

SECTION 4 – SOCIAL CARE MATTERS

Children and young people in custody (Version 1.1 September 2016)

Specific arrangements are required under the regulations for children and young people who may be detained in a youth offending institution or in a secure children's home. These apply where there may be concern that an education, health and care (EHC) needs assessment is needed or where a statement is in place and needs to be transferred to an Education, Health and Care plan. If a young person with special educational needs is due to return to the local community their assessment or transfer should be completed prior to their return date (for further details see Chapter 10 SEND Code of Practice 2015).

The process applies to young people in detention up to the end of the academic year in which they are 18 years old. The approach outlined below should be followed to ensure that wherever possible the needs of young people in detention are identified and met in a timely manner.

Information sharing:

- The Youth Offending Team (YOT) **must** notify the SAMS team manager when a child/young person is going into detention, particularly if following the completion of the Asset assessment there may be concerns that the young person may have special educational needs or it is known that they already have a Statement or EHC plan.
- The YOT should alert the SAMS when an EHC needs assessment may be needed or requested
- Both the SAMS and YOT should alert the relevant detention centre if there is a need for an EHC needs assessment or when one is underway, and explain the local process to follow.
- Relevant database information will support identification of the professional network

Requesting an EHC needs assessment

- A written request is required with any existing evidence attached. Given the high levels of vulnerability of young people entering custody, to prevent delays and because of the likelihood that they will not have an established professional or educational network, this will be sufficient.
- Requests should be sent to SENteam@peterborough.gov.uk and/or Statutory Assessment and Monitoring Service (SEN), third floor, Bayard Place, Broadway, Peterborough, PE1 1AY

HC needs assessment agreed

- Additional educational information will be sought by the SAMS if the young person has been in an educational setting within the previous 18 months.
- Information will be requested from the parent/carer.
- The SAMS will set up the appropriate planning TAC meeting – the network will be drawn from database information, information from the detention centre and the YOT.
- It is essential that a key link worker is identified to ensure that the views of the young person are included as part of the assessment. The YOT should identify this person and notify the SAMS.
- If the detention centre does not use their own educational psychologists (EP), a Peterborough EP will be allocated.

Support and advice to the parent/carer and young person

This is available from the Peterborough Parent Partnership Service (IASS) and Independent supporters.

Conversion from a Statement to an EHC plan

Where these are required they will be managed as a priority. If a young person with a Statement of SEN has just been released from custody their conversion **must** be completed as soon as possible after their release.

Education, Health and Care plan

The plan should include clear outcomes that relate to long term Care stability, as appropriate, as well as education and health outcomes



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Mental Capacity Assessments (Version 1.1 September 2016)

What does the Mental Capacity Act say?

The Mental Capacity Act (Department for Constitutional Affairs, 2005) is designed to protect and empower individuals who may lack the mental capacity to make their own decisions about their care and treatment. It is a law that applies to individuals aged 16 and over.

Individuals who lack the capacity to make certain decisions may present with the following:

- dementia
- a severe learning disability
- a brain injury
- a mental health condition
- a stroke

However, just because a person has one of these conditions does not necessarily mean they lack the capacity to make a specific decision. **The initial assumption is that a person has the capacity to make a decision for themselves. The onus is on the assessor to prove capacity or a lack of capacity.**

Someone can lack capacity to make some decisions (for example, to decide on complex financial issues) but still have the capacity to make other decisions (for example, to decide what items to buy at the local shop).

The Mental Capacity Act says that:

1. Everyone has the right to make his or her own decisions. Health and care **professionals should always assume an individual has the capacity to make a decision themselves, unless it is proved otherwise through a capacity assessment.**
2. Individuals must be given help to make a decision themselves. This might include, for example, providing the person with information in a format that is easier for them to understand.

The Mental Capacity Act also says that someone who lacks mental capacity cannot do one or more of the following four things:

1. understand information given to them
2. retain that information long enough to be able to make a decision
3. weigh up the information available and understand the consequences of the decision
4. communicate their decision - this could be by any possible means, such as talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

Key Principles we all follow regarding Mental Capacity:

- A person must be assumed to have capacity unless it is established that they lack capacity, they do not have to 'prove' anything;
- 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;
- A person is not to be treated as unable to make a decision merely because they make an unwise decision;
- An act done, or decision made, under the Mental Capacity Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests:



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- Before the assessment is done, or the 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.

