

Mental Capacity Act 2005 Policy

Partners in Care

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Mental Capacity Act 2005 Policy

Contents

<u>Title</u>	<u>Page</u>
1. Introduction	4
2. Legal Context	5
3. Purpose	7
4. Scope	7
5. Policy Statement	8
6. Governance and Quality Assurance	9
7. Care Quality Commission	9
8. Consultation and Further Advice	10
9. Independent Mental Capacity Advocates (IMCA)	11
10. Restriction of Movement and Restraint	11
11. Consent and Capacity	12
12. Interface of MHA 1983 and MCA 2005	12
13. Young People and Mental Capacity	14
14. Personalisation and Mental Capacity Act	15
15. Recording	18
16. Information Sharing and Information Governance	19
17. Training	20
18. Monitoring and Review	20

1. Introduction:

- 1.1** This policy has been produced as a joint document between Devon County Council (DCC) and Torbay and Southern Devon Health and Care NHS Trust (TSDHCT)
- 1.2** The Mental Capacity Act (MCA) 2005 provides a statutory and quality framework to empower and protect some of the most vulnerable people in society. It makes it clear who can take decisions, in which situations and how they should go about this in respect of people who lack capacity to make particular decisions for themselves.
- 1.3** The Act enshrines in statute a legal and statutory framework to empower an individual to remain central to the decision-making process. The Act ensures that a robust assessment process is undertaken to evidence a lack of capacity and where an individual is assessed as lacking capacity related to a specific decision then a Best Interest checklist is followed to safeguard the individual's Human Rights.
- 1.4** Section 5 of the Act allows carers, healthcare and social care staff to carry out certain tasks without fear of liability. These tasks involve the personal care, healthcare or treatment of people who lack capacity to consent to them. The aim is to give legal backing for acts that need to be carried out in
- 1.5** The best interests of the person who lacks capacity to consent
- 1.6** It provides three fundamental powers in relation to health and social care decisions;
 - A legal framework for people with capacity to record their wishes for future treatment, especially the refusal of treatment (Advance Decision - AD) and
 - A legal framework for staff and others to make a Best Interests decision on behalf of another person.
 - The opportunity for people who have capacity to plan for a time when they may lack capacity (Lasting Power of Attorney - LPA)

2. The Legal Context –

- 2.1 The MCA 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.
- 2.2 The MCA is designed to protect and restore power to those vulnerable people who lack capacity.
- 2.3 The MCA offers direction to people who have capacity and choose to plan for their future ;this is everyone in the general population who is over the age of 18 (note whilst 16/17 year olds cannot make an Advance Decision or Lasting Power of Attorney they can make an Advance Statement of wishes and preferences.
- 2.4 Compliance with the MCA provides legal protection in practice for health and social care staff and support and guidance for carers.
- 2.5 A Code of Practice is available which all professional have a duty to comply with. The MCA Code of Practice can be accessed:

In Devon: <http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act>

In Torbay: icare http://icare/Operations/mental_capacity_act/Pages/default.aspx

- 2.6 There are five statutory principles which are the benchmark of the MCA and must underpin all acts carried out and decisions taken in relation to the Act. They are as follows:
- **A person must be assumed to have capacity UNLESS it is proved otherwise.**
 - **Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity.**
 - **An unwise decision does NOT in itself indicate a lack of capacity.**
 - **Any act or decision made must be in the person's Best Interests.**
 - **Any act or decision should aim to be the least restrictive option to the person in terms of their rights and freedom of action.**
- 2.7 The MCA provides a capacity assessment test designed to support and empower those in health and social care to assess capacity themselves in relation to the provision of health and social care treatment.
- 2.8 The MCA provides a Best Interests checklist to direct those making Best Interests decisions for people who lack capacity including the requirement to consult with families, carers and close friends and emphasises that assessment of capacity and Best Interests decision making is integral to day to day practice
- 2.9 The Act introduces sanctions:

