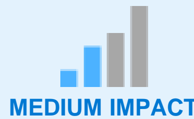
HOLISTIC QUALITY CARE LTD
64b , Roaseville Road, n/a, Leeds, West Yorkshire, LS8 5DR

Review Sheet

Last Reviewed 16 May '22

Last Amended 16 May '22

Next Planned Review in 12 months, or sooner as required.

Business impact	 **MEDIUM IMPACT** Changes are important, but urgent implementation is not required, incorporate into your existing workflow.
Reason for this review	Scheduled review
Were changes made?	Yes
Summary:	This policy outlines the statutory framework of the MCA, including the five principles, to empower and protect vulnerable people who may lack capacity to always make their own decisions; to support them to plan ahead, if they wish, for a time when they may lose capacity. It has been reviewed and updated with changes throughout. Further reading and a new document has been added to the forms section titled Mental Capacity Act - Five principles of the MCA. References have been checked to ensure they remain current.
Relevant legislation:	• Equality Act 2010 • The Care Act 2014 • The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 • Human Rights Act 1998 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice
Underpinning knowledge - What have we used to ensure that the policy is current:	• Author: Office of the Public Guardian, (2020), *Guidance and Safeguarding information about LPAs and Deputies*. [Online] Available from: https://publicguardian.blog.gov.uk/category/guidance/ [Accessed: 16/5/2022] • Author: CQC, (2022), *Home For Good: Successful community support for people with a learning disability, a mental health need and autistic people*. [Online] Available from: https://www.cqc.org.uk/publications/themed-work/home-good-successful-community-support-people-learning-disability-mental [Accessed: 16/5/2022] • Author: The Office of the Public Guardian, (2020), *Mental Capacity Act Code of Practice*. [Online] Available from: https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice [Accessed: 16/5/2022] • Author: Social Care Institute for Excellence, (2022), *Mental Capacity Act (MCA) Directory*. [Online] Available from: https://www.scie.org.uk/mca-directory/ [Accessed: 16/5/2022] • Author: Office of the Public Guardian, (2009), *Making decisions - A guide for people who work in health and social care*. [Online] Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_da -Health-care-workers-MCA-decisions.pdf [Accessed: 16/5/2022]
Suggested action:	• Encourage sharing the policy through the use of the QCS App
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.

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1. Purpose

1.1 To meet the provisions of the Mental Capacity Act 2005 (occasionally referred to as 'The Act' in this policy).

1.2 To support HOLISTIC QUALITY CARE LTD in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
CARING	C2: How does the service support people to express their views and be actively involved in making decisions about their care, support and treatment as far as possible?
CARING	C3: How are people's privacy, dignity and independence respected and promoted?
EFFECTIVE	E1: Are people’s needs and choices assessed and care, treatment and support delivered in line with current legislation, standards and evidence-based guidance to achieve effective outcomes?
EFFECTIVE	E2: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care and support?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?
RESPONSIVE	R1: How do people receive personalised care that is responsive to their needs?
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W1: Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?

1.3 To meet the legal requirements of the regulated activities that {HOLISTIC QUALITY CARE LTD} is registered to provide:

- Equality Act 2010
- The Care Act 2014
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice

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2. Scope

2.1 The following roles may be affected by this policy:

- Registered Manager
- Other management
- All workers delivering support or care

2.2 The following Service Users may be affected by this policy:

- All adult Service Users who might lack mental capacity as defined under the Act in England and Wales

2.3 The following stakeholders may be affected by this policy:

- Advocates
- Representatives
- Commissioners
- The family and friends of Service Users who might lack mental capacity as defined under the Act in England and Wales

3. Objectives

3.1 To ensure that HOLISTIC QUALITY CARE LTD follows the statutory framework of the MCA, including the five principles, to empower and protect vulnerable people who may lack capacity to always make their own decisions; to support them to plan ahead, if they wish, for a time when they may lose capacity.
3.2 To ensure staff assume Service Users have capacity until proven otherwise by use of a decision and time specific mental capacity assessment.
Staff and volunteers understand that the empowering, human rights-based ethos of the Mental Capacity Act is a crucial framework for ensuring human rights-based care and interactions with any Service Users who may lack capacity to make some decisions at the time they need to be made.
3.3 Staff empower and protect Service Users who are not able to make their own decisions by use of the Mental Capacity Act Framework. By following the mental capacity code of practice, staff are supported to make decisions in the Service User's best interests and encouraged to identify the least restrictive of all available options.
3.4 To ensure that all staff at HOLISTIC QUALITY CARE LTD are given training in the Mental Capacity Act relevant to their role regarding who to assess as well as how and when to assess a Service User's mental capacity, and how to make best interests decisions when necessary, whilst also ensuring that staff are aware of their responsibilities and are legally protected through following the principles of the MCA.

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4. Policy

4.1 Mental Capacity Act: 5 Principles
HOLISTIC QUALITY CARE LTD will ensure that all staff know, and work within the **Mental Capacity Act and its 5 underpinning principles**:

- The presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have the capacity to do so unless it is proved otherwise
- Individuals must be supported to make their own decisions – people must be given all appropriate help before anyone concludes that they cannot make their own decisions
- Individuals must be able to make what might be seen as eccentric or unwise decisions, without this being used as the sole reason to say they lack capacity
- Best interests – anything done for, or on behalf of people who lack capacity must be in their best interests
- Least restrictive option - before any act is done or a decision is made, staff must consider if they have found the option that, while meeting the need, is the least restrictive possible of the person's basic rights and freedoms

4.2 Supporting Service Users to make their own decisions - Consent
Staff at HOLISTIC QUALITY CARE LTD ensure that they support Service Users to make their own decisions at every opportunity by using all available means to enhance their capacity for each specific decision.
HOLISTIC QUALITY CARE LTD understands the importance of supporting people to make their own informed decisions through informed choice:

- Staff know how to present the right information in the right way, providing accessible information and resources including easy-read or pictures where suitable, and being clear about all the available options
- Staff actively look for the best ways to communicate with an individual, by checking that their vision and hearing are as good as they can be, or querying if an interpreter might be needed
- Staff put the Service User at ease, whether by choosing the right time of day to explain about a decision to the person, or asking whether they would like a relative or friend present
- Staff allow time for the Service User to ponder on the decision, or go away and discuss it with trusted relatives or friends

HOLISTIC QUALITY CARE LTD will never pressure or coerce Service Users, or withhold information which is relevant to their decision-making process.

