

MENTAL CAPACITY ACT 2005

PROCEDURE FOR ASSESSMENT OF MENTAL CAPACITY

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1 INTRODUCTION

- 1.1 The question of whether a service user has capacity to make a decision regarding their treatment or care is fundamental to mental health services as capacity is the precondition for giving valid consent. What is meant by capacity and when and how it should be assessed are now given statutory guidance by the Mental Capacity Act 2005.
- 1.2 This policy has arisen from the implementation of the Mental Capacity Act and seeks to give advice and guidance on how and when an assessment of capacity should be carried out. It draws a distinction between routine and ongoing assessment of capacity, which is a part of everyday care, and more exceptional occasions, when a formal assessment is necessary. In the latter case a documented assessment should be completed in defined instances (see 4.4 below).
- 1.3 Although this policy applies to BEHMHT, much that is in it reflects a broader legal position and accepted principles following the implementation of the Mental Capacity Act. In particular assessments of capacity do not become necessary solely in mental health services, but occur in all health and social care settings. Much that is in the policy, therefore, is relevant to all health and social care professionals.
- 1.4 The Act applies to all people aged 16 years and over¹.

2 PRINCIPLES OF ASSESSING MENTAL CAPACITY

- 2.1 Capacity should be judged in relation to a specific decision – some decisions are easier to make than others.
- 2.2 A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- 2.3 A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.
- 2.4 A person is not to be treated as unable to make a decision merely because he or she makes a decision that others believe to be unwise.
- 2.5 A mentally competent adult has an absolute right to refuse to consent to any intervention or medical treatment for any reason, rational or irrational, or for no reason at all, even where this decision may lead to his or her own death.
- 2.6 An act done or decision made, for or on behalf of a person who lacks capacity must be done, or made, in his or her best interests.
- 2.7 Before such an act is done, or decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less invasive or restrictive of the person's rights and freedom of action.

¹ There is an exception to this age limit for children under 16 who lack capacity and will continue to lack capacity in relation to their property and financial affairs when they reach 18. In such cases, the matter may be referred to the Court of Protection to make a decision on the Act's application before the age of 16. In addition, a person needs to be a minimum age of 18 in order to: 1) make a lasting power of attorney; 2) make an advance decision; 3) be a deputy; 4) be detained under the deprivation of liberty safeguards.

3 WHO SHOULD ASSESS MENTAL CAPACITY

- 3.1 In many cases, the assessment of capacity is relatively straightforward and, with appropriate guidance, could and should be performed by the professional responsible for the individual's care. In more complex cases, for example where the individual's decision-making capacity is borderline, appears to fluctuate or is - by reason of mental disorder - particularly difficult to assess, it may be necessary to obtain the opinion of a psychiatrist. In these cases, it is good practice for the psychiatrist to assess capacity jointly with the responsible professional who can explain more fully the care decision to be made and the implications of a decision in either direction.
- 3.2 Where the patient is subject to multi-disciplinary care, the professional with greatest responsibility for the decision in relation to which capacity is being assessed (the 'decision-maker') should be the person who assesses capacity.

4 WHEN SHOULD MENTAL CAPACITY BE ASSESSED

- 4.1 Care and treatment, particularly in mental health settings, is often a matter not just of one-off treatment such as an operation or other medical intervention, but of on-going care over a period of years. The assessment of capacity must therefore be a continuous and ongoing process informed by the principle (see above) that a person is to be assumed to have capacity until it is established otherwise. All professionals involved in the provision of care and treatment must assure themselves either that the person continues to have capacity or that where they do not the care and treatment given is necessary for the person's best interests.
- 4.2 It is helpful and good practice for the routine assessment of capacity to be noted in the clinical notes.
- 4.3 Occasions arise when a service user faces an important decision, whether in relation to care and treatment or something arising from it. Where there are any doubts about the ability of the service user to give a valid consent to the decision, e.g. because of borderline capacity or fluctuating capacity, a formal assessment of capacity must be carried out.
- 4.4 It is not possible to list all the eventualities when a formal assessment of capacity is required and professional judgement must be exercised, however, the following represent some instances: -
 - Informal admission to hospital
 - Serious medical treatment (as defined by the Mental Capacity Act 2005)
 - Significant change of accommodation (as defined by the Mental Capacity Act 2005)
 - Breach of confidentiality (i.e. where personal information about the service user may be given to a third party)
 - Decision in relation to the management of finances, property or affairs

These may be supplemented by others and when in doubt staff should seek advice from their manager/senior colleague. In particular there may be some occasions when patients enter into sexual relationships where, in order to protect a potentially vulnerable person from abuse, staff should satisfy themselves through a formal

assessment of capacity that the person(s) has capacity to enter the relationship and is not being subject to abuse. This is particularly likely to arise in inpatient settings.

- 4.5 In line with 3.0 above, the assessment should be carried out by the professional identified as responsible for the decision in question, but in more difficult cases specialist assistance should be obtained.
- 4.6 Where a second, more specialist, professional has been involved in the assessment, their views should be taken into account, but the ultimate decision about capacity remains with the professional responsible for the treatment/other decision.
- 4.7 Any such assessment must be documented using the required format – see Appendix 1 – and a copy placed in the clinical notes. This is available on RIO (IT System of patient care). Where it is not yet possible to complete the documentation on RIO, the assessment must be referred to on RIO for reference.

5 DEMONSTRATING DECISION-MAKING CAPACITY

- 5.1 The test for capacity in relation to care and treatment is now taken from the Mental Capacity Act Section 3 as follows. In order to demonstrate decision-making capacity, a person should be able to: -

- **Understand the information relevant to the decision, including the purpose of any proposed course of action, the main benefits, risks and alternatives, and the consequences of refusing to follow the proposed course of action and of failing to make a decision.**
- **Retain that information for long enough to make a decision.**
- **Use or weigh that information as part of the process of making the decision.**
- **Communicate his or her decision, whether by speech, sign language or any other means.**

- 5.2 Note that though ‘belief’ does not form an explicit part of the test of capacity as outlined above, a person who does not believe information that is self-evidently true is unlikely to be able to ‘weigh’ it in the balance ‘as part of the process of making the decision’ and would therefore fail the test.