We always start from the perspective that a person has the capacity to make a decision. They do not have to 'prove' anything. The burden of proving a lack of capacity to take a specific decision (or decisions) always lies upon the person who considers that it may be necessary to take a decision on their behalf (or will invite a court to take such a decision). The standard of proof which must be achieved is on the balance of probabilities. Accordingly, it will always be for the decision –maker to prove that it is more likely than not that the person lacks capacity.

What happens if I have concerns that a person does not have the mental capacity to make certain decisions?

If appropriate, check with any other involved professionals and parents/carers to see if they share your concerns. Mental Capacity Assessments (MCAs) should be done focusing on a specific decision(s) so it would be essential to identify an agreed way of explaining that decision, for example: 'Does [Name of person] have the capacity to understand and make decisions about ...?'

To guide the assessment, you should use the form provided by either Peterborough City or Cambridgeshire County Councils – see links below.

Who should lead on the assessment?

This could vary depending on the decision being discussed. Ultimately, the most appropriate person to lead a MCA is the most relevant person to the young person which could be the SEN Officer, a SENCO, social worker, clinical consultant, and so on.

How does a Mental Capacity Assessment happen?

MCAs often take place through a specific meeting with the young person, parent/carer and relevant professionals attending. It is best practice for two professionals to 'run' the assessment: one asking the questions to determine an answer to the agreed question, and one to observe the young person and taking notes.

When organising the meeting, you need to consider what will help the young person comfortable and willing to engage with the discussion. Please remember to consider the venue, transport/journey, communication aids, furniture / seating layout, and who is invited to attend the meeting. Parent / carers can be present if it is appropriate.

It is good to start the meeting with a young person friendly explanation of the purpose of the meeting, such as *'We're here because a few of us are worried about you, and want to make sure you can make choices about It is not about making good or bad choices but being able to make decision for yourself using the information you need.'* Remember to use age and ability appropriate language and try to ease the tension this discussion might bring out.

Notes from the meeting can be made verbatim, in a summarised format or using quotations from the young person.



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Who can help with the mental capacity assessment?

An Independent Mental Capacity Assessor (IMCA) could be involved in a case for a specific assessment, meeting and decision to advocate on behalf of the young person if they have no one else.

Contact social care services to request an IMCA.

What happens if the mental capacity changes depending on the person's fluctuating mental health?

Fluctuating capacity is often linked to mental health disorders. If possible, try to assess the mental capacity of a person when they are 'well', asking if the young person would be comfortable with letting others make decisions for them, if they become unwell. This will most likely need a psychiatrist or appropriate professional to be involved to make sure the signs of being unwell are clear.

Generally, if the decision is heavily dependent on the health and mental health of the young person, it would probably be more appropriate to let a health / mental health professional lead the MCA.

What happens if the person does have mental capacity?

If a person has the mental capacity to make the decision, they should be given the opportunity to make the best decision possible.

What happens if the person does not have mental capacity?

If a person does not have the mental capacity to make a decision, a 'best interest meeting' should take be held. Cambridgeshire County council website has further guidance that may be useful.

What are 'Best Interest Meetings'?

The outcome of these meetings is to plan ahead, in light of the MCA, what can we (as professionals) do to ensure the best interests of the person, specifically regarding the area in which they are deemed not to have the mental capacity to make a decision over.

There are some decisions that professionals are not entitled to take on behalf of someone else (known as excluded decisions, see sections 27-29 and 62 of the Mental Capacity Act). These include:

- Decisions concerning family relationships (consenting to marriage, divorce, dissolution, discharging of parental responsibility, etc.)
- Mental Health Act matters (giving or receiving treatment for mental health illnesses)
- Voting rights (nothing in the Act permits a decision on voting in any election for public office or a referendum)
- Unlawful killing or assisting suicide

Who chairs a Best Interest Meeting?

This needs to be someone with the appropriate level of skill and experience. This may not be the person who will be required to implement the decision (as they may need to contribute impartial information regularly throughout the meeting).

A note taker is also a helpful role to allocate when agreeing the meeting



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When should a Best Interest Meeting be held?

