Policy for Mental Capacity	
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07	15/03/2026	Christine Hodby, Specialist Advisor, Safeguarding	Policy Review. Minor amendments to Definitions, detail on IMCA responsibilities, detail on assessing capacity, detail on safeguarding.

1. Introduction and Overview

This policy sets out the law and associated guidance in respect of mental capacity and deprivation of liberty in general. The Mental Capacity Act 2005 is the main legislative mechanism for this purpose. This Act of Parliament can also apply to 16- and 17-year-olds, however the Children Act 1989 and the Family Law Reform Act 1969 are also key pieces of legislation when it comes to the treatment of children and young people.

New Medical Systems Limited (Known as Newmedica) are committed to ensuring people who use our services and who may lack capacity to make decisions will have access to quality care and treatment. Our staff will work with individuals and their families and carers to ensure they are at the heart of all decision making in relation to their own care and treatment provided by our services.

This Policy and the following procedures aim to ensure that staff are aware of the requirements of MCA and can apply this in practice and therefore comply with these legal duties.

2. Purpose

The purpose of this policy is to ensure that Newmedica complies with the statutory requirements of the Mental Capacity Act 2005, and all staff are aware of the procedures pertaining to this**.**

The Act applies to people of 16 or over who lack capacity to make their own decisions.

However, there are some provisions of the Act that only apply to adults over the age of 18, and in those circumstances, reference should be made to the above legislation or case law for Children and Young People to determine what action should be taken where they are deemed to be unable to make their own decisions.

3. Scope

This Policy sets out the principles and procedures that Newmedica has adopted, to ensure fair and effective arrangements for maintaining appropriate standards throughout.

Newmedica are committed to being an organisation that embraces diversity, equity and inclusion and the policy applies to all 'staff' that work within the organisation regardless of employment status.

4. Definitions

Lasting Power of Attorney (LPA) for Health and Welfare	A legal document by which one person (the donor) gives another (the attorney) power to act and make decisions on their behalf. There are two kinds of Lasting Power of Attorney (LPA): • A Property and Affairs LPA gives powers to a chosen Attorney(s) to

	make decisions about financial and property matters e.g. such as selling the person's house or managing their bank account. • A Personal Welfare LPA gives powers to a chosen Attorney(s) to make decisions about the person's health and personal welfare, such as where a person must live, day-to-day care or having medical treatment.
Advanced Decision to Refuse Treatment (ADRT)	An Advance Decision is a decision made by a person after they have reached the age of 18 and when they have the capacity to make such a decision. The effect of an Advance Decision is to enable the person to refuse specified medical treatment at a point in the future when that person has lost the capacity to give or refuse consent to that treatment.
Mental Capacity	The ability to understand information and make own decisions about life. It can also mean the ability to communicate decisions about own life. The capacity to decide can vary depending on the time that the decision needs to be made and the type of decision the person needs to make.
Functional Capacity	Functional capacity refers to an individual's ability to perform activities of daily living and engage in physical tasks that are essential for maintaining a healthy lifestyle. Understanding functional capacity helps healthcare professionals assess a person's physical abilities and limitations, enabling them to tailor interventions that promote independence and enhance quality of life
Restrictive Practice	Restrictive practices are things that limit the rights of a person, like being able to move. around freely. Restrictive Practice

	is used to stop a person from doing behaviours of concern. This can be as simple as holding a hand to prevent movement during care and treatment.
Best Interests	Acting in someone's best interests simply means trying to do what is best for them, what is most important to them, and what they would have wanted. In doing so, the MCA says, the decision maker must, as far as it is reasonable and practicable to do so, consider the previously expressed views and wishes of the person lacking capacity and the views of others, especially close family, or friends.
Unwise Decision	A decision that person arrives at, that is different to others decision but based on the same evidence. In healthcare, this decision may be contradictory to the proposal of best care and treatment offer.
Impairment or disturbance in the functioning of mind or brain	A condition in which a part of a person's mind is damaged or is not working properly.

