safe and to discuss the admission again on another occasion.

The person's well being is the most important consideration. Staff should be cautious about how their own anxiety about the situation may affect their decision-making. Staff should seek support and guidance from managers or colleagues when managing high risk situations.

Section 5 of the Mental Capacity Act allows restriction or restraint in a person's best interest, but only if it is

- Necessary to protect *the person* from harm (not other people or staff)
- The least restrictive option
- Proportionate to the risk of harm

These conditions must be met whenever there is (1) the use or threat of force to help to do an act which the person resists, or (2) restriction of the person's liberty of movement, *whether or not they resist*. The conditions must also be met where medical treatment such as sedation is used to restrict the person.

10. Multi-disciplinary Best Interest planning meetings

If an admission is likely to require restrictive measures, a multidisciplinary best interest meeting should be held wherever possible to plan intervention and make a clear record of decision-making. Records should include information about other methods tried previously to avoid use of restraint. Records should also include information about the risk to the person and evidence that the restraint, restriction, force or threat of force is proportionate to the risk.

Emergency admissions might be avoided by holding multidisciplinary planning meetings at an early stage. Family members or others who care about the person can be involved in the meeting to help plan an appropriate response.

11. Disputes

In the event of a dispute between any of the professional parties present then the patient's safety and wellbeing within their current environment should be everyone's primary concern while the issue is resolved. Social Care and Health provisions should be mobilized to ensure and maintain the safety and wellbeing of the person in their current environment.

A Best Interest Meeting should be convened as soon as practicable to help with the decision making about next steps. Alternatively you may choose to seek advice from the most appropriate Health or Social Care Legal departments regarding whether an approach should be made to the Court of Protection.

Appendix A – or similar (FACE)

Mental Capacity Assessment and Best Interests

What procedure or treatment does the person have to make a decision about?

What information have they been given by you or others about the procedure or treatment and risks involved in consenting to it or refusing it?

You should assume that the person has capacity to make the decision unless they are giving you cause to doubt it. What is causing you concern that they lack capacity?

Does the person have an impairment of, or disturbance in, the functioning of their mind or brain?		**If yes, briefly describe**
YES	**NO**	**If no, the MCA does not apply**

Whose opinion have you asked for to help you decide about capacity?

Does the person have a general understanding of: what decision they need to make, why they need to make it and the likely consequences of making, or not making, this decision?

Explain your decision
Yes –
No – Explain why you think they cannot understand this

Is the person able to retain the information long enough to make the decision?

Explain your decision
Yes –
No – Explain why you think they cannot retain the information

Is the person able to use and weigh up the information relevant to this decision?

Explain your decision
Yes -
No – Explain why you think they cannot weigh up the information

Can the person communicate their decision by talking, using sign language or any other means?
Explain your decision **Yes –** **No – Explain why they cannot communicate**
IMPORTANT - If you have answered 'NO' to any of the above 4 questions then the person you are assessing is deemed to be lacking in capacity.
Before making a decision in someone's best interests, because you have assessed them as lacking capacity to make this particular decision, consider:
Even if the person lacks capacity, can the decision be delayed until they regain capacity?
Explain your decision (if yes don't proceed)
Do they have an advance decision which covers this issue? If they do then you should follow the guidance in this document.
Before deciding on best interests ensure that you have done whatever is possible to permit and encourage the person to take part, or to improve their ability to take part, in making the decision.
Consider the person's past and present wishes and feelings (in particular if they have been written down).
Explain what you took into account (eg family or friends' assertions re the patients wishes)
Consider any beliefs and values (e.g. religious, cultural or moral) that would be likely to influence the decision in question and any other relevant factors.
Explain what you took into account
Who else have you asked about what is in the person's best interest and what did they say? Does anyone disagree with the decision?
Explain (eg GP or other professionals who knows the patient)
What have you decided is in their best interests? Include details of any restrictions or restraint that may be necessary.

Signature	**Job title**
Print Name	**Date**

Appendix B

The Five Principles of the Mental Capacity Act 2005

1. A person must be assumed to have capacity unless it is established that he lacks capacity.

2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

4. 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.

5. 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 as effectively achieved in a way that is less restrictive of the person's rights and freedoms.