- 5.3 Note that the process of decision-making must be free from outside interference. A decision to receive a specific treatment that is the result of undue pressure or coercion is not freely made and any consent obtained in this way may be invalid (see Mental Health Act Code of Practice).

6 DETERMINING AN INDIVIDUAL’S BEST INTERESTS

- 6.1 All decisions and actions taken on behalf of a person who lacks capacity must be taken in the reasonable belief that they are in the person’s best interests.

6.2 In determining what is in a person's best interests, encompassing medical, emotional and all other welfare issues, the following must be considered: -

- Whether the person is likely, at some point in the future, to recover his or her decision-making capacity in relation to the matter in question.
- The ascertainable past and present wishes and feelings of the person, and the beliefs, values and other factors that would be likely to influence him or her if he or she had capacity.
- The need to allow and encourage the person to participate as fully as possible in any act done for, and any decision affecting, him or her.
- The views of other people whom it is appropriate and practical to consult about the person's wishes and feelings, and what would be in his or her best interests.
- Whether the purpose for which any action or decision is required can be as effectively achieved in a manner less invasive or restrictive of the person's freedom of action.
- In the case of medical treatment, that treatment should be necessary to save life, prevent a deterioration or ensure an improvement in the patient's physical or mental health and should be consistent with a reasonable body of current medical opinion (the "Bolam" test).

6.3 Best interests decisions should be documented on part II of the Assessment of Mental Capacity Form (see Appendix 1).

7 REFERRALS TO INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCAs)

7.1 Decisions as identified in 4.4 above where a formal assessment of capacity is required are likely in some cases to overlap with occasions when a referral to an IMCA is required.

7.2 A referral to an IMCA is normally a requirement in law when:

- A person assessed as incapable lacks relatives/friends who can be consulted; and
- faces either serious medical treatment or a significant change of residence

7.3 A referral to an IMCA may also be made when:

- The person is subject to adult protection procedures as a vulnerable adult

8 SOURCES OF FURTHER INFORMATION

There is a wealth of published advice and guidance on assessment of mental capacity. This policy is intended to assist professionals in making an assessment; it is not intended to replace any of the published guidance. Some key sources of further advice include:

- Mental Capacity Act 2005 (June 2004) <http://www.dca.gov.uk/menincap/legis.htm>
- Mental Capacity Act Code of Practice
- BMA Consent Toolkit (Second Edition, February 2003). [http://www.bma.org.uk/ap.nsf/AttachmentsByTitle/PDFconsenttk2/\\$FILE/toolkit.pdf](http://www.bma.org.uk/ap.nsf/AttachmentsByTitle/PDFconsenttk2/$FILE/toolkit.pdf)
- Assessment of Mental Capacity. Guidance for Doctors and Lawyers (Second Edition, 2004). The British Medical Association and The Law Society. BMJ Books
- Guide to Consent to Treatment – Medical Defence Union (1999) <http://www.themdu.com/associatedArticles/consent.pdf>
- NELMHT Consent to Treatment Policy
- Mental Health Act Code of Practice, 1999, Chapters 15 and 16

9 INFORMATION & HYPERLINKS

Materials and publications

MCA Code of Practice - provides guidance and information on how the MCA will work on a day to day basis for anyone who works with or cares for people who lack capacity, including family, friends and unpaid carers. From 1 October 2007, certain groups of people will be legally required to have regard to the Code when acting or making decisions on behalf of people who lack capacity.

www.justice.gov.uk/guidance/mca-code-of-practice.htm

Information booklets on the Mental Capacity Act - provide introductory information on the Mental Capacity Act.

- [Booklet 1: About your health, welfare or finance - who decides when you can't](#)
- [Booklet 2: A guide for family, friends and unpaid carers](#)
- [Booklet 3: A guide for people who work in health and social care](#)
- [Booklet 4: A guide for advice workers](#)
- [Booklet 5: The Mental Capacity Act - Easyread](#)
- [Booklet 6: The Independent Mental Capacity Advocate \(IMCA\) Service](#)

The booklets can be downloaded: www.justice.gov.uk/guidance/mca-info-booklets.htm

Printed copies of these booklets can also be obtained from the Public Guardianship Office, Customer Services Tel: 0845 330 2900.

Mental Capacity Act Information Leaflet - entitled "*Making decisions about your health, wealth and finances....Who decides when you can't*" can be downloaded from:

<http://www.justice.gov.uk/guidance/mca-info-leaflet.htm>

Printed copies of the leaflets may be ordered from:

Telephone:	023	8087	8036/38
Fax:	023	8052	8324
Email:	reorder@inprintlitho.com		

Office of the Public Guardian publications

Copies of the following publications produced by the Office of the Public Guardian, can be downloaded from: <http://www.publicguardian.gov.uk/forms/forms.htm>

- Making a Lasting Power of Attorney (LPA)
- Registering a Lasting or Enduring Power of Attorney
- Asking the Court to make a decision
- Customer service, fees, the OPG registers and Deputy guidance
- Complete listing of all OPG and Court forms and guidance

Hard copies of any of the forms above and other guidance contained on this website, can be obtained by calling Customer Services on 0845 330 2900.

National bodies with responsibilities for MCA

Ministry of Justice: <http://www.justice.gov.uk/index.htm>

Office of the Public Guardian / Court of Protection

Office of the Public Guardian / Court of Protection: Archway Tower, 2 Junction Road, London N19 5SZ
Tel: 0845 330 2900 Fax: 0207 664 7705
Email: custservices@publicguardian.gsi.gov.uk Website: <http://www.publicguardian.gov.uk/>
Text Phone: 020 7664 7755 (9am - 5pm, Mon - Fri)

If you have speech or hearing difficulties, and you have access to a text phone, you can call the PGO text phone and a customer service operator will assist you.

Other useful organisations concerned with MCA

The Making Decisions Alliance

<http://www.makingdecisions.org.uk/>

The Making Decisions Alliance (MDA) comprises of nearly 40 national and regional disability and older people's organisations and was formed in 2002 because the legal situation with mental capacity was felt to be inadequate.

