

Multi Agency Mental Capacity Act Policy

Document Summary

This resource pack provides guidance to staff writing approved documents for the Trust, including policies, procedures, strategies and protocols to help ensure consistency in their development, implementation, and distribution.

DOCUMENT NUMBER	POL/001/005/019
DATE RATIFIED	20/04/2016
DATE IMPLEMENTED	April 2016
NEXT REVIEW DATE	April 2019
ACCOUNTABLE DIRECTOR	Director of Quality & Nursing
POLICY AUTHOR	Head of MHLU/Multi agency

Important Note:

The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendment

MULTI-AGENCY MENTAL CAPACITY ACT POLICY

POLICY & GUIDANCE STATEMENT

Key Objective:

To ensure compliance with the requirements of the Mental Capacity Act 2005 and the Mental Capacity Act associate Code of Practice by providing guidance as to the operation of the Act within the partner agencies across Cumbria.

The policy of the Cumbria Safeguarding Partnership is to abide by the principles of Act and to follow this Code of Practice.

KEY POLICY ISSUES

- Compliance with the MCA and Code of Practice.
- The implementation and management of the Act across Cumbria
- Guidance on the support and advice to service users, carers and multi-agency staff.

	Page No
TABLE OF CONTENTS	
1. INTRODUCTION	
2. RATIONALE.	
3. SCOPE.	
4. POLICY.	
5. PROCEDURE.	
6. TRAINING...	
7. IMPACT ASSESSMENTS	
8. REFERENCES & BIBLIOGRAPHY	
9. GLOSSARY & DEFINITIONS	

The following agencies have been involved in producing this policy and guidance:

Cumbria County Council Adult Social Care Directorate
Cumbria Constabulary
North Cumbria Acute Hospitals NHS Trust
University Hospitals of Morecambe Bay NHS Trust
Cumbria Partnership Foundation NHS Trust
Cumbria Care Sector Alliance
Cumbria Primary Care Trust

This Policy and Procedure can be made available in different formats and languages. Please contact Adult Social Care Public Information Officer 01539 713300.

1. INTRODUCTION

This handbook provides guidance on the operation of the Mental Capacity Act 2005. It is designed to be used by service users, carers and staff throughout the statutory and non-statutory health and social care services across Cumbria.

It should be used in conjunction with the Mental Capacity Act 2005 Code of Practice.

Specifically, it seeks to provide advice and explanation as to:

- why the policy is necessary (rationale)
- to whom it applies and where and when it should be applied (scope)
- the underlying beliefs upon which this policy is based (principles)
- the standards to be achieved (policy)
- how the policy standards will be met through working practices (procedure)

Throughout this document the Act refers to the Mental Capacity Act 2005

2. SCOPE

This policy is for adoption, information and application by all staff of the signatories to the Cumbria Safeguarding Partnership. A list of all partners to this multi-agency agreement can be found at the front of this document.

It does not replace any specific policies of partner agencies and staff should also refer to relevant policies and guidance of their own organisation.

3. PRINCIPLES

The Act details five guiding principles, which underpin its fundamental concepts and govern its implementation.

They are:

- Assume capacity unless it is proved otherwise
- Give all appropriate help before concluding someone cannot make their own decisions
- Accept the right to make what might be seen as eccentric or unwise decisions
- Always act in the best interests of people without capacity
- Decisions made should be the least restrictive of their basic rights and freedoms

4. POLICY

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. It makes it clear who can take decisions in which situations and how they should go about this. It enables people to plan ahead for a time when they may lose capacity.

The Act enshrines in statute, current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf. It provides for reform and updating of the current statutory schemes for Enduring Powers of attorney and Court of Protection receivers.

The Mental Capacity Act Code of Practice is the basis of good practice guidance for all aspects of the Act. **The policy of the Cumbria Safeguarding Partnership is to abide by the principles of Act and to follow this Code of Practice.**

5. PROCEDURE

5.1 Records

Staff must maintain accurate records of how and why decisions regarding assessment of mental capacity and best interest are reached.

It should be remembered that records can be referred to in future in the event of disputes or as part of legal proceedings.