Assessing Capacity

Does the person have an impairment of, or a disturbance in the functioning of the mind or brain? Does the impairment or disturbance mean the person is unable to make a decision when they need to?

A person is unable to make a decision if they cannot:

Understand (relevant) information about the decision.
Retain that information in their mind (long enough to weigh it or use it).
Weigh or use that information as part of the decision-making process OR;
Communicate the decision by talking, sign language or any other means).

Making Best Interest Decisions: The Best Interest Checklist

Working out someone's best interests cannot be based simply on age, appearance, condition or behaviour. Every effort should be made to encourage and enable the person to take part in making the decision.

If there is a chance the person will regain the capacity, then consider if it is possible to put off the decision until that time.

If not, consider (1) The person's past and present wishes and feelings, beliefs and values, (2) The views of other people who are close to the person especially any power of attorney, (3) all the relevant circumstances including medical, emotional and social benefits and disbenefits of the proposed action.

A best interest decision is be made by weighing up all relevant information.

Mental Capacity Act - Section 5

Before carrying out an action in a person's best interest, health and social care professionals must have a reasonable belief that the person lacks capacity to make the decision and a reasonable belief that the treatment or care to be provided is in the person's best interest.

Appendix C

The role of a person's wishes in best interest decisions

There are several case judgements made by the court of protection which are helpful in understanding the weight that should be given to a person's stated wishes when considering what is in his or her best interest. Excerpts from two of the judgements are included below.

Re S and S: *Her Honour Judge Hazel Marshall QC*

The views and wishes of the person in regard to decisions made on his behalf are to carry great weight.

Where a person expresses a wish that is not irrational, not impractical and not financially irresponsible, that wish should be implemented unless there is a sufficiently detrimental effect for the person of doing so.

"It is the basic right of any adult to be free to take and implement decisions affecting his own life and living […] a person who lacks mental capacity should not be deprived of that right except insofar as is absolutely necessary in his best interests."

Re: P: *The Honourable Mr. Justice Lewison*

"I cannot see that it would be a proper exercise for a third party decision maker consciously to make an unwise decision merely because [the person] would have done so. A consciously unwise decision will rarely if ever be made in [a person's] best interests."

Appendix D

Deprivation of Liberty Safeguards

Where a person has been admitted to residential care or hospital against his or her stated wishes, especially where any element of restriction or restraint was necessary to facilitate the admission, the care home or hospital must consider whether the care the person requires is a deprivation of liberty.

This is particularly important where there are any other restrictions of liberty involved in person's care such as a family member objecting to the admission, restrictions on contact between the person and any family or friends, or any restrictions of the person's freedom of choice or movement within the unit.

If the person is detained under a section of the Mental Health Act, then the deprivation of liberty is already authorised by a lawful process.

If the person is deprived of their liberty following a Mental Capacity Act admission, then the Deprivation of Liberty Safeguards must be used to seek an authorisation to ensure that the detention is lawful.

In considering whether a person's care amounts to deprivation of liberty, staff should refer to chapter 2 of the Deprivation of Liberty code of practice. Advice can be sought by contacting the Devon DoLS office on 01392 381676 or

To determine if a deprivation of liberty is occurring, start with the specific situation of the individual and consider the whole range of factors involved such as type, duration, and effects of the restrictions involved.

The difference between a deprivation of liberty [needs to be authorised] and restriction of movement [permissible under the mental capacity act] is the degree or intensity of the restriction and not the nature or substance.

Some Key Questions to consider:

- Is the person under constant supervision and control?
- Do staff exercise complete and effective control over the care and movement of a person for a significant period?
- Is the person prevented from maintaining contact with the outside world or maintaining social contacts?
- Are family, friends or carers are prevented from moving the person to another care setting or taking them out?
- Has a decision been made to prevent the person from leaving or being released to the care of others?
- Has a request by carers for a person to be discharged to their care been refused?
- Does the cumulative effect of all the restrictions placed on a person amount to deprivation of liberty even if the restrictions considered individually would not?

South West Supervisory Body – Devon, Cornwall, Torbay, Plymouth, Somerset, Dorset, Bournemouth & Poole.