4.3 Assessing Capacity
HOLISTIC QUALITY CARE LTD understands that all Service Users will be presumed to have capacity unless there is reason to believe otherwise.
HOLISTIC QUALITY CARE LTD understands a capacity assessment is not required if there is no doubt about an individual's capacity.
When a Service User lacks the mental capacity to make a particular decision, all actions taken are in the best interests of that person and align, as far as possible, with the person's wishes and feelings.
Where appropriate (for more major decisions), staff will ensure that they use the MCA best interests checklist to inform best interest decision making.
Any assessment of a Service User's mental capacity is **decision specific** and **time specific** to decide whether they can make a particular decision at the time it needs to be made.
The Registered Manager or a designated and trained individual will undertake capacity assessments when they are required.
All assessments will be completed using the form found in the 'Forms' section of this policy.

4.4 Best Interest Decisions
When a person lacks the mental capacity to make a particular decision, everything that is done for, or on behalf of that person is in the person's best interests and restricts their rights as little as possible. In working out what is in someone's best interests, the Registered Manager or appointed trained staff apply the mandatory checklist of factors laid out in the Mental Capacity Act.

4.5 Restrictive Practices
Staff refer to the associated policies and procedures at HOLISTIC QUALITY CARE LTD, such as restraint /

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physical interventions and restriction of freedom of movement, when considering capacity and best interest decision making and ensure that their actions are in accordance with the MCA.
Staff know how the Mental Capacity Act defines restraint, and that restraint can be:

- Physical or mechanical
- Environmental
- Chemical

Any physical intervention must be agreed as part of a multidisciplinary decision involving external health professionals and senior managers in the organisation. Staff must follow strategies as detailed by an approved, credited training provider (Please refer to the Reducing Physical Intervention Policy and Procedure).

4.6 Deprivation of Liberty

Staff know that the Mental Capacity Act does not allow a person to be deprived of their liberty in community settings such as domiciliary care, supported living settings unless this receives direct authorisation from the Court of Protection.

4.7 Third Parties with Legal Responsibilities

HOLISTIC QUALITY CARE LTD understands that families and friends do not have the legal right to make decisions on behalf of Service Users without their consent, or if they do not have capacity.
HOLISTIC QUALITY CARE LTD will ensure that they have a record of those lawfully able to act on a Service User's behalf and under what circumstances. This includes:

- Lasting power of Attorney (Health and Welfare)
- Lasting Power of Attorney (Property and Finance)
- Enduring powers of attorney (signed and dated before 2007 and applicable to the decision and circumstance)
- Court Appointed Deputies
- Advance Decisions

HOLISTIC QUALITY CARE LTD will ensure that all legal requirements are met, including registration, before accepting the above.

4.8 Advance Statements of Wishes

These are not legally binding, but it is good practice to encourage people to think about the ways they would like to be cared for if they should lose mental capacity.
HOLISTIC QUALITY CARE LTD will make sure that Advance Statements are considered thoroughly when making best interest decisions for Service Users.

4.9 Advocacy / IMCA

In cases where a Service User lacks capacity and has no relatives or friends to be consulted about their wishes and feelings apart from paid staff, and there is a need for serious medical treatment or a change in accommodation (e.g. moving into a care home), staff know that an independent mental capacity advocate (IMCA) must be appointed by the relevant NHS body or local authority.
Staff of HOLISTIC QUALITY CARE LTD cooperate with any IMCA who is instructed.
Staff can refer to the Advocacy Policy and Procedure at HOLISTIC QUALITY CARE LTD for further details.

4.10 Training

All staff at HOLISTIC QUALITY CARE LTD are given training in the Mental Capacity Act. References to training resources can be found in the Underpinning Knowledge/References section of this policy.
Staff at HOLISTIC QUALITY CARE LTD know and work within the Mental Capacity Act principles and codes of practice, including knowing what deprivation of liberty is, the legal framework to support Service Users lacking mental capacity, and the procedures that must be followed in such circumstances.

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5. Procedure

5.1 Roles and Responsibilities
anbara Haji Abdullahi is responsible for this policy and the dissemination of its contents

- anbara Haji Abdullahi maintains and raises awareness among all staff of the Mental Capacity Act's principles and practice, including:
  - Recognising the central importance of the MCA to protect the human rights of vulnerable people
  - Understanding among all staff that the MCA springs out of human rights law combined with existing best practice in health and social care, so it is intuitive to work within, and aligns with good person-centred practice
  - The requirement to do everything possible to enable Service Users to make their own decisions, even small ones, wherever they can do so
  - The definition of restrictive interventions / restraint within the MCA, and how to recognise when deprivation of liberty is unavoidable in the person's best interests
  - The requirement to interfere with the person's basic rights and freedoms as little as possible, while keeping them as safe as possible
  - Is responsible for assessing the capacity and best interest meetings and more complex best interest decisions of Service Users, if this is required, or delegating responsibility to a trained deputy
  - Reporting all breaches and raising safeguarding concerns to the regulator and local authority
  - Checking the registration of those with third party legal responsibilities

All staff have a responsibility to read this policy and procedure and direct questions to their line manager or the Registered Manager if there is any element they do not understand.
Staff have a responsibility to follow this policy and procedure and report any intentional or accidental breach of the process.
Training will be set by the Registered Manager, and staff have a duty to attend or make alternative arrangements to attend. It is every member of staff's responsibility to maintain this knowledge and raise any concerns or gaps in knowledge with anbara Haji Abdullahi.
Staff can access the Whistleblowing Policy and Procedure if they have witnessed any wrongdoing and wish to use this process to report a concern.