- New crime of ill treatment or neglect of an incapacitated adult (no age is specified) from 1st April 2007.
- Civil litigation – against individual workers and organisations if the Code of Practice is not followed.
- Protection from liability for staff and supporters is provided under section 5 MCA so that professionals and carers can act when they need to, in reasonable belief of best interests. (Recording is important to demonstrate this.)
- By the Court of Protection (court orders; contempt of court; displacement of Powers of Attorney and Deputies.
- Acts of restraint or deprivation of liberty carried out on any person will be open to complaint, legal action, abuse and enquiry unless certain conditions are met, or there are exceptional circumstances. This includes paid and unpaid carers and staff, legal representatives, nominees and advocates.
- DCC and TSDHCT have produced a joint Deprivation of Liberty Safeguards Policy. This Policy can be accessed along with other related resources

In Devon: <http://www.devon.gov.uk/mca-deprivation-of-liberty-policy.pdf>

In Torbay: icare <http://icare/Operations/DOLS/Pages/default.aspx>

2.10 The Act and Human Rights. Article 5 of the Human Rights Act 1998 concerns each person's right to liberty and personal freedom, and Article 6 concerns the right not to be subjected to inhuman or degrading treatment. These rights are protected by criminal and civil law unless the Code of Practice can be shown to have been reasonably followed.

2.11 DCC and TSDHCT have a duty to commission an Independent Mental Capacity Advocates service to ensure that those who lack capacity and are unbefriended are able to have their Human Rights observed. The IMCA service can be contacted via www.ageconcerndevon.co.uk or www.livingoptions.org

2.12 The Mental Capacity Act 2005 should be read in conjunction with other relevant Legislation, Codes of Practice and Statutory Instruments.

- Mental Health Act 2007
- Mental Health Act 1983
- Mental Health Code of Practice
- Human Rights Act 1998
- Care Standards Act 2000
- NHS Act 2006
- National Assistance Act 1948
- Data Protection Act 1998

- National Health Service and Community Care Act 1990

3. Purpose:

- 3.1** The purpose of this policy is to ensure that each organisation has systems and quality assurance processes in place to comply with the Mental Capacity Act.
- 3.2** This document provides a framework to increase staff awareness of the legal responsibilities and duties that must be undertaken.
- 3.3** This policy must be adhered to within all levels of DCC and TSDHCT.
- 3.4** The principles within the document are applicable to anyone aged 16 yrs and above who may lack capacity.
- 3.5** DCC and TSDCT have jointly produced a 'Mental Capacity Act Practice Guidance Tool' to be read in conjunction with both this policy and the MCA code of Practice. The Guidance tool is specifically written to support staff with the application of the MCA in practice. The Mental Capacity Act Practice Guidance and other related information can be found:

In Devon: <http://www.devon.gov.uk/index/socialcarehealth/adult-protection/mca-practice-guidance.htm>

In Torbay: icare: http://icare/Operations/mental_capacity_act/Pages/default.aspx

4. Scope:

- 4.1** This policy applies to all health and social care staff who are employed by DCC and TSDHCT.
- 4.2** The Act generally applies to people aged 16 years and over with the exception of children aged less than 16 years who lack capacity and will continue to lack capacity in relation to their property and financial affairs when they reach 18 years of age.
- 4.3** It is recognised that partner agencies and specific service areas within DCC and TSDHCT may have to develop some further specific MCA procedures and guidance to meet the needs of their particular context and function. This should be done within the framework of this overarching policy.
- 4.4** This policy must be read in conjunction with other policies and procedures, for example: FACS, Data Protection, Consent and all clinically policy

- 4.5** DCC and TSDHCT will be individually responsible for the development and review of a Mental Capacity Act 2005 and Deprivation of Liberty Safeguards information web page available to the General Public. The web page will provide information in both Easy Read format and also in different languages. Current web pages are:-

In Devon: <http://www.devon.gov.uk/mentalcapacityact>

In Torbay:

<http://www.torbaycaretrust.nhs.uk/ourservices/MentalCapacityAct/Pages/Default.aspx>