5.2 How to assess capacity (see appendix no 2)

The Act sets out a two-stage test of capacity for the decision maker when assessing whether a person lacks capacity to take a particular decision at a particular time. It is a “decision-specific” test. No one can simply be labelled ‘incapable’ as a result of a particular medical condition or diagnosis.

Stage 1: Does the person have an impairment of or disturbance in the functioning of their mind or brain?

Stage 2: If so, does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?

5.3 Decision Maker

The decision maker is the person who is proposing to take an action in relation to the care or treatment of an adult who lacks capacity, or who is contemplating making a decision on behalf of that person. Who the decision maker is will depend on the person’s circumstances and the type of decision.

5.4 Defining a lack of capacity

A person lacks capacity in relation to a matter if at the material time s/he is unable to make a decision for him/herself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

It does not matter whether the impairment or disturbance is permanent or temporary.

A lack of capacity cannot be established merely by reference to:

- a person's age or appearance
- a condition, or an aspect of their behaviour, which might lead others to make unjustified assumptions about their capacity

Any question whether a person lacks capacity must be decided on the balance of probabilities.

5.5 Inability to make decisions

The decision maker will consider a person as lacking capacity to make a decision if s/he is unable to:

- to understand the information relevant to the decision
- to retain that information
- to use or weigh that information as part of the process of making the decision
- to communicate their decision (whether by talking, using sign language or any other means)

A person is not to be regarded as unable to understand the information relevant to a decision if s/he is able to understand an explanation of it given to him/her in a way that is appropriate to their circumstances using simple language, visual aids or any other means.

The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him/her from being regarded as able to make the decision. Capacity is confirmed where a person is able to understand and retain information long enough to make an informed decision.

The information relevant to a decision includes information about the reasonably foreseeable consequences of:

- deciding one way or another, or
- failing to make the decision.

As a last resort, an opinion from the person's GP (General Medical Practitioner) may be sought or a request for an assessment made to the registration officer at Cumbria Primary Care Trust or Adult Social Care. Remember however that capacity should be presumed unless there is clear evidence to the contrary. In the case of Court of Protection Receivers, and Deputies, the application requires a certificate to be completed by the GP or specialist to confirm mental incapacity before they can be appointed.

5.6 Factors which may affect capacity

A person's mental capacity can vary or be temporarily impaired due to mood or depression. In these circumstances, it may be possible to put off a decision until such time as the person has regained capacity.

A person's mental capacity may also vary or be temporarily impaired due to an underlying physical disorder e.g. urinary tract infection.

A person may have the capacity to make some decisions but not others. For example, a person who cannot understand the financial issues around entering long term care might still have the capacity to make a choice about whether they want to go into long term care at all and, if so, which home.

Information

All information relevant to the decision must be provided in a format that the person can understand.

Pressure

Carers or other family members may sometimes exert undue pressure when the person being cared for is actually capable of making their own decisions or where expert help may help them do so.

A lack of trust

A person may feel anxious about dealing with staff from Adult Social Care or any other interested agency, so ensure that they have access to independent support, advice or advocacy in these circumstances.

5.7 Best Interests

The Act provides a checklist of factors that decision-makers must work through when deciding what is in a person's best interests. A person may have put their wishes and feelings into a written statement, which the person making the determination must consider. Carers and family members have a right to be consulted. See appendix 3 for Best Interest checklist

The decision maker must not make a decision merely on the basis of:

- the person's age or appearance, or a condition of his/hers, or
- an aspect of his/her behaviour, which might lead others to make unjustified assumptions about what might be in their best interests, or
- any Advance Statement made by that person.

The decision maker must consider all the relevant circumstances and, in particular, take into account:

- whether it is likely that the person will at some time have capacity in relation to the matter in question, and
- if it appears likely that they will do so, when that is likely to be.

They must, so far as reasonably practicable, permit and encourage the person to participate, as fully as possible in any act done for them and any decision affecting them.

They must consider, so far as is reasonably ascertainable:

- the person's past and present wishes and feelings (and in particular any relevant written statement made by them when they had capacity),
- the beliefs and values that would be likely to influence their decision if they had capacity; and
- the other factors that they would be likely to consider if they were able to do so.

They must consult and take into account, if it is practicable and appropriate the views of:

- anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
- anyone engaged in caring for the person or interested in his/her welfare,
- any donee of a Lasting/ Enduring Power of attorney granted by the person, and
- any deputy appointed for the person by the court, as to what would be in the person's best interests.

