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## The Mental Capacity Act, 2005

Policy and guidance for service users, carers and practitioners

This policy and guidance should be read in conjunction with the Mental Capacity Act, 2005, and its related Codes of Practice the Deprivation of Liberty Safeguards Code of Practice; and the “Making decisions” series of booklets provided by the Department for Constitutional Affairs, the Department of Health and the Public Guardianship Office.

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## **1.0 Introduction**

South West Yorkshire Partnership NHS Foundation Trust is a large and complex organisation which serves over 1 million people and links to Integrated Care Boards, local authorities and specialist commissioners.

This policy and guidance have been developed to assist staff within all areas of clinical practice in the Trust with regard to the complex areas of consent, decision making and advanced care planning. This policy specifically relates to powers and duties under the Mental Capacity Act 2005 and Deprivation of Liberty safeguards.

All staff providing care and treatment to service users, both in-patient and community, formal and informal, in-patient or community based, must be familiar with the scope and requirements of the Mental Capacity Act when considering the patient's decision-making abilities in respect of all aspects of their care and treatment with the Trust.

In addition, this policy refers to policy and guidance related to safeguarding adults, lone working, reducing restrictive physical interventions, NICE Guideline for decision-making and capacity (NG108) and the MHA 1983. It is therefore important that all staff familiarise themselves with the content of this document.

## **2.0 Purpose and Scope of the Policy and Guidance**

**2.1** The underlying philosophy of the Mental Capacity Act 2005 (referred to hereafter as “the Act”) is to support individuals in making decisions for themselves and to ensure that an individual who lacks capacity is the focus of any decisions being made, or actions taken on their behalf. It prioritises the interests of the person who lacks capacity, not the views or convenience of those caring for and supporting that person.

**2.2** The majority of the Act applies to young people aged 16 and 17, with the entire Act applying to everyone over the age of 18 living in England and Wales. It provides:

- A statutory framework for the assessment of capacity and for making decisions on behalf of people who lack capacity.
- For those aged 18 and over, a range of means, enshrined in law, to make various decisions about their lives in advance, and that these decisions will be binding in the event of the person becoming mentally incapacitated, and therefore unable to make informed decisions at that time. This range of decisions are known collectively as advance care planning (ACP)
- For those aged 18 and over, a means to appoint someone else to make decisions relating to property and affairs and/or health and welfare decisions.

**2.3** The inability to make a decision can be caused by a range of problems, such as a mental health problem, dementia, learning disability, and physical problems such as toxic confusion, a stroke, brain injury or the effects of drugs or alcohol. This loss can be of a temporary or fluctuating nature or a permanent loss.

**2.4** The assessment of mental capacity and making decisions on behalf of others can be a complex process. Those who are involved in assessments of capacity and acting on behalf of others have a duty to ensure their practice is evidence based and in keeping with available guidance. Knowledge of this guidance alone will not be sufficient to ensure practice is

defensible, and staff will have to be familiar with the contents of the Act, its associated Code of Practice, and relevant NICE guidelines.

### **3.0 Duties**

All staff who are providing care and treatment to services users are responsible for ensuring that the provisions of the Mental Capacity Act 2005, its related codes of practice and available guidance is followed in addition to this guidance. Where this is not followed, reasons should be recorded to reflect the deviation from the policy

Guidance or the MCA code of practice. The lead Directors for this policy are the Chief Medical Officer and the Chief Nurse / Director of Quality and Professions. The development of the policy and its updates is supported by the Trust Legal Services department. Approval of this policy will be sought from the Executive Management Team.

### **4.0 South West Yorkshire Partnership NHS Foundation Trust's commitment toward people who lack capacity to make decisions**

South West Yorkshire Partnership NHS Foundation Trust (hereafter referred to as "the Trust") is committed to enabling service users to access services and to ensure that those individuals who lack capacity to make decisions are provided with high quality care from a knowledgeable and competent workforce. This policy and guidance, alongside the implementation of the related Codes of Practice, NICE Guideline NG108 and Department of Health guidance, aims to ensure that staff are aware of the requirements of the Act and are able to use the legislation to ensure the protection of people who lack capacity to make decisions.

### **5.0 The Mental Capacity Act; key points**

**5.1** The Act applies in England and Wales to people aged 16 years and over but some parts of the Act, notably Advance Decisions to refuse treatment, Lasting Powers of Attorney and the Deprivation of Liberty Safeguards scheme are limited to those persons aged 18 or over.

**5.2** It is based on what at the time was considered to be best practice and largely codifies what was common law in "advanced directives" and "living wills". It clarifies what is meant by lack of capacity and ensures that any decision or action taken on a person's behalf is in that person's best interests.

**5.3** A summary of the key points of the Act is as follows.

An assessment of capacity must always start with the assumption that a person has the capacity to make their own decisions. The onus is on the professional to demonstrate that the person lacks the capacity to make the decision.

Once it is confirmed that the person lacks capacity to make the decision, the act done for, to or on behalf of the person must be clearly determined to be in their best interests and clearly recorded.

- The Act sets out a two stage test for assessing a person's capacity to make a decision

- The Act provides a checklist for determining what is in the best interests of a person. Greater weight is to be given to the person's values, wishes, beliefs and preferences when making the best interests decision
- The Act provides ways for a person to plan ahead for a time in the future when they may lack capacity to make a range of decisions known collectively as advance care planning
- Clarification of the actions people can take if someone lacks capacity, and provides legal protection from civil or criminal action if the Act has been followed
- It places a statutory duty on those working with a person who lacks capacity to consult other people involved with the person, not just "next of kin" or family members
- The Act sets out details for the scope and role of the Independent Mental Capacity Advocate (IMCA), which is the statutory advocacy service for people who lack capacity. In certain circumstances an IMCA **must** be instructed by staff working with the person and their findings **must** be taken into account when making the decision
- The Act Sets out the **criminal** offences of "Wilful neglect or ill treatment of a person who lacks capacity"
- Provides safeguards concerning research involving people who lack capacity.
- Is supported by the public bodies of the Court of Protection, and the Office of the Public Guardian
- Sets out the provision for the Court of Protection to direct an NHS Body as part of their NHS duties to provide the Court with information, reports and conduct capacity assessments to assist the Court in the decision before the Court
- Provides for statutory guidance in the form of a Code of Practice that healthcare practitioners, and others, have a "duty to have regard to"

## 6.0 Decisions to which the Mental Capacity Act does not apply

Please see chapter 1 of the Code of Practice

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

- Consenting to a decree of divorce on the basis of two years' separation
- Consenting to the dissolution of a civil partnership
- Consenting to marriage or civil partnerships
- Consenting to sexual relationships
- Consenting to a child being placed for adoption or the making of an adoption order
- Discharging parental responsibility for a child in matters not relating to the child's property, or
- Giving consent under the Human Fertilisation and Embryology Act 1990.
- Vote in an election
- Where a person is subject to the MHA the requirements of Part 4 or Part 4A (as applicable) must be followed for treatment of mental disorder
- Nothing in the Act is to be taken to affect the law relating to murder, manslaughter or assisting suicide

## 7.0 Guiding principles

Please see chapter 2 of the Code of Practice

The Act has five key principles which appear in the MCA 2005 at section 1, therefore they have statutory force. Decisions and actions carried out under the Act should be tested against the principles. These principles provide protection for the person who may lack capacity and those acting on behalf of a person who lacks capacity.

### **Principle one**

A person must be assumed to have capacity unless it is established that they lack capacity.

### **Principle two**

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.

### **Principle three**

A person is not to be treated as unable to make a decision merely because they make an unwise decision.

### **Principle four**

An act done or decision made under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.

### **Principle five**

Before the act is done, or the decision is 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.

## **8.0 Helping people make decisions**

Please see chapter 3 of the Code of Practice and NICE Guideline NG108

**8.1** As stated above, the Trust is committed to helping service users make their own decisions, even when circumstances make this difficult. Practitioners must always start from the assumption that a service user has capacity. Providing help with decision making should form part of the care planning processes for people receiving health or social care services.

**8.2** Consideration needs to be given to the means of support to help the service user make a decision. The following list is not exhaustive and appropriate support must be developed to meet individual needs:

- ☐ Relevant information should be provided in language the person can access and understand
- ☐ Use of signing, translation or Makaton should be considered
- ☐ It may be more useful to communicate in the person's first language
- ☐ Does the person communicate using non-verbal means? This form of communication is equally valid, and help should be sought to understand it.
- ☐ The person may find it easier to make a decision in a different place (for example at home instead of in a clinic)

- ☐ Is advice from a specialist required to help the person make the decision (e.g. a doctor, speech and language therapist, financial or legal advisor?)
- ☐ Can relatives, friends or carers help? They may have important advice on how the person communicates, or may be able to communicate better with the person
- ☐ Use of technology may help, such as videos, DVDs, photographs etc. to help reiterate points
- ☐ Some people may find it easier to communicate at certain times of the day
- ☐ Is medication affecting the person's ability to communicate?
- ☐ Avoid unnecessary time limits

## **9.0 Assessing capacity**

Please see chapter 4 of the Code of Practice and NICE Guideline NG108

**9.1** Valid consent must be obtained before starting treatment or physical investigation, or providing personal care, for a person. Case law ('common law') has established that touching a patient without valid consent may constitute the civil or criminal offence of battery. Further, if healthcare professionals (or other healthcare staff) fail to obtain proper consent and the patient subsequently suffers harm as a result of treatment, this may be a factor in a claim of negligence against the healthcare professional involved. Consent may be given by a patient who has capacity or a donee of a Lasting Power of Attorney for personal welfare/ Court Appointed Deputy providing that the decision is within the scope of the donee/deputy's authority.

**9.2** The assumption that all adults have capacity is central to the Act. Where a person has the capacity to make a particular decision the decision is his and cannot be overturned by anyone else. Where there is doubt that a person has capacity to make a particular decision, there is a need to determine this.

**9.3** Where there are grounds to doubt a person's capacity to make a particular decision, assessment of capacity must be in keeping with the Act and its related Code of Practice. Any deviance from the guidance contained in the Code of Practice must be logical, rational, reasonable and defensible. It is important to recognise that a person who lacks capacity can be very articulate and rational in his reasons for making or not making a particular decision. This needs to be considered in relation to the person meeting the test of capacity. For example, a person with a mental disorder may well be able to articulate very well his reasoning behind a particular decision, but his disorder may prevent him from appreciating the consequences of it.

**9.4** The Act introduces a two stage test at section 2, to assess capacity.

- Does the person have an impairment or disturbance in the functioning of the mind or brain?
- Is the impairment or disturbance the cause of or is sufficient to mean that the person is unable to make the decision in question at the time it needs to be made?

**9.5** The functional test at section 3(1) states that a person is unable to make a decision for themselves if they are unable.

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

**9.6** A person may lack capacity for any number of reasons. Capacity is not dependent on any condition alone, but to the effects a condition may have on the ability to make decisions. Whilst the severity of a condition may be a factor in assessment, its severity alone is not the determining factor. For example, a person suffering from schizophrenia may be ill to the extent that they need to be detained in hospital under the Mental Health Act; however, this does not mean that they necessarily lack mental capacity to make decisions regarding their treatment.

**9.7** A person's capacity to make a decision must never be based simply on; their age their appearance assumptions about their condition, or any aspect of their behaviour

**9.8** The Code of Practice provides a non-exhaustive list of some of the conditions which **may** lead to a lack of capacity to make a particular decision as follows:

- Acquired brain injury
- Stroke
- Toxic confused states
- Learning disability
- Dementia
- The effects of an illness or a treatment, such as pain, distress, confusion, drowsiness, unconsciousness
- The effects of drugs or alcohol
- Mental health problems including:
  - Psychoses
  - Anxiety
  - Phobias
  - Depressive illness
  - Other mood problems
  - Personality disorder

**9.9** Mental capacity is **decision and time specific**. A person is considered to have capacity for each and every decision they make. The decision to act in a person's best interests because a lack of capacity has been identified is only for the particular decision at the time it needs to be made.

**9.10** Loss of capacity may be temporary or open to fluctuation such as in the case of a diurnal variation. The capacity to make decisions may also be affected by alcohol, drugs; over the counter, prescribed and illicit, it may also be affected by the environment.

## **10.0 Recording assessments of capacity**

**10.1** There are no statutory or standard forms for the recording of an assessment of capacity in relation to the Act. The Trust has a form which should be used to record complex or formal assessments of capacity. This can be accessed through the MCA node on the SystmOne Tree, the Trust MCA intranet page and at Appendix A. For staff using physical health modules the capacity assessment record can be found integrated within a range of documents including core assessment and standalone documents as set out locally for the recording of complex or invasive treatments where a person's capacity to consent is in doubt. For routine consent to treatment in physical health settings that fall outside integrated documents, consideration of capacity and the persons consent should be recorded within the body of the clinical record. A word version of the document and guidance can be found on the Trust MCA intranet page and if used must be scanned and uploaded to Communications and Letters, 6. MCA with the naming convention – Date of assessment followed by the words Capacity Assessment (decision). For children and young adults under the age of 18 the capacity and competency record can be found on SystmOne under the CAMHS folder.

**10.2** It is acceptable to record an assessment of a patient's capacity within the electronic patient record. Any such record should state what attempts were made to enable the person to participate in the decision, what information was provided, what the decision was and, if the patient lacks capacity including your evidence to support this finding, and on what grounds the patient lacks capacity.

**10.3** This record should include a statement as to whether the patient is expected to regain capacity if the decision can be deferred until such a time as the patient regains capacity and what, if any, steps or interventions need to be taken to enable the person gain or regain capacity to make the decision.

**10.4** If a complex decision needs to be made, then the best interest decision should also be recorded. A copy of the Trust best interest decision form can be found in the MCA node on the SystmOne Tree, at Appendix B or in the Trust MCA intranet pages. For staff using physical health modules the capacity assessment record can be found integrated within a range of documents including core assessment and standalone documents as set out locally for the recording of complex or invasive treatments where a person's capacity to consent is in doubt. For routine consent to treatment in physical health settings that fall outside integrated documents, consideration of capacity and the persons consent should be recorded within the body of the clinical record. A word version of the document and guidance can be found on the Trust MCA intranet page and if used must be scanned and uploaded to Communications and Letters, 6. MCA with the naming convention – Date of the assessment followed by the wording Best Interest Decision (decision).

**10.5** Best interest decisions should be supported with a care plan held in the patient electronic record.

**10.6** In most cases assessments of capacity will take place on a regular, more informal level; however, it is important to appreciate that the test for capacity and the principles to be

applied in decision making remain the same and practitioners may still be called upon to justify decisions.

**10.7** It is suggested that the form may be of benefit to use in the following circumstances when:

- The decision is about serious medical treatment
- The decision concerns long term accommodation changes
- There is a lack of concurrence about whether or not the person lacks or has capacity
- There is an intention to refer to the Independent Mental Capacity Advocate
- There is a need to have a specific record of the assessment and the rationale behind it suggests that such a form would be useful.
- It is requested by the police for the purposes of furthering their enquiries (e.g. s44 Mental Capacity Act charges)

**10.8** When recording the assessment of capacity of a compliant community patient who lacks capacity to consent to the treatment in preparation for ECT, in the first instance Form 4 should be used to record the assessment, thereafter the ECT record of capacity held within the treatment record booklet should be completed. (For further information refer to the ECT protocol.)

**10.9** In cases where an external team or service have requested assistance with an assessment of capacity (such as a request from an acute trust in the case of a patient under their care who also has a mental disorder) the records should show the context of the assessment. In such cases Trust staff would be offering an opinion and would not be responsible for the assessment of capacity or any ensuing best interest decision. The clinician providing the treatment or investigation is responsible for ensuring that the person has given valid consent before treatment begins therefore the responsibility for assessment and decision making would remain with the acute trust and their decision maker.

## **11.0 Duty to consult as far as is practicable and appropriate**

(Please see chapter 5 of the Code of Practice)

**11.1** The Mental Capacity Act extends the duty to consult other people in relation to considering best interests. The duty to consult is not restricted to consulting with the person's next of kin, therefore it should be checked whether or not the person has set out their views in a document, appointed a person to act on their behalf, or if there are others such as friends or family involved in their care. If practicable and appropriate you must consult with, and take in to account, the views of the following:

- Anyone the person has previously nominated to be consulted (The Nominated Person)
- Lasting Power of Attorney appointed
- Enduring Power of Attorney appointed
- A Deputy appointed by the Court of Protection
- Professionals involved in the care of the person

- Other persons engaged in caring for, or interested in, the person. This could be carers, friends, supporters, a solicitor, or other professional person who has involvement with the person.