5. Policy Statement:

- 5.1** The issue of whether a person aged 16 years or over has the mental capacity to make a decision regarding his or her care commonly arises in health and social care settings. All health and social care professionals will potentially be in situations where they are required to assess the mental capacity of an individual to make a particular decision and to make Best Interests decisions.
- 5.2** Everyone working with or caring for an adult who may lack capacity to make decisions must comply with the MCA 2005 when making decisions or acting for such persons.
- 5.3** All those working within DCC & TSDHCT have a duty and commitment to protect vulnerable adults. Staff should work on the basis of an assumption of capacity.
- 5.4** Staff should consider people's capacity to take decisions as part of their normal assessment and care planning arrangements.
- 5.5** Where an adult may lack capacity to make a specific decision, a formal assessment of capacity may be necessary to determine capacity. Specific decisions or actions may need to be taken where an adult may not have capacity.
- 5.6** Where an adult may be vulnerable as defined in 'No Secrets' and may be being abused, either the DCC or TSDHCT Safeguarding Adult Multi Agency Policy must be followed. Interagency working is essential if the interests of a vulnerable adult are to be safeguarded. This Policy can be accessed:

In Devon <http://www.devonsafeguarding.org/adults/index.html>

In Torbay icare: <http://icare/Operations/SafeguardingAdults/Pages/default.aspx>

- 5.7** The MCA 2005 has implications for all aspects of the work with adults who may lack capacity and for all policies.

6. Governance & Quality Assurance:

- 6.1 DCC and TSDHCT have a joint Multi-agency Mental Capacity Act Sub-group to the Safeguarding Adult Board. The overall **aim** of the Local Implementation Network (LIN) is to lead implementation of the MCA and DoLS in Devon and Torbay ensuring good practice and a coherent approach across organisations within the MCA Sub-group.

7. Care Quality Commission (CQC):

- 7.1 The Care Quality Commission (**CQC**) has requirements in respect of standards which health and social care organisations must reach to be compliant with the MCA 2005 and to avoid sanctions. General guidance including a Summary of regulations, outcomes and judgement frameworks can be found at CQC Essential Standards of Quality and Safety.
- 7.2 Section 4 of the Health and Social Care Act 2008 requires CQC to have regard to “the need to protect and promote the rights of people who use health and social care services (including, in particular persons who are deprived of their liberty in accordance with the MCA 2005)”. The first two outcomes in ‘Guidance about compliance with the Health and Social Care Act 2008’ (Registration Requirements) regulations 2009 are specifically and deliberately aligned with the MCA Codes of Practice:
- Respecting and involving people who use services and
 - Consent to care and treatment.
 - They focus on rights, involvement, taking decisions, individualised care planning and review.
- 7.3 CQC states in “Essential Standards of Quality and Safety” (2009) that all people who use services should be protected from abuse, or the risk of abuse, and their human rights be respected and upheld. Specifically, CQC standard 7 states that all agencies must:
- Make sure that the use of restraint is always appropriate, reasonable, proportionate and justifiable to that individual
 - Where applicable, only use Deprivation of Liberty Safeguards when it is in the Best Interests of the person who uses the service and in accordance with the MCA 2005.
- 7.4 The Care Quality Commission ‘Essential Standards of Quality and Safety’ can be accessed via:

<http://www.cqc.org.uk/organisations-we-regulate/registering-first-time/essential-standards>

8. Consultation and Further Advice:

- 8.1 Within DCC & TSDHCT professionals will routinely come into contact with adults who may lack capacity. All staff should be familiar with the Mental Capacity Act Code of Practice (2007) and have access to their manager should they have any concerns. All managers are expected to have a good level of awareness with regard to the MCA, regardless of how often they are using the Act and must be able to support their staff where appropriate.
- 8.2 Where consultation or guidance is required or sought regarding an assessment of capacity or Best Interest's decision, this should be sought from the staff member's line manager, an experienced colleague, named or Organisational MCA Lead.
- 8.3 If the issue is not resolved the staff member will be advised by the Organisational MCA lead to seek Legal advice from the relevant legal Service.

9. Independent Mental Capacity Advocates (IMCA):

- 9.1 The IMCA service commenced in April 2007 in England. The current IMCA provider in Devon and Torbay is Age Concern Devon and Living Options.

DCC and TSDHCT have undertaken to jointly hold regular contract monitoring meetings with the IMCA provider on a quarterly basis, as a means of providing a level of scrutiny and quality assurance over the service provision.

In addition, DCC and TSDHCT will undertake an annual case and service audit, the outcome of which will be reported, as part of the governance process, to the joint DCC and TSDHCT Mental Capacity Act Sub Group and the relevant Safeguarding Adult Boards.