The duties imposed in above also apply in relation to the exercise of any powers, which are:

- exercisable under a lasting/enduring power of attorney, or
- are exercisable by a person under the Mental Capacity Act where s/he reasonably believes that another person lacks capacity.

In the case of an act or a decision by a person other than the court, it is sufficient if (having complied with the requirements of Mental Capacity Act section 4.2) s/he reasonably believes that what s/he does or decides is in the best interests of the person concerned. "Relevant circumstances" are those of which the person making the determination is aware, and which it would be reasonable to regard as relevant.

Disputes

If there is a dispute about capacity or best interests, the following action may be of assistance:

- Obtain a second opinion
- Hold an multi-agency case conference
- Go to mediation
- Apply to the Court of Protection for a ruling
- Involve an independent advocate**

5.8 Independent Mental Capacity Advocate (IMCA)

An IMCA is someone appointed to safeguard the right of a person who lacks capacity and who has no one to speak for them. They are bringing to the attention of the decision-maker all factors that are relevant to the decision. The IMCA can challenge the decision-maker on behalf of the person lacking capacity.

The Mental Capacity Act 2005 places an obligation on Local Authorities and/or NHS bodies to instruct and consult an IMCA when making decisions for a person who lacks capacity in the following circumstances (see Mental Capacity Act 2005 Sections 37 – 39 and Chapter 10 Code of Practice.

- Serious Medical Treatment
- The Local Authority is proposing to arrange accommodation for someone for longer than 8 weeks
- The NHS body is proposing to arrange accommodation for someone for longer than 28 days

The Mental Capacity Act 2005 gives powers to Local Authorities to extend the functions of an IMCA service and **may** instruct an IMCA in cases of:

- Care reviews, and
- Adult Protection cases, (the criteria of friends and family does not apply in Adult Protection cases) (see Safeguarding Adults Policy)

The IMCA has a duty to meet the person concerned and to see relevant health and Social Care records. This is to enable the IMCA to perform properly his function of representing and supporting the person who lacks capacity.

How to refer to an IMCA?

People First provide the IMCA service for Cumbria. You can find their details here <http://www.peoplefirstcumbria.org.uk/>. To make a referral visit the website and click

on the IMCA referral button and you will be taken to an electronic form. Once the referral is completed People First will contact you within two days.

5.9 Restraint/deprivation of liberty

The Mental Capacity Act 2005 (Section 6) defines restraint “as the use or threat of force where an incapacitated person resists, and any restriction of liberty or movement whether or not the person resists”. Restraint is only permitted if the person using it reasonably believes it is necessary to prevent harm to the incapacitated person or others, and if the restraint used is proportionate to the likelihood and seriousness of the harm. Whenever constraint is being considered the Best Interest principle must be followed. Section 6(5) makes it clear that it does not provide any protection for an act depriving a person of his or her liberty within the meaning of Article 5(1) of the European Convention on Human Rights. (See Code of Practice e.g. Para 5.68 & 5.69)

The Department of Health has published Deprivation of Liberty Safeguards Code of Practice. Available at

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

5.10 Payment for goods and services

Staff should be aware that previous legislation and common law rules have now been brought together by the Mental Capacity Act regarding a person lacking capacity and the purchase of ‘necessaries’ in terms of goods and services. The Mental Capacity Act makes it clear that a person lacking capacity must pay a ‘reasonable price’ for goods and services supplied to them. A person who is acting under Mental Capacity Act (Section 7) may arrange something for a person’s care or treatment and promise that the person receiving the care and/or treatment will pay for it. This is restating the common law rules which provide that a person acting as an ‘agent of necessity’ should not be out of pocket for acting in good faith.

The Mental Capacity Act does not provide for a person acting for an individual lacking capacity to access that individual’s bank or building society account. Formal steps may be taken to arrange this by registering a power of attorney or obtaining a court order.

5.11 Lasting Powers of Attorney (LPA)

The Mental Capacity Act allows a person to appoint an attorney to act on their behalf if they should lose capacity in the future. An attorney can make health and welfare decisions on behalf of the person who lacks capacity.