**11.2** Consideration must be given as to the need to consult further. Depending on the nature of the decision and the seriousness of the consequences, the consultative body for decisions, **may** include specialist advisors, such as speech and language therapists, mental health professionals, specialists in learning disabilities, psychologists etc.

**11.3** Reasons why consultation may not be practicable or appropriate may include the following:

- The person lives abroad and has no contact with the service user
- A relative who is estranged
- A family member who refuses to be consulted
- A family member who himself lacks capacity to be involved in the process
- The urgency of the decision, therefore a lack of time
- There is an abusive relationship the person and the individual available to consult with or Safeguarding process have begun
- The service user is strongly opposed to the other person's involvement Confidentiality continues to apply and must be considered before and during any consultation with others. (Refer to paragraph 13 below)

**11.4** At times consultation will raise the issue of conflicting views between consultees. This may be as a consequence of the emotive nature of the decision to be made or values and beliefs. Staff should be supportive to the concerns of the family and friends consulted, and where possible offer face to face meetings, mediation, or the involvement of an advocate. Ultimately consultees if unhappy with actions taken by Trust staff should be provided with details of the Trust complaints procedure.

**11.5** Whilst staff should consult with those who best know the patient who lacks capacity before making best interest decisions in respect of care and treatment, it should be remembered that the best interest decision rests with the lead clinician (the decision maker). In cases where the patient has an advance decision that relates to the matter at hand, the advance decision must be followed. Where there is a Donee/Attorney under an LPA or Court Appointed Deputy with the authority to make the decision in question they become the decision maker, and a best interest decision cannot be made by the clinical staff.

**11.6** Staff should also be aware of the potential of abusive relationships and in such cases should invoke the Safeguarding Adults policies.

**11.7** At times the opinions of the patient's family and friends will conflict with valid and applicable advance decisions made by the patient. In such cases unless the Consultees raise information that would call into question the validity or applicability of the advance decision the care team must follow the patient's advance refusal of treatment as set out in the advance decision. Staff should be supportive to the concerns of the family and friends consulted, and where possible offer face to face meetings, mediation or the involvement of an advocate. Consultees if unhappy with actions taken by Trust staff should be provided

with details of the Trust complaints procedure. Advice is available in such instances from Legal Services and MHA Office.

**11.8** In cases where no resolution can be found to such a dispute in respect of an advance decision and there is a need to proceed with a treatment the Trust will take the case to the Court of Protect for a decision. In such instances Legal Services will co-ordinate legal proceedings.

**11.9** All instances of disputes and disagreements in respect of best interest decisions including those from within the care team, must be recorded in the electronic patient record including how the dispute was resolved, what best interest decision was made and by whom. (There is an identified space on the Trust best interest form to record this information)

## **12.0 Best interests**

Please see chapter 5 of the Code of Practice and NICE Guideline NG108.

**12.1** It is important to remember that where a person lacks capacity to make a particular decision, they can neither consent to it nor refuse it. Any person acting on behalf of a person who lacks capacity **must** act in that person's best interests. The ability to articulate a decision, consent or refusal is not the single determining factor in determining capacity or best interests. Some conditions may enable a person to be very articulate, but they may still lack the ability to make an informed decision and therefore lack capacity.

**12.2** It is important to consider the following factors when determining best interests:

- What is the decision about?
- Is there an Advance Decision addressing the matter or an Advance Statement with relevant information?
- Is there a Lasting Power of Attorney or an Enduring Power of Attorney?
- Is there a Court Appointed Deputy or Court Order that should be consulted?
- Who needs to be involved in making the decision?
- Who needs to be consulted?
- Who is the decision maker?
- How should the decision be made?
- What is known about the person's previous wishes, feelings and beliefs?
- What are the person's current wishes feelings and beliefs even though lacking capacity?
- What are the practical implications of making decisions in a person's best interest?
- What are the risks and benefits involved?

**12.3** In instances where staff are managing or assisting with the management of a person who has self-harmed, where the person is able to communicate, an assessment of their mental capacity should be made as a matter of urgency. If the person is judged not to have capacity, then they may be treated on the basis of temporary incapacity (see chapter 2,

paragraph 12). Consideration for the use of the MHA 1983 should also be given in such circumstances, and may be applied to compel treatment for the direct consequence of an act of self-harm which is a manifestation of the mental disorder.

**12.4** Similarly, patients who have attempted suicide and are unconscious should be given emergency treatment.

**12.5** However, patients with capacity **do** have the right to refuse life-sustaining treatment (other than for treatment of mental disorder under the Mental Health Act 1983) – both at the time it is offered and for a time in the future. Making a decision which, if followed, may result in death does not necessarily mean that a person is or feels suicidal. Nor does it necessarily mean that the person lacks the capacity to make the decision now or in advance.

**12.6** If the person is clearly suicidal, this may raise questions about their capacity to make the decision. Further s.62 of the MCA is clear that others cannot be directed to assist a person in their attempt to commit suicide. If a patient with capacity has harmed themselves, a prompt assessment of their needs should be offered.

### **13.0 Record Keeping**

Please see chapter 4 of the Code of Practice paragraph 4.61

**13.1** Where a patient lacks capacity to make decisions regarding their care or treatment a record of the assessment must be held in the electronic records system, the record should show:

- The decision
- What information was provided to the person?
- What steps were taken to enable the person to participate in the decision making?
- On what grounds the person was unable to make the decision and what is considered to be the reason for the person being unable to make the decision
- When making a best interest decision how the persons views, wishes, beliefs and preferences were taken into account
- Who was consulted and their views of what the person would want to happen
- If an Independent Mental Capacity Advocate (IMCA) was involved and how their information was taken into account

**13.2** Recording decisions in this way will help staff to demonstrate why they had a reasonable belief in the person's lack of capacity and that they were acting in the person's best interests.

**13.3** Where a person is judged to lack capacity to consent to day-to-day care, elaborate record keeping is not required. However, if a member of staff's decision is challenged, the practitioner must be able to describe why they had a reasonable belief of lack of capacity and about what was in the person's best interests. The decision about lack of capacity and best interests should always be recorded in the person's clinical electronic record. Although this does not need to be done on a

daily basis, the record should accurately reflect the decisions and note that it will be reviewed regularly or until capacity is regained.

- 13.4** It is important to note that where a service user lacks capacity to make a particular decision, e.g. for treatment, or sharing information, then they cannot sign a consent form or any other document relating to consent or refusal. In these cases, those acting on their behalf must act in the person's best interests and records should reflect this.

## **14.0 Care Planning**

Please see chapter 6 of the Code of Practice paragraph 6.34 and NICE Guideline NG108

**14.1** Consideration should be given to writing Advance Care Plans when the person has the mental capacity to participate in the process.

**14.2** Advance Care Planning is described as a process of discussion between an individual and their care providers irrespective of discipline or agency about planning care and treatment for a time in the future when they may be unable to make such decisions. If the individual wishes, their family, and friends may be included. This should be conducted with regard to the CPA policy. An Advance Care Plan might include:

- The individual's concerns
- Their important values or personal goals for care
- Their understanding about his illness and prognosis
- Their preferences for types of care and treatment that may be beneficial in the future and the availability of these

**14.3** Advance care planning normally takes place in the context of an anticipated deterioration in the individual's condition in the future, which may lead to a loss of capacity to make decisions. The patient should be offered the opportunity and assistance to make an advance decision and supporting advance statements of wishes. The Trust forms for both the advance decision and the advance statement are available on SystmOne in the MCA node.

**14.4** The ReSPECT document is a form of advance care planning recording the discussions regarding the ReSPECT plan, including their views, wishes and preferences. Following completion of the ReSPECT process the creation of legally binding advance care planning may be appropriate. Any ReSPECT plan should reflect a person's preferences and wishes about future care and treatment accordingly.

**14.5** Some Care Groups have access to a functionality to enable the record and advance care planning documentation and conversations to be shared. This includes ReSPECT conversations and planning in electronic records e.g Barnsley Future Planning incorporating EPaCCs. Within these Care Groups any details of advance care planning already in place (applicable sections of the policy are 19,20, 21 and 22) should be recorded on these templates.

**14.6** Primary care colleagues should be informed of the completion of the template and asked to upload it as an enhanced summary care record.

**14.7** The person may also wish to forward plan by Making a Lasting Power of Attorney (LPA) for either health and welfare (H&W) or property and affairs (P&A) matters. (See section 20 below for further details.) Trust staff should support service users to access independent legal advice to ensure that the LPA will be able to address the forward plans as the person wishes. Care should be taken to ensure the patient understands the extent of the authority of these documents and in which circumstances they can be overruled.

**14.8** Should Trust staff be made aware of any LPA, attempts should be made to receive a copy of the document. It should then be uploaded to SystmOne under Communications and Letters, 6. MCA and named with the convention – Date of the document, followed by the wording LPA (H&W) or (P&A). This should be alerted to other staff.

## **15.0 Confidentiality and data protection**

Please see chapter 16 of the Code of Practice.

**15.1** This part of the policy should be read in conjunction with the Data Security & Protection Policy.

Policy. This policy does not replace the guidance of the Information Commissioner's Office on the Data Protection Act 1998. Where there is doubt advice should be sought from the Trust Information Governance lead.

**15.2** Service users have a right to confidentiality. Information can be shared about an individual where the service user has capacity and consents to the sharing of information, where there is a legal duty to do so, or where there is an overriding public interest.

**15.3** Where a person lacks capacity to make a decision regarding sharing of information, the following guidance applies (alongside the guidance contained in the Data Protection Policy)

- Information can be shared if it is in the best interest of the person who lacks capacity to do so. This should be limited to the information which is needed to meet the person's best interests
- Independent Mental Capacity Advocates have a right to access relevant health and social care records
- A person may have previously given consent (whilst they had the capacity to do so) for a person or persons to access information, such as a Lasting Power of Attorney or Enduring Power of Attorney. In such cases those disclosing information should be clear about the extent of the Powers
- A Deputy appointed by the Court of Protection may have the right to relevant information
- A person may have previously let their wishes and feelings be known about sharing information, and these must be considered when considering sharing information for a person who lacks capacity. If there is any doubt about sharing information, advice should be sought from the Trust Information Governance Lead

## **16.0 Mental capacity and risk management**

**16.1** It is a fundamental principle that people live with elements of risk in their personal lives. When considering what action is in the best interests of a person assessed as lacking capacity to make a decision, there is a need to take into account a balance of that person's risks and needs.

**16.2** It is important when assessing capacity as part of the assessment, that a person is able to understand the risks and consequences associated with making that decision or indeed, of not making a decision. Understanding and accepting risks is an important part of decision making. If the person is unable to understand the risks of a decision, it is more likely than not that they lack capacity.

**16.3** When considering risk taking behaviour, assessors must deliberate whether the person fully understands the consequences of a proposed decision. This includes the person understanding and believing information provided and any negative consequences of the proposed decision. Trust staff cannot be compelled to support a patient's risk taking behaviours, nor can they be required to support the patient's plan or wish to take actions that hold a risk that is likely to result in their death or have the intended consequence of them taking their own life.

**16.4** Where a person's risk taking behaviour may lead to risk to other people, public protection must be considered. If the behaviour is likely to put the child at risk of harm children and young people under the age of 18 reference should be made to the Trust's Safeguarding and Promoting the Welfare of Children Policy.

**16.5** It is equally important that those who lack capacity to make decisions are protected from risks as a result of their lacking capacity. This may mean that sometimes actions are taken, against the person's apparent (although non- capacitous) wishes.

**16.6** There may be occasions when staff themselves face risks associated with assessing capacity and determining best interests. It may be that there are family disagreements or disputes, or carers feel strongly about the decisions to be made or disagree with the decisions taken by professionals. These risks must be taken seriously, and staff and their managers should address such risks. Where required reference should be made to the Trust Lone Worker Policy and to the Violence and Aggression at Work Policy.

## **17.0 Protection of vulnerable adults**

**17.1** This part of the Policy should be read in conjunction with the Safeguarding Adults Policy.

**17.2** People who lack capacity are amongst the most vulnerable people in our community. It is important to recognise that where a person's ability to make some decisions is impaired, the decisions they are able to make, become more important.

**17.3** Mental capacity will often need to be considered in cases where adult abuse is suspected or proven. A person with capacity will be able to make a decision about their future care and support, even if this means that they wish to remain within an abusive environment. However, if a person in an abusive situation lacks capacity, then those involved will need to make decision on their behalf based on that person's best interests. This may

mean a complex set of circumstances will need to be considered, up to and including the effects of the person remaining within the abusive environment and the effects of removing him from the environment. The wider social aspects of a person's circumstances must be considered when determining what is in their best interests

**17.4** Section 44 of the Mental Capacity Act relates to wilful neglect or ill treatment of a person who lacks capacity and makes these criminal offences (see section 28 below, wilful neglect or ill treatment of a person who lacks capacity). These offences may need to be considered in cases of adult protection. (See Trust policy Safeguarding Adults Policies.

## **18.0 Independent Mental Capacity Advocate**

Please see chapter 10 of the Mental Capacity Act

**18.1** Local Authorities are responsible for the commissioning of Independent Mental Capacity Advocacy Services (IMCA). The Trust MCA intranet page maintains an up to date data base of IMCA services and their contact details.

**18.2** Referral to the IMCA service is restricted to a set of defined circumstances. The IMCA service it is designed to assist the most vulnerable members of society who not only lack capacity, but who also have no friends, carers or supporters, or those who may be involved in adult protection cases, or those subject to a DoLS authorisation.

**18.3** The IMCA service is for people who lack capacity and who do not have friends, carers or supporters and there needs to a decision taken about serious medical treatment **or** consideration is being given to moving the person into long term accommodation (defined as more than 28 day in hospital or 8 weeks in a care home).

In these defined sets of circumstances, staff a have legal **duty** to instruct the IMCA.

**18.4** The IMCA **may** be instructed in cases where a care review is to consider movement from one care home to another, providing the person concerned lacks capacity to make the decision and there is no one other than a paid carer for the current care team to consult with.

**18.5** The IMCA **may** also be instructed where the person who lacks capacity is the subject of adult protection procedures, whether or not the person is without friends or relatives for the care team to consult with. This referral should be considered where it is thought to be of some benefit to the case.

**18.6** Guidance on who to refer, how to refer and to which service are included within the Trust MCA Intranet pages

## **19.0 Planning ahead for the future**

Please see chapter 7 of the Code of Practice and NICE Guideline (NG108).

**19.1** A person can plan ahead for a time when they may lack capacity. The Mental Capacity Act provides ways of doing this.

**19.2** Trust staff involved in implementing this part of the Act are advised to consider carefully the guidance contained within the MCA Code of Practice and Chapter 9 of the MHA Code of Practice; Wishes expressed in advance. Additional guidance and leaflet for service users and carers to support discussions are also available on the Trust MCA intranet page.

**19.3** Ways to plan ahead can be through:

- Lasting Powers of Attorney (LPA)
- Advance decisions to refuse treatment
- Advance statements

**19.4** The ReSPECT process and associated care plan should reflect any advance care planning that is documented or been stated. Given that the ReSPECT is clinical advice only, discussions should be an opportunity to introduce additional forms of advance care planning such as LPA and ADRT.

## **20.0 Lasting Power of Attorney**

Please see chapter 7 of the Code of Practice.

**20.1** The Mental Capacity Act provides ways in which a person can plan ahead in case they lose capacity in the future. Lasting Powers of Attorney replace and expand the system of Enduring Powers of Attorney. From October 2007, only Lasting Powers of Attorney can be created. If a person has already made an Enduring Power of Attorney and it has not been registered, it can still be registered after 2007 and will basically take effect as a Property and Affairs Lasting Power of Attorney. The effect of this is that for many years both systems will be in place.

**20.2** There are two types of Lasting Power of Attorney (LPA):

- Property and affairs LPA
- Personal welfare LPA

**20.3** The property and affairs LPA is similar to an EPA. It only relates to financial matters and can be used when the person still has capacity if that power is given to the attorney.**20.4** The personal welfare LPA can only be used when the person who created it lacks capacity and ceases to have effect once the person regains capacity to make their own health and welfare decisions.

**20.5** A LPA can only be made when the person making it is aged 18 or over, has the capacity to understand the importance of the document, and the power they are giving to another person. The person to whom the Power has been given is known in the Act as the “donee” but is also commonly known as an Attorney. Attorney is the term used in the Code of Practice. There can be more than one attorney appointed and they may be allowed to act independently or only together.