5 Roles and Responsibilities

5.1 Board of Directors

They have strategic overview and final responsibility for setting the direction of this policy.

5.2 Medical Director/ Clinical Quality and Governance Director

They hold executive responsibility for the application of MCA, 2005 principles across all Newmedica Services and will provide updates to the Board of Directors on issues relating to the MCA policy. They are responsible for the Newmedica strategic direction of this policy and will update the Board of Directors regularly on any issues relating to the Mental Capacity Act Policy.

5.3 Head of Quality and Patient Safety

Holds responsibility as MCA lead and is responsible for providing clinical leadership ensuring that there is an up-to-date policy that meets both legal and best practice guidance and that professional conduct relating to consent is maintained. They are responsible with the Head of Development and Reward for overseeing the development and delivery of the training needs identified in section 20 of this policy. The Head of Quality and Patient safety will ensure there are clear processes and

procedures in place for staff to obtain guidance and clarity on the Mental Capacity Act.

5.4 Quality & Patient Safety Team

The Quality and Safety team hold responsibility for oversight of the quality in application of MCA, 2005, and monitoring staff compliance with MCA competencies and skills. They will assist with embedding the principles of the MCA within the services.

5.5 Operational Directors/Registered Managers

Hold local responsibility for the oversight of the quality in application of the MCA, 2005, and staff competencies and skills to apply the Act principles in practice.

5.6 Service Safeguarding Leads

Hold local responsibility as MCA Leads, and with support from the Head of Quality and Patient Safety, provide advice and guidance on how the Act principles are applied in practice.

5.7 All Newmedica staff

All staff have a duty to ensure they know how to use the MCA, 2005 and apply the principles of the Act in their own professional practice.

6. General Principles

6.1 Mental Capacity Act 2005 (MCA)

The purpose of this Act is to empower and protect vulnerable people who are not able to make their own decisions. It makes clear who can take decisions in which situations and how they should go about this. It also enables people to plan for a time when they may lose their mental capacity.
The Act establishes five "statutory principles" which underpin the legislation, and which must be applied in all circumstances. These are laid out in section 1 of the MCA (2005), as follows:

1. **Assumption of capacity**: "a person must be assumed to have capacity unless it is established that they lack capacity."

2. **Assisted decision-making**: "a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success."

3. **Unwise decisions**: "a person is not to be treated as unable to make a decision merely because they make an unwise decision."

4. **Best interests**: "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 their best interests."

5. **Least restrictive alternative**: "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 freedom of action."

6.2 Assessing Mental Capacity

Any assessment of mental capacity must be based on a person's ability to make a specific decision in relation to the care and treatment proposed at the time this decision needs to be made. The person who assesses an individual's capacity to decide and takes responsibility as the decision maker will usually be the person who will be providing the required treatment.

In most cases, the assessment of capacity will be straightforward and can be undertaken by any member of a clinical team with appropriate training and using the Newmedica recommended capacity assessing templates.

In more complex cases it may be necessary to obtain an opinion from another professional, discuss within a multidisciplinary team or seek further advice from Newmedica's Medical Director & Clinical Quality & Governance Director.

Assessments of capacity are a continuous and on-going process throughout an episode of care. It is not possible to list all eventualities when a capacity assessment should be carried out.

6.3 When assessing capacity, the following points from the Code of Practice should inform practice:

When do I assess capacity?

- When there is doubt about the person's ability to make a specific decision.
- At the time the decision needs to be made, if there is more than one decision to be made then a capacity assessment should be done for each decision.

Who conducts the capacity assessment?

- For most routine decisions, the relevant registrant who assesses capacity will be the Doctor, Nurse or Optometrist directly concerned with the individual and the care and treatment decision at that time.
- More complex or sophisticated decisions may require a particular professional to lead the assessment. This may be the professional proposing the decision (I.e. the consultant responsible for the patients care) or the person responsible for decision maker if they *lack capacity (A specific named professional, e.g., a solicitor in relation to legal transactions).*

How sure does an assessor need to be?