- 9.2 An IMCA is someone appointed to support a person who lacks capacity and has no one to speak for them, such as family or friends. There is a statutory duty to appoint an IMCA where the decision is any of the following:
- **Change of Accommodation:** An IMCA must be instructed where a decision is proposed about a move to or a change in accommodation where the person lacks capacity to make the decision and there are no family or friends who are willing and able to support the person. This includes moving to a care home for 8 weeks or more, or admission to hospital where admission is likely to last 28 days or more.
 - **Serious Medical Treatment:** NHS bodies must instruct and then take into account information from an IMCA where decisions are proposed about 'serious medical treatment' where the person lacks the capacity to make the decision and there are no family or friends who are willing and able to support the person.
 - **Care Reviews:** A responsible body can instruct and must consider an IMCA to support and represent a person who lacks capacity when:
 - (i) They have arranged accommodation for that person.
 - (ii) They aim to review the arrangements (as part of a care plan or otherwise)

(iii) There are no family or friends whom it would be appropriate to consult.

- **Safeguarding Adults (Adult protection):** DCC & TSDHCT have decided that an IMCA can be instructed to support and represent a person who lacks capacity to consent to the proposed measures where it is alleged that:
 - (i) the person is being or has been abused or neglected by another person and or
 - (ii) the person is abusing or has abused another person.

9.3 In safeguarding adult cases, access to IMCAs is not restricted to people who have no one else to support or represent them. People who lack capacity who do have family and friends are still entitled to have an IMCA to support them in safeguarding adult procedures. The decision-maker must be satisfied that having an IMCA will benefit the person.

9.4 Deprivation of Liberty Safeguards (DoLS):

In certain circumstances, a person who is subject to DoLS must have an IMCA instructed to support them. The IMCA will provide legal protection for vulnerable people who may be deprived of their liberty (other than under the Mental Health Act 1983) where they are in a hospital or care home, whether placed there under public or private arrangements.

10. Restriction of Movement and Restraint:

10.1 Restraint and restraint of a person lacking mental capacity is only permitted if the person using it reasonably believes it is necessary to prevent harm to the person, and if the restraint used is a proportionate response to the likelihood and seriousness of the harm.

10.2 Section 6 of the MCA sets out limitations on the use of restraint when taking action in connection with care and treatment. It defines restraint as the use or threat of force where a person who lacks capacity resists, and any restriction of liberty or movement whether or not the person resists.

10.3 TSDHCT and Devon County Council have developed Standard Operational Procedures to help staff understand their responsibilities relating to restraint.

TSDHCT version is available at [icare](http://icare/Operations/mental_capacity_act/Pages/default.aspx).

http://icare/Operations/mental_capacity_act/Pages/default.aspx

Devon's version is available at <http://www.devon.gov.uk/index/socialcarehealth/policies-procedures-guidance/assessment-elig-careman/healthandsafety-riskman/pol-phys-intervention/pol-phys-intervention-part2.htm#2-2-2>

10.4 The Deprivation of Liberty Safeguards (DoLS) are additional safeguards for people who lack capacity and are deprived of their liberty, but would not be eligible for the protections offered by the Mental Health Act.

10.5 DCC and TSDHCT have jointly produced a ‘Deprivation of Liberty Safeguards’ Policy. Any person who believes a person may be unlawfully being deprived of their liberty should in the first instance consult this policy for information and guidance as soon as possible. (Link provided on pg 6)

11. Consent and Capacity:

- 11.1** The issues of consent and capacity are closely linked. Consent enables interventions to lawfully take place on the basis that people are adequately informed, have the capacity to consent, and are free from coercion.
- 11.2** For consent to be valid it must be given voluntarily by an appropriately informed person who has the capacity to consent to the intervention in question. Acquiescence where the person does not know what the intervention entails is not consent.
- 11.3** Where any doubt about the person’s capacity to consent exists the professional should assess the capacity of the person to take the decision in question. The seeking or giving of consent is a process rather than a one off event.

12. Interface of MHA 1983 and MCA 2005:

- 12.1** For some patients or residents, the MHA 1983 and the MCA 2005 are inextricably linked. If a person is over 16, has a mental disorder, needs treatment for their mental disorder and lacks capacity in relation to that treatment then either Act could apply.
- 12.2** It is important for health and social care staff who work with client groups with mental health problems, particularly those with severe and enduring mental illness to have an understanding of this interface. This also includes the need to have an awareness of the DoLS. For further guidance please refer to the table below.