**20.6** The personal welfare LPA, means that a person can nominate another person to make decisions on their behalf in relation to both health, and personal welfare.

**20.7** It is essential to read the LPA, to understand the extent of the Attorney’s power and any restrictions or limitations placed on their decision making authority. In order to ensure that Trust staff follow the directions in an LPA that a copy is saved to SystmOne in Communications and Letters, 6. MCA and saved under the naming convention – Date of the document followed by the wording LPA (P&A) or (H&W) Date (of the LPA). An alert on the records to the document must also be made.

**20.8** Before an LPA can be used it must be registered with the Office of the Public Guardian (see paragraph 29 below, The Office of the Public Guardian). Without registration an LPA cannot be used. An Attorney should be able to produce the full LPA document and a letter from the Office of the Public Guardian confirming it's registration.

**20.9** If there is doubt about the validity of an LPA the Trust Legal Services should be contacted, who will provide support and advice including where necessary contacting the Office of the Public Guardian on behalf of the Trust.

**20.10** If the person who lacks capacity has created a personal welfare LPA, the Attorney is the decision maker on all specified matters relating to the person's care and treatment. Unless the LPA specifies limits to the Attorney's authority, the Attorney has the authority to make personal welfare decision and consent to or refuse treatment on the donor's behalf.

**20.11** The Attorney must act in the person's best interests and if there is a dispute that cannot be resolved, it may be referred to the Court of Protection.

**20.12** If the decision is about life sustaining treatment, the Attorney only has the authority to make the decision if the LPA specifies this.

**20.13** In cases where a matter is referred to the Court of Protection for a decision, in respect of an LPA the Act provides that life sustaining treatment can always be given while the application is being made.

**20.14** Enduring Powers of Attorney only relate to property and affairs and do not give the person with the Power of Attorney the right to make health or welfare decisions on behalf of a person without capacity however, the Attorney should be consulted on matters of serious medical treatment.

**20.15** Enduring Power of Attorney (EPA) can be used when the person who has made the EPA still has capacity if permitted by the EPA.

**20.16** Employees of the Trust must not agree to be an Attorney for a service user for whom they are providing care, treatment or support. In order to avoid the possibility of members of the patient's family raising issues about the reason for and nature of the involvement of staff, Trust employees should not assist with the wording of an LPA but rather direct or support the patient to seek legal advice. Trust staff may, if satisfied of the person's capacity to make the LPA, sign the capacity certificate contained within the application. A full record of the assessment of capacity should be made within the electronic patient record.

## **21.0 Advance decisions to refuse treatment**

Please see chapter 9 of the Code of Practice.

**21.1** Previously commonly known as living wills, or advance directives, these documents existed prior to the enactment of the Mental Capacity Act. The MCA clarifies the legal status of these decisions, now known as Advance Decisions, Advance Statements and Advance Decision to refuse Life Sustaining Treatment and sets out how they should be made. People can, when they have the capacity to make the decision, make an advance decision to refuse specified treatment under specified circumstances for a time in the future when the treatment may be considered to be an option. The refusal of treatment can extend to include the refusal of life sustaining treatment.

**21.2** An advance decision to refuse treatment can only be made by a person aged 18 years or over who has mental capacity at the time the advance decision is made. If the advance decision is valid and applicable, then it has legal force.

**21.3** An advance decision may be verbal or in writing whilst an advance decision to refuse life sustaining treatment must be in writing. It must be signed by the maker in the presence of a witness who must also sign it. Trust staff **must not** act as the independent witness to the advance decision to refuse life sustaining treatment for their patient. It can be in any format and a copy should be in the person's SystmOne notes. In both cases the decision must set out the circumstance in which the refusal will apply and the specific treatment that the person is refusing. The Trust form for the recording of advance decisions including those which refuse life sustaining treatment can be found on SystmOne in the MCA node, a word version can also be accessed on the Trust MCA intranet page and at Appendix C.

**21.4** An advance decision to refuse treatment may be given by the person verbally to a member of staff. In such instances the member of staff should record the decision and any witness to the verbal advance decision. The care team must review this decision in detail with the person to ensure the exact intention of the decision is understood by all concerned.

**21.5** Advance decisions can be tools to engagement and ensure that staff are acting in accordance with what the service user wanted. They offer the additional benefit of facilitating participation and collaborative care planning for a time in the future when the person may lack the capacity to engage in discussion and make decisions in respect of treatment.

**21.6** Service users should be encouraged to discuss any advance decisions and advance decisions to refuse life sustaining treatment with family, friends, or external carers, to ensure that they are interpreted as the service user intended and to avoid family dispute in the future.

**21.7** Advance decisions to refuse life sustaining treatment must be verified by a specific statement that says the advance decision is to apply to the specified treatment even if the withholding of that treatment puts the person's life at risk. This statement must also be in writing, signed by the maker and the signature must be witnessed. Staff **must not** act as a witness to an advance decision to refuse life sustaining treatment for their patient. If a person has already made an advance decision to refuse treatment, they should be advised and encouraged to review it in light of the requirements of the Mental Capacity Act.

**21.8** If Trust staff are in a position to action an advance decision to refuse treatment, they must consider if the refusal is both valid and applicable in the current circumstances. In considering the validity of an advance decision, staff should have regard to the following:

- Has the advance decision been withdrawn in the period between making it and the need to action it?
- Has it been overridden by the making of a Lasting Power of Attorney?
- Has the person acted in a way which is inconsistent with the advance decision, e.g. by making comments about their future?
- If it is about life sustaining treatment, is it signed, witnessed and contains or is accompanied by a statement recognising that it applies to life sustaining treatment?

**21.9** In considering the applicability of the advance decision, practitioners should have regard to the following:

- Does the advance decision specify the treatment that is being refused, whether in lay or medical terms?
- Does the advance decision to refuse treatment specify any circumstances which will apply, and are those circumstances currently present?
- Are there any reasonable grounds for believing that there have been changes in circumstances which would have affected the person's advance decision (e.g. advances in medical treatment)?

**21.10** A person cannot make an advance decision to refuse basic or essential care, such as warmth, cleanliness, offer of oral food and fluid, however artificial nutrition, such as feeding via a naso-gastric tube or PEG is treatment and can be refused.

**21.11** A person cannot make an advance decision to demand a specific medical treatment, they can only refuse treatment. If a person has made a statement, indicating that they have preferred treatments, these should be given due consideration when determining their best interests.

**21.12** A person cannot make advance decisions which demand their life to be ended.

**21.13** An advance decision that does not fulfil the requirements to be valid and applicable is not binding but should still be taken as an advance statement when considering any best interest decision (see 22.3 below).

**21.14** In cases where a matter is referred to the Court of Protection for a decision in relation to the validity or applicability of an advance decisions the Act provides that life sustaining treatment can always be given while the application is being made.

**21.15** Advance decisions to refuse treatment for a mental disorder can be set aside by Part 4 of the MHA but a record of the reason why the advance decision has been set aside must be made by the AC in charge of treatment and the reasons explained to the person when they have regained capacity to make their treatment decisions.

**21.16** Advance Decisions to refuse ECT are respected by the MHA, with the exception of where ECT is considered to be life sustaining treatment. In such cases ECT may be authorised under s.62 (1) (a or b). In such cases the reason for giving ECT and proposed future treatment must be reviewed with the patients when they have regained capacity to make their treatment decisions.

**21.17** Advance decisions to refuse treatment for mental disorder must be respected where a patient is subject to a CTO.

**21.18** when a person under the care of the Trust has been given a diagnosis of a life limiting illness Trust staff should advise the patient of the option for creating advance decisions, statements and Lasting Powers of Attorney. Staff should provide support to create forms of advance care planning for a time when they may be unable to make decisions regarding their care, treatment, accommodation or manage their finances.

## **22.0 Advance Statements of wishes, feelings and beliefs**

**22.1** These are a formal way for an individual to make known their personal desires in respect of their care and treatment. Advance statements assist family, friends, and professionals determine best interests, should that person lose capacity. It must be borne in mind that advance statements are not legally binding. An individual cannot demand that they are met. They can include anything that is important to the person e.g. the need for a vegetarian diet, religious practices, or the wish to have a pet looked after, or moved with the person into residential care. They can also indicate the type of treatment a person would prefer to have for a particular disorder, including specific drugs or other treatments that have been successful for the person in the past.

**22.2** Advance statements can work in conjunction with advance decisions, with a decision stating what treatment the person refuses and the statement providing guidance for previously effective treatment or preferred routes of administration of medication.

**22.3** Those making best interest decisions on a person's behalf have a legal duty to have regard to such a statement in considering that person's best interests. Not complying with the statement must be for reasonable and rational reasons related to the final decision of the best interests of the person and recorded in the electronic patient record.

**22.4** Statements of wishes, feelings and beliefs need not be in writing, but those that are written down and given to family, friends and health and social care professionals are more likely to be known about and followed.

**22.5** Where staff are involved with a person who wishes to plan for the future, they should give advice, support, and assistance if the person wishes to make such a statement. The Trust form to record an advance statement can be found on SystmOne in the MCA node. A word version can be accessed on the Trust MCA intranet page.

## **23.0 Restraint**

Please see chapter 6 of the Code of Practice. This section should be read in conjunction with paragraph 25 below, Interface with the Mental Health Act

**23.1** Section 6 of the Mental Capacity Act defines restraint as the use or threat of force when an incapacitated person resists, and any restriction of liberty or movement whether or not the person resists. Restraint is only permitted if the person using it reasonably believes it is necessary to prevent harm to the person lacking capacity, and that any restraint used is **proportionate** to the **likelihood** and **seriousness** of the harm. If restraint is used in this way and recorded, then those undertaking it are protected by the Mental Capacity Act.

**23.2** The Mental Capacity Act (section 6(5)) makes it clear that the Act does not provide protection for an action which deprives a person of their liberty within the meaning of the Human Rights Act. Any action which deprives a person of their liberty without using legislation will be reported under the Safeguarding Adult Procedures.

## **24.0 Research**

Please see chapter 11 of the Code of Practice

**24.1** The Mental Capacity Act sets out parameters for research which may be lawfully carried out if an "appropriate body" (normally a Research Ethics Committee) agrees it is safe, related to the person's condition and produces a benefit to the person that outweighs risk and

burden. The Trust is part of West Yorkshire Mental Health Research Consortium, and its research governance is fully compliant with the Act.

**24.2** Carers or nominated third parties of an incapacitated person must be consulted and agree. If the person shows any signs of resistance or indicates in any way, they do not want to take part, they must be withdrawn from the research.

## **25.0 Interface with the Mental Health Act**

Please see chapter 13 of the Mental Health Act Code of Practice.

**25.1** The Mental Capacity Act can be used to treat a person for mental disorder when they cannot consent because they lack capacity, and where the treatment is in the persons best interest and is not being used to compel treatment.

**25.2** The Mental Capacity Act cannot be used to detain a person in hospital. Where a person needs to be detained because they are suffering from a mental disorder, then they are assessed with a view to detention under the Mental Health Act.

**25.3** If a person is detained under the Mental Health Act, the Mental Capacity Act becomes subordinate legislation and therefore treatment can be given for mental disorder without the patient's consent in accordance with Part 4 of the MHA.

**25.4** The MHA Code of Practice states (9.9) 'Even where clinicians may lawfully treat a patient compulsorily under the Mental Health Act, they should where practicable, try to comply with the patient's wishes as expressed in an advance decision.'

**25.5** The Mental Health Act Code of Practice requires (25.56) that consultees inform the SOAD of any 'past and present views and wishes of the patient' and that the SOAD should give due weight to them when making their decision to authorise treatment.

**25.6** The Mental Health Act 1983 as Amended by the Mental Health Act 2007 recognises the authority of an advanced decision to refuse ECT under s58A (See the Trust ECT protocol) however the powers contained within s62 (1) (a and b) MHA may override the advance decision to refuse ECT should this become life sustaining treatment.

**25.7** The Mental Health Act 1983 as Amended by the Mental Health Act 2007 recognises the authority of the advance decision and LPA (health and welfare) in respect of treatment for community (CTO) patients.

**25.8** Where a person who is subject to the Mental Health Act is moved to another hospital or care home under the provisions of the Mental Health Act, there is no requirement to consult an Independent Mental Capacity Advocate.

**25.9** For most other purposes, the Mental Capacity Act will still apply to those detained under the Mental Health Act, for example for the treatment of physical disorders.

## **26.0 Children and Young People aged 16 – 18**

Please see chapter 12 of the Code of Practice.

**26.1** There is an overlap between the Mental Capacity Act and the Children Act for 16 and 17 years, and most of the provisions of the Mental Capacity Act apply. Decisions made on

behalf of young people aged 16 and 17 must be in their best interests when they lack capacity, and the decision makers should normally consult those with parental responsibility.

**26.2** Parts of the Mental Capacity Act do not apply to young people aged 16 and 17. A young person cannot make a Lasting Power of Attorney or an advance decision to refuse treatment. However, case law has shown that the closer the young person is to adulthood, the greater the weighting that is given by the Court to the young person's wish or preference. Where young people are approaching transition between children and adult services consideration should be given to supporting the young person to set out their views, wishes and preferences in respect of their care and treatment in order to facilitate a successful transition as outlined in NICE Guidelines NG (43).

**26.3** The Court of Protection has no power to make a will on behalf of a person under 18.

**26.4** For those under 16, only two parts of the Mental Capacity Act apply. The Court of Protection can make decisions relating to property and affairs of a person under 16, and the criminal offences of wilful neglect or ill treatment of a person who lacks capacity apply to all age groups.

## **27.0 Disputes and disagreements**

Please see chapter 15 of the Code of Practice.

**27.1** The Code of Practice makes it clear that any disputes relating to either assessment of capacity or best interest need to be resolved quickly and, in a cost effective manner.

**27.2** It is likely that there will be challenges in relation to both assessments of capacity and best interest decisions. These issues can be very emotive subjects for those who care for a person who lacks capacity. It is possible that there may be disagreements where the carer(s) have a different opinion from professionals on capacity or best interests, or where families disagree with each other. It is also possible that there will be several opinions as to what action is in a person's best interests, and it may be difficult to get a consensus opinion on the best action to take.

**27.3** It is important to try to resolve disagreements and disputes at a local level. Good communication and open dialogue are important, but it is recognised that issues may not always be resolved at this level.

**27.4** Where significant persons are involved in the person's life every effort should be made to consult with, and involve them and arrive at an agreed decision provided this is felt to be in that person's best interests and meets their assessed social and/or medical needs.

**27.5** A case conference or mediation may be useful. Where agreement cannot be reached assistance is sought from the employee's line manager or senior managers, further meetings may be necessary including formal complaints through the route of the Trust Customer Services or by seeking legal advice.

**27.6** If agreement cannot be reached, the family or carers have recourse to the complaints procedures of the agencies involved.

**27.7** Recourse to the Court of Protection should be the last resort if no agreement can be reached. When seeking a court declaration contact the Trust Legal Services for support and approval to proceed. (out of hours contact Director on call).

## **28.0 Wilful neglect or ill treatment of a person who lacks capacity**

Please see chapter 14 of the Code of Practice.

**28.1** Section 44 of the Mental Capacity Act (2005) covers the criminal offences of wilful neglect or ill treatment of a person who lacks capacity. These offences are punishable by a fine or a sentence of up to five years imprisonment or both.

**28.2** These offences may apply to anyone caring for a person who lacks capacity – this includes family, carers, health or social care staff in hospital, care homes and those providing care or support in a person's home.

**28.3** Ill treatment and neglect are separate offences. For a person to be found guilty of ill treatment, they must either:

- have deliberately ill-treated the person, or
- be reckless in the way they were treating the person

**28.4** It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the victim's health.

**28.5** The meaning of wilful neglect varies depending on the circumstances. But it usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.

**28.6** Where ill treatment or wilful neglect is suspected, the police must be informed, and the Safeguarding Adults Procedure should be instigated.

## **29.0 Protection from liability**

Please see chapter 6 of the Code of Practice.

**29.1** Section 5 of the Mental Capacity Act (2005) allows carers, healthcare and social care staff to carry out certain tasks without fear of liability. These tasks involve the personal care, healthcare or treatment of people who lack capacity to consent to them. This is to ensure that acts can be carried out in a person's best interest where they lack capacity.

**29.2** To ensure protection from liability, it is important that those acting on behalf of others observe the five principles of the Mental Capacity Act and act reasonably in assessing capacity and in determining and carrying out best interest decisions and recording both in the electronic patient record. The decision maker is treated as being in the same position as if the individual they are acting for had capacity and had consented to the action.