- Capacity is decided on the balance of probability; this is called the 'reasonable belief test' in other words you should be more sure than not.
- Capacity assessing should additionally take into consideration functional capacity for the individual to determine the individual's ability to carry out the activities required

Where should an assessment be recorded?

- Assessments must be recorded in any appropriate documentation for example medical notes or care plans.

- Assessments should be recorded on the capacity assessment tool.

6.4 The MCA two stage test to establish if the person lacks capacity.

A person who lacks capacity is defined under s.2(1) MCA 2005 thus: 'a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or the brain.'

There is a two-stage test, made up of a functional and diagnostic element that must be applied when assessing capacity and to robustly evidence if the person lacks capacity.

For a person to lack capacity to make a decision, the Act says their impairment or disturbance of mind must affect their ability to make the specific decision when they need to. A functional test is required to determine and prove if the individual has 'inability to make a decision.' A person is unable to make a decision if they cannot:

- understand information about the decision to be made (the Act calls this 'relevant information') or
- retain that information in their mind, or
- use or weigh that information as part of the decision-making process, or
- communicate their decision (by talking, using sign language or any other means).

In any event, an assessment of a lack of capacity must demonstrate the direct link between the impairment/ disturbance on mind and the inability to make the decision in question.

The diagnostic part of the test is to establish if the person has an impairment of the mind or brain, or some sort of or disturbance that affects the way their mind or brain works.

- If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under MCA.

Examples of an impairment or disturbance in the functioning of the mind or brain may include the following:

- conditions associated with some forms of mental illness.
- dementia
- significant learning disabilities
- the long-term effects of brain damage
- physical/medical conditions that cause confusion, drowsiness, loss of consciousness.

- delirium
- concussion following a head injury,
- the symptoms of alcohol or drug use

Following completing the functional and diagnostic test parts of the capacity assessment and it is reasonably believed, on the balance of probabilities, that the person is unable to make a decision in relation to their care and treatment because of the impairment or disturbance in their mind or brain, then they will be deemed to be lacking capacity in relation to the particular decision in question.