Use of this table should not be relied upon as an alternative to legal advice.

	YES	NO
Is the person under 16?	Only the MHA can be used.	Either the MHA or the MCA can be used.
Does the person have a mental disorder?	Either the MHA or the MCA can be used.	The MCA can be used if the person has an; „ <i>impairment of or disturbance in the functioning of the brain</i> ”.
Is the proposed treatment for mental disorder?	Either the MHA or the MCA can be used.	If the person lacks capacity; only the MCA can be used.
Do they have capacity to consent to treatment?	Only the MHA can be used to treat them if they refuse treatment for their Mental Illness.	Either the MHA or the MCA can be used. Note: if the persons” capacity will be regained in the near future – the MCA will be of limited use.

Do they meet the criteria for detention under the MHA?	If they meet the criteria for detention under the Mental Health Act and are in a unit registered to use the Act then the Mental Health Act must be used. However if the person is not in a place registered to use the Mental Health Act, the use of Deprivation of Liberty Safeguards may apply.	Only the MCA can be used. Note: this could include Deprivation of Liberty Safeguards under the MCA.
Do they have an Advance Decision refusing treatment for mental disorder?	To override an Advance Decision, the MHA would have to be used. Note: special rules apply to electro-convulsive therapy	Either the MHA or the MCA can be used.
Does their Lasting Power of Attorney or Deputy or Court of Protection ruling refuse treatment for mental disorder?	To override this detention under the MHA would have to be used. Note: special rules apply to electro-convulsive therapy.	Either the MHA or the MCA can be used.
Is the person objecting to treatment for mental disorder?	The MHA should be used*.	Either the MHA or the MCA can be used.
Is restraint needed because of the risk of harm to others?	The MHA should be used. (The Mental Capacity Act only applies to cases of harm to self).	Either the MHA or the MCA can be used.

The Mental Health Act provides a legal framework by which a detained patient's treatment may be made compulsory in the absence of their consent or their refusal to consent.

However, the patient's consent should always be sought and their mental capacity and consent or refusal should be recorded in full. When patients are detained under the Mental Health Act, they may be given treatment with medication for their mental disorder for the first three months of their treatment, even if they refuse to consent or are incapable of giving consent to that treatment. After this time (except in emergencies), the treatment can be given only under certain conditions and the authority for that treatment must be formally certified. Where the patient consents to the treatment, either the Approved Clinician in charge of it or a second opinion appointed doctor (SOAD) will certify that consent, where the patient lacks capacity to consent, or refuses to consent, the treatment may only be given following a SOAD's certification, that is appropriate for it to be given. A patient's capacity and consent status should be under continuous review, especially when they have been certified as consenting to treatment by the clinician in charge of treatment.

12.3 Consent to treatment is one of the key outcomes in CQCs new regulatory system. In their 2009/10 annual report on their monitoring of how the Act is used they make it clear that the assessment of capacity and consent, and recording of related discussions, is an area in

which they want to see significant improvement. Assessments and recording of consent and capacity should be an integral part of treatment planning.

- 12.4** In respect of Electro Convulsive Treatment (ECT) and consent specific rules apply. The following link will help explain this further.
http://www.mentalhealthlaw.co.uk/Additional_safeguards_for_ECT_introduced_in_new_s58
[A](#)

13. Young People and Mental Capacity:

- 13.1** Within the MCA ‘children’ refers to people aged below 16 while, ‘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.
- 13.2** The Act does not generally apply to people **under the age of 16** with the exception of offences of ill-treatment or wilful neglect and the Court of Protection’s power to make decisions about a child’s property or finances where the child lacks to capacity to make such decisions and is likely to still lack capacity to make such financial decisions when they reach the age of 18. The former only applies if the child’s lack of capacity to make a decision for themselves is caused by an impairment or disturbance that affects how their mind or brain works and not due to the child’s youth or immaturity when it would be dealt with under the separate offences of child cruelty or neglect. Care and treatment of children under the age of 16 is generally governed by common law principles.
- 13.3** Most of the Act applies to young people aged 16-17 years. There are four exceptions:
- Only people aged 18 and over can make a Lasting Power of Attorney
 - Only people age 18 and over can make an Advance Decision to refuse medical treatment
 - The Court of Protection may only make a statutory will for a person aged 18 and over.
 - Deprivation of Liberty Safeguards can only be utilised for people who are 18 and over.