**29.3** Those involved in the provision of care, support or treatment of a person who lacks capacity have a legal duty to have regard to the guidance contained within the Code of Practice. Staff should follow the guidance in the Code of Practice unless there are rational and justifiable reasons for not doing so. There are no specific legal sanctions in a failure to comply with the Code but failure to do so will be used in any disciplinary proceedings and can also be used in evidence before a court or tribunal or in any civil proceedings.

**29.4** South West Yorkshire Partnership NHS Foundation Trust expects that the practice of its employees will be in keeping with the guidance contained in the Code of Practice, unless there are justifiable reasons for deviating from it. Any deviation from the Code of Practice and the reasons for this must be clearly recorded.

**29.5** For these reasons, the Trust expects that that staff who work with people who lack capacity are familiar with the contents of the Code of Practice and are up to date with their mandatory MCA training.

## **30.0 The Court of Protection**

Please see chapter 8 of the Code of Practice.

**30.1** The Court of Protection has jurisdiction relating to the whole of the Mental Capacity Act and is the final arbiter for capacity matters. It has its own procedures and nominated judges. In cases where there are particular concerns or an agreement cannot be reached relating to capacity or best interests, the Court of Protection can be consulted to make a judgement.

**30.2** This will deal with all serious unresolved matters relating to capacity welfare, finance, serious medical treatment and protection. The Court can make a decision where there is a single issue or appoint a Deputy where there are ongoing issues.

**30.3** In cases where a matter is referred to the Court of Protection for a decision, including questions about advance decisions and/or LPAs the Act provides that life sustaining treatment can always be given while the application is being made.

**30.4** The Court of Protection has the option of issuing a s.49 direction. This court order requires that as part of their NHS duties staff are required to make assessment, provide treatments and reports to the Court to enable the court to make its decision. In order that the Trust is able to comply with the Court Rules, all approaches for reports for the Court of Protection must be directed to Legal Services.

## **31.0 The Office of the Public Guardian**

Please see chapter 14 of the Code of Practice.

**31.1** The Public Guardian and their staff are the registering authority of LPAs and deputies. They supervise deputies appointed by the Court of Protection and provide information to the Court to help make decisions. They also work together with other agencies such as the police and social services, to respond to any concerns raised about the way in which an attorney or deputy is operating. A Public Guardian Board scrutinises and reviews the way in which the Public Guardian discharges their duties.

## **32.0 Deprivation of Liberty**

To be read in conjunction with the Deprivation of Liberty Safeguards code of practice and Mental Health Act code of practice chapter 13.

**32.1** The Mental Health Act (1983) as Amended by the Mental Health Act (2007) amends the Mental Capacity Act to incorporate the Deprivation of Liberty (DoL) Safeguards. The Safeguards are intended to protect the interests of those people who have a mental disorder and lack capacity to consent to the arrangements made for their care or treatment, who are deprived of their liberty within the meaning of Article 5 of the European Convention of Human Rights within either a hospital or registered care home setting.

**32.2** A deprivation of liberty arises when a person who has a mental disorder and lacks capacity to consent to being in hospital or a care home for the purposes of their care or

treatment is being kept in such a setting. The Supreme Court has defined the acid test for a deprivation of liberty to be, that the person is

- 1. subject to continuous supervision and control
- 2. is not free to leave

**32.3** If a care plan can be reviewed to create a restriction of liberty rather than the proposed DoL then this should be done. Advice is available from the local MHA office. If the care plan needs to be delivered in a such a restrictive way and the person meets the criteria for detention under the MHA, then a MHA assessment must be organised in order to provide the person with the opportunity to access the safeguards available under this Act and avoid an unlawful detention.

**32.4** There are six criteria which must be met prior to any authorisation being granted by the appropriate Supervisory Body. They are:

**a. Age Assessment:** the person must be over the age of 18 years

**b. No Refusals Assessment:** there are no Advance Decisions refusing the treatment intended to be provided whilst the person is being deprived of their liberty nor any Donee or Deputy who has the authority to refuse such a treatment is doing so.

**c. Mental Capacity Assessment:** the person must lack capacity to consent to being in the place where the proposed care and treatment are to be given.

**d. Mental Health Assessment:** the person has a mental disorder within the meaning of the MHA, but including learning disabilities.

**e. Eligibility Assessment:** does the person meet the criteria for an application under the MHA. Note this does not mean that the person must be detained under the MHA, but that he meets the minimum criteria for detention under the MHA.

**f. Best Interest Assessment:** that it is in the person's best interests to be deprived of their liberty in this environment for the purpose of providing care or treatment.

**32.5** The above assessments are conducted by a minimum of two assessors who are the Mental Health Assessor and the Best Interest Assessor. They are appointed by the Supervisory Body and have in the case of an Urgent Authorisation 7 calendar days to complete all six assessments, the reports and the recommendations to the Supervisory Body Panel for authorisation or refusal of the DoLS application, or in the case of a Standard Authorisation, 21 calendar days.

**32.6** When a care team consider that they may have a DoL and that they are unable to avoid this level of care plan, then the doctor in charge of treatment or agreed member of the clinical care team must contact the local MHA office for the appropriate DoLS application form. The form will need to be completed by the team and returned promptly to the MHA office who will submit the form to the appropriate Supervisory Body. Assistance in the decision making and completion of the form is available from the MHA office, step by step guidance is also available on the Trust MCA intranet page.

**32.7** The appointed assessors will contact the ward and arrange to attend to meet with the person and members of staff to complete their assessments. Staff must provide the

assessors with information to assist the assessment process, this includes access to appropriate clinical records and any relevant recent assessments. This does not permit full access to all of the person's records, only those that are relevant to the assessment process.

**32.8** The Ward and the MHA Office will be notified of the decision of the Supervisory Body. Once the person is subject to a DoL authorisation they become known as the Relevant Person. This will include the duration of the authorisation (up to 12 months), any conditions which are attached to the authorisation, and the name of the Relevant Persons Representative.

**32.9** It is the responsibility of the ward staff to give the patient who is now subject to the DoLS authorisation the following:

- a. A copy of the authorisation form to the Relevant Person and any IMCA instructed for that person
- b. Do everything practicable to explain to the Relevant Person both orally and in writing what the effect of the authorisation is
- c. The Relevant Person's right to apply to the Court of Protection for it to be terminated
- d. Inform Relevant Persons family, friends and carers about the authorisation so that they can support the Relevant Person this may be done in person, by telephone, e.mail or letter
- e. Record in electronic patient record the steps taken to involve the Relevant Person's family, friends and carers and anyone else with an interest together with their views and with details of any IMCA who has been instructed

**32.10** The ward or unit must keep a record of the involvement of the Relevant Persons Representative including their visits to see the patient (known as the Relevant Person), attendance at ward rounds and their inclusion in the care planning.

**32.11** The MHA office will notify the clinical team one month before the DoL authorisation is due to expire. The care team must then determine if a further period of DoL authorisation is required. The MHA office must be notified of the decision to ensure that the appropriate forms are supplied to the care team for completion. These forms must be returned to the MHA Office for submission to the relevant Supervisory Body. A detailed Guidance for the Clinical Process is available on the Trust MCA intranet pages along with all forms. Further assistance with this process is available from the local MHA Office or Trust Legal Services.

**32.12** The authorisation will only have relevance for the ward for which it has been provided. Its authority is non-transferable. In the event that the person needs to be moved, e.g. a transfer to the acute trust or move to another unit the MHA office must be notified immediately and the Supervisory body informed to enable suspension of the authorisation and lawful care plan.

**32.13** A person cannot be subject to 2 DoLS authorisation at the same time. If the person was subject to a DoLS in the community and is then admitted to hospital the DoLS authorisation can be suspended for up to 28 days. Advice in these situations can be accessed through the MHA office or Trust Legal Services.

**32.14** Those aged 16 and 17 sit outside the scope of the DoLS however, to care and treat a young person in circumstances which may amount to them being deprived of their liberty

may require an application to the Court of Protection and Trust Legal Services must be notified as soon as practicable.

**32.15** Those adults who are being cared for in settings which amount to them being deprived of their liberty but are not in a hospital or registered care home may require authorisation from the Court of Protection. Where such circumstances are suspected the clinical team must contact the Trust Legal Services for advice.

### **33.0 Training and Compliance with this policy**

**33.1** Training is available to staff through the mandatory training programme.

Specialist advisors where applicable will and do incorporate elements of the Mental Capacity Act specific to their speciality within their training programmes. Information is available in the form of guidance notes, legal updates, leaflets for patients, carers and staff which can be accessed on the Trust MCA intranet page.

**33.2** MCA compliance is monitored through the Trust Mental Health Act Committee who will also commission specific and additional audits and reviews as required.

### **34.0 Duties**

**34.1** Trust Board is responsible for approving the policy for the approval of this policy.

**34.2** The Lead Director is responsible for ensuring that the policy has been developed in line with the Trust policy for the development, approval and dissemination of policy and procedural documents.

**34.3** General managers, clinical leads and team managers are responsible for ensuring that staff in their area of responsibility are aware of their responsibilities under the policy and that they follow the policy.

**34.4** All clinical staff are responsible for ensuring that their actions comply with the policy.

**34.5** Mental Health Act Office staff are responsible for advising on the practice related to the policy insofar as it is governed by the Mental Capacity Act 2005.

### **35.0 Principles**

This policy seeks to describe the Trust's duties under the Mental Capacity Act, ensuring that all patients are involved in decisions about their care to their maximum ability, or where they lack capacity to be involved in decision making about their care there are legal safeguards in place.

### **36.0 Equality impact assessment**

The policy has had an equality impact assessment (see appendix D).

### **37.0 Dissemination and implementation arrangements**

The policy will be disseminated through the Trust information channels and through professional groups. It will be placed on the Trust intranet.

### **38.0 Process for monitoring compliance and effectiveness**

Compliance with the MCA, including the completion of capacity assessments where required will be monitored by clinical services on a daily basis. More significant capacity decisions will be monitored by senior clinical staff with advice from the Mental Health Act Office.

### **39.0 Review and revision arrangements**

The policy will be reviewed by the Associate Director, Legal Services on behalf of the accountable director by the review date, or earlier if required. Previous copies will be archived in line with rust procedures.

### **40.0 References**

Department of Constitutional Affairs (2007) Mental Capacity Act 2005: Code of Practice TSO London

Mental Capacity Act 2005

Ministry of Justice (2008) Mental Capacity Act 2005 Deprivation of Liberty

Safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice TSO London

NICE Guideline (NG108)

NICE Guideline (NG 43)

### **41.0 Associated Documents**

Department of Health (2015) Mental Health Act 1983: Code of Practice TSO London

Mental Health Act 1983

[Safeguarding adults at risk of abuse or neglect policy](#)

[Safeguarding and promoting the welfare of children policy](#)

[Data security and protection policy](#)

[Lone worker policy](#)

[Preventing violence and aggression policy](#)

## Appendix A

### Mental Capacity Assessment Form

Name:

DOB:

Ward / Team:

Date of Assessment:

Form completed by:

Job title

What reasonable adjustments have you made to enable the person to participate in the assessment? e.g. aids to communication, translator, time place and people present, written or pictorial information

Specify anyone who has been consulted to assist in this assessment e.g. someone who knows the person well, a Speech and Language Therapist, a clinical specialist.

What pertinent information was provided and in what form e.g. verbal, written

#### Stage1

Does the person have an impairment of, or disturbance in the functioning of, the mind or brain? If 'yes' give specific details, if 'no' then the Mental Capacity Act does not apply.

Details of decision to be made

#### Stage 2

1. Has the person understood the decision to be made and the consequences? **YES / NO** Give specific details showing your evidence to support your findings.

2. Is the person able to retain the information long enough to make a decision? **YES / NO** Give specific details showing your evidence to support your findings.

|                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                           |
| 3. Has the person understood and weighed up the options before making a decision? <b>YES / NO</b><br>Give specific details showing your evidence to support your findings |
|                                                                                                                                                                           |
| 4. Has the person communicated their decision? <b>YES / NO</b><br>Give specific details of how this was done, including the communication methods used                    |
|                                                                                                                                                                           |
|                                                                                                                                                                           |

## ASSESSMENT CONCLUSION

If the answer to any question in stage 2 above is 'no' then the person lacks capacity to make decision.

|                                                                                                     |  |                                                                                            |
|-----------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------|
| Does the person have capacity to make the decision? Please put a cross in the appropriate box below |  |                                                                                            |
| <b>Yes</b>                                                                                          |  | The person makes their own decision even if it is considered by others to be an unwise one |
| <b>No</b>                                                                                           |  | <b>Proceed to a best interests decision</b>                                                |
|                                                                                                     |  |                                                                                            |

## Appendix B

### Best Interest Decision Form

Name:

DOB:

Ward / Team:

|                                                                                         |
|-----------------------------------------------------------------------------------------|
| 1. What decision has to be made?                                                        |
|                                                                                         |
| 2. Mental Capacity Assessment <b>relating to this decision</b> was completed as follows |
|                                                                                         |
| Date:                                                                                   |
| By Who?                                                                                 |
| Where is the assessment recorded?                                                       |

***A best interest decision can only be made if the person is proven to lack the capacity to make the decision for themselves.***

Only continue with this form if a Mental Capacity Assessment has been completed and the person is shown to lack capacity to make this decision for him / herself.

|                                                                                                                                                                                               |                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 3. Has an IMCA been instructed                                                                                                                                                                | <b>YES/NO</b>   |
| <b>If yes</b> please provide IMCA details; name, contact details & where a copy of the IMCA report is held                                                                                    |                 |
|                                                                                                                                                                                               |                 |
| 4. Is there any advance care plan in place that would have the lawful authority to make this decision e.g. Advance decision, Lasting Power of Attorney, Court Appointed Deputy or Court Order | <b>YES / NO</b> |
| <b>If yes</b> please provide details of the authority and where the copy is held                                                                                                              |                 |
|                                                                                                                                                                                               |                 |
| 5. Is there any advance statement or evidence of the person's views, wishes, preferences                                                                                                      |                 |
|                                                                                                                                                                                               |                 |

|                                                                                                                                                                                                                               |                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| or beliefs relating to the decision to be made? <b>YES / NO</b><br><b>If yes</b> give details below including where the information is recorded or who has provided the information.                                          |                                      |
|                                                                                                                                                                                                                               |                                      |
| 6. Does the decision have to be made now, or could it be postponed? <b>YES / NO</b><br><b>If yes</b> please detail any steps to be taken whilst being postponed to enable the person to make the decision                     |                                      |
|                                                                                                                                                                                                                               |                                      |
| 7. List all those involved in the 'best interest' decision making, giving name and designation and identify the decision maker                                                                                                |                                      |
|                                                                                                                                                                                                                               |                                      |
|                                                                                                                                                                                                                               |                                      |
| 8. What steps have been taken to enable the person to participate in the decision making<br><b>e.g.</b> how was the person supported to attend the meeting, to participate in the decision making                             |                                      |
|                                                                                                                                                                                                                               |                                      |
| 9. What steps have been taken to enable the person's family and friends to participate in the decision making<br><b>e.g</b> explanations provided in accessible language, invited to attend, views sought if unable to attend |                                      |
|                                                                                                                                                                                                                               |                                      |
| 10. What factors are important to the person that relate to this decision?                                                                                                                                                    |                                      |
|                                                                                                                                                                                                                               |                                      |
| 11. List <b>all</b> the possible options that are available in relation to this decision                                                                                                                                      |                                      |
|                                                                                                                                                                                                                               |                                      |
| 12. List the potential benefits of option 1                                                                                                                                                                                   | List the potential risks of option 1 |
|                                                                                                                                                                                                                               |                                      |

|                                                                               |                                      |
|-------------------------------------------------------------------------------|--------------------------------------|
| 13. List the potential benefits of option 2                                   | List the potential risks of option 2 |
|                                                                               |                                      |
| 14. List the potential benefits of option 3                                   | List the potential risks of option   |
|                                                                               |                                      |
| 15. Summarise the key points discussed, and detail any differences of opinion |                                      |
|                                                                               |                                      |
| 15. Outline the final decision made, and give the reasons for this            |                                      |
|                                                                               |                                      |

|                                           |  |              |
|-------------------------------------------|--|--------------|
| <b>Name of person completing the form</b> |  | <b>Date:</b> |
| <b>Signature</b>                          |  |              |
| <b>Designation</b>                        |  |              |

This is my advance decision to be followed in case I am unable to participate in decisions about my treatment because of a lack of mental capacity.

|                                                               |  |
|---------------------------------------------------------------|--|
| Name:                                                         |  |
| Address:                                                      |  |
| Date of Birth:                                                |  |
| Distinguishing marks:                                         |  |
| Name of registered professional with whom this was discussed: |  |
| Designation of clinician with whom this was discussed:        |  |
| Date:                                                         |  |
| Contact Address:                                              |  |
| Contact Tel No:                                               |  |
| GP:                                                           |  |
| GP contact details:                                           |  |
| Other professionals consulted and purpose                     |  |

Name of; family members, friends, advocates, professional or others as identified who know, and understand about this advance decision.