5.2 Consent
Any decision about a Service User's care or treatment must involve the informed and lawful consent of the Service User. A list of considerations can be found in the Policy section to ensure that the Service User is offering their informed consent.
If a Care Worker has concerns that a Service User is unable to give informed and lawful consent (whether that be a refusal or agreement on the issue), the Care Worker must inform the Registered Manager and record this information in the Care Plan notes to see if a capacity assessment needs to be completed.

5.3 Supporting Service Users to make decisions and the MCA Process
Where it is helpful for the Service User, a Care Worker or a family member, advocate or representative may sit with them during the assessment process to reassure and help them relax and feel comfortable.
Staff adopt the following best practice in relation to supporting Service Users to make decisions:

- Knowing how to present the right information in the right way, including being clear about all the available options
- Actively looking for the best ways to communicate with a Service User, including checking whether they can see and hear as well as possible, need an interpreter or need to have pictures to understand their options
- Putting the person at ease, choosing the right time of day to explain about a decision to the Service User, or asking whether they would like a relative or friend present
- Taking care to enable the Service User, wherever possible, to take away the information (in an accessible format such as easy read where suitable) and think it over, or discuss it with trusted friends or family
- Actively trying to create options that will fit with the Service User's wishes, feelings, history and personality

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5.4 Day-to-Day Decisions
Care Workers must work from the Care Plan for day-to-day decisions. For more important decisions, best interests decisions should be recorded. This can be done by completing the forms accompanying this policy with the Service User.
5.5 If it is determined that the Service User does not have the mental capacity to make a particular decision at the time it needs to be made, any action taken or any decision made must be in their best interest and recorded by the Care Worker.
5.6 Assessment of Capacity
Any assessment of a Service User's mental capacity is **decision specific** and **time specific** to decide whether they can make a particular decision at the time it needs to be made.
Someone lacks capacity for a decision if, after all practicable help, they cannot carry out all of the following four steps:

- **Understand** information relevant to the decision, such as their options, and what would happen if they refuse to make the decision
- **Retain** that information
- **Use or weigh** the information to reach a decision, and
- **Communicate** their decision, by any means at all that can be understood

This is a 'two-stage' test: if someone has been unable to do at least one of these steps, you must then consider if there is some 'disability or disturbance in their mind or brain' and, if so, if this is the reason the person cannot make the decision.
There must **never** be a generalised statement that someone lacks mental capacity. It is **never** enough to say that the person lacks mental capacity solely because of a diagnosis (such as dementia), or because someone thinks their decision is unwise, or because of their age, or their appearance.
When assessing a Service User's capacity, the Service User does not have to prove that they have capacity to make a certain decision. It is up to the person(s) who will make decisions on behalf of the Service User to prove that, on the balance of probabilities, the Service User lacks the mental capacity to make this decision.
If it is decided that, on the balance of probabilities, and after all possible help has been given to enable them to do so, the person does not have the mental capacity to make a particular decision at the time it needs to be made, any action taken or any decision made must be in their best interests.
5.7 Where a Service User lacks capacity over a long period of time for many kinds of decisions, capacity must be reviewed whenever a Service User's Care Plan is being developed or reviewed, or there appears to be some change in their capacity to make decisions, or when they lack capacity for a major decision that needs to be made, for example, about where to live, or whether to have serious medical treatment.
5.8 Complete Record of Assessment
Any member of staff responsible for assessing capacity must ensure that all required documentation is completed to evidence that the Mental Capacity Act has been followed. Staff must refer to the documentation that can be located in the Forms section of this policy.
Care Workers must work to a Care Plan which is clearly based on the assessment of capacity and best interests and is subject to review in accordance with local agreement and the Service User Care Planning Policy and Procedure at HOLISTIC QUALITY CARE LTD. All Care Workers know that they can raise issues that might show that the Care Plan should be reviewed more urgently with senior staff . Examples of this include when the staff member thinks the person has regained capacity, or that there is a decision they used to be able to make but now might have lost that capacity.
The records of all assessments must be completed fully, signed by the assessor and dated. Assessments will be kept with the Care Plan so they are readily available and can be revisited when reviewing aspects of the Service User's Care.
All information will be stored in line with data protection law and the UK General Data Protection Regulation.
5.9 Disputes
If there is a dispute about best interests, firstly staff must ensure that they have followed the mandatory best interests checklist, and tried, in particular, to make a decision that is in alignment with what the Service User wants. The following must be considered:

- Families and friends with legal responsibilities will not always agree about what is in the best interests of an individual. However, they usually have greater knowledge than Care Workers of what this Service User would have wanted, and sometimes of what the Service User now wants

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- The decision-maker will need to clearly demonstrate in the record kept that the decision is based on all available evidence and has taken into account all conflicting views. Particular care will be taken to look for the option that is the least restrictive of the Service User's rights

5.10 If there is a dispute, the Registered Manager will consider the following things to assist in determining what is in the Service User’s best interests:

- Where it might help, involve an advocate who can represent the Service User and highlight their relevant wishes and feelings
- Hold a best interests meeting to identify all the possible options and explore the pros and cons of each, or, if for example, relatives or some professionals cannot attend in person, enable all relevant views to be properly recorded and shared
- Consider mediation
- As a last resort, apply to the Court of Protection for a ruling (normally undertaken by the relevant Local Authority or NHS Trust when a complex and serious decision is to be made)

The Registered Manager must ensure that all documents completed are both signed and dated.