The Mental Health Foundation

<http://www.mentalhealth.org.uk>

Founded in 1949, the Mental Health Foundation is a leading UK charity that provides information, carries out research, campaigns and works to improve services for anyone affected by mental health problems.

APPENDIX 1

ASSESSMENT OF MENTAL CAPACITY & DETERMINATION OF BEST INTERESTS

1. Assessment

Patient Name _____

Address _____

DOB _____ RIO NO. _____

Date of Assessment _____

Details of treatment decision(s) or other specific issue(s) in relation to which capacity is being assessed.

In relation to that decision/issue the patient can:

	YES	NO
Understand information relevant to the decision? Comments:	<input type="checkbox"/>	<input type="checkbox"/>
Retain information long enough to make the decision? Comments:	<input type="checkbox"/>	<input type="checkbox"/>
Weigh the information in the balance in order to make a decision? Comments:	<input type="checkbox"/>	<input type="checkbox"/>
Communicate the decision? Comments:	<input type="checkbox"/>	<input type="checkbox"/>

Note that if the patient fails the test at any point, they lack capacity in relation to the decision at the time of the assessment.

	YES	NO
Is the patient likely to recover capacity?	<input type="checkbox"/>	<input type="checkbox"/>

If yes, the assessment of capacity should be repeated at a future point.

2. Determination of Best Interests

If the outcome of the assessment is that the patient lacks capacity, it may be possible to treat/act in their best interests. To help determine this, the following pointers should be followed:

	YES	NO
Have the patient's past and present wishes and feelings been taken into account as far as possible?	<input type="checkbox"/>	<input type="checkbox"/>

Has account been taken of the patient's known beliefs and values that would be likely to influence their decision?	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------

Have the patient's relatives/friends been consulted?	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------

If there is an advance decision/lasting Power of Attorney/deputy appointed by a Court, have they been consulted?	<input type="checkbox"/>	<input type="checkbox"/>
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Proposed course of action and reasons.

3. Referral to IMCA

	YES	NO
Is the patient eligible to be referred to an IMCA	<input type="checkbox"/>	<input type="checkbox"/>

If yes, has the patient been referred?	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------

If yes, date _____
and name of IMCA Service _____

Completed by:

Name: _____ Position: _____

Date: _____

APPENDIX 2

SUMMARY OF STEPS IN ASSESSING MENTAL CAPACITY

Capacity should be judged in relation to a specific decision – some decisions are easier to make than others.

A mentally competent adult has an absolute right to refuse to consent to any intervention or medical treatment for any reason, rational or irrational, or for no reason at all, even where this decision may lead to his or her own death.

PRINCIPLES OF ASSESSING MENTAL CAPACITY

- A person must be assumed to have capacity unless it is established that he or she lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he or she makes a decision that others believe to be unwise.
- An act done, or decision made, for or on behalf of a person who lacks capacity must be done, or made, in his or her best interests.
- Before such an act is done, or decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less invasive or restrictive of the person's rights and freedom of action.

DEMONSTRATING DECISION-MAKING CAPACITY

In order to demonstrate decision making capacity, a person should be able to: -

- Understand the information relevant to the decision, including the purpose of any proposed course of action, the main benefits, risks and alternatives, and the consequences of refusing to follow the proposed course of action and of failing to make a decision.
- Retain that information for long enough to make a decision.
- Use or weigh that information as part of the process of making the decision.
- Communicate his or her decision, whether by speech, sign language or any other means.

A person who fails any one of the above four points is lacking in capacity in relation to that decision.

DETERMINING AN INDIVIDUAL'S BEST INTERESTS

In determining what is in a person's best interests, encompassing medical, emotional and all other welfare issues, the following must be considered: -

- Whether the person is likely, at some point in the future, to recover his or her decision-making capacity in relation to the matter in question.
- The ascertainable past and present wishes and feelings of the person, and the beliefs, values and other factors that would be likely to influence him or her if he or she had capacity.
- The need to allow and encourage the person to participate as fully as possible in any act done for, and any decision affecting, him or her.
- The views of other people whom it is appropriate and practicable to consult about the person's wishes and feelings, and what would be in his or her best interests.
- Whether the purpose for which any action or decision is required can be as effectively achieved in a manner less invasive or restrictive of the person's freedom of action.
- In the case of a medical treatment, that treatment should be necessary to save life, prevent a deterioration or ensure an improvement in the patient's physical or mental health and should be consistent with a reasonable body of current medical opinion (the "Bolam" test).

The five 'statutory principles' of the MCA

- Section 1 of the MCA sets out the five 'statutory principles', the values that underpin the legal requirements of the MCA.
- The MCA is intended to be enabling and supportive of people who lack capacity, not restricting or controlling of their lives.
- It aims to protect people who lack capacity to make particular decisions, but also to maximise their ability to make decisions, or to participate in decision-making, as far as they are able to do so.

1. Presumption of capacity

A person must be assumed to have capacity unless it is established that he or she lacks capacity

2. Maximising decision-making capacity

A person is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success

3. Unwise decisions

A person is not to be treated as unable to make a decision because s/he makes an unwise decision

4. Best interests

An act done, or decision made, under the Mental Capacity Act for on behalf of a person who lacks capacity must be done, or made in his/her best interests

5. Least restrictive alternative

Before an act is done, or a decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

APPENDIX 4

Assessing Mental Capacity Checklist

In order to decide whether a person has the mental capacity to make a particular decision, this two-stage test needs to be applied, with regard to the specific decision at the time the decision needs to be made:

Stage 1: Is there or might there be an impairment of, or disturbance in, the functioning of the person's mind or brain (this may be permanent or temporary or fluctuating)?

What proof is there of this impairment?

If answer to stage 1 is 'No', the person is said to *have* mental capacity in relation to this question (under the MCA).

Stage 2: Does the impairment or disturbance make, or might it make, the person unable to make the particular decision at the time it is needed?