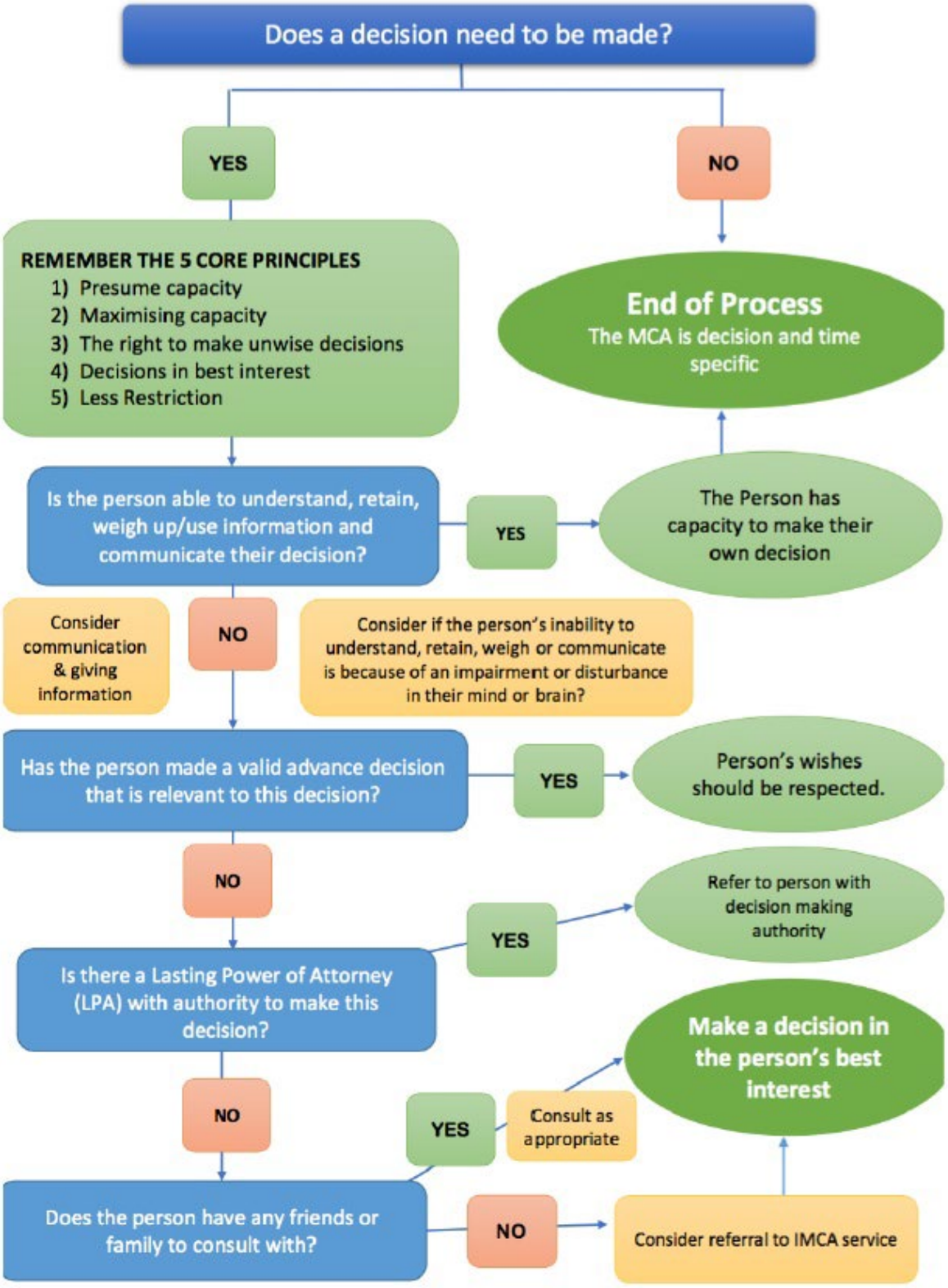
Every assessment of capacity should be contemporaneously recorded in the patient's records specifically on the appropriate capacity assessment template and an entry made in the progress notes regarding completion of the assessment. Refer to Appendix 1.

In addition to the assessment, the following should also be recorded.

- The specific decision for which capacity was assessed.
- The salient points that the individual needed to understand and what information was presented to the person.
- Steps taken to promote the individual's ability to make their own decision.
- How the diagnostic test was assessed and how the assessor came to their conclusion.
- How the functional test was undertaken and how the assessor reached their conclusion.
- This should be followed where appropriate by the formulation of the appropriate care plan in relation to the proposed treatment.
- Professionals must seek to involve those who lack capacity in all decisions about their care as much as they would those who have capacity.
- Care plans must determine what is in a person's best interests (see below) and reflect consideration of the persons wishes, feelings, beliefs, and values and, where appropriate, be developed in consultation with others such as family or carers, about what is in the persons best interests.

If the decision relates to investigations or a procedure, the assessment of the patient's capacity can be recorded on **Consent Form 4**: Form for adults who are unable to consent to investigations or treatment. See Consent Policy: POL-GOV -21

7 Mental Capacity Act flow chart



8 Lasting Power of Attorney (LPA) for Health and Welfare

An individual may have requested someone to be their Lasting Power of Attorney for their health and wellbeing at a time when they no longer have the capacity to make their own health care and treatment decisions.

A health and welfare LPA gives this person the power to make decisions about the individual's medical care and to consent or refuse treatment on their behalf. This power can only be used when it has been assessed and the individual is unable to make their own decision.

However, a health and welfare LPA can only refuse lifesaving treatment if specific provision has been made for this.

For practitioners it is important to see evidence of the LPA specifically for health and wellbeing having been granted through the appropriate legal processes. The LPA will have a legal document in place to this effect.