In case of dispute I would like to have those individuals marked with an \* to be consulted. They have given permission to be contacted and consulted as to their knowledge of my wishes, beliefs and values.

| Contact Name | Contact Address | Contact Tel Number | Does the contact have a copy of the advance decision? |
|--------------|-----------------|--------------------|-------------------------------------------------------|
|              |                 |                    |                                                       |
|              |                 |                    |                                                       |
|              |                 |                    |                                                       |
|              |                 |                    |                                                       |
|              |                 |                    |                                                       |

If the advance decision is intended to apply even if your life is at risk, that is it is intended to refuse life sustaining treatment then this form **must** be signed and independently witnessed. Forms without the person's signature and the signature of an independent witness will be invalid in these circumstances. It is Trust policy that Trust staff will not act as the witness.

You should note that in certain circumstances decisions regarding treatment for mental disorder may be overruled if you are subject to detention in hospital under a section of the Mental Health Act 1983.

### Details of my advance decision/s

In the event that I lack mental capacity to make decisions about my health care and treatment I have made the following decisions to refuse treatment. I understand that if I am subject to detention in hospital under the Mental Health Act 1983 decisions regarding the refusal of medication for the treatment of my mental disorder may be overruled. I understand that in certain circumstances decisions to refuse other health care treatment may be overruled by the MCA 2005 whilst a decision is sought from the appropriate Court

### Advance decision/s

| Specific treatment/s which I do not wish to receive | The specific circumstances under which I wish to refuse the treatments |
|-----------------------------------------------------|------------------------------------------------------------------------|
|                                                     |                                                                        |
|                                                     |                                                                        |
|                                                     |                                                                        |

I understand that I cannot refuse basic care

I confirm that I am 18 years of age or older and understand that this document remains effective until I make it clear my wishes have changed. (The wishes of people under 18 years will be taken into consideration but are not legally binding)

#### Completed by the person making the advance decision

|         |  |
|---------|--|
| Signed: |  |
| Name:   |  |
| Date:   |  |

#### To be completed by the registered professional providing support and assistance

|                                                                                          |  |
|------------------------------------------------------------------------------------------|--|
| I confirm that the person named above has capacity to make the decisions recorded above. |  |
| Name:                                                                                    |  |
| Designation:                                                                             |  |

|       |  |
|-------|--|
| Date: |  |
|-------|--|

**Please save a copy of this completed document to: SystmOne, Communications and Letters, 6. MCA The document should be named as follows -Date of the document followed by the wording 'Advance Decision' (e.g 21.04.23 Advance Decision)**

## Advance decision/s to refuse life sustaining treatment/s

| Specific treatment/s which I do not wish to receive even if the refusal of treatment/s may risk my life or result in my death | The specific circumstances under which I wish to refuse the life sustaining treatments detailed above |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
|                                                                                                                               |                                                                                                       |
|                                                                                                                               |                                                                                                       |
|                                                                                                                               |                                                                                                       |

**I confirm that I would want to be given pain relief and/or be made as comfortable as possible in any event I understand that I cannot refuse basic care**

This form **must** be independently witnessed if any advance decision applies to the refusal of life sustaining treatment.

| To be completed by the person making the advance decision to refuse life sustaining treatment |  |
|-----------------------------------------------------------------------------------------------|--|
| Name                                                                                          |  |
| Signature                                                                                     |  |
| Date                                                                                          |  |

| To be completed by the independent witness |
|--------------------------------------------|
|--------------------------------------------|

|                                                                                                                                                                                                                       |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| I confirm that I have witnessed this above named person sign this advance decision. I confirm that the above named person has made this advance decision of their own free will, without undue pressure or influence. |  |
| Name                                                                                                                                                                                                                  |  |
| Signature                                                                                                                                                                                                             |  |
| Relationship to the person making the advance decision to refuse life sustaining treatment                                                                                                                            |  |
| Date                                                                                                                                                                                                                  |  |
| <b>To be completed by the registered professional providing support and assistance</b>                                                                                                                                |  |
| I confirm that the person named above has capacity to make the decisions recorded above.                                                                                                                              |  |
| Name                                                                                                                                                                                                                  |  |
| Designation                                                                                                                                                                                                           |  |
| Date                                                                                                                                                                                                                  |  |

**Please save a copy of this completed document to: SystmOne, Communications and Letters, 6. MCA The document should be named as follows – Date of the document, followed by the wording ‘Advance Statement’ (e.g 21.04.23, Advance Statement )**

## Appendix D – Equality Impact Assessment

### POLICY AND STRATEGY Equality Impact Assessment template

***This EIA template is to be completed by staff when writing a new policy/strategy or when reviewing a policy/strategy. The EIA needs to demonstrate who would be impacted (local census data and workforce data) and what gaps there are.***

***Any gaps identified need to be included in section 6 where actions are listed to address and progress to ensure inclusivity and diversity in the policy/strategy.***

|   | QUESTIONS                                                                                                                                                                                  | ANSWERS AND ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Name of policy/strategy?<br><i>Prompt: is it new or revised?</i>                                                                                                                           | Mental Capacity Act 2005 – policy and guidance<br>Standard review process                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2 | Description of the document:<br><i>Prompt: what is the aim of the document?</i>                                                                                                            | <p>This policy aims to provide a robust framework for good practice in relation to the application of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards in clinical practice. It informs health care professionals of the legal and ethical requirements in gaining consent either verbal, non-verbal, or written for any intervention, how to ensure that acts done are in the best interests of the person, the role and status of advance care planning, statutory roles under the Act including the Office of the Public Guardian, The Court of Protection and Independent Mental Capacity Advocates. The policy includes the requirements for the Deprivation of Liberty Safeguards and the processes supporting this legal framework.</p> <p>The main principle of this policy is to ensure that patients with capacity have the right to choose, and that all care offered and provided is person centred. For patients who lack capacity either temporarily or permanently, that they are offered care and treated in their “best interest” with dignity and respect.</p> <p>Implementation of the policy assures the Board that clinical practice is being delivered in a manner compliant with the Mental Capacity Act 2005, Deprivation of Liberty Safeguards 2009, and their associated codes of practice. The policy is a requirement of CQC registration.</p> <p>This policy does not apply to those under the age of 16 years.</p> <p>This policy informs consent to treatment under Part 4 and Part 4A of the MHA 1983.</p> |
| 3 | Lead contact person for the Equality Impact Assessment                                                                                                                                     | Name: Julie Carr<br><br>Job title: Clinical Legislation Manager                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 4 | Who else is involved in undertaking this Equality Impact Assessment<br><i>Prompt: list all people involved by name and job title</i>                                                       | Yvonne French – Associate Director Legal Services<br>Carly Thimm – MHA/MCA Manager, Trustwide                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 5 | Sources of information used to identify gaps and barriers<br><i>Prompt: local, regional, national research/reports/journals &amp; profession updates. Complaints and compliments data.</i> | List information by name, date, author or hyperlink<br>Mental Capacity Act 2005<br>Mental Capacity Act Code of Practice 2007<br>Nice Guideline for Decision Making and Capacity (NG108)<br>Mental Health Act Code of Practice 2015                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

***For section 5a-5j, use the following data links to populate the EIA with narrative about your service and workforce.***

**Workforce data link:** [Completing a service EIA \(sharepoint.com\)](http://sharepoint.com)

**Service data link:**

<http://swyt-fhh-rep01/reports/report/Live%20Reports/Mental%20Health%20Community/Mental%20Health%20Community%20PID/EqualitiesMonitoring%20v2?rs:embed=true>

**EIA narrative: What does the information you have sourced tell you about the impact it will have on the following equality groups in terms of service provision, access and delivery?**

**5a Disability Groups:**

*Prompt: consider people who have Learning Disabilities or Difficulties, Physical, Visual, Hearing disabilities and people with long term conditions such as diabetes, cancer, stroke, heart disease. Also consider how you meet their needs in line with the Accessible information standard.*

| Area       | Non- disabled       | Disabled           |
|------------|---------------------|--------------------|
| England    | 45,715,455<br>82.7% | 9,774,620<br>17.3% |
| Barnsley   | 19,0655<br>78%      | 53,920<br>22%      |
| Calderdale | 168,780<br>81.7%    | 37,855<br>18.3%    |
| Kirklees   | 357,620<br>82.6%    | 75,590<br>17.4%    |
| Wakefield  | 282,165<br>79.9%    | 71,195<br>20.1%    |

Source: Census 2021 data

Workforce data: All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest. For those patients aged 16 and over the assessment of capacity as set out at s.2 and s.3 MCA must be followed.

Service data: This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of disability.

EIA narrative  
The Mental Capacity Act 2005 sets out at s.1 the 5 principles which must be respected for all people aged 16 years and older.

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success.
3. A person is not to be treated as unable to make a merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before an act is done, or the decision is 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.

The Act is an inclusive one that aims to empower people as decisions need to be made and to enable decisions to be made in advance for a time in the future when they are unable to make decisions for themselves. The starting point for any act done or treatment provided is to establish that the person has capacity to make their own decisions and that all reasonable assistance is put in place to support that person to make their own decisions.

The Act continues to set out that any assessment of capacity must not be affected by assumptions related to a person's disability. This requirement is further explained in the MCA code of practice (2007) through chapters 2, 3 and 4. Additional information is available through NICE Guideline for Decision Making and Capacity (NG108)

Stating that; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using, or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.

Recommendation 1.4.10 requires that;  
In preparing for an assessment, the assessor should be clear about:

- the decision to be made
- if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person
- the options available to the person in relation to the decision
- what information (the salient factors) the person needs in order to be able to explore their options and make a decision
- what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids
- how to allow enough time for the assessment, giving people with communication needs more time if needed
- how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity

|            |                                                                                           | <ul style="list-style-type: none"> <li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision</li> <li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li> <li>• how to identify the steps a person is unable to carry out even with all practicable support</li> <li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li> </ul> <p>Recommendation 1.4.14 requires that:<br/>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"> <li>• that their capacity to make a particular decision is being assessed</li> <li>• why their capacity is being assessed</li> <li>• the outcome of that assessment</li> <li>• what they can do if they are unhappy with the outcome</li> </ul> <p>In assessing a person's capacity to consent to their treatment or an examination all the above steps and reasonable adjustments must be made for all patients irrespective of disability.</p> <p>The Trust has access to a range of interpreting services, providing verbal, written and through sign language.</p> <p>The Trust has access to psychology and Speech and Language Therapists who are able to provide advice for how best to communicate with people who have language or speech impairments.</p> <p>The Trust holds easy read information to support people with learning disabilities or other form of cognitive impairment to support that persons understanding of capacity and consent and the process of assessing capacity and making best interest decisions to ensure that the person, their family and carers can be fully involved in the process and enabled to make their own decisions.</p> <p>The Trust is engaged with the Virginia Mason Institute and PSC for 2 QI projects focused on improving involvement and service user experience for people with a learning disability. The projects are linked to CT(E)R processes and Advance Choice (future planning of care and treatment)</p> |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
|------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|------|--------|---------|-------------------|-------------------|----------|------------------|------------------|------------|------------------|------------------|----------|----------------|----------------|-----------|------------------|------------------|
|            | <b>QUESTIONS</b>                                                                          | <b>ANSWERS AND ACTIONS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| 5<br>b     | <p><b>Gender:</b></p> <p><i>Prompt: Female &amp; Male issues should be considered</i></p> | <table border="1"> <thead> <tr> <th>Area</th><th>Male</th><th>Female</th></tr> </thead> <tbody> <tr> <td>England</td><td>27,656,336<br/>49%</td><td>28,833,712<br/>51%</td></tr> <tr> <td>Barnsley</td><td>120,279<br/>49.2%</td><td>124,293<br/>50.8%</td></tr> <tr> <td>Calderdale</td><td>100,790<br/>48.7%</td><td>105,901<br/>51.3%</td></tr> <tr> <td>Kirklees</td><td>212,346<br/>49%</td><td>220,870<br/>51%</td></tr> <tr> <td>Wakefield</td><td>173,831<br/>49.2%</td><td>179,539<br/>50.8%</td></tr> </tbody> </table> <p>Source: Census 2021 data</p> <p>Workforce data: All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest</p> <p>Service data: This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of disability.</p> <p>EIA narrative<br/>The Mental Capacity Act 2005 sets out at s.1 the 5 principles which must be respected for all people aged 16 years and older.</p> <ol style="list-style-type: none"> <li>1. A person must be assumed to have capacity unless it is established that they lack capacity.</li> <li>2. A person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success.</li> <li>3. A person is not to be treated as unable to make a merely because he makes an unwise decision.</li> <li>4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Area | Male | Female | England | 27,656,336<br>49% | 28,833,712<br>51% | Barnsley | 120,279<br>49.2% | 124,293<br>50.8% | Calderdale | 100,790<br>48.7% | 105,901<br>51.3% | Kirklees | 212,346<br>49% | 220,870<br>51% | Wakefield | 173,831<br>49.2% | 179,539<br>50.8% |
| Area       | Male                                                                                      | Female                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| England    | 27,656,336<br>49%                                                                         | 28,833,712<br>51%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| Barnsley   | 120,279<br>49.2%                                                                          | 124,293<br>50.8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| Calderdale | 100,790<br>48.7%                                                                          | 105,901<br>51.3%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| Kirklees   | 212,346<br>49%                                                                            | 220,870<br>51%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |
| Wakefield  | 173,831<br>49.2%                                                                          | 179,539<br>50.8%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |      |      |        |         |                   |                   |          |                  |                  |            |                  |                  |          |                |                |           |                  |                  |

|         | <p>5. Before an act is done, or the decision is 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.</p> <p>The Act is an inclusive one that aims to empower people as decisions need to be made and to enable decisions to be made in advance for a time in the future when they are unable to make decisions for themselves. The starting point for any act done or treatment provided is to establish that the person has capacity to make their own decisions and that all reasonable assistance is put in place to support that person to make their own decisions.</p> <p>The Act continues to set out that any assessment of capacity must not be affected by assumptions related to a person's disability. This requirement is further explained in the MCA code of practice (2007) through chapters 2, 3 and 4. Additional information is available through NICE Guideline for Decision Making and Capacity (NG108)</p> <p>Stating that; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using, or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p> <p>Recommendation 1.4.10 requires that;</p> <p>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"><li>• the decision to be made</li><li>• if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li><li>• the options available to the person in relation to the decision</li><li>• what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li><li>• what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li><li>• how to allow enough time for the assessment, giving people with communication needs more time if needed</li><li>• how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity</li><li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li><li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li><li>• how to identify the steps a person is unable to carry out even with all practicable support</li><li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li></ul> <p>Recommendation 1.4.14 requires that:</p> <p>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"><li>• that their capacity to make a particular decision is being assessed</li><li>• why their capacity is being assessed.</li><li>• the outcome of that assessment</li><li>• what they can do if they are unhappy with the outcome</li></ul> <li>• In assessing a person's capacity to consent to their treatment or an examination all the above steps and reasonable adjustments must be made for all patients irrespective of disability.</li> <p>The policy language has been reviewed with the aim of writing in a gender neutral format.</p> <p>People should not be disadvantaged as a consequence of their gender.</p> <p>Where required a reference for the gender of the clinician seeking consent should be accommodated. Where this is not possible chaperones should be provided if the gender of the clinician is an issue and is impeding a person's ability to concentrate on the information being provided so interfering with their ability to understand, retain, weigh information or communicate a decision, to maximise the person capacity to consent to treatment.</p> |                                                                                                                                                                                                                                         |            |            |           |       |       |         |         |            |            |            |            |           |
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| 5c      | Age:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <table><tr><th>Area</th><th>Under 18</th><th>18-39</th><th>40-59</th><th>60-79</th><th>Over 80</th></tr><tr><td>England</td><td>11,774,609</td><td>16,161,002</td><td>14,897,132</td><td>10,858,911</td><td>2,798,379</td></tr></table> | Area       | Under 18   | 18-39     | 40-59 | 60-79 | Over 80 | England | 11,774,609 | 16,161,002 | 14,897,132 | 10,858,911 | 2,798,379 |
| Area    | Under 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 18-39                                                                                                                                                                                                                                   | 40-59      | 60-79      | Over 80   |       |       |         |         |            |            |            |            |           |
| England | 11,774,609                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 16,161,002                                                                                                                                                                                                                              | 14,897,132 | 10,858,911 | 2,798,379 |       |       |         |         |            |            |            |            |           |

Prompt: Older people & Young People issues should be considered

|            |                 |                  |                  |                 |                |
|------------|-----------------|------------------|------------------|-----------------|----------------|
|            | 20.8%           | 28.6%            | 26.4%            | 19.2%           | 5%             |
| Barnsley   | 50,068<br>20.5% | 65,448<br>26.8%  | 65,850<br>26.9%  | 51,606<br>21.1% | 11,595<br>4.7% |
| Calderdale | 45,122<br>21.8% | 51,990<br>25.2%  | 57,280<br>27.7%  | 42,548<br>20.6% | 9,694<br>4.7%  |
| Kirklees   | 98,029<br>22.6% | 11,9116<br>27.5% | 114,735<br>26.5% | 81,845<br>18.9% | 19,484<br>4.5% |
| Wakefield  | 73,625<br>20.8% | 96,756<br>27.4%  | 94,822<br>26.8%  | 71,717<br>20.3% | 16,440<br>4.7% |

Source: Census 2021 data

**Workforce data:** All staff seeking to provide care and/or treat to a patient must seek consent from the patient or evidence that they are acting in the person's best interests.