The meeting needs to be held at the time the decision needs to be made, while still allowing sufficient time for the decision to be acted upon. This means it should not be so far in advance that circumstances might have changed by the time the decision needs to be acted upon. If the decision can be delayed until the person has regained capacity then that should happen.

What should be discussed in a Best Interest Meeting?

A sample agenda is below, listing the key points to be covered in a best interest meeting.

What happens if the Best Interest Meeting does not reach an agreement?

The Mental Capacity Act code of practice suggests several options, including seeking further information before holding a second meeting. However, if disagreements remain with the course of action the decision maker intends to take then a complaint could be made through the organisation's formal procedures. Ultimately the Court of Protection might need to decide what is in the person's best interests.

The Chair of the best interest meeting will be responsible for sending out notes of the meeting, the decisions and their reasons to those who attended. Professionals will be responsible for ensuring the notes are entered in the person's records, such as on ARCUS, Information@Work, Liquid Logic, etc.

What if the situation is urgent?

There may not always be time to hold a best interest meeting due to the need for a decision to be made urgently. In this case, the most appropriate person involved should be the decision maker and act – they will still need to be able to justify their actions are in the person's best interest at a later point.

Further guidance is available on the Cambridgeshire county council website:

Forms and guidance - http://www.cambridgeshire.gov.uk/downloads/download/135/mental_capacity

Deprivation of liberties: http://www.cambridgeshire.gov.uk/info/20166/working_together/619/mental_capacity_and_dols_resources/2

The code of practice for the Mental Capacity Act:

http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf



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Sample agenda for best interest meeting:

BEST INTERESTING DECISION MEETING

DATE AND TIME OF MEETING

VENUE AND ROOM OF MEETING

AGENDA

1. Introductions
2. Apologies
3. Clarification of roles and explanation of process
4. Decision to be made and outcome of mental capacity assessment
5. Information gathering:
It is good practice to structure this section around the Mental Capacity Act best interests check list:
 - a. Decision should not be based on assumptions
 - b. Consider if the person will regain capacity
 - c. How has the person been involved in the decision?
 - d. Does the decision relate to life sustaining treatment?
 - e. What is known of the wishes and feelings of the person?
 - f. What is known of the beliefs and values of the person?
 - g. The results of any consultations (including an IMCA report)
6. Discussion and consideration of options
7. Summary of discussion
8. Best interests decision
9. Record responses to best interests decision
10. Agree further actions / next steps



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Deprivation of Liberties (Version 1.1 September 2016)

What is the Deprivation of Liberties (DOLs)?

A deprivation of liberty occurs when “the person is under continuous supervision and control and not free to leave and the person lacks the capacity to consent to these arrangements” (Department for Constitutional Affairs, 2007).

What are the Deprivation of Liberty Safeguards?

The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They make sure that people in care homes, hospitals and supported living are looked after in a way that does not inappropriately restrict their freedom. The safeguards should ensure that a care home, hospital or supported living arrangement only deprives someone of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them. Care should be provided in the least restrictive way possible. However, if all alternatives have been explored and the hospital, care home or local authority administering the supported living arrangements believes it is necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do this by following strict processes. These processes are the Deprivation of Liberty Safeguards, and they have been designed to ensure that a person's loss of liberty is lawful and that they are protected.

The key elements of the safeguards are:

- to provide the person with a representative
- to give the person (or their representative) the right to challenge a deprivation of liberty through the Court of Protection.
- For the DOLs to be reviewed and monitored regularly.

What education reasons are there for depriving liberties?

When a young person (over 16 years old) is placed into residential care, including some foster care and residential schools, this could be depriving them of their liberties, for example being able to leave at their own will.

I think a young person should be in residential care, what should I do?

Inform the 0-25 disability team and ask for their advice about whether this would constitute a deprivation of liberty, and if an application to the Court of Protection is required.

What does the court of protection do?

The Court can give legal permission to deprive a person of their liberties for the safety and best interests of the person and others. **To place a young person in a situation depriving them of their liberties without permission of the Court of Protection is a breach of the law.**

How do I get permission from the Court of Protection?

This is a complicated process. Please contact your line manager and the 0-25 disability team for advice and guidance. During the process of applying for DoLS it is important that all professionals work together for the best interests of the young person. The application for permission is usually a paper-based exercise. If there is insufficient evidence to provide a clear reason for the court to give permission a hearing may be called.



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