9. Best Interests Decision Making

Once a lack of capacity in relation to a particular decision has been established, any further decision then made on the person's behalf must be in their best interest as per the MCA principle above.

In determining what is in a person's best interest, regard must be had (by the person making the decision on behalf of the incapacitated person) to all relevant factors that it would be reasonable to consider, not just those that they professionally consider, or think is important.

A practitioner must not act or make a decision based on what they would personally or professionally want to do if they were the person who lacked capacity.

Section 4 of the MCA provides a check list of what should be considered when determining a person's best interest concerning medical treatment including:

- Whether the person is likely at some point in the future to regain capacity (in which case can the decision be deferred until that point).
- Whether there are any additional means that can be employed to enable the person to participate or be involved more fully in the decision making.
- The ascertainable past and present wishes and feelings of the person and their beliefs, values and other factors that may influence them if they had capacity.
- The views of relatives, carers, or others who it would be practicable and appropriate to consult about the persons wishes and feelings.

Best interest decisions must be formally documented on the Newmedica Best Interests Template **Appendix 2** and with a further entry made in the patient's notes.

If the decision relates to investigations or a procedure, the assessment of the patient's capacity can be recorded on **Consent Form 4**: Form for adults who are unable to consent to investigations or treatment. See Consent Policy: POL-GOV -21

10. Staff Protection from Liability

In connection with acts associated with care and treatment, where care or treatment is provided for someone who lacks capacity, this can be delivered without the carer incurring any legal liability by meeting the conditions of section 5 of the Mental Capacity Act.

This means that as long as any act of care and treatment is carried out in the person's best interest following an assessment and confirmation that the person lacks capacity, there will be protection from liability.

This includes acts that would otherwise be classified as a civil wrong or a crime if it concerned interfering with a person's body or property in the ordinary course of carrying out the treatment in question.

11. Use of Restraint to access Treatment.

Newmedica do not support the use of any physical or chemical restraint for patients accessing services.

12. Advance Decision to Refuse Treatment. (ADRT)

A refusal of future treatment for certain circumstances can be made by someone who has the mental capacity to do so. Evidence of this legally binding decision would need to be provided and there needs to be further consideration if this would be applicable for the present treatment being proposed.

An advance decision to refuse treatment will not be valid if at the material time, the person who made it still has capacity to give or refuse consent to treatment being proposed.

An advance decision will not be binding or valid if the person had subsequently withdrawn it at any time, they had capacity or has done something which is judged to be clearly inconsistent with the advance decision.

An advance decision will not be binding or valid if it is not applicable to the treatment being proposed or any circumstances specified in the advance decision are absent or there are reasonable grounds to suppose that circumstances exist which the person did not anticipate at the time of making the advance decision and which would have affected their decision.

An advance decision will not be binding if a lasting power of attorney relating to health care is made after the advance decision which gives the attorney the authority to give or refuse consent to the treatment to which the advance decision refers.

An advance decision is not applicable to life sustaining treatment unless it is verified by a statement to the effect that it is to be applied to the proposed treatment even if life is at risk and the decision is in writing, signed and witnessed.

An advance decision which does not relate to life sustaining treatment can be given verbally. Persons who wish to make an advance decision should be encouraged to register their decision clearly with their health care team or their GP and a clear notice of their advance decision should clearly be recorded within their progress notes and be set out clearly in a care plan.

13. Independent Mental Capacity Advocate (IMCA)

The Mental Capacity Act gives some people who lack capacity a right to receive support from an IMCA. This person is an independent person instructed to support and represent a person who lacks capacity to make decisions where that person does not have any family, friends, or carers to consult as to what treatment would be in their best interest.

The benefits of an IMCA service

The main benefits for the person who lacks capacity are:

- having an independent person to review significant decisions being made
- having an advocate who is articulate and knowledgeable not solely in relation to the Act but also about a person's rights, health and social care systems and community care law
- receiving support from a person who is skilled at helping people who have difficulties with communication to make their views known and
- having an independent person who can support and represent them when certain serious decisions are being made, and they have nobody else who can be consulted.

