

Document Type:	Protocol	
Reference Number : 1751	Version Number: 4	Next Review Date: 23 April 2024
Title:	Best Interest Assessor Policy	
Document Author:	Mental Capacity Lead	
Applicability:	As Defined In Document	

Contents

1. Introduction	Page 2
2. Statement /objectives	Page 2
3. Roles and Responsibilities	Page 3
4. Training	Page 5
5. Best Interest Assessor returning to practice	Page 7
6. Best Interest Assessor ceasing to act in the role	Page 7
7. Best Interest Assessor insurance	Page 7
8. Monitoring/Auditing	Page 8
9. Complaints	Page 8
10. References	Page 9
11. Appendices	Page 10

1. Introduction

1.1 The Deprivation of Liberty Safeguards (DoLS) provides a legal protection for those vulnerable people who are or may become deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights in a hospital or care home, whether placed under public or private arrangements. They do not apply to people detained under the Mental Health Act 1983.

1.2 The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's best interest.

1.3 The Safeguards provide for a deprivation of liberty to be made lawful through Standard or Urgent authorisation processes. These processes are designed to prevent arbitrary decisions to deprive a person of their liberty and give a right to challenge deprivation of liberty authorisations.

1.4 Within Torbay, the DoLS Operational function is managed by an agreement made under section 75 of National Health Services Act 2006, between Torbay Council and Torbay and South Devon NHS Foundation Trust (TSDFT). This means that the DoLS function is managed by the Safeguarding Adult Team situated within TSDFT.

2. Statement/Objective

2.1 Within the DoLS framework it is a requirement that six different assessments are completed by at least two different assessors, and the qualifying criteria met for each assessment. One of these assessors must be a Best Interest Assessor (BIA) who may undertake the following assessments:

- The Best Interest Assessment
- The Age Assessment
- The No Refusals Assessment
- The Mental Capacity Assessment

2.2 The aim of this policy is to set out how TSDFT will execute its delegated responsibility to:

- Ensure that sufficient assessors are available to meet the needs of the service.
- Provide assurance that each assessor has the skills, experience, qualifications and training required to perform the function effectively.
- Provide assurance that completed assessments are of a high quality and reflect the empowering ethos of the Mental Capacity Act (MCA) 2005.
- Provide assurance that completed assessments reflect any relevant national development and any relevant developing case law.

3. Roles & Responsibilities

3.1 A transparent and effective governance pathway is essential in setting the mechanisms, processes and relations by which the DoLS, and specifically the role of the BIA, will be controlled and directed within the Trust.

3.2 The BIA Governance pathway will be as follows;

- In the first instance, BIA's act as individual professionals and are personally accountable for their decisions, and to their professional code of conduct. The Safeguarding Adult Team or Supervisory Body must not indicate or seek to influence their decisions.
- The day to day management of all BIA's will be the responsibility of the MCA /DoLS Lead Practitioner situated within Safeguarding Adult Team. The MCA/DoLS Lead Practitioner will also act in the role of Lead BIA. The Lead BIA will report to and receive monthly supervision from the Safeguarding Adult Operational Manager.
- The Safeguarding Adult Operational Manager will report to and receive supervision from the Deputy Director of Adult Social Services
- Both the Safeguarding Adult Operational Lead and the Deputy Director of Adult Social Services will report to the Safeguarding Adult Board, the Integrated Safeguarding Committee and the Executive Boards for TSDFT.

