

[Place patient label here]

Mental Capacity Act 2005: Capacity Assessment and Best Interest Documentation; For Significant Invasive Treatments / Investigations Where Written Consent Would Be Required

Lawful Authority for Care and Treatment When Capacity is in Doubt

In emergency situations, where delay would pose a risk to health of the patient, proceed to treatment.
Do NOT delay treatment to complete the documentation



To be retained in the patient's notes



Consent Process for Patients without Capacity – when procedures, interventions or operations are proposed.

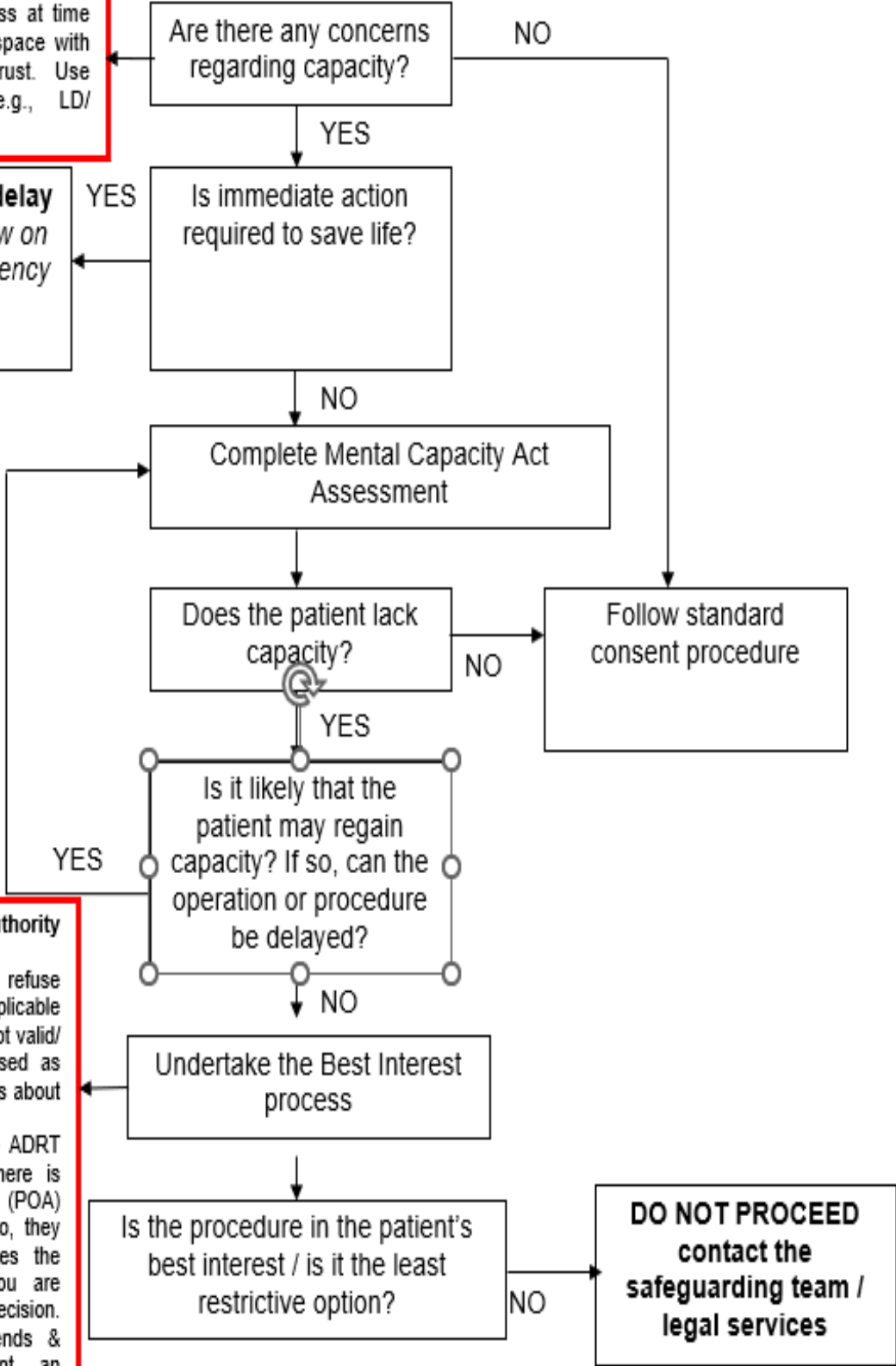
This Clinical Guideline relates to adult patients for whom UHDB has a duty of care. It should be used in conjunction with the Policy on Treatment with Lawful Consent available on the Trust Intranet in the KOHA section. Please follow the 9 steps below in order.