To ascertain the answer to question raised in stage 2, please ask the following questions:

Is the person able to:

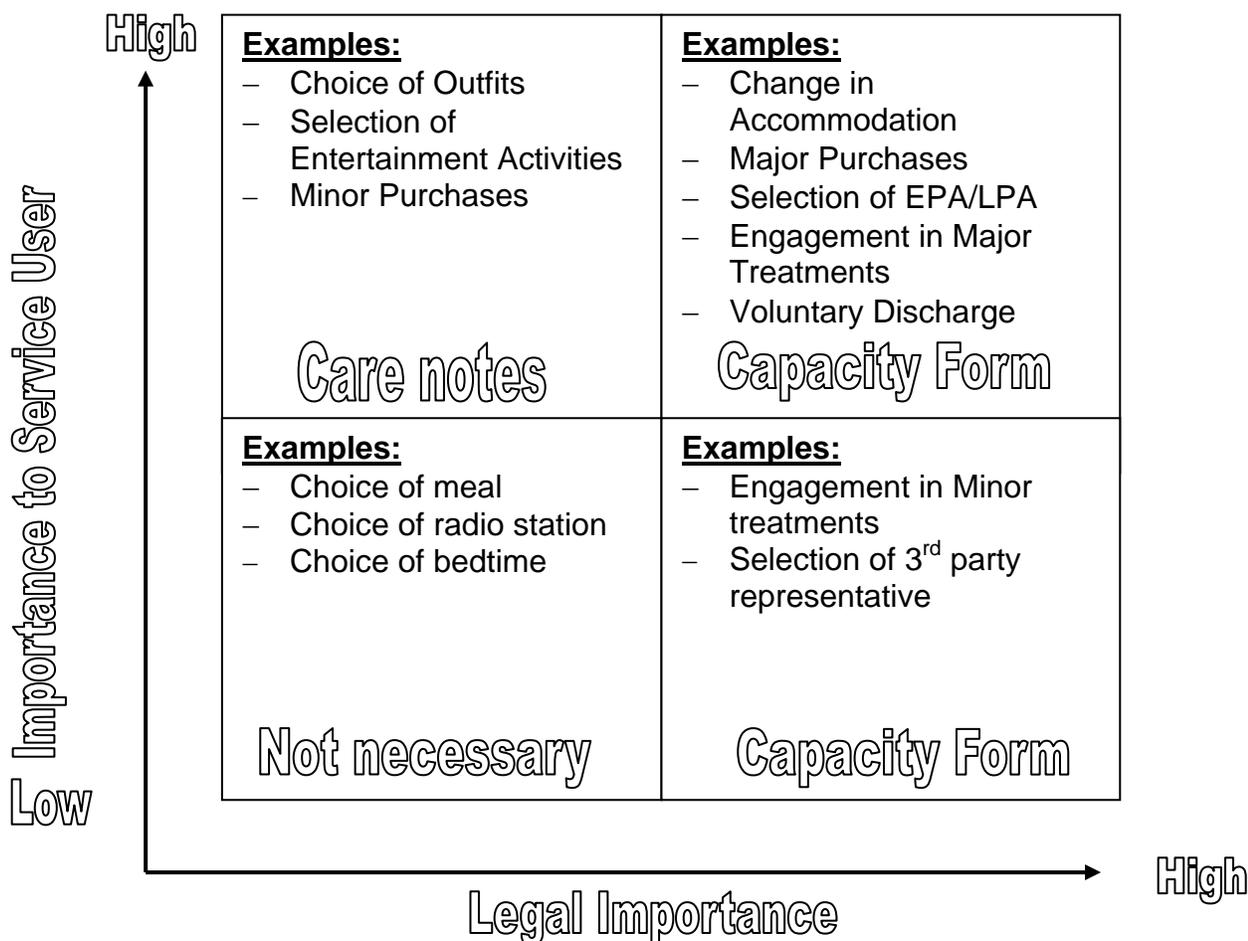
1. understand the information relevant to the decision?
2. retain that information?
3. use or weigh that information as part of the process of making the decision?
4. communicate the decision (whether by talking, using sign language or any other means)?
 - If the person is unable to do 1,2 or 3 as above, they will be treated as lacking capacity to make the decision.
 - If the person is unable to do 4 as above, i.e. is unable to communicate their decision in any way at all, the MCA says they should be treated as lacking capacity to make the decision.
 - An assessment of capacity must be made on the balance of probabilities - is it more likely than not that the person lacks capacity?

As the assessor, you must be able to show in your records why you have come to the conclusion that the person lacks capacity to make the particular decision at the particular time that it is needed.

Recording Matrix

APPENDIX 5

This matrix is designed as a tool to assist staff in determining whether a mental capacity decision needs to be recorded, and if so where and how it.



The two factors of the matrix represent the importance of the decision being taken from both the Service User's perspective and the organisations perspective. It is impossible to have any universal examples because each decision must take into account the particularities of the individual involved.

Importance to Service User – Comparing the importance of the decision from the service user perspective requires knowing how important the decision is in the life of that particular person. This varies from person to person and decision to decision. The greater importance it is to the Service User, the more important it is to record that the Service User's interests were served.

Legal Importance – This factor defines how important it is for the organisation to ensure that a proper process was followed in making the decision/assessment of capacity. Generally the greater need to prove that the decision was done with proper process, or the greater the need to be able to show that all factors were considered and weighed properly, the more important it is to record this information in a formal way.

⚠ Remember your judgement is best. If you think that a formal record of the capacity and assessment is required then use the Capacity Forms provided.

Best Interest Checklist

The principle of equal consideration

- People lacking capacity must be treated with equal respect and consideration as those with capacity.
- A determination of best interests must not be made merely on the basis of a person's age, appearance, a condition of or an aspect of her/his behaviour or any other aspect of a person's condition which may lead to unjustified assumptions about what might be in a person's best interests

The decision-maker must consider all the relevant circumstances.

The decision-maker must consider whether it is likely that the person will at some time regain capacity in relation to the matter in question, and if it appears likely that they will, when that is likely to be.

The decision-maker must, as far as possible, permit and encourage the person to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them.

The decision-maker must also consider, as far as possible:

- The person's past and present wishes and feelings;
- Any previously held instructions (such as advance directives or any other written statement);
- The beliefs and values that would be likely to influence their decision if they had capacity, and
- Any other factors that they would be likely to consider if they were able to do so.