5.12 Continuation of existing Enduring Powers of Attorney

Enduring Powers of Attorney in place before 1st October 2007 will continue to be valid following implementation of Mental Capacity Act.

5.13 Court of Protection

The Act provides for two new public bodies to support the statutory framework, both of which will be designed around the needs of those who lack capacity:

- The Court of Protection

The Court has jurisdiction relating to the Mental Capacity Act and will be the final arbiter for capacity matters. It will have its own procedures and nominated judges.

- A Public Guardian

The Public Guardian and his/her staff will be the registering authority for LPAs and deputies. They will supervise deputies appointed by the Court and provide information to help the Court make decisions. They will also work together with other agencies, such as the police and social services, to respond to any concerns raised about the way in which an attorney or deputy is operating. Referral to the Court of Protection should be made by the legal services advisor for the agency responsible for the care of the incapacitated person.

5.14 Court appointed deputies

The Act provides for a system of court appointed deputies to replace the previous system of receivership in the Court of Protection. Deputies will be able to take decisions on welfare, healthcare and financial matters as authorised by the Court but will not be able to refuse consent to life-sustaining treatment. They will only be appointed if the Court cannot make a one-off decision to resolve the issues.

5.15 Advance decisions to refuse treatment

Statutory rules with clear safeguards will confirm that people may make a decision in advance to refuse treatment if they should lose capacity in the future. The decision must be made by a person who is 18 or over at a time when the person has capacity to make it and must specify the treatment that is being refused. This advance decision may be withdrawn by the person at any time by any means except in the case of life-sustaining treatment where the withdrawal must be in writing.

If there is doubt or dispute about the existence, validity or applicability of an advance decision then it should be referred to the Court of Protection for determination.

This Policy and Procedure should be read in conjunction the signatory agencies own Advance Statements Policy (NB. a distinction must be drawn between Advance Statements and Advance Decisions).

5.16 Excluded decisions

The Act lists certain decisions that can never be made on behalf of a person who lacks capacity. There will be no question of an attorney consenting or of the Court of Protection making an order or appointing a deputy to provide the requisite consent. These are summarised below.

Decisions concerning family relationships (section 27)

Nothing in the Act permits a decision to be made on someone else's behalf on any of the following matters:

- consenting to marriage or a civil partnership
- consenting to have sexual relations
- consenting to a decree of divorce on the basis of two years' separation
- consenting to the dissolution of a civil partnership
- consenting to a child being placed for adoption or the making of an adoption order
- discharging parental responsibility for a child in matters not relating to the child's property
- giving consent under the Human Fertilisation and Embryology Act 1990.

Mental Health Act matters (section 28)

Where a person who lacks capacity to consent is currently detained and being treated under Part 4 of the Mental Health Act 1983, nothing in the Mental Capacity Act authorises anyone:

- give the person treatment for mental disorder
- consent to the person being given treatment for mental disorder.

Voting rights (section 29)

Nothing in the Act permits a decision on voting, at an election for any public office or at a referendum, to be made on behalf of a person who lacks capacity to vote.

Unlawful killing or assisting suicide (section 62)

For the avoidance of doubt, nothing in the Act is to be taken to affect the law relating to murder, manslaughter or assisting suicide. Although the Act does not allow anyone to make a decision about these matters on behalf of someone who lacks capacity to make such a decision for themselves (for example, consenting to have sexual relations), this does not prevent action being taken to protect a vulnerable person from abuse or exploitation.

Part IV Mental Health Act 1983

The Mental Capacity Act section 28 ensures that the Mental Capacity Act does not apply to any treatment for a medical disorder which is being given in accordance with the rules about compulsory treatment as set out in Part IV of the Mental Health Act 1983.

Staff should be aware that the statutory safeguards which the Mental Health Act 1983 gives in relation to compulsory psychiatric treatment must always be afforded to those patients to whom the Mental Health Act 1983 applies.

5.17 Young People

Generally, the Act does not apply to children under the age of 16 although there are two exceptions:

- The Court of Protection can make decisions about a child's property or finances if the child lacks capacity and is likely to still lack capacity when they reach the age of 18.
- Offences of ill treatment or wilful neglect of a person who lacks capacity can also apply to victims younger than 16.