3.3 The Lead BIA will be responsible for the following:

- Representation at the Southwest Peninsular Local Implementation network.
- Representation at the MCA 2005 Subgroup to the Safeguarding Adult Board.
- Representation upon the joint Devon and Torbay DoLS Peer Audit panel.
- The dissemination of national and local development information at a strategic and operational level.
- The dissemination of relevant case law at a strategic and operational level.
- Maintaining an up to date BIA register of qualification and fitness to practice.
- The development of an on-going BIA rota.
- The commissioning of BIA's where required.
- The provision of BIA support and guidance during assessment process.
- The development of guidance tools to support good practice and quality assurance.
- The development of Supervisory Body paperwork in preparation for signing.
- The management of operational activity.
- The immediate escalation of identified risk to both Senior Managers within the operational teams as well as the Torbay Local Authority Legal service
- To ensure that any independent BIA commissioned to undertake an assessment on behalf of the Supervisory Body meets regulatory requirement before any assessment work commences.
- To negotiate and agree the costs of an Independent BIA prior to commencing an assessment process.

3.4 The BIA will be responsible for the following:

- Demonstrate a sound knowledge of the MCA and DoLS codes of practice and any developing case law or legislation.
- Work in a manner congruent with the presumption of capacity
- Take all practical steps to help someone make a decision
- Balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately
- Establish whether a deprivation of liberty is occurring or is going to occur and, if so whether:
 - It is in the best interest of the relevant person to be deprived of their liberty.
 - It is necessary for them to be deprived of their liberty in order to prevent harm to themselves.
 - Deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm.
- Demonstrate a person centred approach at all times within any assessment and decision making process.
- Liaise with, and pay regard to any report provided by an Independent Mental Capacity Advocate (IMCA) as part of the best interest decision making process.
- Liaise with all significant people who have an interest in the wellbeing of the Relevant Person to seek their views and opinions, as part of the best interest decision making process.
- Liaise with, and pay regard to any assessments completed by a Mental Health Assessor, and to seek a professional opinion as to how any proposed deprivation will affect the Relevant Person's mental health, as part of the best interest decision making process.
- Liaise with all significant health and social care professionals and family members involved in the care and or treatment of the Relevant Person, to seek their views and opinions as part of the best interest decision making process.
- Assess risk, the seriousness of that risk, and the probability of that risk occurring, to ensure any decisions made are a proportionate response to that risk, the less restrictive option available and in the Relevant Person's best interest.
- Balance a person's rights to autonomy and self-determination with their right to safety, and respond proportionately
- Assess what is in the best interest of a Relevant Person and to make recommendations to the Supervisory Body.
- Collate and analyse complex and often sensitive information.
- Provide relevant evidenced based and concise assessments/reports to the Supervisory Body within agreed timescales.
- Manage challenging and sensitive issues with clarity and professionalism.
- Advise and support Managing Authorities, Relevant Person/ Family/Carers and other health and social care professionals on MCA and DoLS related matters.
- Demonstrate a sound knowledge and understanding of the interface and complexities between the MCA 2005 DoLS and the Mental Health Act 2007 and how this applies to practice.

-
- Raise any concerns about a Relevant Person's safety or the quality of their care/treatment directly with the Single Point of Contact for Safeguarding Adults or the Quality and Improvement Team.
 - Work within the framework of the General Data Protection Regulation to protect personal and sensitive information.

4. Training

4.1 To ensure on-going appropriate numbers of assessors are available to meet the demands of the DoLS Service, the role of the BIA will be incorporated within the wider MCA and DoLS training strategy.

4.2 In England and Wales the regulations state that the best interest assessment must be undertaken by:

- An Approved Mental Health Practitioner
- A Social worker
- An Occupational Therapist
- A Registered Nurse
- A Chartered Psychologist.

4.3 Therefore, BIA training opportunities will only be made available to those practitioners with a professional qualification in one of these disciplines. The regulations further specify the following conditions must be met:

- The individual practitioner is not suspended from the register or list relevant to the person's profession.
- The individual practitioner must have appropriate professional registration.
- The individual practitioner must have a minimum of 2 years post qualifying experience.
- The individual must have successfully completed training that has been approved by the Secretary of State to be a BIA.
- Evidence that except in the 12 months period beginning with the date the person has successfully completed the approved training, has, in the 12 months prior to selection completed further training relevant to their role as a BIA.
- Has the skill necessary to obtain, evaluate, and analyse complex evidence and differing views and to weigh them appropriately in decision making.