**Service data:** This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of disability.

#### EIA narrative

The Mental Capacity Act 2025 sets out at s.1 the 5 principles which must be respected for all people aged 16 years and older.

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success.
3. A person is not to be treated as unable to make a merely because he makes an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
5. Before an act is done, or the decision is 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.

The Act is an inclusive one that aims to empower people as decisions need to be made and to enable decisions to be made in advance for a time in the future when they are unable to make decisions for themselves. The starting point for any act done or treatment provided is to establish that the person has capacity to make their own decisions and that all reasonable assistance is put in place to support that person to make their own decisions.

The Act continues to set out that any assessment of capacity must not be affected by assumptions related to a person's disability. This requirement is further explained in the MCA code of practice (2007) through chapters 2, 3 and 4. Additional information is available through NICE Guideline for Decision Making and Capacity (NG108)

Stating that; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using, or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.

Recommendation 1.4.10 requires that:

In preparing for an assessment, the assessor should be clear about:

- the decision to be made.
- if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person
- the options available to the person in relation to the decision
- what information (the salient factors) the person needs in order to be able to explore their options and make a decision
- what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids
- how to allow enough time for the assessment, giving people with communication needs more time if needed
- how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity
- how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]
- how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable

|            | <ul style="list-style-type: none"><li>• how to identify the steps a person is unable to carry out even with all practicable support</li><li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li></ul> <p>Recommendation 1.4.14 requires that:<br/>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"><li>• that their capacity to make a particular decision is being assessed</li><li>• why their capacity is being assessed.</li><li>• the outcome of that assessment</li><li>• what they can do if they are unhappy with the outcome</li></ul> <p>In assessing a person's capacity to consent to their treatment or an examination all the above steps and reasonable adjustments must be made for all patients irrespective of age.</p> <p>For young people (those aged 16 – 17 years old) the majority of the policy applies, however there are exceptions a capacitous refusal of treatment or examination can be set aside by someone with parental authority. The closer the young person is to the age of 18 the more weight must be given to their decision. The Trust capacity assessment recording form for Young people sets out the process that must be followed and records the voice of the Young Person and reasons for actions. Where a matter is contentious Legal Services will provide support (<a href="mailto:mhamcamanagement@swyt.nhs.uk">mhamcamanagement@swyt.nhs.uk</a>) Should the matter need to be taken to court, Legal Services will instruct a legal representative and counsel. Legal Services will provide support for staff who are engaged with such proceedings. Safeguarding Children specialist Advisor will also be involved in the process.</p> <p>For Children (those under the age of 16) their ability to consent is determined by their competence to make decisions. The assessment in these cases is the Gillick Competence assessment. If the child is found to not be Gillick Competent then consent is to be sought from an adult with parental responsibility. If the child is assessed as Gillick Competent and they refuse the treatment or examination, this decision can be over ruled by someone with parental responsibility. The Trust capacity assessment recording form for Young people sets out the process that must be followed and records the voice of the Young Person and reasons for actions. Where a matter is contentious Legal Services will provide support (<a href="mailto:mhamcamanagement@swyt.nhs.uk">mhamcamanagement@swyt.nhs.uk</a>) Should the matter need to be taken to court, Legal Services will instruct a legal representative and counsel. Legal Services will provide support for staff who are engaged with such proceedings. Safeguarding Children specialist Advisor will also be involved in the process.</p> <p>People should not be disadvantaged as a consequence of their age.</p> |                  |                          |                          |                    |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
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| 5<br>d     | <p><b>Sexual Orientation:</b></p> <p><i>Prompt: Heterosexual, Bisexual, Gay, Lesbian groups should be considered</i></p> <table><tr><th>Area</th><th>Straight or heterosexual</th><th>Gay or lesbian</th><th>Bisexual</th><th>Other sexual orientation</th><th>Not answered</th></tr><tr><td>England</td><td>43,403,110<br/>89.37%</td><td>747,805<br/>1.54%</td><td>623,504<br/>1.29%</td><td>165,305<br/>0.34%</td><td>3,626,649<br/>7.46%</td></tr><tr><td>Barnsley</td><td>182,948<br/>91.57%</td><td>2,990<br/>1.5%</td><td>1,817<br/>0.91%</td><td>396<br/>0.2%</td><td>11,638<br/>5.83%</td></tr><tr><td>Calderdale</td><td>149,815<br/>89.91%</td><td>2,811<br/>1.69%</td><td>1,968<br/>1.18%</td><td>550<br/>0.33%</td><td>11,488<br/>6.89%</td></tr><tr><td>Kirklees</td><td>311,501<br/>89.96%</td><td>4,340<br/>1.25%</td><td>3,697<br/>1.07%</td><td>998<br/>0.29%</td><td>25,742<br/>7.43%</td></tr><tr><td>Wakefield</td><td>261,615<br/>90.98%</td><td>4,321<br/>1.50%</td><td>2,968<br/>1.03%</td><td>689<br/>0.24%</td><td>17,945<br/>6.24%</td></tr></table> <p>Source: Census 2021 data</p> <p><b>Workforce data:</b> All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest</p> <p><b>Service data:</b> This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of disability.</p> <p><b>EIA narrative</b><br/>The Mental Capacity Act 2005 sets out at s.1 the 5 principles which must be respected for all people aged 16 years and older.</p> <ol style="list-style-type: none"><li>1. A person must be assumed to have capacity unless it is established that they lack capacity.</li><li>2. A person is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success.</li><li>3. A person is not to be treated as unable to make a merely because he makes an unwise decision.</li></ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Area             | Straight or heterosexual | Gay or lesbian           | Bisexual           | Other sexual orientation | Not answered | England | 43,403,110<br>89.37% | 747,805<br>1.54% | 623,504<br>1.29% | 165,305<br>0.34% | 3,626,649<br>7.46% | Barnsley | 182,948<br>91.57% | 2,990<br>1.5% | 1,817<br>0.91% | 396<br>0.2% | 11,638<br>5.83% | Calderdale | 149,815<br>89.91% | 2,811<br>1.69% | 1,968<br>1.18% | 550<br>0.33% | 11,488<br>6.89% | Kirklees | 311,501<br>89.96% | 4,340<br>1.25% | 3,697<br>1.07% | 998<br>0.29% | 25,742<br>7.43% | Wakefield | 261,615<br>90.98% | 4,321<br>1.50% | 2,968<br>1.03% | 689<br>0.24% | 17,945<br>6.24% |
| Area       | Straight or heterosexual                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Gay or lesbian   | Bisexual                 | Other sexual orientation | Not answered       |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
| England    | 43,403,110<br>89.37%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 747,805<br>1.54% | 623,504<br>1.29%         | 165,305<br>0.34%         | 3,626,649<br>7.46% |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
| Barnsley   | 182,948<br>91.57%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2,990<br>1.5%    | 1,817<br>0.91%           | 396<br>0.2%              | 11,638<br>5.83%    |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
| Calderdale | 149,815<br>89.91%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 2,811<br>1.69%   | 1,968<br>1.18%           | 550<br>0.33%             | 11,488<br>6.89%    |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
| Kirklees   | 311,501<br>89.96%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4,340<br>1.25%   | 3,697<br>1.07%           | 998<br>0.29%             | 25,742<br>7.43%    |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |
| Wakefield  | 261,615<br>90.98%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4,321<br>1.50%   | 2,968<br>1.03%           | 689<br>0.24%             | 17,945<br>6.24%    |                          |              |         |                      |                  |                  |                  |                    |          |                   |               |                |             |                 |            |                   |                |                |              |                 |          |                   |                |                |              |                 |           |                   |                |                |              |                 |

|         | <p>4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.</p> <p>5. Before an act is done, or the decision is 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.</p> <p>The Act is an inclusive one that aims to empower people as decisions need to be made and to enable decisions to be made in advance for a time in the future when they are unable to make decisions for themselves. The starting point for any act done or treatment provided is to establish that the person has capacity to make their own decisions and that all reasonable assistance is put in place to support that person to make their own decisions.</p> <p>The Act continues to set out that any assessment of capacity must not be affected by assumptions related to a person's disability. This requirement is further explained in the MCA code of practice (2007) through chapters 2, 3 and 4. Additional information is available through NICE Guideline for Decision Making and Capacity (NG108)</p> <p>Stating that; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using, or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p> <p>Recommendation 1.4.10 requires that:</p> <p>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"><li>• the decision to be made.</li><li>• if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li><li>• the options available to the person in relation to the decision</li><li>• what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li><li>• what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li><li>• how to allow enough time for the assessment, giving people with communication needs more time if needed</li><li>• how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity</li><li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li><li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li><li>• how to identify the steps a person is unable to carry out even with all practicable support</li><li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li></ul> <p>Recommendation 1.4.14 requires that:</p> <p>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"><li>• that their capacity to make a particular decision is being assessed</li><li>• why their capacity is being assessed.</li><li>• the outcome of that assessment</li><li>• what they can do if they are unhappy with the outcome</li></ul> <p>In assessing a person's capacity to consent to their treatment or an examination all the above steps and reasonable adjustments must be made for all patients irrespective of age.</p> <p>Where required a reference for the gender of the clinician seeking consent should be accommodated. Where this is not possible chaperones should be provided if the gender of the clinician is an issue and is impeding a person's ability to concentrate on the information being provided so interfering with their ability to understand, retain, weigh information or communicate a decision, to maximise the person capacity to consent to treatment.</p> <p>The policy language has been reviewed with the aim of writing in a gender neutral format.</p> <p>People should not be disadvantaged as a consequence of their sexual orientation.</p> |                 |                   |                 |                   |               |                 |                     |                   |             |              |         |                     |                 |                   |                 |                   |               |                 |                     |                   |
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| 5e      | <p>Religion or Belief:</p> <table><tr><th>Area</th><th>Christian</th><th>Buddhist</th><th>Hindu</th><th>Jewish</th><th>Muslim</th><th>Sikh</th><th>Other</th><th>No religion</th><th>Not answered</th></tr><tr><td>England</td><td>26,167,899<br/>46.3%</td><td>262,433<br/>0.5%</td><td>1,050,533<br/>0.5%</td><td>269,283<br/>0.5%</td><td>3,801,186<br/>6.7%</td><td>420,383<br/>0%</td><td>322,410<br/>0.6%</td><td>20,715,664<br/>36.7%</td><td>3,400,548<br/>6.0%</td></tr></table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Area            | Christian         | Buddhist        | Hindu             | Jewish        | Muslim          | Sikh                | Other             | No religion | Not answered | England | 26,167,899<br>46.3% | 262,433<br>0.5% | 1,050,533<br>0.5% | 269,283<br>0.5% | 3,801,186<br>6.7% | 420,383<br>0% | 322,410<br>0.6% | 20,715,664<br>36.7% | 3,400,548<br>6.0% |
| Area    | Christian                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Buddhist        | Hindu             | Jewish          | Muslim            | Sikh          | Other           | No religion         | Not answered      |             |              |         |                     |                 |                   |                 |                   |               |                 |                     |                   |
| England | 26,167,899<br>46.3%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 262,433<br>0.5% | 1,050,533<br>0.5% | 269,283<br>0.5% | 3,801,186<br>6.7% | 420,383<br>0% | 322,410<br>0.6% | 20,715,664<br>36.7% | 3,400,548<br>6.0% |             |              |         |                     |                 |                   |                 |                   |               |                 |                     |                   |

*Prompt: Main faith groups and people with no belief or philosophical belief issues should be considered*

|            |                  |             |               |             |                 |               |               |                  |                |
|------------|------------------|-------------|---------------|-------------|-----------------|---------------|---------------|------------------|----------------|
| Barnsley   | 125,502<br>51.3% | 435<br>0.2% | 416<br>0.2%   | 62<br>0%    | 1,404<br>0.6%   | 256<br>0.1%   | 862<br>0.4%   | 102,906<br>42.1% | 1,2728<br>5.2% |
| Calderdale | 85,677<br>41.5%  | 630<br>0.3% | 1,173<br>0.6% | 153<br>0.1% | 19,650<br>9.5%  | 387<br>0.2%   | 1,045<br>0.5% | 86,787<br>42%    | 11,129<br>5.4% |
| Kirklees   | 170,577<br>39.4% | 996<br>0.2% | 1,723<br>0.4% | 187<br>0%   | 80,046<br>18.5% | 3,476<br>0.8% | 1663<br>0.4%  | 150,599<br>34.8% | 23,949<br>5.5% |
| Wakefield  | 173,070<br>49%   | 797<br>0.2% | 1,270<br>0.4% | 127<br>0%   | 11,279<br>3.2%  | 501<br>0.1%   | 1,405<br>0.4% | 145,950<br>41.3% | 18,972<br>5.4% |

Source: Census 2021 data

**Workforce data:** All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest

**Service data:** This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of religion or faith.

#### EIA narrative

The Mental Capacity Act 2025 stipulates that capacity must be assumed (s.1(2)). It continues to explain that any assessment of capacity must not be affected by assumptions related to a person's appearance. It states that all things practicable must be done to enable the person to be involved in decision making (s1.(3))

Reasonable adjustments are further explained in the MCA code of practice (2007) through chapters 2, 3 and 4.

Decisions that are driven by religious beliefs (e.g refusal of blood products, removal of body hair) must be taken into account when considering what is in a person's best interests. Such decisions and beliefs should be respected, even if considered to be unwise.

Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Stating that:

A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.

**Recommendation 1.4.10** requires that:

In preparing for an assessment, the assessor should be clear about:

- the decision to be made.
- if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person
- the options available to the person in relation to the decision
- what information (the salient factors) the person needs in order to be able to explore their options and make a decision
- what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids
- how to allow enough time for the assessment, giving people with communication needs more time if needed
- how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity
- how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]
- how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable
- how to identify the steps a person is unable to carry out even with all practicable support
- whether involving people with whom the person has a trusted relationship would help the assessment.