5.11 Best Interest Meetings / Mental Capacity Act Check List

In making a decision in a Service User's best interests because they lack capacity to make this decision for themselves, the Mental Capacity Act makes it compulsory to use a checklist covering matters to be considered, except in an emergency.

Decisions can be complex or life changing and a formal best interest decision meeting may be required. A number of different people may be involved if the decision would benefit from their input for the Service User such as:

- Staff
- Third parties such as power of attorney
- Family/close friends

A record of the conversations and conclusions must be recorded when making a decision in the Service User's best interests, and the following **must** be taken into account (except in an emergency, when there is no time). The following checklist is a mandatory requirement under the Mental Capacity Act of matters to consider by a decision-maker:

- Is the person likely to regain the mental capacity to make this decision and, if so, can this decision wait until then?
- Do everything possible to encourage the person to take part in the making of the decision, even though they lack the capacity to make the decision
- Give great weight to the person’s past and present wishes and feelings (in particular if they have been written down)
- Identify any beliefs and values (e.g. religious, cultural or moral) that would be likely to influence the decision in question
- Include any other factors that would be relevant and important to this person if they were able to make their own decision
- Be sure that you are not making assumptions about this person's best interests simply based upon the person's age, appearance, condition or behaviour
- As far as possible, the decision-maker must consult other people who might have views on the person's best interests and what they would have wanted when they had mental capacity, especially the following people:
  - Anyone previously named by the person lacking capacity as someone to be consulted
  - Carers, close relatives, friends or anyone else interested in the person’s welfare
  - Any attorney appointed under a Lasting Power of Attorney
  - Any deputy appointed by the Court of Protection to make decisions for the person

Making a decision in a person’s best interests requires evidence of the following:

- That the Act’s statutory principles and best interests checklist are properly considered
- That the Service User remains central to the decision or decisions needing to be made and they are involved in the decision-making process where possible

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- That relevant professionals and informal networks are properly consulted and if the statutory criteria are met, an Independent Mental Capacity Advocate is instructed
- A clear structure to the meeting, promoting partnership and collaborative working, the sharing of relevant information, the positive expression of different views, and an analysis of the risks and benefits attached to different options

5.12 Education and Training

- All staff at HOLISTIC QUALITY CARE LTD are given training (including regular refresher training) in the Mental Capacity Act and the attendance of staff is recorded on a matrix at HOLISTIC QUALITY CARE LTD
- All staff understand the importance of seeking consent whenever staff intervene in a Service User's privacy or lifestyle, unless it can be shown the person lacks capacity to make this specific decision
- All staff understand that capacity is 'decision and time specific', so they must do all they can to enable this person to make this particular decision at the time it needs to be made, for example, by clearly explaining their options and the likely outcomes of different decisions they might make
- Staff recognise that Service Users have the important right to consent to, or refuse, any staff interventions in their lives, provided they have capacity to do so
- All staff understand how to assess capacity when required, if appropriate, in cooperation with more senior staff
- All staff evaluate how effective the training is and feedback their views to anbara Haji Abdullahi
- New Care Workers are expected to complete standard 9 of the Skills for Care Certificate
- Forums such as supervision, team meetings and observation of practice are used to continue improving staff practice in applying the MCA

Holistic Quality Care ltd makes accessible documents and resources about the Act, including training resources available to staff.

References to resources can be found in the Further Reading and Underpinning Knowledge sections of this policy.

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6. Definitions

6.1 Restraint

- The Mental Capacity Act defines restraint of a person lacking mental capacity to consent to the action for which restraint is needed as:
  - The use, or threat of use, of force to make someone do something they are resisting, or
  - The restriction of a person's freedom of movement, whether they are resisting this or not

6.2 Protection from Liability

- The Mental Capacity Act allows carers, healthcare and social care staff to carry out certain tasks for, or on behalf of people whom they reasonably believe to lack capacity to consent to these actions, without fear of liability
  For actions to receive protection from liability, the worker must
  - Reasonably believe the person lacks capacity to consent to or refuse the proposed actions
  - Reasonably believe the actions they propose are in the person's best interests, and
  - Reasonably believe they have found the least restrictive option to meet the identified need

  Note that two extra conditions apply for the use of restraint. Any action intended to restrain a person who lacks capacity will not attract protection from liability unless the following **two conditions are also met**:
  - The person taking action must reasonably believe that restraint is **necessary to prevent harm to the person**, and
  - The amount or type or restraint must be a **proportionate response to the likelihood and seriousness of that harm**

6.3 Winterbourne View and Mid Staffordshire Hospital

- The MCA is part of a framework aimed at protecting the human rights of vulnerable patients and, if applied correctly, assures both the provider and the commissioner that this is indeed the case
- Reports into care by the Care Quality Commission and others, at Winterbourne View and Mid Staffordshire Hospital, have highlighted issues where basic human rights have not been recognised and patients have been neglected and abused as a result
- Much of what went wrong at Winterbourne View and other places might have been avoided if the service provider had truly understood and acted upon their duty to protect the liberty and security of those in their care as well as understood what the Act says about the duty to take decisions in the best interests of vulnerable individuals

6.4 Independent Mental Capacity Advocate (IMCA)

- An IMCA is an advocate appointed by a Local Authority or NHS body, in certain circumstances, to support a person who lacks capacity but has no one except paid staff who are interested in their welfare
- The IMCA finds out about the person's wishes, feelings, beliefs and values, and brings to the attention of the decision-maker all factors that are relevant to the decision. The decision-maker must consider the views of the IMCA but is not bound by them
- anbara Haji Abdullahi must ensure that, if an IMCA has been instructed and will visit, staff understand the IMCA has a right to see the person alone if they wish and has a right to see relevant records.
  It is good practice to sort out what notes will be relevant to the decision the IMCA will advise on, to welcome the IMCA as a colleague, and if applicable, to provide somewhere private for the IMCA to meet with the person if they wish, to read the information and make notes