4.4 The Trust will discharge its statutory obligations for the provision of qualified BIA's by offering places in line with the needs of the service on suitably accredited training courses.

4.5 Where possible the Trust will work in collaboration with neighbouring Local Authorities in facilitating training events, inclusive of BIA annual legal updates.

4.6 The need to facilitate a BIA training event will be reviewed on an annual basis by the Principle Social Worker, the Deputy Director of Adult Social Services and the Safeguarding Adult Operational Manager.

4.7 Applications to attend a BIA training event will be encouraged from a range of eligible professionals across the Trust.

4.8 Practitioners who express an interest in undertaking BIA training will be required to provide written agreement from their Line Manager to be released from existing duties for the following :

- Undertaking initial BIA training
- Upon successful completion of BIA training to undertake a minimum of 4 assessments a year .
- Attendance at the mandatory legal update day.

4.9 The final decision to fund a practitioner to undertake BIA training will lie with the Principle Social Worker, Deputy Director of Adult Social Services and the Safeguarding Adults Operational Lead, and will depend on:

- Evidence of professional registration
- Evidence of two years post qualifying experience
- Evidence of proven ability to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making
- Impact upon the individuals existing role within the Organisation
- Agreement from the individuals Line Manager to be released from existing roles for the purpose of training and subsequent BIA duties.

4.10 On completion of BIA training the practitioner will be required to provide a copy of their professional qualification and a copy of completion of BIA training to the Lead BIA who will store centrally within the DoLs team.

4.11 The number of active BIA's will be monitored on an on -going basis by the Lead BIA. Where risk is identified the Lead BIA will report immediately in writing (email/position report) to the Safeguarding Adult Operational Lead, Associate Director of Adult Social Care and Principle Social Worker.

4.12 It will be a mandatory requirement of each BIA to attend a legal update day within each twelve month period of post qualification to enable their continuing practice with the Organisation, which will count towards the agreed 6-8 hours per annum training. Where possible, the BIA legal update day will be run in collaboration with neighbouring Local Authorities and include the Mental Health Assessors to enhance the learning experience for all assessors.

4.13 It is imperative that each BIA is able to demonstrate the necessary skills and competencies required to undertake the role on behalf of the Trust in protecting vulnerable people lacking the mental capacity to consent to their residence and care arrangements.

4.14 To form part of a quality assurance framework, training events and legal updates will reflect the 'Best Interest Assessor Capabilities Framework' developed by the College of Social Work and agreed by the Government in 2012. (See Appendix 1).

4.15 The Lead BIA will be responsible for measuring the quality of assessment work on an ongoing basis and raise any quality or capability concerns directly with the relevant BIA in the first instance, and if appropriate with their Line Manager also.

5. Best Interest Assessor's returning to practice

5.1 Any practitioner who wishes to return to BIA work after a break in service and has previously completed BIA training, but which has now lapsed will be required to:

- Provide written evidence from their Line Manager to confirm agreement that they can be released from their existing duties within the Trust for the purpose of undertaking BIA Duties.
- Provide evidence of the BIA training they have previously undertaken and with which approved Organisation.
- Provide evidence of professional registration.
- Provide evidence of any previous legal updates completed.
- Agree to attend a legal update session

5.2 The returning practitioner will not be permitted to undertake BIA duty until the Lead BIA has;

- Arranged a legal update and the practitioner has successfully completed it.
- Has made all necessary checks and is satisfied that the practitioner is now legally compliant and able to practice in the BIA role.

6. Best Interest Assessor's ceasing to act in the role.

6.1 TSDFT have a duty to ensure that it has access to enough appropriately trained and skilled BIA's at all times. So as not to place the Trust at risk of not being able to fulfil the delegated function BIA's who wish to cease acting in the role should as far as possible:

- Inform their line Manager and the Lead BIA as soon as possible of their intention to cease to be a BIA
- Where possible provide a 3 month period of notice, or period of current allocated rota weeks.