14. Personalisation and the Mental Capacity Act

- 14.1** The Mental Capacity Act (MCA) and personalisation share core values. The MCA emphasises the person being at the centre of decision making. Where this is not possible because of lack of capacity the person should be supported to be involved as much as possible. Personalisation starts with the person as an individual with strengths, preferences and aspirations and means putting them at the centre of the process of identifying their

needs and making choices about what, who, how and when they are supported to live their lives.

- 14.2** There are a number of important decision-making points in setting up and managing self-directed support. Where a person lacks the capacity to make a particular decision, their views must still be sought. Their ability to make decisions on other matters should be assumed. For example, a person may be able to make a decision about who they would like to support them, but not about how to manage a personal budget.
- 14.3** Assessment is the starting point for identifying what a person's eligible needs are, the outcomes they want to achieve and an indicative amount of money available for their personal budget. Wherever possible a person should be supported to lead and participate in the self-assessment process.
- 14.4** Devon County Council and Torbay and Southern Devon Health and Care NHS Trust must make sure that the eligible person is fully supported to understand the range of personal budget options, the benefits and responsibilities involved in each, and the support available to manage them.

A personal budget may be received in the following ways:

- direct (cash) payment paid to the eligible person, or where they lack capacity, to a 'suitable person'
 - a 'managed' personal budget either:
 - held by the local authority, who arranges and manages services on the eligible person's behalf
 - as a mixture of the above options.
- 14.5** If the eligible person is believed to be unable to make the decision themselves about having a direct payment or a managed personal budget, this should be confirmed with a Mental Capacity Assessment and then a Best Interest Decision is made about the most suitable option.
- 14.6** If an eligible person lacks the mental capacity to manage a Direct Payment themselves it may be paid to a "suitable person" the suitable person must be available and willing to make support decisions and manage the direct payment on the person's behalf. The suitable person can be:
- Friend, carer or family member
 - Deputy appointed by the court of protection
 - An attorney with health and welfare or finance decision making powers created by a lasting power of attorney
 - An independent support broker

14.7 The managed personal budget option may be appropriate where:

- the eligible person is unable to manage a personal budget
- there is not a suitable person available and willing to manage the direct payment
- there is a person who has an active interest in supporting the person but does not want the responsibilities of managing a direct payment.
- An appropriate person could be a trusted friend or family member.

14.8 Once the decision has been made about how the eligible person will receive their personal budget, their support plan needs to be worked out and then agreed. It should be assumed that the eligible person has the capacity to plan their support, with someone to help them if they choose. If the person lacks capacity to make decisions about some aspects of their support, Devon County Council or Torbay and Southern Devon Health and Care NHS Trust must be satisfied that what is to be provided will be in the person's Best Interests according to the requirements set out in the MCA. The process of deciding this should be recorded.

14.9 If a person lacks capacity to make some decisions about their support, it will be necessary to put into place more frequent monitoring arrangements than for other people who use services. See Prioritising need in the context of Putting People First: A whole system approach to eligibility for social care: Guidance on Eligibility Criteria for Adult Social Care'. This applies whether or not they have a personal budget. Attention will also need to be given to ensuring the person has as much opportunity as possible to control and review the support they receive.

14.10 Finally, there are a number of instances where it may be necessary to involve the Court of Protection. A suitable person may wish to make an application to the Court of Protection to be appointed as a property and affairs Deputy to enter contracts on behalf of the person, for example a tenancy agreement. It should also be used where there are disputes which cannot be resolved.