6.5 Authorisation of Deprivation of Liberty

- In community settings such as when receiving care in their own home, supported living, extra-care housing or shared lives schemes, a person aged 16 or older who is deprived of their liberty to give them necessary care or treatment **must have their rights protected by having the situation authorised by the Court of Protection**. This is arranged by the commissioner of the service or, for self-funders, the Local Authority. If HOLISTIC QUALITY CARE LTD suspects that a Service User is deprived of their liberty, they must notify the commissioner or Local Authority

6.6 Advance Decision to Refuse Treatment (ADRT)

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- The Act creates ways for people aged 18 and over to make a decision in advance to refuse medical treatment if they should lose capacity in the future. This is called an advance decision to refuse treatment
- An advance decision to refuse treatment that is not life-sustaining does not need to be in writing, but the person must ensure that professionals know what treatment(s) the person is refusing
- A person who is refusing, in advance, life-sustaining treatment, must make sure that their advance decision meets certain requirements. These are that the decision must be in writing, signed and witnessed (as a safeguard that the person is not subject to undue pressure), with a clear statement of which treatment or treatments the person is refusing. In addition, there must be an express statement the person understands that this may put their life at risk but that the decision still stands
- A person can only refuse specified medical treatments; they cannot insist on any particular treatment. A person cannot refuse in advance to be admitted to a care home, or to be offered food and drink by mouth, or to being kept clean and comfortable.
  An advance decision to refuse treatment can be used to refuse, in advance, clinically-assisted nutrition and hydration (CANH) because this is regarded as a medical treatment
- If it meets the rules above, and applies to the situation at hand, an advance decision to refuse treatment is just the same as if the person is refusing the treatment with capacity; the treatment cannot be given
  Care workers must be clear
  - Whether an advance decision to refuse treatment exists
  - What is in it, and
  - Where it is to be found

  Any doctor or paramedic needs to know if treatment they might suggest would be lawful or whether the person has refused it in advance

6.7 Deprivation of Liberty

- A person who lacks capacity to consent to or refuse the Care Plan that keeps them safe is deprived of their liberty if this Care Plan shows that they are:
  - Under complete and effective supervision and control by staff (this may not always be 'line of sight' supervision, but staff prevent the person from acting in a way that would cause them harm, and know at all times pretty well what they are doing) *and* they are
  - Not free to leave the place where they are being cared for (in the sense of leaving to go and live somewhere else if they choose, or go away on a trip without permission from others)

6.8 Court Appointed Deputies

- They are only appointed if the Court cannot make a one-off decision to resolve the issues, and if the person has already lost capacity to make these decisions. Staff should be aware of any Court appointed deputies in place for Service Users in their care, and of what decisions any deputy is authorised to make
- The Act provides for a system of court appointed deputies to replace the previous system of receivership in the Court of Protection. Deputies are able to take decisions on welfare, healthcare and financial matters as authorised by the Court but are not able to refuse consent to life-sustaining treatment

6.9 Lasting Power of Attorney (LPA)

- The Act allows a person aged 18 and over, who has capacity to make this decision, to appoint attorneys to act on their behalf if they should lose capacity in the future. There are two types of LPA, one to make health and welfare decisions, and the other to make finance and property decisions. The provision replaces the previous role of Enduring Power of Attorney (EPA)
- Staff should be aware of any LPA in place for Service Users in their care; they should know which individuals have been given powers to make which specific types of decisions

6.10 Best Interests

- Everything that is done to, or on behalf of a person who lacks capacity must be in that person’s best interests. The Mental Capacity Act does not define best interests, but lays out how best interests decisions must be made. The Act provides a checklist of factors that decision-makers must work through, except in an emergency, in deciding what is in a person’s best interests. A person can put

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their wishes and feelings into a written statement if they so wish, which the person making the decision must consider

6.11 Test for Capacity

- The Act sets out a two-stage test for assessing whether a person lacks capacity to take a particular decision at the time it needs to be made. It is a 'decision-specific and time-specific' test, and must be recorded in a way that explains why you have reached the conclusions to answer these questions:
  - Firstly, is this person unable to make a particular decision at the time it needs to be made? (See explanation below of how to consider the '4 steps' to work this out)
  - Secondly, is their inability to make the decision BECAUSE OF some impairment of, or disturbance in the functioning of, their mind or brain? (This can be temporary or permanent; there will usually be a diagnosis of what is wrong with the mind or brain, but it is not essential)
- The person lacks capacity for this decision if there is one or more of the following steps that they CANNOT do:
  - **Understand** appropriately presented information about the decision to be made
  - **Retain** that information for long enough to use or weigh that information as part of the decision-making process
  - **Use or weigh** that information as part of the decision-making process
  - **Communicate** their decision (by talking, sign language or any other means)

6.12 Mental Capacity Act

- The Mental Capacity Act 2005, covering England and Wales, lays out a legal framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they might lack capacity in the future
- It sets out who can take decisions, in what situations, and how they should go about this
- All staff paid to work with any person aged 16 or above, who might lack mental capacity to make certain decisions at the time they need to be made due to a disability or disorder of mind or brain, must 'have regard to' the MCA code of practice
- Note that a new code of practice is under development, and will supersede the existing code, perhaps in autumn 2023. HOLISTIC QUALITY CARE LTD will update all its resources to take account of the new code in good time
- Most of the MCA applies to people from the age of 16 upwards
- Certain parts, such as the Deprivation of Liberty Safeguards (DoLS) and the right to make an advance decision to refuse treatment or appoint attorneys under a Lasting Power of Attorney, only relate to people aged 18 and over
- Note that DoLS will be replaced, not before autumn 2023, by the Liberty Protection Safeguards (LPS), which will apply in any settings where a person lacking capacity to consent to their care arrangements might be, such as supported living, extra-care housing, or their own family homes. HOLISTIC QUALITY CARE LTD will update all resources and policies in good time before implementation
- Certain parts, such as the right to make an advance decision to refuse treatment or appoint attorneys under a Lasting Power of Attorney, only relate to people aged 18 and over