7. Best Interest Assessor Insurance

7.1 Regulation 3 of the MCA 2005 currently sets out that for a person to be eligible to carry out a DoLS assessment they must be insured in respect of any liabilities arising in connection with carrying out the assessment.

7.2 All BIA's employed by the Trust and undertaking BIA activity on behalf of the Trust will be afforded liability insurance by the Trust.

7.3 The provision of this insurance will not extend to any BIA who is employed by the Trust but is undertaking an assessment independently of the Trust.

7.4 Any independent BIA commissioned by the Trust to undertake an assessment will be required to provide the following information prior to any activity:

- Evidence of initial BIA qualification by an approved source.
- Evidence of professional registration.
- Evidence of appropriate insurance cover.
- Evidence of professional development undertaken within the previous 12 months.

8. Monitoring and Auditing

8.1 The Lead BIA will be responsible for chairing a peer audit process in collaboration with a neighbouring Local Authority 'Devon County Council' on a regular basis

8.2 As part of the audit 2 assessment processes completed within the previous quarter will be picked at random and anonymised. The assessment process will be presented by the Lead BIA to an expert panel for critical analysis and scrutiny. The aim of the audit process is to ensure legal compliance and share learning outcomes.

8.3 The Panel members will consist of following representatives:

- Devon and Torbay Local Authority Legal Teams
- Devon and Torbay Supervisory Body Signatories
- The Lead IMCA for the Devon and Torbay
- The Lead Section 12 Medic for the joint Devon and Torbay Mental Health Assessor Service.
- Lead BIA's within Devon and Torbay

8.4 The Lead BIA will be responsible for disseminating all learning outcomes to the BIA cohort, and in the development of any necessary guidance.

9. Complaints

9.1 In circumstances where a complaint arises as a consequence of any assessment completed by BIA on behalf of the Trust, the Lead BIA will undertake the following;

- Clarify the nature of the complaint directly with the complainant
- Where possible seek to find an immediate solution, in consultation with both the BIA and the Complainant.
- Where the complaint cannot be resolved the Lead BIA will immediately inform the Safeguarding Adult Operational Lead and where necessary seek legal advice.
- In circumstances where a BIA's competency to practice has been found to be lacking, the Lead BIA will provide immediate Supervision and the development of an Improvement Action Plan which will be shared with the BIA's Line Manager.

10. References

- Mental Capacity Act 2005 Deprivation of Liberty Safeguards
- Human Rights Act 1998
- Mental Health Act 2007
- Best Interest Assessor Capabilities, College of Social work 2012.

11. Appendices

Appendix 1

Best Interest Assessor Capabilities



Best Interest Assessor Capabilities

This document describes the six areas of capability Best Interest Assessors (working within the Deprivation of Liberty Process) need to practise effectively within the role. They reflect and build on the requirements of the regulations in relation to the capabilities needed.

The six areas are:

- **Key Capability 1: The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks**
- **Key Capability 2: The ability to work in a manner congruent with the presumption of capacity**
- **Key Capability 3: The ability to take all practical steps to help someone to make a decision**
- **Key Capability 4: The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately**
- **Key Capability 5: The ability to make informed, independent best interest decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment**
- **Key Capability 6: The ability to effectively assess risk in complex situations, and use analysis to make proportionate decisions**

There is a presumption that prior to training for the role, professionals will already be able to demonstrate a high level of professional practice in their area of specialism, and be able to evidence the following:

- A minimum of two years' post qualifying experience¹
- A working knowledge of the Mental Capacity Act 2005 (MCA) and human rights legislation, for example assessing capacity and making best interest decisions
- The capability to work independently and autonomously.

¹ As defined by the regulations.