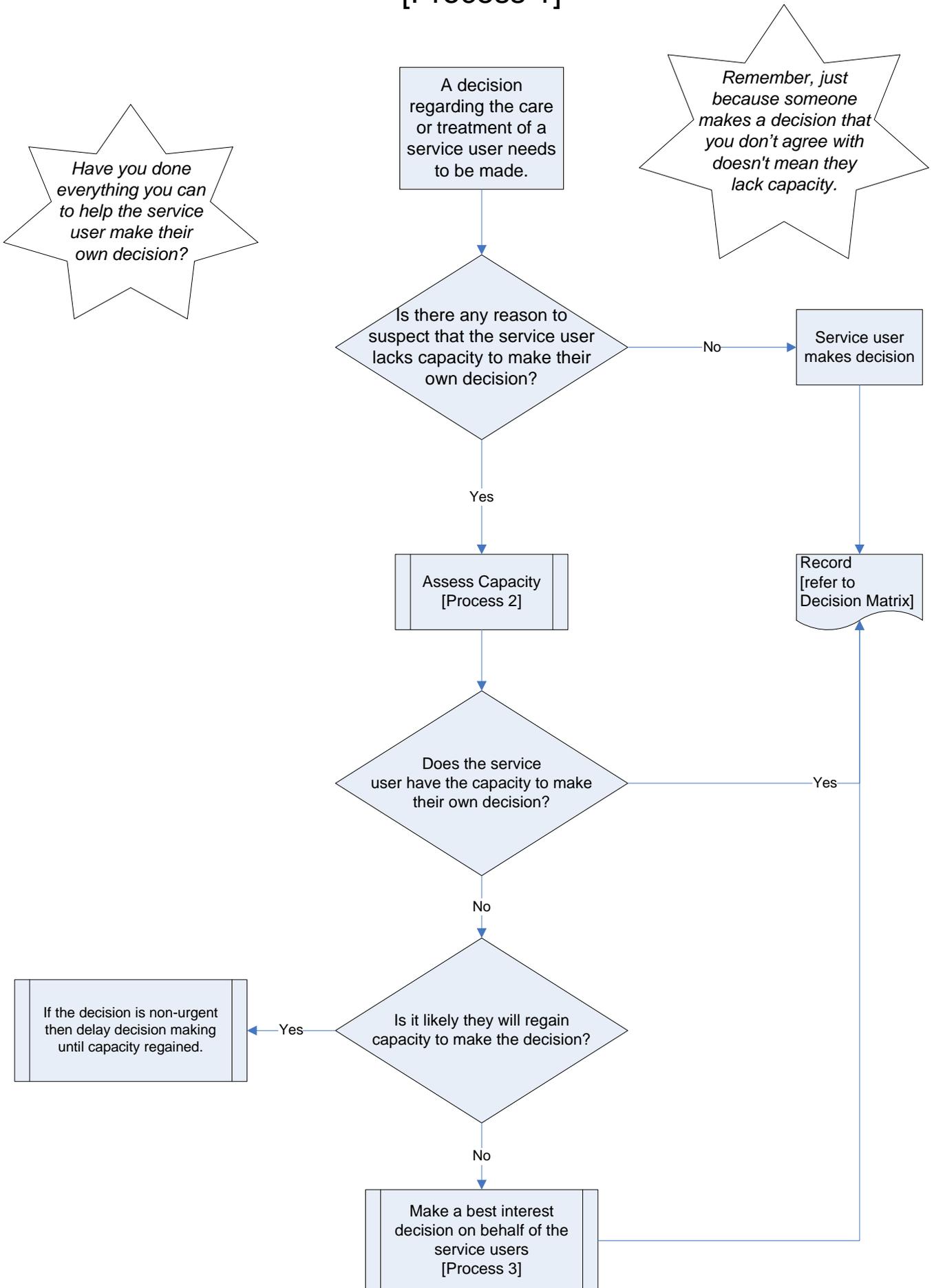
The decision-maker must take into account, if it is practicable and appropriate to consult them, the views of:

- The IMCA;
- 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 their welfare, as to what would be in the person's best interests.