6.13 Court of Protection

- The Court of Protection has jurisdiction relating to the whole Act and is the final arbiter for capacity matters. It has its own procedures and nominated judges

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Key Facts - Professionals

Professionals providing this service should be aware of the following:

- The Mental Capacity Act 2005 provides a statutory framework to empower and protect people aged 16+ who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they must go about this. It enables people to plan ahead for a time when they may lose capacity
- When a person aged 16+ lacks capacity to consent to care, deprivation of liberty is only permitted if it has been authorised by the Court of Protection; this is arranged by the commissioner or the Local Authority. DoLS will be replaced in time by the Liberty Protection Safeguards (LPS). Full guidance will be provided nearer the time
- Guidance on the Act is provided in a statutory Code of Practice. Whilst there is no legal duty on anyone to 'comply' with the Code, those working with people who lack mental capacity must follow its guidance or have extremely good reasons for not doing so. The Code is currently under revision, to include LPS and updates. Full guidance will be provided in good time before implementation
- The Act introduces new criminal offences of ill treatment or neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to imprisonment for a term of up to 5 years

Key Facts - People affected by the service

People affected by this service should be aware of the following:

- Where a decision needs to be made for someone who lacks the capacity to make that decision, the decision must be made in the person's best interests. The decision-maker must take into account the person's wishes and the views of friends and family in making those decisions
- The Mental Capacity Act (MCA) protects the rights of people who lack mental capacity and those who take decisions on their behalf. It provides ways for anyone to plan ahead for a time when capacity might be lost. It also puts an obligation on paid staff to find the least restrictive, most person-centred ways possible to care for someone who lacks mental capacity, and keep them safe

Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

National Institute for Health and Care Excellence - Decision-making and mental capacity (NG108):
https://www.nice.org.uk/guidance/ng108
National Institute for Health and Care Excellence: Decision-making and mental capacity (QS194):
https://www.nice.org.uk/guidance/QS194
Mental Capacity (Amendment) Act 2019:
https://www.legislation.gov.uk/ukpga/2019/18/enacted
This contains the new Liberty Protection Safeguards (LPS), which will eventually replace the Deprivation of Liberty Safeguards (DoLS). HOLISTIC QUALITY CARE LTD will provide information on the implementation timetable when this is available.
For changes to the MCA Code of Practice and implementation of the LPS, see:
https://www.gov.uk/government/consultations/changes-to-the-mca-code-of-practice-and-implementation-of-the-lps

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Outstanding Practice

To be ‘ outstanding ’ in this policy area you could provide evidence that:

- Current good practice materials, including technology, are available to help Service Users who need support in decision making
- Service Users with capacity are not prevented by the service from making decisions, even though others may disagree with their choices
- The wide understanding of the policy is enabled by proactive use of the QCS App
- Service Users are helped and supported in several ways including through innovative and person-centred strategies, and on a regular basis, to make all possible decisions for themselves
- Staff can describe the difference between restrictions and restraint allowed by the Mental Capacity Act and a deprivation of liberty requiring special authorisation through DoLS (and in future through LPS)
- Decisions or choices made by Service Users who lack capacity are respected as far as possible, while keeping the Service User safe
- All relevant staff can identify the principles of the Mental Capacity Act 2005

Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
Essential MCA Information - CR46	To log essential information at the start of service delivery or when reviewing Care Plans	QCS
Capacity Assessment Form - CR46	When creating or reviewing Care Plans if there is doubt whether the person has capacity to consent to receiving the services proposed	QCS
Care Planning: Best interests decision-making form - CR46	When a person has been assessed as lacking capacity to create their own Care Plan or consent to receiving services	QCS
Five Principles of the MCA CR46	As a reference for understanding the five principles	QCS

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1. Has the Service User created Lasting Powers of Attorney (LPA) for:		
Property and Finance?	**Yes**	**No**
Health and Welfare?	**Yes**	**No**
If the answer for either of the above is 'yes', please use the below space to record their details. Use additional pages as necessary.		
Property and Finance LPA		
Names and contact details of attorneys:		
Has the LPA been registered with the Office of the Public Guardian (OPG)?	**Yes**	**No**
What decision-making powers have been given, or withheld?		
Health and Welfare LPA		
Names and contact details of attorneys:		
Has the LPA been registered with the Office of the Public Guardian (OPG)?	**Yes**	**No**
What decision-making powers have been given, or withheld?		

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2. Is there a Deputy appointed by the Court of Protection? If the answer is 'yes', please complete their details below.	**Yes**	**No**
Name and contact details of Deputy:		
Briefly note what powers are given by the deputyship order:		

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3. Has the person made an Advance Decision (AD) to refuse treatment?	**Yes**	**No**
If 'No', and there is no reason to think the person lacks mental capacity to do this, do they understand that they can make an AD if they wish, but do not have to? Record briefly below any discussions you have had with the person on this topic.		
3.A If 'Yes' they have made an AD, does it relate to potentially life-sustaining treatment?	**Yes**	**No**
If 'Yes': You should have a copy of this. **If 'No':** Record below any details of verbal advance decisions to refuse treatment, with a signature from the person to confirm you have correctly recorded their wishes. If they lack mental capacity to give this confirmation, record how you learned of the advance decision.		
Details of any verbal advance decisions to refuse treatment: Signed by: ________________________________ Date:____________		