	Key Capability 1: The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks	
Underlying expectations	<p>The Best Interest Assessor (BIA) has:</p> <p>1.1 A working knowledge of:</p> <ul style="list-style-type: none"> (i) Mental capacity legislation and the Deprivation of Liberty Safeguards (DoLS), their related codes of practice, national and local policy guidance (ii) Relevant parts of other legislation, codes of practice, national and local policy guidance, in particular the Human Rights Act 1998, the Mental Health Acts (MHA) 1983 and 2007, and law/policy related to Adult Safeguarding (iii) Relevant case law and its application in practice (iv) The developing concept of deprivation of liberty (vi) The legal position and accountability of DoLS/BIA's in relation to the MCA, any employing organisation and the authority on whose behalf they are acting. 	<p>1.2 The ability to:</p> <ul style="list-style-type: none"> (i) Base DoLS/BIA practice on a critical evaluation of a range of case law and research relevant to evidence-based practice (ii) Provide a clearly evidenced, written rationale of the process including where relevant information on differences of opinion, and how information has been analysed and used to reach an evidence-informed professional opinion (iii) Analyse and critically reflect on personal practice in order to identify achievements and opportunities for further development (iv) Exercise the appropriate use of independence, authority and autonomy and use it to inform their future practice as a BIA (v) Work within their area of competence, seeking further advice as appropriate

		(vi) Assert a social perspective and make properly informed independent decisions in tight timescales.
	Key Capability 2: The ability to work in a manner congruent with the presumption of capacity	
Presumption of capacity	<p>The BIA is able to demonstrate:</p> <p>2.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The Human Rights Act in particular the basic rights to personal autonomy, choice, privacy, liberty and self-determination, providing challenge to others where needed (ii) The formal two-stage assessment of capacity (iii) Advance decisions and lasting powers of attorney including in relation to refusing life sustaining treatment (iv) The role of the relevant person's representative, and the role of the relevant person in choosing their representative. 	<p>2.2 The ability to:</p> <ul style="list-style-type: none"> (i) Competently assess capacity in complex cases, seeking other evidence as appropriate (ii) Understand and respond sensitively to, issues of race, faith, belief, disability, age, sexuality and culture in carrying out DoLS assessments (iii) Consult sensitively all those with an interest in the person's welfare, and sustain engagement in circumstances where there is hostility or risk (iv) Reflect on the influence and impact of their own values on professional practice (v) Appropriately identify legally appointed decision makers such as attorneys and court appointed deputies, and assess whether advance decisions are valid and applicable

		(vi) The ability to promote the rights, dignity and self-determination of the relevant person consistent with their own needs and wishes, to enable them to contribute to the decisions made affecting their quality of life and liberty.
Key Capability 3: The ability to take all practical steps to help someone to make a decision		
Taking all practical steps to help someone make a decision	<p>The BIA is able to demonstrate:</p> <p>3.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The impact of mental disorder on mental capacity, including the effect of social, physical and developmental factors on a person's ability to make decisions (ii) The social impact of the disability or condition, how this impacts on the relevant person, the family, carers, and the decision making process (iii) The role of the Independent Mental Capacity Advocate (IMCA) within the DoLS process, and the circumstances in which an IMCA should be appointed 	<p>3.2 The ability to:</p> <ul style="list-style-type: none"> (i) Communicate skilfully and confidently in the context of a DoLS assessment (ii) Utilise a range of approaches to sustain engagement with people whose capacity and ability to communicate may fluctuate, or be very limited (iii) Enable the person to contribute to the decision making process as far as is possible given the circumstances of the case

	(iv) A variety of forms of communication, including communication aids and tools and the impact on the relevant person of communicating at different times of the day and in different locations.	(iv) Support people through a complex assessment process within the framework of the MCA including interviewing the person, their relatives and staff and identifying and appointing the relevant person's representative.
<p>Key Capability 4: The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately</p>		
Unwise decisions	<p>The BIA is able to demonstrate:</p> <p>4.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The MCA in relation to the impact of unwise decisions (ii) The links between the MCA/DoLS, the MHA and the protection of adults at risk of abuse within the wider need to recognise people's right to autonomy (iii) The impact of coercion and power imbalances on people's abilities to make informed decisions. 	<p>4.2 The ability to:</p> <ul style="list-style-type: none"> (i) Carry out work with individuals that is person centred and promotes choice and autonomy, while considering issues of risks and proportionality (ii) Be alert for the need for assessment under the MHA where relevant persons are ineligible for DoLS (iii) Make appropriate safeguarding referrals.