1. Where there is a proposal to perform a procedure or intervention or operation, where written confirmation of consent is required *and there are concerns from any member of the clinical team, the patient, or an advocate of the patient that the patient may lack mental capacity to give informed consent*, you must assess the patient's capacity using the Mental Capacity Act 2005 Capacity Assessment and Best Interest Documentation
2. If the patient is assessed to have capacity for this decision at this time, obtain informed consent (or refusal) and do not follow this guidance further.
3. If the patient is assessed as lacking capacity to consent for this decision at this time, consider if capacity may improve in the near future and if the proposed procedure, intervention or operation can safely be delayed.
4. If the procedure, intervention or operation cannot safely be delayed and the patient lacks capacity then the Best Interest process within the Mental Capacity Act 2005 Capacity Assessment and Best Interest Documentation is required to be completed.
5. The Consultant or most senior clinician proposing the procedure or operation is responsible for undertaking the MCA assessment and Best Interest process.
6. The Best Interest Decision must take account of any valid Advance Decision to Refuse Treatment (ADRT), the views of any person holding Lasting Power of Attorney (LPA) for Health and Wellbeing and those close to the patient e.g., relatives or carers.
7. Once the above is completed, the consultant or most senior clinician proposing the procedure, intervention or operation must complete The Form for Adults who are Unable to Consent to Investigation or Treatment (contained in the Mental Capacity Act 2005 Capacity Assessment and Best Interest Documentation) and ensure it is counter signed by a second health care professional. The second health care professional must be the person undertaking the procedure when they are not the first signatory (e.g., endoscopy or interventional radiology procedure). This may be done in the relevant department prior to the procedure being undertaken.
8. The completed Mental Capacity Assessment and Best Interest Documentation must then be filed in the case notes.
9. In an emergency situation where an intervention is indicated and to delay would pose a risk to the patient the procedure or operation must not be delayed. Please see the further guidance (page 5) in respect of emergency situations.

**Consent Process for Patients who lack mental Capacity –
when procedures, interventions or operations are proposed.**

Maximise opportunity for person to demonstrate capacity; discuss at time best for them in a relaxed space with people they know and trust. Use interpreter if required e.g., LD/ Dementia specialist / SALT

Proceed without delay
See guidance below on treatment in emergency situation



Who/ what can give lawful authority care and treatment?
Is there an advance decision to refuse treatment (ADRT)? A valid & applicable ADRT is legally binding. Where not valid/ applicable an ADRT may be used as evidence of their wishes & feelings about the proposed treatment.
In absence of valid & applicable ADRT ask family or care givers if there is someone with Power of Attorney (POA) or Court Appointed Deputy. If so, they are the legal proxy who makes the decision. If none in place, you are responsible for making the decision. Take account of views of friends & relatives – if none, appoint an Independent Mental Capacity Advocate



IS THIS AN EMERGENCY SITUATION?

YES

- Communicate with the patient as much as possible as to what is happening and why.
- Is there an Advance Decision to Refuse Treatment (ADRT)? Does it relate to the specific treatment and is it valid? **If obvious**, it must be followed (an ADRT refusing specific treatment will overrule a Lasting Power of Attorney (LPA), Court Appointed Deputy (CAD) & medical staff decisions). The Best Interests principles will not apply where there is a valid ADRT.
- If there is no valid ADRT as above, is there someone with a valid LPA? If so, they can make the decision. If there is a disagreement between the clinicians involved and the LPA, seek immediate legal advice. If the LPA is manifestly acting in bad faith they can be set aside-refer to safeguarding. If the procedure or operation is clearly indicated **and** in the patient's best interests, proceed with emergency treatment without delay.
- Is there a court order (CO) in place?
- **If there is no ADRT/ LPA /CAD or CO - you are the Decision Maker.**
- **Discuss with those close to the patient e.g., relatives or carers if available, either "face to face" or by telephone**, and clearly record this discussion in the sections of the MCA recording tool / document and file in medical notes. *However*, do not delay emergency treatment whilst undertaking this process.
- **Healthcare professional proposing treatment must complete consent form.**
- **Consent form must be countersigned by a second healthcare professional.** This must be the healthcare professional undertaking the procedure if not the first signatory e.g., surgeon, endoscopist or interventional radiologist.