Most of the Act applies to young people aged 16 – 17 years who may lack capacity. See Code of Practice Chapter 12 and Section 2 of the Act for further information.

5.18 Research

The appropriate authority must be sought prior to undertaking research concerning a person who lacks capacity. The Mental Capacity Act 30 - 34 lays down clear parameters for research where people without capacity may be the subjects. The provisions contained in the Mental Capacity Act are based on long-standing international standards e.g. World Medical Association.

5.19 Ill-treatment or wilful neglect

The Mental Capacity Act introduces a new criminal offence of ill treatment or neglect of a person who lacks capacity by anyone responsible for that person's care, donees of Lasting Powers of Attorney or Enduring Powers of Attorney, or deputies appointed by the court. A person found guilty of such an offence may be liable to imprisonment for a term of up to five years.

5.20 Existing receivers

Existing receivers will become deputies when the Act is implemented on 1st October 2008(Schedule 5 Transitional Provisions and Savings Part 1 Repeal of part 7 of the Mental Health Act 1983).

5.21 Appointeeship

Appointees do not fall within the scope of the Act but it is expected that the principle of the Act and Code of Practice should be followed.

6. TRAINING

It is the responsibility of each of the partner agencies to ensure they have identified the training needs of their various staff groups and provided an opportunity for staff to receive the appropriate level of training to enable them to meet their responsibilities under the Act.

7. IMPACT ASSESSMENTS

This policy and procedure is designed to be consistent with the partner agencies policies on Equality & Diversity, and does not discriminate in its application. To this end this policy will be made available in a variety of formats on request, including languages to meet ethnic minority requirements, people with learning disabilities (these may include picture versions, large print format, Braille versions, etc).

8. REFERENCES & BIBLIOGRAPHY

- Mental Capacity Act 2005
- Mental Capacity Act Manual Sixth Edition (Richard Jones, 2014)
- Mental Capacity Act 2005 Code of Practice (TSO April 2007)

9. GLOSSARY and DEFINITIONS

EPA	Enduring Power of Attorney. A person who is authorised by someone to manage such of her/his affairs as agreed between them.
LPA	Lasting Power of Attorney. Introduced under the Mental Capacity Act. Similar to the current EPA but whose powers are retained even after the individual whose affairs they are managing has lost the capacity to appoint an LPA or discontinue that appointment.
SMT	Serious Medical Treatment
MCA	Mental Capacity Act 2005
DoLS	Deprivation of Liberty Safeguards

Public Guardian A statutory public body that oversees the registration of EPAs and LPAs.

DEFINITIONS

A presumption of capacity – The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Act.

Individuals being supported to make their own decisions -

Unwise decisions...

Best interests – Any decisions made, or anything done for a person who lacks capacity to make specific decisions, must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests. These are set out in Section 4 of the Act, and in the non-exhaustive checklist in 5.13.

Least restrictive option...

Advance decisions to refuse treatment - A decision to refuse specified treatment made in advance by a person who has capacity to do so. This decision will then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. This is set out in Section 24(1) of the Act. Specific rules apply to advance decisions to refuse life-sustaining treatment.

Assessing lack of capacity - The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Act.

Acts of care or treatment – Tasks carried out by carers, healthcare or social care staff which involve the personal care, health care or medical treatment of people, who lack capacity to consent to them – referred to in the Act as 'section 5 acts'.

Code of practice...

Court appointed deputies – Someone appointed by the Court of Protection with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Act.

Court of protection – The specialist Court for all issues relating to people who lack capacity to make specific decisions. The Court of Protection is established under Section 45 of the Act.

Decision maker – Under the Act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the decision is referred to throughout the Code, as the ‘decision maker’, and it is the decision maker’s responsibility to work out what would be in the best interests of the person who lacks capacity.

Excluded decisions...

IMCA (Independent Mental Capacity Advocate) – Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them. The IMCA service is established under Section 35 of the Act and the functions of IMCAs are set out in Section 36. It is not the same as an ordinary advocacy service.

Lasting power of attorney (LPA) – A Power of Attorney created under the Act (see Section 9 (1) appointing an attorney (or attorneys) to make decisions about the donor’s personal welfare (including healthcare) and/or deal with the donor’s property and affairs.