14. Deprivation of Liberty (DoL)

This is a term used to describe the circumstances in which a person's freedom is severely limited to the extent that they are not allowed to leave their environment, they are under continuous supervision and control, and they lack capacity to consent to this situation. This does not, however, mean this individual cannot be assisted to make care and treatment decisions. They may still have the capacity to make a specific treatment decision. Their mental capacity will need to be assessed in these circumstances. By the nature of DOLS in place, the 2-stage test has been applied and it has already been assessed and established this person lacks capacity for certain aspects of their care.

15. Consent - Refer to the Consent Policy POL- GOV 21

Consent is the voluntary and continuing permission of a patient to be given a particular treatment, based on a sufficient knowledge of the purpose, nature, likely effects, and risks of that treatment, including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not considered to be consent.

If the decision relates to investigations or a procedure, the best interest meeting and outcome can be recorded on **Consent Form 4**: Form for adults who are unable to consent to investigations or treatment. See Consent Policy: POL-GOV -21

16.Safeguarding

People who may lack the capacity to make certain decisions may also be less able to protect themselves from abuse or exploitation and therefore be considered an adult at risk. If you have any concerns that an adult at risk may be experiencing abuse, follow the safeguarding procedures as detailed within your safeguarding policies.

17. MCA Training

In accordance with Department of Health directives, it is mandatory for all clinical staff, whose roles will require them to assess patient capacity relating to care and treatment, to access relevant MCA training.

Newmedica mandate that all clinical facing staff, must complete online MCA Training every 3 years.
In addition, this staff group will be required to attend a 3 yearly face to face workshop covering application of MCA into Operational Practice.

The MCA training requirements will be applicable to the Newmedica Clinical Quality and Governance Director and Clinical Quality and Patient Safety Team, where their roles require them to provide advice and guidance in relation to application of the Mental Capacity Act.

18.Research

The Mental Capacity Act also sets out clear parameters for Research. Research involving, or in relation to, a person lacking capacity may be lawfully carried out if an "appropriate body" (normally a Research Ethics Committee) agrees that the research is safe, relates to the person's condition and cannot be done as effectively using people who have mental capacity. The research must produce a benefit to the person that outweighs any risk or burden. Alternatively, if it is to derive new scientific knowledge it must be of minimal risk to the person and be carried out with minimal intrusion or interference with their rights. Carers or nominated third parties must be consulted and agree that the person would want to join an approved research project. If the person shows any signs of resistance or indicates in any way that he or she does not wish to take part, the person must be withdrawn from the project immediately.

19. Monitoring Compliance

How implementation and ongoing compliance is to be monitored, including standards and key indicators

Aspects of compliance or effectiveness being monitored	Monitoring Method	Responsibility for Monitoring	Frequency of Monitoring	Group/Committee to review findings and monitor completion of action plan
MCA Training compliance and assurance all staff have the required competency as set out in	Data on MCA Training completion monthly and quarterly from OJV on highlight reports	Registered Managers Safeguarding leads OJV	Monthly and Quarterly	Clinical Governance Committee
Quality in application of MCA 2005 in Practice	Local Audit of capacity assessments and Best Interests Decisions Complaints CQC inspections Annual Safeguarding report	Safeguarding leads OJV Quality and Patient Safety Team Clinical Quality and Governance Director	Annual Quarterly Following outcome of CQC inspections	Clinical Governance Committee Local OJVs (Ophthalmic Joint Ventures) Clinical Governance meetings

20. Communication and implementation

Publication on Newmedica internal website and dissemination to all Newmedica Service
Registered Managers and Safeguarding Leads Local.