	Key Capability 5: The ability to make informed, independent best interest decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment	
<p>Actions/decisions should be in the person's best interests</p>	<p>The BIA is able to demonstrate:</p> <p>5.1 An understanding of:</p> <ul style="list-style-type: none"> (i) What constitutes 'best interests', as set out within the MCA, codes of practice and case law (ii) The DoLS assessment process including the role of the Mental Health Assessor and IMCA (iii) The implications of a range of treatments and interventions applicable to the relevant person's situation (iv) The recommendations a BIA can make in relation to deprivation of liberty. 	<p>5.2 The ability to:</p> <ul style="list-style-type: none"> (i) Articulate the DoLS process and the BIA's role within the assessment process (ii) Determine whether: <ul style="list-style-type: none"> (a) a deprivation of liberty is occurring (b) the deprivation is in the person's best interests using the section 4 checklist (c) the person meets the requirements for age, no refusals, mental capacity and eligibility if appropriate (iii) Make appropriate recommendations on: <ul style="list-style-type: none"> (a) conditions attached to the authorisation, and (b) duration of the authorisation

		<p>(iv) Formally record assessments to a high professional standard likely to withstand legal scrutiny, demonstrating the ability to analyse and evaluate complex information; to provide evidence for decision making including the rationale for the timescale recommended for any deprivation of liberty</p> <p>(v) Consult the Mental Health Assessor, and IMCA if appointed, and document and examine their views in the written decision making process.</p>
	<p>Key Capability 6: The ability to effectively assess risk, in complex situations, and use analysis to make proportionate decisions</p>	
Least restrictive options	<p>The BIA can demonstrate:</p> <p>6.1 An understanding of:</p> <p>(i) Risk, how to assess risk, likelihood and seriousness of risk, proportionate responses to managing risk</p> <p>(ii) The benefits of positive risk taking.</p>	<p>6.2 An ability to:</p> <p>(i) Weigh up the pros and cons of the different options in the light of best interests and risk assessment</p> <p>(ii) Identify risk, and consider its management in a less restrictive manner (if possible) to arrive at a proportionate outcome</p> <p>(iii) Evidence in their report an analysis of risk</p>

Document Control Information

This is a controlled document and should not be altered in any way without the express permission of the author or their representative.

Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.

If printed, this document is only valid for the day of printing.

This guidance has been registered with the Trust. The interpretation and application of guidance will remain the responsibility of the individual clinician. If in doubt contact a senior colleague or expert. Caution is advised when using clinical guidance after the review date, or outside of the Trust.

Ref No:	1751		
Document title:	Best Interest Assessor Policy		
Purpose of document:			
Date of issue:	23 April 2021	Next review date:	23 April 2024
Version:	4	Last review date:	April 2021
Author:	Mental Capacity Lead		
Directorate:	Professional Practice		
Equality Impact:	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
Committee(s) approving the document:	Care and Clinical Policies Group		
Date approved:	22 February 2021		
Links or overlaps with other policies:	Mental Capacity Act 2005 Deprivation of Liberty Safeguards Hospitals/ Care Homes		

Have you identified any issues on the Rapid (E)quality Impact Assessment. If so please detail on Rapid (E)QIA form.	Yes <input type="checkbox"/>	
	Please select Yes No	
Does this document have implications regarding the Care Act? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have training implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does this document have financial implications? <i>If yes please state:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Is this document a direct replacement for another?	<input type="checkbox"/>	<input type="checkbox"/>

If yes please state which documents are being replaced:

Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
2011	1		Care and Clinical Policy Group
11 November 2014	2	Removed the 3 yearly re approval process Replaced with supervision Supervision recording sheet inclusive of agreed learning action plan BIA Competency framework BIA Checklist	
29 January 2016	2	Adopted from Icare to Icon	
22 February 2021	3	Revised	Care and Clinical Policies Group
23 April 2021	4	Revised	Care and Clinical Policies Group

The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory 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 lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on ICON.