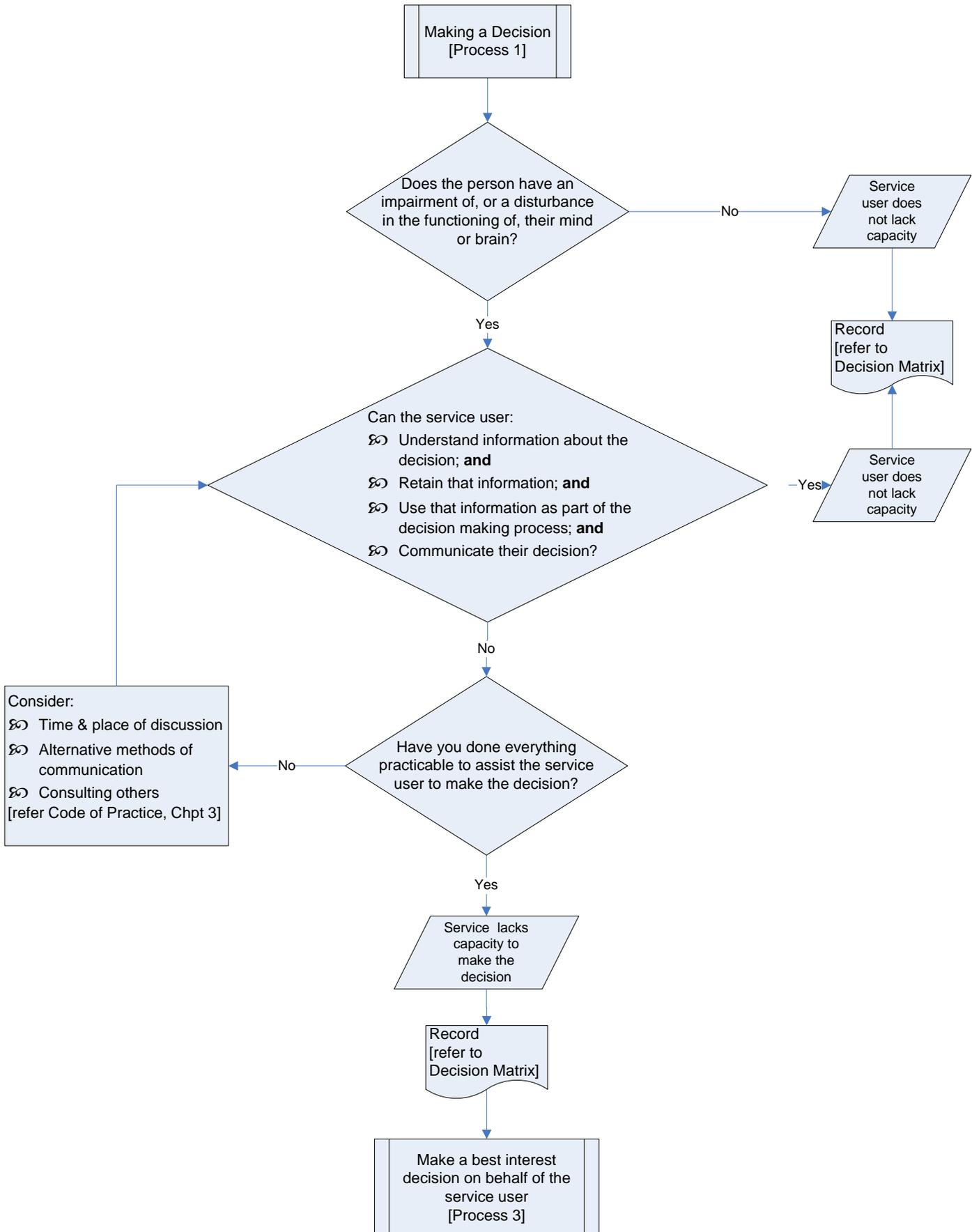
Process for appointing / instructing an IMCA:

1. Decision-maker identifies the *relevant decision*, as one of the following:
 - **statutory** serious medical treatment **or** accommodation move
 - **discretionary** care review e.g. where placement is breaking down **or** protective measures are being put in place as part of protection of adult protection proceedings
2. Decision-maker assesses the service user's mental capacity in relation to this decision, records the process and outcome, and finds person **lacks capacity** in relation to this decision.
3. Decision-maker identifies that the person is 'unbefriended' i.e. there is nobody available, other than paid staff, whom it is **appropriate to consult**.
4. **Discretionary powers**
 - Where the decision to instruct an IMCA is **discretionary**, the decision-maker has a duty to decide whether an IMCA would **particularly benefit** the person.
 - Where the relevant decision relates to protective measures as part of adult protection proceedings, and it is decided that it would particularly benefit the person to have an IMCA, a decision also needs to be made **at what point** to involve the IMCA.
5. Decision-maker discusses the referral with the service manager who checks that all the necessary criteria for a referral to the IMCA service have been met:
 - An appropriate decision has been identified
 - Person has been assessed as lacking capacity in relation to this decision (evidence of assessment should be requested)
 - Person is 'unbefriended'
 - Statutory criteria for appointing IMCA met **Or**
 - Discretionary criteria met and IMCA would be of particular benefit
6. Once satisfied qualifying criteria are met, authorises referral to the Rethink IMCA service using the agreed referral procedures:
 - Referral made on appropriate form
 - Form faxed with due attention to Data Protection requirements
 - Fax: 0208 330 6622
 - Follow with telephone call to verify safe receipt Tel: 08450 175198.

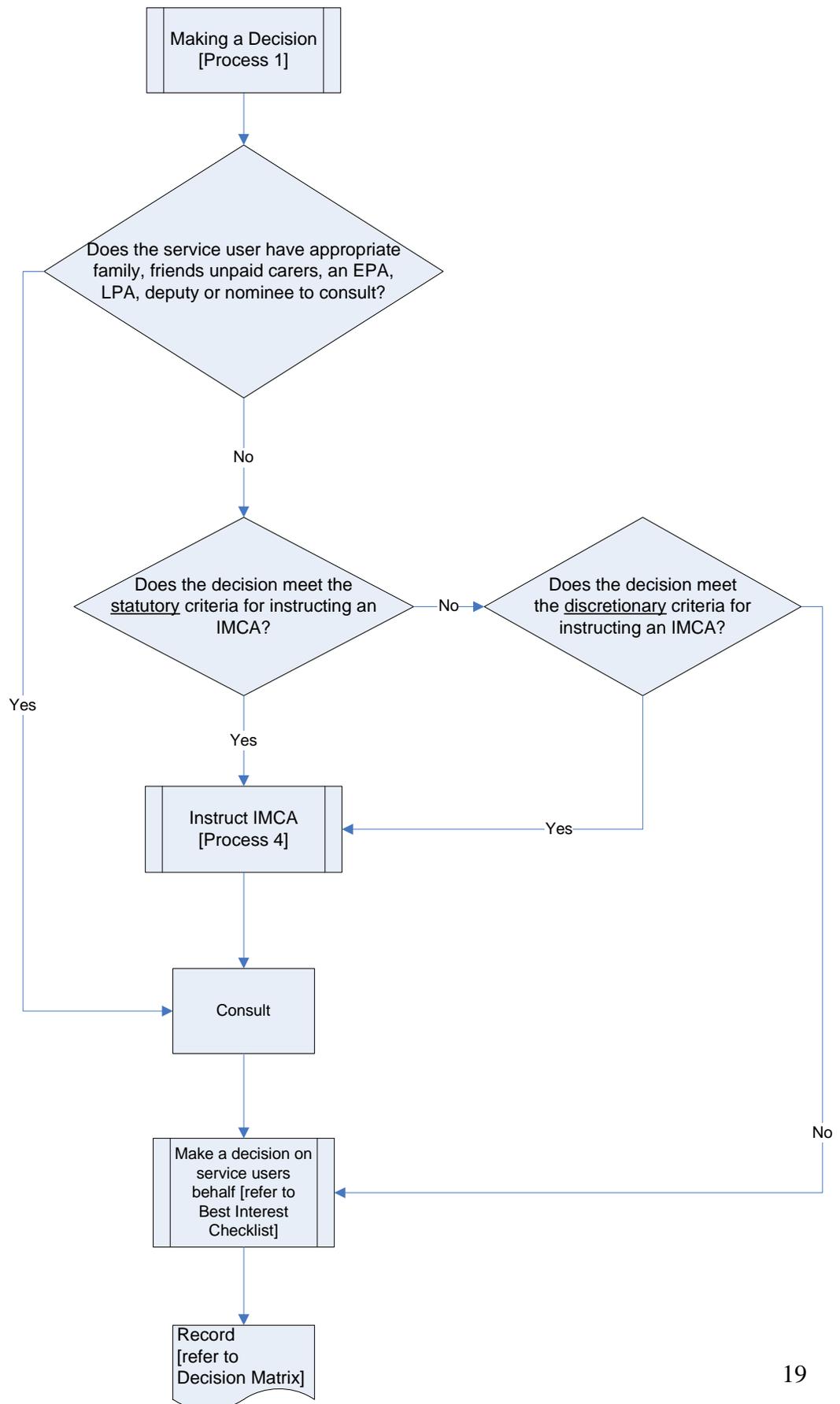
Making a Decision [Process 1]