21. References to Related Policies and Procedures

- Mental Capacity Act 2005
- Mental Capacity Act 2005 Deprivation of Liberty Safeguards, TSO, 2008
- Human Rights Act 1998
- Mental Health Act 1983
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- NICE Guidelines 2018 Decision Making and Mental Capacity
- Disability Discrimination Acts (DDA) 1995 and 2005
- Equality Act 2010
- Care Act 2014
- RCN Safeguarding: Roles and responsibilities for Health Care Staff, 2024
- CQC Regulation 9: Person-Centred Care
- CQC Regulation 10: Respect and Dignity
- CQC Regulation 11: Need for Consent
- Data Protection Act
- GDPR

Policies

Safeguarding Adults Policy: POL-GOV- 08
Safeguarding Children Policy: POL- GOV-07
Supervision Policy: POL-GOV- 20
Consent Policy -POL-GOV 04
Information Sharing: POL-IG -06
Records Management: POL-IG-09

22. Equality Impact Assessment

		Yes/No	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:	No	
a	• Gender.	No	
b	• Marital Status (including Civil Partnership),	No	
c	• Gender Reassignment,	No	
d	• Disability including – Learning Disabilities, – Physical Disabilities, – Sensory Impairment, – Mental Health Problems,	No	
e	• Race, Nationality or Culture,	No	
f	• Age,	No	
g	• Sexual Orientation (including Lesbian Gay or Bisexual People),	No	
h	• Religion or Belief,	No	
i	• Trade Union Membership,	No	
j	• Pregnancy or Maternity,	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so, can the impact be avoided?	N/A	
6.	What alternatives are there to achieving the policy/guidance without the impact?	N/A	
7.	Can we reduce the impact by taking different action?	N/A	

Appendix 1: Part A: Template for Assessing Mental Capacity

Specify decision to be made:		
Assessment Questions	Yes	No
1.Is there an impairment or disturbance in the functioning of mind or brain? (Permanent or temporary).	**YES,** impairment is present record symptoms/behaviours, any relevant diagnosis	**NO** impairment is not present, record evidence. If NO the person is deemed capable - assessment is ended
2. If yes:		
a) With all possible help given is the person able to understand the information relevant to the decision eg. What is your understanding of the decision in question? Can you tell me why you think the decision needs to be made? What do you think the consequences of your decision will be? Or	**YES -** able to understand info. Record views/evidence to show they understood it	**NO -** unable to understand info. Record steps taken to explain info and views/evidence why they did not understand it.
b) Are they able to retain the information long enough to make the decision? Or	**YES** - able to retain info, record evidence	**NO** - unable to retain information, record any help given and evidence.
c) Are they able to weigh the information as part of the decision-making process? Are they unable to	**YES -** able to weigh information, record evidence.	**NO** - unable to weigh info record evidence

understand the consequences of making or not making the decision? Or		
d) Are they able to communicate the decision?	**YES** - able to communicate, record evidence	**NO** - unable to communicate, record evidence
Conclusion - If the answer to 1. is YES and the answer to any of 2. a) - d) is NO then the person does lack capacity under the Mental Capacity Act 2005	**FLUCTUATING CAPACITY: Always consider whether the person has fluctuating capacity and whether the decision can wait until capacity returns. If this is the case, explain and enter reassessment date in outcome below.** **Outcome:** **Assessor:**	

Appendix 2: Part B: Best interests' template

Patient details	
Decision-maker	
Decision required	
Evidence that the person lacks the capacity in relation to the decision in question – including a summary of steps taken to maximise decision-making capacity	
Clinical and diagnostic assessment	
Contributors to the best interest's process	
Is there anyone else who should be involved?	
Summary of persons views, wishes and feelings	
Currently expressed views:	*Previously expressed views:*
Other relevant information (e.g. any additional information about the person's interests, life, relationships with others)	

Options	
Option 1	
*Benefits to the person of enacting the decision**:***	*Burdens or risks to the person of enacting the decision:*
Option 2	
*Benefits to the person of enacting the decision**:***	*Burdens or risks to the person of enacting the decision:*
add more options if necessary…	
Decision reached – including reasons for the decision and how it was reached	

BMA: Best interests decision-making for adults who lack capacity A toolkit for doctors working in England and Wales