

Gloucestershire Multi Agency Mental Capacity Governance Group

Guidance for professionals on use of the Mental Capacity Act (MCA) during the Coronavirus emergency

1.0 Introduction: The principles and processes of the MCA continue to be applicable in the current situation. This is reinforced in the April 2020 Dept of Health and Social Care MCA and DoLS guidance*. It should be remembered the MCA is not only for longer-term conditions, it can also apply to people who are simply extremely ill, and who cannot make decisions because they are – for example – unconscious or struggling to breathe.

2.0 A capacity assessment should be carried quickly using the following questions:
Can the person:

- understand information about a decision;
(for example the following criteria will demonstrate ‘understanding’ about keeping safe from Covid-19);
- Covid-19 is a ‘flu’ like virus – it can be very dangerous for some people and it is highly contagious; because of this, you are advised only to go out for exercising once a day or essential shopping, when you are outside your house there is a the need for physical distancing between people of at least 2 metres,)remember this information (for long enough to make the decision)
- use or weigh up this information to make a decision, or
- communicate the decision.

3.0 Best Interest decisions should continue to be made during the Covid-19 crisis using the Best Interest checklist:

- Consider the persons views (this is important and only in an emergency should you act without attempting to find out if their views can be given or understood);
- Consider the relevant circumstances;
- Consult with family/carers/significant others to gain their viewpoint(s)
- Consult with Independent Mental Capacity Advocate (IMCA), where necessary. POhWER who provide the IMCA service in Gloucestershire continue to provide advocacy services using alternative working models – www.pohwer.net/ 0300456 2370 pohwer@power.net;
- Do not discriminate, all decisions must be taken specifically for each person;
- Assess whether the person will regain capacity, and whether the decision can wait. The decision can be reviewed if the person regains capacity AND
- Consider if the person has made a valid and applicable **Advance Decision** to refuse the specific treatment in question. If they have made such a decision, then relevant treatment, including for Covid-19 cannot be provided;

- Establish if the person has a valid Lasting Power of Attorney (**LPA**) for Health and Welfare. If the LPA (or a Court Appointed Deputy) has specific authority in relation to the proposed treatment and is refusing consent to that treatment, then that treatment cannot be provided.

4.0 Emergency Public Health Powers: Whilst the DHSC guidance says that the use of the MCA should be used as far as possible they put forward two principles where it may be more appropriate to use Public Health Officer powers:

- I. If the reasons for the isolation are purely to prevent harm to others or the maintenance of public health;
- II. If the person's relevant capacity fluctuates.

5.0 Recording: It is understood that not all information will be available in the time-scales required to make some decisions; you must do the best you can in the circumstances. It is also appreciated that service pressures will make it difficult to provide full recording of decision making, but recording should be made ASAP after the assessment and best interest decision/s.

Assessments and Best Interest decisions can be made even where face to face meetings are not possible. Use of video meeting or telephone contact is explicitly provided for in the DHSC guidance. Please be aware of issues of confidentiality and security.

6.0 DoLS: The Department of Health and Social Care recognises the additional pressure the pandemic will put in the DoLS system. Fundamentally, it is the Department's view that as long as providers can demonstrate that they are providing good quality care and/ treatment for individuals, and are following the principles of the MCA and Code of Practice, then they have done everything that can be reasonably expected in the circumstances to protect the person's human rights. The **DHSC guidance** can be found at:

*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878910/Emergency_MCA_DoLS_Guidance_COVID19.pdf

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