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4. Has the person made any advance statements of wishes?	**Yes**	**No**
If 'Yes': You should have a copy of this. **If 'No':** If the person has mental capacity to decide details of how they might like to be treated if they no longer had mental capacity, it is good practice to encourage them to make any advance statements they wish, to be recorded here.		
Advance statements: Signed by: ________________________________ Date:____________		

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Notes for Question 1:

- LPAs must be registered with the Office of the Public Guardian before they can be used. If the LPA is registered, each page will have a mark saying 'Validated – OPG'
- An LPA for property and finance, once it has been registered, CAN be used while the person has mental capacity to manage their own affairs, but only with their permission
- An LPA for health and welfare can ONLY be used once it has been registered, if the person who created it lacks the mental capacity to make a particular decision at the time it needs to be made. People must make their own health and care decisions if they have the mental capacity to do so
- A person creating an LPA can personalise it, if they wish, by giving the attorney the power to make some decisions but not others. Therefore, it is important that you note BOTH who the attorneys are, AND what decisions the attorney has the power to make. This is particularly important with LPAs for health and welfare, since the attorney might have the power to consent to or refuse life-sustaining treatment on behalf of the person, or that power might have been withheld
- Attorneys making decisions under an LPA have a duty, just as you do, to act within the Code of Practice of the MCA. This means you should give them the information they need to make a particular decision, if the person lacks capacity to do this. It also means that, if you think an attorney is failing to act in the best interests of the person, you must immediately tell the Office of the Public Guardian. They will then investigate. Examples of poor practice might be: if there is a property/finance LPA, failing to provide the person with money for toiletries or hairdressing, or being in arrears with the fees; or, if they have a health/welfare LPA, refusing to let the person go to the church of their choice. **If you have concerns about any actions of an LPA attorney, you should tell the OPG as a matter of urgency**
- Within the possible limits explained in (4) above, you should think of the attorney as 'standing in the shoes' of the person who has given them the powers; they can make decisions as if they are the person receiving services

For further information, see MCA Code of Practice chapter 7.

Notes for Question 2

For further information, see MCA Code of Practice chapter 8.

Notes for Question 3:

- An advance decision to refuse treatment is a powerful legal tool to make sure someone is not given treatment they would not want, when they lack capacity to consent to it. If an advance decision is valid (made correctly) and applicable (relates to the treatment being considered), it is as if the person is refusing that treatment with capacity; the treatment cannot then be given
- **Please do not** use phrases such as 'living will' or 'advance directive' since these are confusing and have no legal power
- Nobody **has** to make an advance decision to refuse treatment. If a person has not done so, decisions are made in the best interests of the person, taking account of what is known about their past and present wishes and feelings
- An advance decision to refuse treatment can only be a refusal of medical treatment. This can include Clinically Assisted Nutrition or Hydration (CANH) but a person cannot refuse 'basic care', such as being kept warm, clean and comfortable, and being offered nutrition or hydration by mouth
- It is not possible to make an advance decision to refuse admission to a care home
- A person with mental capacity can make, change, or cancel an advance decision at any time. You may need to help them get their decision updated at their GP practice or hospital providing treatment
- If there is an advance decision to refuse treatment, but it is not about life-sustaining treatment, it does not, in law, need to be in writing. But in order to honour it, it is important that it is described in the records of the care provider and the GP
- If there is an advance decision that relates to potentially life-sustaining treatment, it must be in writing, in the person's own words, signed by them (or in their presence, if they physically cannot sign), and witnessed. It must also contain a statement that the person understands that this may shorten their life, but they wish it to apply anyway

For further information, see MCA Code of Practice chapter 9.

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Notes for Question 4:

- Advance statements of wishes are not legally binding, but it is good practice to encourage people to think about the ways they would like to be cared for if they should lose mental capacity
- Providers must give any written statement real weight in deciding on the Care Plan of someone who lacks mental capacity to decide their own Care Plan
- Whether written or not, advance statements of wishes should be considered, recorded as relevant, and honoured wherever possible in best interests decision-making
- An example of advance statements might be: 'If I lack mental capacity to consent to medication, I would like staff to know I have difficulty swallowing large tablets and do better if they can be hard-coated and shaped for easier swallowing; and I need a large glass of water, and not to be rushed.' Or, 'If I lack mental capacity, I would like staff to know that I have always loved dogs and would like my Care Plan to continue to incorporate PAT dogs if possible.'

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Notes:

1. If there is no reason to think that the person might lack mental capacity, there is no need to carry out a capacity assessment.
2. Remember that nobody needs to prove they have capacity. But if you plan to act on behalf of an individual in their best interests, under the MCA, you must show that, on balance, the person lacks mental capacity.

Person's name:
Name and role of person completing this form: Date:___________
Nature of decision: (for example, 'consenting to necessary medication', 'consenting to the use of bed-rails at night' or 'consenting to be helped with intimate personal care')

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Step 1		
1. Is there any impairment of, or disturbance in the functioning of the person's mind or brain? (such as dementia, a stroke, a neurological condition, use of alcohol, or any other temporary or permanent problem)	**Yes**	**No**
If 'No': The Mental Capacity Act cannot be used as a framework for decision-making unless there is some impairment or disturbance as described above. **Do not continue.** **If 'Yes':** Describe below the nature of this impairment or disturbance. If you do not know its cause, you should describe it, for example, 'confusion and memory loss, cause not established').		