**Recommendation 1.4.14** requires that:

Practitioners should use accessible language or information in an accessible format to explain to the person:

- that their capacity to make a particular decision is being assessed
- why their capacity is being assessed.
- the outcome of that assessment
- what they can do if they are unhappy with the outcome

Religious beliefs and values may be incorporated in to a range of advance care planning documents. Where the document is a statement of wishes and preferences, including the impact of religious or

|            |                                                                                                                                                          | <p>faith-based matters these must be taken into account when determining acts in a person's best interests in respect of treatment or examination. Where they are set out as either Advance decisions, advance decisions to refuse life sustaining treatment or as Lasting Powers of Attorney or stipulated in Court Appointed Deputy powers consent or refusal for treatment or examination must be followed where the person lacks capacity to consent to such acts.</p> <p>People should not be disadvantaged as a consequence of their religious beliefs or faith. The Trust is able to provide support and advice through the pastoral and the Equality and Involvement Team to ensure that clinicians are able to mitigate situations where a person's religious beliefs or faith may impact of how they understand information and how decisions can be communicated.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                   |                                              |                                                                    |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
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| 5f         | <p><b>Marriage and Civil Partnerships</b></p> <p><i>Prompt: Single, Married, Co-habiting, Widowed, Civil Partnership status should be considered</i></p> | <table><tr><th>Area</th><th>Married or in a registered civil partnership</th><th>Single – never married and never registered in a civil partnership</th><th>Divorced</th><th>Widowed</th><th>Separated</th></tr><tr><td>England</td><td>20,561,642<br/>44.7%</td><td>17,450,122<br/>37.9%</td><td>4,171,639<br/>9.1%</td><td>2,790,036<br/>6.1%</td><td>1,033,518<br/>2.2%</td></tr><tr><td>Barnsley</td><td>87,177<br/>43.6%</td><td>73,099<br/>36.6%</td><td>21,183<br/>10.6%</td><td>13,531<br/>6.8%</td><td>4,799<br/>2.4%</td></tr><tr><td>Calderdale</td><td>73,651<br/>44.2%</td><td>60,324<br/>36.2%</td><td>17,611<br/>10.6%</td><td>10,794<br/>6.5%</td><td>4,254<br/>2.6%</td></tr><tr><td>Kirklees</td><td>159,426<br/>46%</td><td>125,290<br/>36.2%</td><td>32,022<br/>9.2%</td><td>21,509<br/>6.2%</td><td>8,027<br/>2.3%</td></tr><tr><td>Wakefield</td><td>127,965<br/>44.5%</td><td>103,484<br/>36%</td><td>30,105<br/>10.5%</td><td>19,017<br/>6.6%</td><td>6,966<br/>2.4%</td></tr></table> <p>Source: Census 2021 data</p> <p><b>Workforce data:</b> All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest.</p> <p><b>Service data:</b> This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of a person's marital status..</p> <p><b>EIA narrative</b><br/>The Mental Capacity Act 2025 stipulates that capacity must be assumed (s.1(2)). It continues to explain that any assessment of capacity must not be affected by assumptions related to a person's appearance. It states that all things practicable must be done to enable the person to be involved in decision making (s1.(3))<br/>Reasonable adjustments are further explained in the MCA code of practice (2007) through chapters 2, 3 and 4.<br/>Substituted decision making is not operational in England. Where a person is found to lack capacity their spouse or civil partner cannot consent to treatment or examination on the persons behalf. In such situations, unless there is cause to believe there is a safeguarding of a vulnerable adult matter in progress, then the spouse or civil partner should be consulted to determine the persons views and expressed opinions. These must be recorded. The Trust holds a form on SystmOne to record such decisions. Additional information is available at Appendix A as part of Form 4.</p> <p>Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Stating that: A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p> <p><b>Recommendation 1.4.10 requires that:</b><br/>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"><li>the decision to be made.</li><li>if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li><li>the options available to the person in relation to the decision</li><li>what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li><li>what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li><li>how to allow enough time for the assessment, giving people with communication needs more time if needed</li></ul> | Area              | Married or in a registered civil partnership | Single – never married and never registered in a civil partnership | Divorced | Widowed | Separated | England | 20,561,642<br>44.7% | 17,450,122<br>37.9% | 4,171,639<br>9.1% | 2,790,036<br>6.1% | 1,033,518<br>2.2% | Barnsley | 87,177<br>43.6% | 73,099<br>36.6% | 21,183<br>10.6% | 13,531<br>6.8% | 4,799<br>2.4% | Calderdale | 73,651<br>44.2% | 60,324<br>36.2% | 17,611<br>10.6% | 10,794<br>6.5% | 4,254<br>2.6% | Kirklees | 159,426<br>46% | 125,290<br>36.2% | 32,022<br>9.2% | 21,509<br>6.2% | 8,027<br>2.3% | Wakefield | 127,965<br>44.5% | 103,484<br>36% | 30,105<br>10.5% | 19,017<br>6.6% | 6,966<br>2.4% |
| Area       | Married or in a registered civil partnership                                                                                                             | Single – never married and never registered in a civil partnership                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Divorced          | Widowed                                      | Separated                                                          |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
| England    | 20,561,642<br>44.7%                                                                                                                                      | 17,450,122<br>37.9%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 4,171,639<br>9.1% | 2,790,036<br>6.1%                            | 1,033,518<br>2.2%                                                  |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
| Barnsley   | 87,177<br>43.6%                                                                                                                                          | 73,099<br>36.6%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 21,183<br>10.6%   | 13,531<br>6.8%                               | 4,799<br>2.4%                                                      |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
| Calderdale | 73,651<br>44.2%                                                                                                                                          | 60,324<br>36.2%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 17,611<br>10.6%   | 10,794<br>6.5%                               | 4,254<br>2.6%                                                      |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
| Kirklees   | 159,426<br>46%                                                                                                                                           | 125,290<br>36.2%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 32,022<br>9.2%    | 21,509<br>6.2%                               | 8,027<br>2.3%                                                      |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |
| Wakefield  | 127,965<br>44.5%                                                                                                                                         | 103,484<br>36%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 30,105<br>10.5%   | 19,017<br>6.6%                               | 6,966<br>2.4%                                                      |          |         |           |         |                     |                     |                   |                   |                   |          |                 |                 |                 |                |               |            |                 |                 |                 |                |               |          |                |                  |                |                |               |           |                  |                |                 |                |               |

|            |                                                                                                                                          | <ul style="list-style-type: none"> <li>• how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity</li> <li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li> <li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li> <li>• how to identify the steps a person is unable to carry out even with all practicable support</li> <li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li> </ul> <p>Recommendation 1.4.14 requires that:<br/>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"> <li>• that their capacity to make a particular decision is being assessed</li> <li>• why their capacity is being assessed.</li> <li>• the outcome of that assessment</li> <li>• what they can do if they are unhappy with the outcome</li> </ul> <p>A person who has capacity may choose to make decisions in advance to refuse or indicate a preferred treatment as part of a range of advance care planning documents. Where the document is a statement of wishes and preferences these must be taken into account when determining acts in a person's best interests in respect of treatment or examination. Where they are set out as either Advance decisions, advance decisions to refuse life sustaining treatment or as Lasting Powers of Attorney which may set out that a spouse or civil partner can consent or refuse treatment or examination in line with the recorded directions from the person when they had capacity to do so, or as stipulated in Court Appointed Deputy powers consent or refusal for treatment or examination must be followed where the person lacks capacity to consent to such acts.</p> <p>People should not be disadvantaged as a consequence of their marital status.</p>                                                                      |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
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| 5<br>g     | <b>Pregnancy and Maternity</b><br><br><i>Prompt: Currently pregnant or have been pregnant in the last 12 months should be considered</i> | <table border="1"> <thead> <tr> <th>Area</th><th>Number of live births 2021</th><th>Percentage of Total fertility rate (TFR)</th></tr> </thead> <tbody> <tr> <td>England</td><td>595,948</td><td>1.55%</td></tr> <tr> <td>Barnsley</td><td>2,521</td><td>1.63%</td></tr> <tr> <td>Calderdale</td><td>2,143</td><td>1.71%</td></tr> <tr> <td>Kirklees</td><td>4,826</td><td>1.72%</td></tr> <tr> <td>Wakefield</td><td>3,857</td><td>1.68%</td></tr> </tbody> </table> <p>Source: Births in England and Wales: summary tables - Office for National Statistics</p> <p>NB: The TFR is the average number of live children that a group of women would bear if they experienced the age-specific fertility rates of the calendar year in question throughout their childbearing lifespan. The national TFRs have been calculated using mid-year population estimates by single year of age. The sub-national TFRs have been calculated using mid-year population estimates by 5 year age group</p> <p><b>Workforce data:</b> All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person's best interest</p> <p><b>Service data:</b> This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of the stage of their pregnancy antenatal or postnatal.</p> <p><b>EIA narrative</b></p> <p>The Mental Capacity Act 2005 stipulates that capacity must be assumed (s.1(2)). It continues to explain that any assessment of capacity must not be affected by assumptions related to a person's appearance or age. It states that all things practicable must be done to enable the person to be involved in decision making (s.1(3))</p> <p>Reasonable adjustments are further explained in the MCA code of practice (2007) through chapters 2, 3 and 4.</p> <p>Substituted decision making is not operational in England. Where a person is found to lack capacity their spouse or civil partner cannot consent to treatment or examination on the persons behalf. In such situations, unless there is cause to believe there is a safeguarding of a vulnerable adult matter in progress, then the spouse or civil partner should be consulted to determine the persons views and</p> | Area | Number of live births 2021 | Percentage of Total fertility rate (TFR) | England | 595,948 | 1.55% | Barnsley | 2,521 | 1.63% | Calderdale | 2,143 | 1.71% | Kirklees | 4,826 | 1.72% | Wakefield | 3,857 | 1.68% |
| Area       | Number of live births 2021                                                                                                               | Percentage of Total fertility rate (TFR)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
| England    | 595,948                                                                                                                                  | 1.55%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
| Barnsley   | 2,521                                                                                                                                    | 1.63%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
| Calderdale | 2,143                                                                                                                                    | 1.71%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
| Kirklees   | 4,826                                                                                                                                    | 1.72%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |
| Wakefield  | 3,857                                                                                                                                    | 1.68%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |      |                            |                                          |         |         |       |          |       |       |            |       |       |          |       |       |           |       |       |

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|  | <p>expressed opinions. These must be recorded. The Trust holds a form on SystmOne to record such decisions. Additional information is available at Appendix A as part of Form 4.</p> <p>Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Stating that ; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p> <p>Recommendation 1.4.10 requires that;<br/>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"> <li>• the decision to be made</li> <li>• if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li> <li>• the options available to the person in relation to the decision</li> <li>• what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li> <li>• what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li> <li>• how to allow enough time for the assessment, giving people with communication needs more time if needed</li> <li>• how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity</li> <li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li> <li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li> <li>• how to identify the steps a person is unable to carry out even with all practicable support</li> <li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li> </ul> <p>Recommendation 1.4.14 requires that;<br/>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"> <li>• that their capacity to make a particular decision is being assessed</li> <li>• why their capacity is being assessed</li> <li>• the outcome of that assessment</li> <li>• what they can do if they are unhappy with the outcome</li> </ul> <p>For matters relating to pregnancy or birth, the lead organisation will be the relevant acute trust providing maternity and obstetrics care. Trust staff may be involved in these cases where the expectant person is under the care of the Trust peri-natal service. In such cases Legal Services must be contacted and will provide support (<a href="mailto:mhamcamanagement@swyt.nhs.uk">mhamcamanagement@swyt.nhs.uk</a>) Should the matter need to be taken to court, Legal Services will liaise with the acute trust and legal representatives. Legal Services will provide support for staff who are engaged with such proceedings. Safeguarding Specialist Advisor will also be involved as required in the process.</p> <p>A person who has capacity may choose to make decisions in advance to refuse or indicate a preferred treatment as part of a range of advance care planning documents. Where the document is a statement of wishes and preferences these must be taken into account when determining acts in a person's best interests in respect of treatment or examination. Where they are set out as either Advance decisions, advance decisions to refuse life sustaining treatment or as Lasting Powers of Attorney which may set out that a spouse or civil partner can consent or refuse treatment or examination in line with the recorded directions from the person when they had capacity to do so, or as stipulated in Court Appointed Deputy powers consent or refusal for treatment or examination must be followed where the person lacks capacity to consent to such acts. As part of routine maternity care a birth plan is usually drawn up with the midwifery team. Trust perinatal services may become involved in supporting the expectant person to ensure that their mental health or learning disability needs are also taken into consideration.</p> <p>People should not be disadvantaged as a result of their pregnancy or maternity status.</p> |
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5h

Gender Re-assignment

Prompt: Transgender issues should be considered

| Area       | Gender identity the same as sex registered at birth | Gender identity different from sex registered at birth | Not answered       |
|------------|-----------------------------------------------------|--------------------------------------------------------|--------------------|
| England    | 43,002,331<br>93.47%                                | 251,844<br>0.55%                                       | 2,752,783<br>5.98% |
| Barnsley   | 189,640<br>94.92%                                   | 803<br>0.74%                                           | 9,389<br>4.70%     |
| Calderdale | 156,893<br>94.16%                                   | 829<br>0.89%                                           | 8,966<br>5.38%     |
| Kirklees   | 323,432<br>93.40%                                   | 1,725<br>0.9%                                          | 21,214<br>6.13%    |
| Wakefield  | 271,795<br>94.52%                                   | 1,280<br>0.81%                                         | 14,539<br>5.06%    |

Source: Census 2021 data

NB: Percentages are calculated from the total usual resident population aged 16 years and over

Workforce data: All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person’s best interest

Service data: This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of gender identity.

EIA narrative

The Mental Capacity Act 2025 stipulates that capacity must be assumed (s.1(2)). It continues to explain that any assessment of capacity must not be affected by assumptions related to a person’s appearance. It states that all things practicable must be done to enable the person to be involved in decision making (s1.(3))

Reasonable adjustments are further explained in the MCA code of practice (2007) through chapters 2, 3 and 4.

Additional information is available through NICE Guideline for Decision Making and Capacity (NG108)

Where required a reference for the gender of the clinician seeking consent should be accommodated. Where this is not possible chaperones should be provided if the gender of the clinician is an issue and is impeding a person’s ability to concentrate on the information being provided so interfering with their ability to understand, retain, weigh information or communicate a decision, to maximise the person capacity to consent to treatment.

The policy language has been reviewed with the aim of writing in a gender neutral format.

People should not be disadvantaged as a consequence of their gender or stage of gender re-assignment

5l

Carers

Prompt: Caring responsibilities paid or unpaid should be considered

| Area       | Yes – provide unpaid care | No – do not provide unpaid care |
|------------|---------------------------|---------------------------------|
| England    | 4,678,265<br>8.3%         | 48,734,833<br>86.3%             |
| Barnsley   | 24,732<br>10.1%           | 206,377<br>84.4%                |
| Calderdale | 17,977<br>8.7%            | 206,631<br>85.8%                |
| Kirklees   | 37,034<br>8.5%            | 371,038<br>85.6%                |
| Wakefield  | 31,731<br>6.1%            | 301,565<br>85.3%                |

Source: Census 2021 data

NB: Missing values account for ‘N/A’ or ‘not answered’

Workforce data: All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person’s best interest