NO

- Is there an Advance Decision to Refuse Treatment (ADRT)? Does it relate to the specific treatment and is it valid? If so it must be followed.
- Is there someone with a valid Lasting Power of Attorney (LPA) for Health and Welfare? If so they can make the decision as to treatment / procedure. However, if there is a disagreement between the clinicians involved and the LPA in respect of the patient's best interests, seek a formal second opinion from another clinician. If agreement cannot be reached, seek legal advice as soon as possible.
- Is there a Court Appointed Deputy (CAD) or Court Order?
- **If no to any of the above - you are the Decision Maker.**
- Complete the Capacity Assessment and the Best Interest Form to record consultation with those close to the patient, e.g., family/carers before proceeding with any procedure or operation, to ascertain previously expressed wishes and feelings made by the patient and use all means to communicate with the patient to aid their participation.
- If the patient has no one close to support them and the procedure constitutes 'serious medical treatment', an IMCA must be appointed.
- **The Healthcare professional proposing treatment must complete consent form.**
- **Consent form must be countersigned by a second healthcare professional.** This must be the healthcare professional undertaking the procedure if not the first signatory e.g., surgeon, endoscopist or interventional radiologist.



Mental Capacity Act 2005 Capacity Assessment

NB! Capacity assessments must be undertaken by the person responsible for carrying out the care and treatment, but appropriate specialists can support the assessment e.g., psychiatrist when patient has a mental health issue / SALT where the patient has speech difficulties / LD specialist where patient has LD.

Always use an interpreter where English is not their first language

This capacity assessment relates to the ability to consent to medical care and treatment / invasive procedures – specifically the following (please list here);

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Stage 1: Can the patient?: -

Understand <i>(They only need a basic understanding in language appropriate for them)</i>	YES	NO
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Evidence understanding / lack of understanding

Retain <i>(They need to retain information only long enough to make the decision – give them the information and ask them to repeat what they have understood – this would be evidence of retention. They do not need to remember it later or tomorrow)</i>	YES	NO
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Evidence ability / lack of ability to retain information

Weigh up <i>(Is the person aware of the pros and cons of making this decision – just one or two suffices)</i>	YES	NO
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Evidence of ability / lack of ability to weigh up pros and cons
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Communicate <i>(The person can communicate their views back in any way particular to them – again you may need SALT or LD Liaison Nurse to help with this)</i>	YES	NO
Evidence of ability / lack of ability to communicate		
<p>If the answer is 'no' to any one of questions in stage 1, the patient lacks capacity. You must identify in conversation with family/carers if there is anyone with lawful authority to provide consent and complete the best interest process in the next section If there are no family / carers, please refer to IMCA service (see safeguarding pages of intranet)</p>		
Stage 2		
Is there an impairment in the functioning of mind or brain? What is this? (This can be a formal confirmed diagnosis or a working hypothesis)	YES	NO
Does the impairment cause the difficulties in understanding, retaining weighing up and communicating the patient's decision?	YES	NO
Detail to be provided here re impairment and impact		
Could their capacity be restored by treatment? (If there is any treatment which may restore capacity – carry it forward without delay. Consider if the decision can wait until capacity is restored – max 48hrs)	YES	NO
If yes, describe the plans that have been made in light of the above.		

Best Interests Process

ESSENTIAL INFORMATION- determining the lawful authority		
Advanced Decision - Has an Advanced Decision to refuse treatment been made about the decision in question (only in relation to healthcare decision) and is it still relevant?	YES	NO
Comments		
Lasting Power of Attorney for Health and Welfare - Is a Lasting Power of Attorney (LPA) for Health and Welfare in place for the decision in question? If yes, who holds this and is it valid and applicable?	YES	NO
Identify who has LPA and confirm that it is seen and is valid (contact safeguarding team if unsure of validity)		
Court of Protection Deputy - Has any deputy been appointed by the Court of Protection for the decision in question?	YES	NO
Comments		
Is there a court order?	YES	NO
If none of the above are in place, the person responsible for carrying out the medical care and treatment is the decision maker under S5 MCA and, after determining the best interest of the patient -following the process below – can take forward the care plan identified as being in the patients best interest		
IMCA Referral - Is there a requirement to refer to IMCA service? (An IMCA referral is required where there are no family, friends, or carers available to be consulted in the best interest process.)	YES	NO
Contact IMCA service to request support and confirm here that it has been done if it is required		
SERVICE USER INVOLVEMENT		
Written statement - Has any relevant written statement been made by the patient when they had capacity?	YES	NO
<i>Please identify what and where the previous statement is:</i>		