Assessing for Capacity [Process 2]



Making a Best Interest Decision on behalf of a Service User who lacks Capacity [Process 3]





Rethink IMCA Referral Form

Please mark any correspondence to us PRIVATE & CONFIDENTIAL

Please return this form *by email* to EBH-IMCA@rethink.org or by post to:
 Rethink IMCA Service
 39-41 North Road
 London N7 9DP
 Phone: 020 7700 7077
 Fax: 020 7607 7411

If we do not acknowledge receipt of this referral form within three working days, please contact us to check we received it; thank you.

The following provides a basic assessment of 'gateway' into IMCA services where:

1. there is a **specific** decision that a person is required to make with regards to
 - a. serious medical treatment, or
 - b. long term care and health moves (more than 28 days in hospital / 8 weeks in a care home)
2. It has been decided (or there is doubt) that a person lacks the capacity to make the **specific** decision.
3. The person has no **appropriate** involvement of family/friends

All three criteria must be met.

If in doubt, please contact the IMCA provider who will advise

An IMCA may also be considered in some cases of Protection of Vulnerable Adults or in cases of Care review where an IMCA would be of benefit to the client.

What happens next:

- Within three working days, we will acknowledge the receipt of this form and ensure that we have all the details needed to start work on the case, we will raise questions around eligibility if it is ambiguous – ***We cannot start working on the case unless we can evidence the criteria are met and we have instruction from the decision maker.***
- We will confirm that the case is eligible and will give you the name of the IMCA who will lead the case
- We will try and arrange a time to read all the notes held at the Social Service Office or/and the Hospital as soon as a mutually convenient time is found
- We will arrange to meet with the client within 7 working days of confirming the referral if possible or we will let you know why we cannot
- We will liaise with you and, if appropriate, write a "pre-decision report" within four weeks of confirming the referral or we will inform you of reasons for the delay.
- We will remain in touch until the decision is taken and will expect the decision maker to evidence how the decision took account of the report and of the Best Interests checklist
- We will send you a "post decision report" which will close the case unless the decision is challenged. This is part of our statutory duty – to report on the governmental database how the best interests of the client were met

NB. Adult Protection Cases often mean a longer involvement and do not follow the above schedule

Please write/tick where appropriate

Name of Client					Your reference		
Date of Birth					Gender		
Address where the clients is staying at present (if different from usual address below)							
Telephone number(s):					Borough of present address		
Person's current place of residence	<input type="checkbox"/> Own Home	<input type="checkbox"/> Care/nursing	<input type="checkbox"/> General hospital	<input type="checkbox"/> Psychiatric hospital	<input type="checkbox"/> Other		
Usual Address (if different):							

Ethnicity (Please tick)				
<input type="checkbox"/> White – British <input type="checkbox"/> White – Irish <input type="checkbox"/> White - Other <input type="checkbox"/> Mixed -White and black Caribbean <input type="checkbox"/> Mixed- White and Black African <input type="checkbox"/> Mixed – White and Asian	<input type="checkbox"/> Mixed – Other <input type="checkbox"/> Asian – or Asian British - Indian <input type="checkbox"/> Asian or Asian British -Pakistani <input type="checkbox"/> Asian or Asian British - other <input type="checkbox"/> Back or Black British - Caribbean <input type="checkbox"/> Black or Black British African	<input type="checkbox"/> Black of black British – other <input type="checkbox"/> Chinese <input type="checkbox"/> Other <input type="checkbox"/> Not known <input type="checkbox"/> Prefer not to indicate		
Person's method of Communication	<input type="checkbox"/> English	<input type="checkbox"/> Another spoken language	<input type="checkbox"/> Gestures/vocalisations/facial expressions	
	<input type="checkbox"/> BSL	<input type="checkbox"/> No obvious communication	<input type="checkbox"/> Pictures/symbols/Makaton	
	Other – please specify:			
Person's capacity to make decision	<input type="checkbox"/> Has capacity	<input type="checkbox"/> Lacks capacity	<input type="checkbox"/> Uncertain	
How was the person's mental capacity assessed?				
<input type="checkbox"/> Decision-maker's judgment:				
<input type="checkbox"/> Assessment by decision maker				
<input type="checkbox"/> Assessment by another professional:				
Other:				
Client group/ reason for lacking capacity	<input type="checkbox"/> Learning disability	<input type="checkbox"/> Autistic Spectrum Disorder	<input type="checkbox"/> Mental Health needs	<input type="checkbox"/>
	<input type="checkbox"/> Dementia	<input type="checkbox"/> Acquired brain injury	<input type="checkbox"/> Unconscious	<input type="checkbox"/>
Does the client have a disability	Mental Health issues	Serious Physical Illness	Learning Disability	none
	Other special needs – please state			
What evidence do you have for lack of capacity regarding this decision				

What does the decision concern	A long term move	A medical decision	
Or does it concern:	A Protection of Vulnerable Adult issue	A care review considering a major change	
What decision needs to be made?			
When does the decision need to be made by?			
What action does the decision maker recommend?			
Any deadlines or important meeting dates?			
Are there any family/friends?	Yes	No	Uncertain
Are there any concerns about their involvement?			
Please confirm the date when the family member(s) have been informed of this referral to IMCA Services - please indicate clearly if some family members must not be consulted.			