Public guardian – The Public Guardian is an officer established under Section 57 of the Act. The Public Guardian will be supported by the Office of the Public Guardian, which will supervise deputies, keep a register of deputies, Lasting Powers of Attorney and Enduring Powers of Attorney, check on what attorneys are doing, and investigate any complaints about attorneys or deputies. The OPG replaces the Public Guardianship Office (PGO) that has been in existence for many years.

Research...

Restraint – See Section 6(4) of the Act. The use or threat of force to help do an act which the person resists, or the restriction of the person’s liberty of movement, whether or not they resist. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm.

Deputy - Someone appointed by the Court of Protection with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Act.

Donor - A person who makes a Lasting Power of Attorney or Enduring Power of Attorney.

Enduring Power of Attorney - A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an attorney to deal with the donor's property and financial affairs. Existing EPAs will continue to operate under Schedule 4 of the Act, which replaces the EPA Act 1985.

Appendix 1

Assessing Capacity

Anyone assessing someone's capacity to make a decision for themselves should use the two stage test of capacity. (ref Code of Practice 4.11 – 4.25)

- Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (it doesn't matter whether the impairment or disturbance is temporary or permanent).
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question **at the time it needs to be made?**

If the decision does not need to be made at this time then an assessment of capacity would not be relevant.

When assessing if someone has capacity to make a particular decision it is important to refer to the first three 'statutory principle' that are outlined in the Act:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. 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. A person is not to be treated as unable to make a decision merely because they make an unwise decision.

The table overleaf is designed to help with deciding if someone lacks capacity to make a particular decision at particular time and each question should be answered in order. You should only move on to the next question when you are sure of the answer to the question you have been considering.

All assessments of capacity should be recorded and if you are in any doubt about your decision you should feel able to consult with others.

Assessing Capacity

Name:..... **Date:**.....

Nature of specific decision

Carefully consider the following:	Answer	<i>Tick</i>	
1. Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent.)	No	<input type="checkbox"/>	The principles of the Mental Capacity Act do not apply
	Yes	<input type="checkbox"/>	Continue and consider question number 2.
2. Having taken all practical and appropriate steps to enable them to make the decision themselves, does the person have general understanding of what decision they need to make and why they need to make it?	No	<input type="checkbox"/>	The person may lack capacity to make this decision.
	Yes	<input type="checkbox"/>	The person may have capacity, continue and consider question number 3.
3. Having taken all practical and appropriate steps to enable them to make the decision themselves does the person have a general understanding of the likely consequences of making, or not making, this decision?	No	<input type="checkbox"/>	The person may lack capacity to make this decision.
	Yes	<input type="checkbox"/>	The person may have capacity, continue and consider question number 4.
4. Having taken all practical and appropriate steps to enable them to make the decision themselves is the person able to understand, retain, use and weigh up this information relevant to this decision?	No	<input type="checkbox"/>	The person may lack capacity to make this decision.
	Yes	<input type="checkbox"/>	The person may have capacity, continue and consider question number 5.
5. Having taken all practical and appropriate steps to enable them to make that decision themselves, can the person communicate their decision by talking, using sign language or any other means?	No	<input type="checkbox"/>	The person may lack capacity to make this decision.

(Consider using the services of a professional such as speech and language therapist if necessary).	Yes	<input type="checkbox"/>	Continue to number 6.
6. Having answered yes to questions 2 – 5 the person appears to have capacity to make the decision.			

Cumbria Safeguarding Adults Partnership

Appendix 2

Best Interests

In order to be clear whether an individual's best interests have been adequately considered, the following checklist may be useful.

1	<i>Details of proposed intervention</i>
2	Will capacity be regained in the future? If yes, when? If no, why?
3	What are the benefits/justifications for the intervention?
4	What are the risks/adverse effects of carrying out?
5	Is there a less restrictive option or any alternatives to consider? (give details)
6	What are the individual's wishes and feelings?
7	How has the person been involved in the decision making process? How has capacity been maximised?

Cumbria Safeguarding Adults Partnership

8	How has information about the intervention been shared with them?
9	What are the views of other significant people involved in their life?
10	Who was consulted?
11	Is there an advance directive?

Summary/Best Interest Decision:

Name.....

Title.....

Signature.....Date.....

.....