Past and present wishes - Have steps been taken to consider, as far as is practicable, the patient's past and present wishes about the matter, e.g., discussion with family, friends, or carers?	YES	NO
<i>Please identify who spoken with and views as to patients previously expressed wishes / views:</i>		
Involvement in decision - Have steps been taken to encourage and involve, as far as possible, the patient's involvement in the decision and actions being considered on their behalf?	YES	NO
<i>Please evidence what has been done to involve the patient:</i>		
Beliefs and values - Have you considered the beliefs and values likely to influence the patient's attitude to the decision, i.e., religious, cultural, lifestyle choices?	YES	NO
<i>Please evidence:</i>		
Other factors - Have you taken into account other factors that the patient would like to have considered in relation to the decision, i.e., emotional bonds, family obligations, where to reside and how to spend money?	YES	NO
<i>Please evidence:</i>		

CONSULTATION (The Act places a duty on the decision maker to consult anyone with an interest in the care of the patient who lacks capacity).

Views of previously named people - Have the views of anyone previously named by the patient as someone to be consulted been sought? This would be a person named by the patient at a time they had capacity as someone they wished to be consulted.

YES

NO

If yes, please specify who has been consulted:

Views of professionals - Have the views of people engaged in caring for the patient (e.g., carers, Mental Health professionals, GP, dentist, nurse, key worker, social worker) been sought? The views of all interested parties must be recorded.

YES

NO

Please specify who has been consulted

Views of family and friends - Have the views of family and friends been sought? The views of all interested parties must be recorded.

YES

NO

If yes, please specify who has been consulted:

Views of other interested parties - Have the views of other people with an interest in the persons welfare (e.g., advocate, voluntary worker, IMCA) been sought? The views of all interested parties must be recorded.

YES

NO

If yes, please specify who has been consulted and their views:



OTHER INFORMATION

Have all least restrictive options been explored?

Any other relevant factors to be considered.

ACTIONS

Best Interest actions to be undertaken.

What were the reasons for reaching this decision? Include any important factors taken into account

Conflict – Are there any disagreements or conflicts regarding the process or outcome? (If so contact the safeguarding team / legal services)

YES

NO

If yes, what steps have been taken to work with or to overcome these conflicts?

Completed by:

Name:

Designation:

Date

completed:



Consent form for adults who lack the capacity to consent to investigation or treatment

Please tick	Male <input type="checkbox"/>	Female <input type="checkbox"/>
Special requirements (e.g., other language / communication method)		
Responsible health professional / decision maker		
Job title		

All sections to be completed by the Health Professional Proposing the Procedure

A) Details of the procedure or course of treatment proposed

B) I confirm that the patient lacks capacity to consent to the proposed treatment (see MCA assessment relating to this procedure)

Tick to confirm

C) I confirm that the treatment/procedure is in the patient's best interest (see attached completed Best Interest checklist relating to this procedure) and that all / any relevant parties, (including any person with lasting power of attorney for health and welfare / court appointed deputy (where either exist) or an IMCA (where the patient is un-befriended)) have been involved in best interest discussions **and** this discussion is documented in the patient's records

Tick to confirm

Signature of Health Professional proposing and undertaking treatment

The above procedure is deemed to be in the best interests of the patient who lacks the capacity to consent for him or herself. The best interest decision making process has been followed and where possible, and appropriate, I have discussed the patient's condition with those close to him or her and taken their knowledge of the patient's views and beliefs into account in determining his or her best interests.

Signature _____ Date _____

Name (PRINT) _____ Job Title _____

Person providing the second opinion should sign below to confirm their agreement

Signature _____ Date _____

Name (PRINT) _____ Job Title _____