Please supply contact details of those people (staff, care manager, Dr, family/friends and others involved in the person's care or who may have relevant information) that the IMCA will need to contact.	
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Referrals can be discussed informally with any referrer but the IMCA will not be able to engage in further work until they have been formally instructed by the Decision Maker.

Name and address of Decision Maker		Team of the Decision Maker	
Telephone number:		Email address	
Relationship to client; (E.g. Care Manager, Social worker, Consultant, Resettlement Officer)			
Name and address of Referrer (if different from Decision Maker)		Team of the Referrer	
Telephone number:		Email address	
Relationship to client; (E.g. Care Manager, Social worker, Consultant, Resettlement Officer)			

Are there any risks to advocate or client in a one to one setting?
If there is a risk assessment, please attach to the referral.

Data Protection Act Consent Form

I would like Rethink to do this work under the provisions of the Data Protection Act. All personal information recorded by Rethink will be stored securely, in accordance with the Rethink Data Management Policy and Procedure. All personal information recorded is subject to the Rethink Confidentiality Policy and Procedure.

I ask rethink to process my referral (including contacting people involved in the named person's care) and to process personal information of the named person.

I understand that the first task will be to seek instruction from the Decision Maker if this form is signed by a referrer who is not the Decision Maker.

Signature: _____ **Date:** _____

EQUALITY IMPACT ASSESSMENT

Name of the policy/service/function being assessed:	
Mental Capacity Act – Procedure for Assessment of Mental Capacity	
Person responsible for carrying out the assessment:	
Andrew Smith - Corporate Mental Health Act Manager	
Main aim, objectives and intended outcomes of the policy / function / service development?	
Aim:	
The overall aim of this protocol is:	
To give advice and guidance on <u>how</u> and <u>when</u> an assessment of capacity should be carried out. It draws a distinction between routine and ongoing assessment of capacity, which is a part of everyday care, and more exceptional occasions, when a formal assessment is necessary.	
Objective:	
To give staff a clear understanding of what is meant by capacity and when and how it should be assessed. Assessments of capacity do not become necessary solely in mental health services, but occur in all health and social care settings. Much that is in the policy, therefore, is relevant to all health and social care professionals.	
Is there reason to believe that the policy / function / service development could have a negative impact on a group or groups?	
No	
Which group or groups may be disadvantaged / experience negative impact?	
Race:	NO
Disability:	NO
Gender:	NO
Age:	NO
Sexual Orientation:	NO
Religion/Belief:	NO
Other:	NO

What evidence do you have and how has this been collected?

Some: The protocol is based on procedures that are already operational across the 3 boroughs. The main impact it will have is to introduce more clarity about what is already happening.

Have you explained your policy / function / service development to people who might be affected by it? YES or NO? If YES, please give further details.

This protocol was prepared in consultation with local services.

If the policy / function / service development positively promotes equality, please explain how?

The Mental Capacity Act provides a framework for the protection of the most vulnerable people in society. This policy supports appropriate implementation of the framework across the organisation and in doing so promotes equality in the way in which service users are supported to make decisions.

From the screening process, do you consider the policy / function / service development will have a positive or negative impact of equality groups?

Please rate the level of impact and summarise the reason for your decision.

POSITIVE: likely to promote equality and improve relationships between groups.

Reasons for your decisions:

The purpose of the protocol is to clarify existing arrangements. The policy will promote equality and improve relationships by raising awareness of best practice when supporting vulnerable people in making decisions about their care and treatment and life in general.

Date completed: 10th August 2009

Signed:



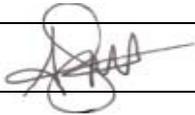
Print Name: Andrew Smith

Checklist for the Review and Approval of procedural Document

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

	Title of document being reviewed: Procedure for Assessment of Mental Capacity	Yes/No/ Unsure	Comments
1.	Title		
	Is the title clear and unambiguous?	YES	
	Is it clear whether the document is a guideline, policy, protocol or standard?	YES	
2.	Rationale		
	Are reasons for development of the document stated?	YES	
3.	Development Process		
	Is the method described in brief?	YES	
	Are people involved in the development identified?	YES	
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	YES	
	Is there evidence of consultation with stakeholders and users?	YES	
4.	Content		
	Is the objective of the document clear?	YES	
	Is the target population clear and unambiguous?	YES	
	Are the intended outcomes described?	YES	
	Are the statements clear and unambiguous?	YES	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	YES	
	Are key references cited	YES	
	Are the references cited in full?	YES	
	Are supporting documents referenced?	YES	
6.	Approval		
	Does the document identify which committee/group will approve it?	YES	
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approve the document?	N/A	
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?	YES	Newsletter /Email Intranet Page
	Does the plan include the necessary training/support to ensure compliance?	YES	Training / e-learning
8.	Document Control		
	Does the document identify where it will be held?	YES	
	Have archiving arrangements for superseded documents been addressed?	YES	Saved on Share MHA Drive

	Title of document being reviewed: Procedure for Assessment of Mental Capacity	Yes/No/ Unsure	Comments
9.	Process to Monitor Compliance and Effectiveness		
	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	YES	Reports to MHA Committee
	Is there a plan to review or audit compliance with the document?	YES	Annual review
10.	Review Date		
	Is the review date identified?	YES	September 2011
	Is the frequency of review identified? If so is it acceptable?	YES	Biennial Review
11.	Overall Responsibility for the document		
	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the documentation?	YES	Corporate MHA Manager

Individual Approval			
If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.			
Name	Andrew Smith	Date	10 th August 2009
Signature			

Committee Approval			
If you are happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation's database of approved documents.			
Name		Date	
Signature			