15. Recording

- 15.1** Full recording of mental capacity will not be needed for all decisions and actions. The Code of Practice gives guidance on when professionals should be involved and when, by implication, there is a need for a clearly documented assessment i.e. where:–
- i)** A decision has major life changing consequences, (e.g. decision to move accommodation, decision to accept or decline support at home, and decision whether to report a criminal or abusive act).
 - ii)** There may be a dispute with the person, their family or the care team, as to the capacity and Best Interest of the individual.
 - iii)** The person's capacity may be subject to challenge.
 - iv)** There may be legal consequences of a finding of capacity (e.g. as a result of a claim for personal injury).
 - v)** The person is making decisions that put him/herself or others at risk or that result in preventable suffering or damage.
- 15.2** These examples are not exhaustive, and each circumstance needs to be judged on its merit, using professional judgement with support from the line-manager or relevant leads as appropriate.
- 15.3** The anticipation is that staff members will use their organisation's recording methods to document clearly when Mental Capacity Assessments and associated Best Interest Decisions are being made.
- 15.4** In circumstances where staff do not use the 'Mental Capacity Assessment and Recording Tool' there is an expectation that an entry will be made into the person's care records or clinical notes to evidence why the person was deemed to lack capacity and the rationale for any Best Interest decision made on their behalf.
- 15.5** The DCC and TSDHCT have jointly agreed the use of the 'FACE' Mental Capacity Act Assessment and Recording Tool, to support staff in practice.
- 15.6** To support the recording tool further a Mental Capacity Assessment and Recording Tool Guidance is available.
- 15.7** To Support the 'Best Interest Decision Making' process for people who have been assessed as lacking mental capacity, DCC and TSDHCT have jointly produced guidance for practitioners who are convening and Chairing Best Interest Meetings. This guidance incorporates templates for minute taking purposes. This guidance tool can be accessed:

In Devon: <http://www.devon.gov.uk/best-interests-meeting-guidance.pdf>

In Torbay: icare http://icare/Operations/mental_capacity_act/Pages/default.aspx

16. Information Sharing & Information Governance: Confidentiality and sharing information

16.1 Sometimes, third parties may request information about someone who lacks capacity. Chapter 16 of the MCA Code of Practice offers general guidance. More specific advice can be obtained from Data Protection Teams or Legal Services.

16.2 People caring for, or managing the finances of, someone who lacks capacity may need information to:

- assess the person's capacity to make a specific decision,
- determine the person's best interests, and
- make appropriate decisions on the person's behalf.

16.3 When receiving requests for personal information about someone who may lack capacity, practitioners must have regard to the Data Protection Act and relevant local policy. In addition the Mental Capacity Act Code of Practice will provide guidance.

16.4 It is only lawful to reveal someone's personal information if:

- there is a legitimate aim in doing so,
- a democratic society would think it necessary to do so, and
- the kind and amount of information disclosed is in relation to the need.

For further advice and information access:

In Devon: <http://staff.devon.gov.uk/acs/acsbustructure/asbrfs/acsinfmantechnology/acs-informationgovernance.htm>

In Torbay: Icare <http://icare/corporate/InformationGovernance/Pages/default.aspx>

17. Training

- 17.1 Both DCC and TSDHCT will be individually responsible for the provision of a comprehensive MCA/DoLS training strategy.
- 17.2 The training strategy will provide all staff with the opportunity to attend a level of training that is commensurate with their role within the Organisation.
- 17.3 The MCA Training strategy will incorporate a variety of learning modems and include e-Learning and face to face learning opportunities.
- 17.4 There will be an expectation that all Managers within each Organisation will be familiar to the MCA Training strategy and ensure that all staff within their teams are provided with the opportunity to attend the appropriate level of training which will be identified within Supervision sessions.
- 17.5 Each Organisation will be responsible for ensuring both MCA and DoLS awareness is available for Managing Authorities within both hospitals and Care Homes.

The Training Strategy can be accessed:

In Devon: <http://www.devon.gov.uk/index/socialcarehealth/scwd/scwd-safeguarding-adults/satrainingresources.htm>

In Torbay: icare http://icare/Operations/mental_capacity_act/Pages/default.aspx
webpage :<http://www.torbaycaretrust.nhs.uk/ourservices/MentalCapacityAct/Pages/Default.aspx>

Further information relating to MCA training dates and guidance on how to book a place access:

In Devon: <http://app-ebookings.devon.gov.uk/TrainingAdmin-Devon/Default.aspx>

In Torbay: icare <http://icare/HR/TRAINING/Pages/default.aspx>

18. Monitoring and Review:

- 18.1 The policy will be monitored on a three yearly basis via the MCA Sub-group which reports to the Safeguarding Adults Board.