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Step 2		
2. You must decide whether this impairment or disturbance means that the person cannot make the specific decision referred to in this form. To do that, you need to consider the four steps which the MCA says a person has to be able to do, in order to make a decision. If a person cannot carry out all of these steps, with as much support as possible, then they lack mental capacity for this decision at this time.		
2A. Can the person **Understand** information relating to the decision (suitably expressed, and without unnecessary detail)?	**Yes**	**No**
If 'No', describe below how you tried to explain the information, and how you know the person did not understand it		
2B. Can the person **Retain** that information at least for a short while?	**Yes**	**No**
If '**No**', describe below how you know the person could not remember the information for long enough to use it		

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2C. Can the person **Use** or weigh it to make their decision?	**Yes**	**No**
If 'No', describe below how you know the person was not able to use or weigh the information		

2D. Can the person **Communicate** the decision by any means?	**Yes**	**No**
If 'No', describe how you tried to help the person to communicate their decision, and why they were unable to do so		

If '**Yes**' throughout, the person has capacity for this decision. You cannot make a best interests decision on this person's behalf; they have the right to make their own decisions.
If 'No' at any stage, the person does not have capacity and a best interest decision has to be made. Explain below why you think that the problem in the person's mind or brain is the reason why they cannot do at least one of them. *For example, you might write: 'Maria is often convinced she is on the staff here, and this delusion stops her being able to understand why she cannot go 'home' to her mother at tea-time' or 'Mr Smith's dementia has seriously affected his short-term memory, and this means he cannot remember his need to take his medication however often he is reminded.'*
Use additional pages as necessary.

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Service User's Name
Nature of decision facing the person:
Name and role of person completing this form: Date:___________

Step 1: Is the person likely to regain capacity?		
1. Is the person likely to regain capacity and, if so, can the decision wait?	**Yes**	**No**
If '**Yes'**, record how you are encouraging the person to regain capacity. If '**No'**, continue with best interests decision-making.		

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Step 2: Check the 'Essential Information' form		
2A. Is there an Advance Decision to Refuse Treatment, relevant to this decision? (For example, a decision to refuse a certain medication which is being proposed?)	**Yes**	**No**
If '**Yes**', and the Advance Decision is valid and applicable, this medication cannot be given. If '**No'**, continue with best interests decision-making.		
2.B Is there any other person with legal powers to make this decision?	**Yes**	**No**
If '**Yes**': Notify them of the decision, and offer to help them with any relevant information. If '**No**', continue with best interests decision-making.		

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Step 3: The best interests checklist		
3A. What are the person's present wishes and feelings about this decision? Do they feel strongly one way or another?	**Yes**	**No**
If '**Yes**': Do all you can to make a decision that fits with their wishes and feelings. Record below how you are trying to do that. If '**No**': Proceed with best interests decision-making.		

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3B. Who cares about this person's welfare and what are their views?

- **Name of person consulted in making this decision** - for example, GP, Practice Nurse, District Nurse, Social Worker, Named Carer
- **Contact details** - Record how you have consulted them (by phone, email, face to face, best interests meeting)
- **Record opinions** - give short direct quotes if possible. Include differences of opinion
    - For example, what do they think the person would want if they had capacity? What can they tell you about the person's culture, beliefs, personal history, and anything else that might influence how this person would think about this decision?

Name of person consulted and date	Contact details	How were they consulted?	Record opinions

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3C. Confirm that you are avoiding discrimination: The MCA says you must not make assumptions about best interests simply on the basis of the person's age, appearance, condition or behaviour.	**Yes**	**No**
3D. If the decision concerns life-sustaining treatment: You must not be motivated in any way by a desire about the person's death. Confirm that you are not making assumptions about the person's quality of life.	**Yes**	**No**
3E. Avoid restricting the person's rights: See if there are other options that may be less restrictive of the person's rights; record below what less restrictive options you have considered and why you have discounted them (*For example, you may have tried them and they do not meet the person's needs).* **Record here:**	**Yes**	**No**
3F. Weigh up all these factors, and anything else that this particular individual would take into account if they had capacity, to reach a best interests decision.	**Yes**	**No**
3G. Ensure that the Care Plan makes it clear to staff how to carry out this decision, in daily practice. Front-line staff are protected from liability provided they are following a Care Plan based on assessments of capacity and best interests as laid out here.	**Yes**	**No**
Additional Notes:		

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Examples of Best Interest Decisions

Example 2: Personal Care:

The completed capacity assessment shows that, on the balance of probabilities, Mrs X lacks the mental capacity to consent to personal care interventions due to her dementia. The best interests decision-making process has determined that it is in her best interests to have such personal care delivered in the least restrictive way possible. Staff are to:

- Make sure she is fully awake and has her hearing aids in, and glasses on, which will help her understand what is happening
- Explain slowly and carefully, at each stage, what actions staff will carry out
- Start with washing her face and hands gently in warm water follow up with her hand cream and encourage her to brush her hair; she enjoys this
- Stay calm, keep good eye contact when explaining
- If she is particularly upset by staff actions, leave her as comfortable as possible, with her radio on her favourite channel (Radio 4) and move to other tasks if possible and then return

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Mental Capacity Act- Five principles of the MCA

At the heart of the MCA in terms of concepts and values, are the five 'statutory principles'. Consider the five principles as the benchmark – use them to underpin all acts done and decisions taken in relation to those who lack capacity. In doing so, you will better empower and protect individuals who lack capacity. It is useful to consider the principles chronologically: principles 1 to 3 will support the process before or at the point of determining whether someone lacks capacity. Once you have decided that capacity is lacking, use principles 4 and 5 to support the decision-making process. The five key underpinning principles (Section 1, MCA):

Principle 1:

A presumption of capacity. Every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.

Principle 2:

Individuals being supported to make their own decisions. A person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you will make every effort to encourage and support people to make the decision for themselves. If lack of capacity is established, it is still important that you involve the person, as far as possible, in making decisions.

Principle 3:

Unwise decisions. People have the right to make what others might regard as an unwise or eccentric decision. Everyone has their own values, beliefs and preferences which may not be the same as those of other people. You cannot treat them as lacking capacity for that reason.

Principle 4:

Best interests. If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of that person, must be made in their best interests.

Principle 5:

Less restrictive option. Someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of action, or whether there is a need to decide or act at all. In essence, any intervention will be proportional to the particular circumstances of the case.

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