<https://icon.torbayandsouthdevon.nhs.uk/areas/mental-capacity-act/Pages/default.aspx>

Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)		Version and Date	
Policy Author			
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users	<input type="checkbox"/>	Staff	<input type="checkbox"/>
Other, please state...		<input type="checkbox"/>	
Could the policy treat people from protected groups less favourably than the general population? PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below			
Age	Yes <input type="checkbox"/> No <input type="checkbox"/>	Gender Reassignment	Yes <input type="checkbox"/> No <input type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input type="checkbox"/>
Gender	Yes <input type="checkbox"/> No <input type="checkbox"/>	Pregnancy/Maternity	Yes <input type="checkbox"/> No <input type="checkbox"/>
Sexual Orientation			Yes <input type="checkbox"/> No <input type="checkbox"/>
Religion/Belief (non)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Marriage/ Civil Partnership			Yes <input type="checkbox"/> No <input type="checkbox"/>
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)			Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language ⁵ used throughout?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Are the services outlined in the policy fully accessible ⁶ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Does the policy encourage individualised and person-centred care?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?			Yes <input type="checkbox"/> No <input type="checkbox"/> NA <input type="checkbox"/>
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes <input type="checkbox"/> No <input type="checkbox"/>
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)			
Who was consulted when drafting this policy?			
Patients/ Service Users	<input type="checkbox"/>	Trade Unions	<input type="checkbox"/>
Protected Groups (including Trust Equality Groups)		<input type="checkbox"/>	
Staff	<input type="checkbox"/>	General Public	<input type="checkbox"/>
Other, please state...		<input type="checkbox"/>	
What were the recommendations/suggestions?			
Does this document require a service redesign or substantial amendments to an existing process? PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below			Yes <input type="checkbox"/> No <input type="checkbox"/>
ACTION PLAN: Please list all actions identified to address any impacts			
Action	Person responsible	Completion date	
AUTHORISATION:			
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form		Signature	
Validated by (line manager)		Signature	

Please contact the Equalities team for guidance:

For Devon CCG, please email d-ccg.equalityanddiversity@nhs.net & d-ccg.QEIA@nhs.net

For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pdf.sdhct@nhs.net

This form should be published with the policy and a signed copy sent to your relevant organisation

Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user

² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them

³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge

⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated

⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives

⁶ Consider both physical access to services and how information/ communication is available in an accessible format

⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Clinical and Non-Clinical Policies – Data Protection

Torbay and South Devon NHS Foundation Trust (TSDFT) has a commitment to ensure that all policies and procedures developed act in accordance with all relevant data protection regulations and guidance. This policy has been designed with the EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 18) in mind, and therefore provides the reader with assurance of effective information governance practice.

The UK data protection regime intends to strengthen and unify data protection for all persons; consequently, the rights of individuals have changed. It is assured that these rights have been considered throughout the development of this policy. Furthermore, data protection legislation requires that the Trust is open and transparent with its personal identifiable processing activities and this has a considerable effect on the way TSDFT holds, uses, and shares personal identifiable data.

Does this policy impact on how personal data is used, stored, shared or processed in your department? Yes No

If yes has been ticked above it is assured that you must complete a data mapping exercise and possibly a Data Protection Impact Assessment (DPIA). You can find more information on our [GDPR](#) page on ICON (intranet)

For more information:

- Contact the Data Access and Disclosure Office on dataprotection.tsdf@nhs.net,
- See TSDFT's [Data Protection & Access Policy](#),
- Visit our [Data Protection](#) site on the public internet.