|         | <p>Service data: This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of gender identity.</p> <p>EIA narrative</p> <p>The Mental Capacity Act sets out that for people over the age of 18 substituted decision making is not an available option in England.</p> <p>Where an adult (over the age of 18 years old) is found to lack capacity to consent to the proposed treatment or examination then those who know the person well e.g family, friends and unpaid carers should be consulted as part of the best interest decision making process.</p> <p>The Trust has provided guidance and information for carers to assist them in this role and to support their understanding and involvement in respect of advance decision-making options for the patient.</p> <p>Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Stating that ; A lack of capacity cannot be established based merely by reference to the person's condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p> <p>Recommendation 1.2.11 requires that decision making should:</p> <p>Involve significant and trusted people in supporting decision-making, in line with the person's preferences and:</p> <ul style="list-style-type: none"><li>• have due regard for the principle of confidentiality set out in paragraph 3.15 of the Mental Capacity Act Code of Practice</li><li>• ensure that this support is free from coercion or undue influence, for example that it does not undermine the person's ability to understand, retain, use and weigh information and express a choice.</li></ul> <p>Recommendation 1.4.10 requires that:</p> <p>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"><li>• the decision to be made.</li><li>• if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li><li>• the options available to the person in relation to the decision</li><li>• what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li><li>• what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li><li>• how to allow enough time for the assessment, giving people with communication needs more time if needed</li><li>• how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person's dignity</li><li>• how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li><li>• how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li><li>• how to identify the steps a person is unable to carry out even with all practicable support</li><li>• whether involving people with whom the person has a trusted relationship would help the assessment.</li></ul> <p>The Trust has developed leaflets to explain consent and decision-making authority to carers and how they can be involved in decision making. Additional materials have been developed as part of the Triangle of Care to ensure involvement of carers.</p> |                   |                   |                 |                   |       |                 |         |                   |                   |                   |                 |                   |
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| 5j      | <p>Race</p> <p>Prompt: Indigenous population and BME Groups such as black African and Caribbean, mixed heritage, South Asian, Chinese.</p> <table><tr><th>Area</th><th>White</th><th>Asian</th><th>Black</th><th>Mixed</th><th>Chinese &amp; other</th></tr><tr><td>England</td><td>45,783,401<br/>81%</td><td>5,426,392<br/>9.6%</td><td>2,381,724<br/>4.2%</td><td>1,669,378<br/>3%</td><td>1,229,153<br/>2.1%</td></tr></table>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Area              | White             | Asian           | Black             | Mixed | Chinese & other | England | 45,783,401<br>81% | 5,426,392<br>9.6% | 2,381,724<br>4.2% | 1,669,378<br>3% | 1,229,153<br>2.1% |
| Area    | White                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Asian             | Black             | Mixed           | Chinese & other   |       |                 |         |                   |                   |                   |                 |                   |
| England | 45,783,401<br>81%                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 5,426,392<br>9.6% | 2,381,724<br>4.2% | 1,669,378<br>3% | 1,229,153<br>2.1% |       |                 |         |                   |                   |                   |                 |                   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                          |                 |                |              |               |              |
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| Irish, new migrant, asylum & refugee, gypsy & travelling communities)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Barnsley                 | 236,964 (96.6%) | 2,297 (0.9%)   | 1,715 (0.7%) | 2,293 (0.9%)  | 1,333 (0.5%) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Calderdale               | 177,836 (86.1%) | 21,726 (10.5%) | 1,439 (0.7%) | 4,027 (1.9%)  | 1,603 (0.8%) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Kirklees                 | 318,969 (73.6%) | 84,202 (19.4%) | 9,948 (2.3%) | 13,588 (3.1%) | 6,506 (1.5%) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Wakefield                | 328,742 (93%)   | 12,633 (3.6%)  | 4,516 (1.3%) | 4,938 (1.4%)  | 2,541 (0.7%) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Source: Census 2021 data |                 |                |              |               |              |
| <p><b>Workforce data:</b> All staff seeking to treat or examine a patient must seek consent from the patient or evidence that they are acting in the person’s best interest.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                          |                 |                |              |               |              |
| <p><b>Service data:</b> This policy applies equally to all patients aged 16 years or over who are being treated or for whom decisions need to be made in their best interests or in compliance with any legal mechanism for advance decision making or as directed by the court of protection, irrespective of race or culture.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                          |                 |                |              |               |              |
| <p><b>EIA narrative</b></p> <p>The Mental Capacity Act 2025 stipulates that capacity must be assumed (s.1(2)). It continues to explain that any assessment of capacity must not be affected by assumptions related to a person’s appearance. It states that all things practicable must be done to enable the person to be involved in decision making (s1.(3))</p> <p>Reasonable adjustments are further explained in the MCA code of practice (2007) through chapters 2, 3 and 4.</p> <p>Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Decisions that are driven by cultural beliefs and practices (e.g djinns, removal of body hair) must be taken into account when considering what is in a person’s best interests. Such beliefs should be respected, even if considered to be unwise.</p> <p>Additional information is available through NICE Guideline for Decision Making and Capacity (NG108) Stating that: A lack of capacity cannot be established based merely by reference to the person’s condition or behaviour. It can only be established if their condition also prevents them from understanding or retaining information about the decision, using or weighing it, or communicating their decision. It cannot be established unless everything practicable has been done to support the person to have capacity, and it should never be based on the perceived wisdom of the decision the person wishes to make.</p>                                                                                                                                                                                                                                                                                         |                          |                 |                |              |               |              |
| <p><b>Recommendation 1.4.10 requires that:</b></p> <p>In preparing for an assessment, the assessor should be clear about:</p> <ul style="list-style-type: none"><li>the decision to be made.</li><li>if any inability to make a decision is caused by any impairment of or disturbance in the functioning of the mind or brain in that person</li><li>the options available to the person in relation to the decision</li><li>what information (the salient factors) the person needs in order to be able to explore their options and make a decision</li><li>what the person needs in order to understand, retain, weigh up and use relevant information in relation to this decision, including the use of communication aids</li><li>how to allow enough time for the assessment, giving people with communication needs more time if needed</li><li>how to introduce the assessment and conduct it in a way that is respectful, collaborative, non-judgmental and preserves the person’s dignity</li><li>how to make reasonable adjustments including, for example, delaying the assessment until a time when the person feels less anxious or distressed and more able to make the decision [having the option of a chaperone or where possible to be examined or treated by a clinician of a specified gender. This is not always possible when in emergency or urgent situations]</li><li>how to ensure that the assessment takes place at a location and in an environment and through a means of communication with which the person is comfortable</li><li>how to identify the steps a person is unable to carry out even with all practicable support</li><li>whether involving people with whom the person has a trusted relationship would help the assessment.</li></ul> |                          |                 |                |              |               |              |
| <p><b>Recommendation 1.4.14 requires that:</b></p> <p>Practitioners should use accessible language or information in an accessible format to explain to the person:</p> <ul style="list-style-type: none"><li>that their capacity to make a particular decision is being assessed</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                          |                 |                |              |               |              |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ul style="list-style-type: none"> <li>• why their capacity is being assessed.</li> <li>• the outcome of that assessment</li> <li>• what they can do if they are unhappy with the outcome</li> </ul> <p>Race issues and cultural values may be incorporated in to a range of advance care planning documents. Where the document is a statement of wishes and preferences, including the impact of religious or faith-based matters these must be taken into account when determining acts in a person's best interests in respect of treatment or examination. Where they are set out as either Advance decisions, advance decisions to refuse life sustaining treatment or as Lasting Powers of Attorney or stipulated in Court Appointed Deputy powers consent or refusal for treatment or examination must be followed where the person lacks capacity to consent to such acts.</p> <p>People should not be disadvantaged as a consequence of their race or cultural needs.</p> <p>The Trust is able to provide support and advice through the pastoral and the Equality and Involvement Team to ensure that clinicians are able to mitigate situations where a person's race or culture may impact of how they understand information and how decisions can be communicated.</p> |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Involvement & Insight:** Please list in the box below any involvement activity, reports or insight you have gathered by working with your staff team or service users/carers by involving them to gain their views on your service.

- *Have you reviewed existing insight i.e. patient experience, complaints, previous surveys to support EIA completion?*
- *Have you gathered the views of people to support EIA completion?*
- *Have you run a focus group, conducted a survey, had an open day where you gained feedback?*
- *Have you gathered views from your staff team on this new policy/strategy, or if reviewing what works well and what could be improved?*

The Policy is a requirement of CQC registration. The policy is based on the Mental Capacity Act and its associated Code of Practice for which clinicians are required to 'have regard to' relevant guidance. This the Code of Practice states means that clinicians must be aware of the code of practice when acting or making decisions on behalf of someone who lacks capacity to make decisions for themselves, and they should be able to explain how they have had regard to the Code when acting of making decisions. The purpose of the Policy is to provide additional guidance to support clinical staff meeting this duty. There is no scope to veer from the nation guidance.

The policy was taken to the Code of Practice Group where it was presented then shared for review by clinical services. The Code of Practice Group membership is formed with representation from all service lines, physical, mental health and learning disability with representation from medical staff, nursing, AHP and specialist advisors from Safeguarding and RRPI.

Additionally, the policy has been circulated to the Quality, Nursing and Professionals Directorate, to the AMD for Operations and the Medical Clinical Leads and to General Operations, IG Lead, R&D, Safeguarding Team, ECT Team, and the General Operations Care Group

In response to the NG108 implementation programme the Trust developed easy read information regarding capacity assessments and best interest decisions. Furthermore, documents were developed for carers to support their involvement. A document has been developed to support the range of advance care planning options and has been further developed to be incorporated into carer information leaflets. All information is held on the Trust MCA intranet site which has recently been updated to a corporate style for ease of navigation by clinical staff.

In the development of NG108 it was found that there is a paucity of research in the matter of capacity and consent. No best practice tools could be identified either. The guideline highlighted the need for further research to inform practice saying that 'Evidence suggests that tailored approaches such as speech and language therapy and psychological and psychosocial interventions can lead to improvements in a person's capacity to make a decision. However, the studies were limited in number and generally of low quality. The guideline committee agreed that further research in this area would be valuable, particularly in relation to the decision-making capacity

## 6. Action Plan

EIAs are now reviewed using a grading approach which is in line with our Equality Delivery System (EDS). This rates the quality of the EIA. This means that the team can review the EIA and make recommendations only. The rating and suggested standards are set out below:

- **Under-developed** – red – **No data. No strands** of equality
- **Developing** – amber – **Some census data plus workforce. Two strands** of equality addressed
- **Achieving** – green – **Some census data plus workforce. Five strands** of equality addressed
- **Excelling** – purple – **All the data and all the strands** addressed

Potential themes for actions: Geographical location, built environment, timing, costs of the service, make up of your workforce, stereotypes and assumptions, equality monitoring, community relations/cohesion, same sex wards and care, specific issues/barriers.

**Previous actions update: please explain what progress you have made against the previous actions identified**

1.

2.

3.

| Who will benefit from this action? (tick all that apply) |   | Action 1: This is what we are going to do                                                           | Lead/s     | By when    | Update -outcome                                             | RAG |
|----------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------|------------|------------|-------------------------------------------------------------|-----|
| Age                                                      | x | Review existing and available information to support capacity and decision making for service users | Julie Carr | March 2025 | The review will be taken through the code of practice group |     |
| Disability                                               | x |                                                                                                     |            |            |                                                             |     |
| Gender reassignment                                      |   |                                                                                                     |            |            |                                                             |     |
| Marriage and civil partnership                           |   |                                                                                                     |            |            |                                                             |     |
| Race                                                     | x |                                                                                                     |            |            |                                                             |     |

|                     |   |  |  |  |  |  |
|---------------------|---|--|--|--|--|--|
| Religion or belief  | x |  |  |  |  |  |
| Sex                 |   |  |  |  |  |  |
| Sexual Orientation  |   |  |  |  |  |  |
| Pregnancy maternity |   |  |  |  |  |  |
| Carers              |   |  |  |  |  |  |

| Who will benefit from this action?<br>(tick all that apply) |   | Action 2: This is what we are going to do                                                    | Lead/s     | By when    | Update -outcome                                             | RAG |
|-------------------------------------------------------------|---|----------------------------------------------------------------------------------------------|------------|------------|-------------------------------------------------------------|-----|
| Age                                                         | x |                                                                                              |            |            |                                                             |     |
| Disability                                                  | x |                                                                                              |            |            |                                                             |     |
| Gender reassignment                                         |   |                                                                                              |            |            |                                                             |     |
| Marriage and civil partnership                              |   |                                                                                              |            |            |                                                             |     |
| Race                                                        | x | Review existing and available information to support capacity and decision making for carers | Julie Carr | March 2025 | The review will be taken through the code of practice group |     |
| Religion or belief                                          | x |                                                                                              |            |            |                                                             |     |
| Sex                                                         |   |                                                                                              |            |            |                                                             |     |
| Sexual Orientation                                          |   |                                                                                              |            |            |                                                             |     |
| Pregnancy maternity                                         |   |                                                                                              |            |            |                                                             |     |
| Carers                                                      | x |                                                                                              |            |            |                                                             |     |

| Who will benefit from this action?<br>(tick all that apply) |   | Action 3: This is what we are going to do                                                                                             | Lead/s     | By when        | Update -outcome                                                                                                                                                                                        | RAG |
|-------------------------------------------------------------|---|---------------------------------------------------------------------------------------------------------------------------------------|------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Age                                                         | x | Review existing and available information for clinical staff to support advance decision making for people with learning disabilities | Julie Carr | September 2025 | <p>The review will be taken through the QI projects run in collaboration with the Virginia Mason Institute and PSC</p> <p>Products from the work will be taken through the Code of Practice Group.</p> |     |
| Disability                                                  | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Gender reassignment                                         | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Marriage and civil partnership                              | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Race                                                        | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Religion or belief                                          | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Sex                                                         | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Sexual Orientation                                          | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Pregnancy maternity                                         | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |
| Carers                                                      | x |                                                                                                                                       |            |                |                                                                                                                                                                                                        |     |

**7 Please state what methods of monitoring you are using to progress actions**

Minutes of the Code of Practice Group  
AAA report to Mental Health Act Committee  
Clinical Governance Group  
Mandatory and Essential to Job Role Group  
QI projects with Newhaven and Horizon improving future planning and communications to support greater service user involvement

**8 Will you publish the Equality Impact Assessment? Please state where the EIA will be shared or published.**

As part of the reviewed policy

**9 EIA assessment by equality and involvement team**

Name: Aboobaker Bhana

Date: September 2024

Rating: **Achieving+**

Recommendations: Align with PCREF and strengthen engagement with all protected groups. Please complete actions identified in any previous action plan and how these have made a positive impact on each of the protected groups including carers.

***When you have fully completed all sections of the EIA  
and it has been signed off in service,  
you must email a copy to: [InvolvingPeople@swyt.nhs.uk](mailto:InvolvingPeople@swyt.nhs.uk) for grading***

**Please note that the EIA is a public document and may be published.**

**Failing to complete an EIA every year could expose the Trust to future legal challenge, as it is a legal requirement to write, review and implement in every service as part of meeting the Equality Act.**

**Appendix E Checklist for the Review and Approval of Procedural Document** *To be completed and attached to any policy document when submitted to EMT for consideration and approval.*

|           | <b>Title of document being reviewed:</b>                                                          | <b>Yes/No/Unsure</b> | <b>Comments</b> |
|-----------|---------------------------------------------------------------------------------------------------|----------------------|-----------------|
| <b>1.</b> | <b>Title</b>                                                                                      |                      |                 |
|           | Is the title clear and unambiguous?                                                               | YES                  |                 |
|           | Is it clear whether the document is a guideline, policy, protocol or standard?                    | YES                  |                 |
|           | Is it clear in the introduction whether this document replaces or supersedes a previous document? | YES                  |                 |
| <b>2.</b> | <b>Rationale</b>                                                                                  |                      |                 |
|           | Are reasons for development of the document stated?                                               | YES                  | Review due      |
| <b>3.</b> | <b>Development Process</b>                                                                        |                      |                 |
|           | 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                  |                 |
| <b>4.</b> | <b>Content</b>                                                                                    |                      |                 |
|           | 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                  |                 |
| <b>5.</b> | <b>Evidence Base</b>                                                                              |                      |                 |
|           | 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                  |                 |
| <b>6.</b> | <b>Approval</b>                                                                                   |                      |                 |

|  |                                                                                                           |     |  |
|--|-----------------------------------------------------------------------------------------------------------|-----|--|
|  | Does the document identify which committee/group will approve it?                                         | YES |  |
|  | If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document? | N/A |  |

|            | Title of document being reviewed:                                                                                      | Yes/No/Unsure | Comments                                    |
|------------|------------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------|
|            |                                                                                                                        |               |                                             |
| <b>7.</b>  | <b>Dissemination and Implementation</b>                                                                                |               |                                             |
|            | Is there an outline/plan to identify how this will be done?                                                            | N/A           | Training is mandatory                       |
|            | Does the plan include the necessary training/support to ensure compliance?                                             | N/A           | Training is mandatory                       |
| <b>8.</b>  | <b>Document Control</b>                                                                                                |               |                                             |
|            | Does the document identify where it will be held?                                                                      | YES           |                                             |
|            | Have archiving arrangements for superseded documents been addressed?                                                   | YES           |                                             |
| <b>9.</b>  | <b>Process to Monitor Compliance and Effectiveness</b>                                                                 |               |                                             |
|            | Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document? | N/A           |                                             |
|            | Is there a plan to review or audit compliance with the document?                                                       | YES           | MCA audit, internal and external CQC visits |
| <b>10.</b> | <b>Review Date</b>                                                                                                     |               |                                             |
|            | Is the review date identified?                                                                                         | YES           |                                             |
|            | Is the frequency of review identified? If so is it acceptable?                                                         | YES           |                                             |
| <b>11.</b> | <b>Overall Responsibility for the Document</b>                                                                         |               |                                             |
|            | Is it clear who will be responsible implementation and review of the document?                                         | YES           |                                             |

## Appendix F Version Control Sheet

This sheet should provide a history of previous versions of the policy and changes made

| Version | Date           | Author                             | Status   | Comment / changes                                                                                                                  |
|---------|----------------|------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------|
| 1       | December 2008  |                                    |          |                                                                                                                                    |
| 2       | October 2010   | Head of Legal Services             | DRAFT    |                                                                                                                                    |
| 3       | February 2016  | Assistant Director, legal services | Reviewed | None                                                                                                                               |
| 4       | April 2018     | Assistant Director Legal Services  | Reviewed | Changes to reflect case law and feedback from staff, list of inserted changes attached to this document                            |
| 5       | November 2021  | Assistant Director Legal Services  | Reviewed | Changes to reflect case law, feedback from staff, recording systems, additional guidance, and NICE Guidelines                      |
| 6       | September 2024 | Associate Director Legal Services  | Reviewed | Changes to reflect case law, feedback from staff, recording systems, changed titles and rewording to make language gender neutral. |