



ROCHDALE BOROUGH
SAFEGUARDING ADULTS BOARD

Rochdale Borough Safeguarding
Adults Board

Multi Agency Practice Guide

Refusal of Medical Treatment Guidelines

TITLE	<p>Title: Multi-Agency Practice Guide – Refusal of Medical Treatment Guidelines</p> <p>Version: 6</p>
AUTHOR	Jane Timson, Principal Social Worker and Strategic Safeguarding Lead
BOARD APPROVAL	<p>Draft: Jan 2013</p> <p>Amended with input from Operation Sub group members: Jan 2013</p> <p>Approved RBSAB 28.01.2013</p>
REVIEW	<p>Reviewed: December 2015</p> <p> November 2017</p> <p> November 2019</p> <p> May 2022</p>

Refusal of Medical Treatment Guidelines

In 2012 a 'Learning the Lessons Review' was published for a resident in a care home with a dual diagnosis of both physical and mental health issues who died as a consequence of refusing medical care. Based on the recommendations of the review, these guidelines have been developed to ensure that health and social care practitioners understand their responsibilities, particularly with regard to mental capacity assessments and recording, when working with people who refuse medical treatment. In 2022 a Safeguarding Adult Review focused on an individual who needed life-saving medical treatment but refused it. These guidelines will assist in the decision making in such cases.

Medical care is prescribed for the benefit, of the service user, who needs to agree to receive it. When a refusal of medical treatment occurs, this can place the care team in a position which restricts their ability to provide the best care possible.

Consent to treatment is the principle whereby a person must give their permission before they receive any type of medical treatment. Consent is required from a service user regardless of the treatment, from blood test to organ donation.

In line with the Mental Capacity Act 2005 Code of Practice, where a Service User has complex health needs, consideration needs to be given as to whether their capacity to consent is being affected by these needs. In these cases, a Mental Capacity Assessment (in accordance with the Mental Capacity Act) should be undertaken and where the individual is unable to meaningfully consent to medical care or treatment a Multi-Disciplinary Best Interests decision meeting should be requested to ensure whether any medical treatment proposed is in the person's best interests.

Procedure

If a carer uses their judgement to determine that a service user requires medical attention but the person refuses to see their GP or attend a hospital appointment, then the following steps are to be followed:

- Inform GP
- Inform next of kin
- Inform care manager
- Assess for capacity to make decisions
- Record refusal in care plan/case notes and note whether person has capacity to refuse.

Capacity and Consent		
	Non urgent treatment	Urgent/emergency treatment
Adult service user with capacity to make decisions	<p>Decision to be respected. Discuss why they do not want to see a doctor:</p> <ul style="list-style-type: none"> • maybe they are afraid of what they may be told? • maybe they are embarrassed, • would they agree to a home visit rather than going to the surgery? • will they see the District Nurse instead? <p>Ensure they have been given full information to make an informed decision</p> <p>Record refusal in care plan/case notes with statement about their capacity at time of refusal.</p>	<p>Decision to be respected even if this decision could result in death, however it may be necessary to seek advice if the service user is refusing treatment for a condition which endangers self or others, such as an infectious disease that presents a risk to public health for example active TB.</p> <p>If a person requires emergency treatment to save their life, and they are unable to give consent as a result of being physically or mentally incapacitated (e.g. they are unconscious), treatment will be carried out. Once they have recovered, the reasons why treatment was necessary will be fully explained.</p>
Adult service user assessed as not having capacity to make decisions	<p>Make a best interest decision involving:</p> <ul style="list-style-type: none"> • next of kin/person with lasting power of attorney for health and welfare • GP • District Nurse or other relevant medical professional <p>Record best interest decision in care plan/case notes.</p>	<p>When there are no family or friends available to consult about serious medical treatment then refer to the Independent Mental Capacity Advocate Service (IMCA).</p> <p>There are some circumstances where a decision should always be referred to the Court of Protection if the person cannot give their consent; this includes situations where there is serious concern about the person's capacity or best interests.</p>
Adult Service User with fluctuating capacity or complex health needs that are affecting capacity to make decisions.	<p>Request a multi-disciplinary meeting involving;</p> <ul style="list-style-type: none"> • Next of kin/ advocate • GP • Any medical consultants the service user is under • Social Worker <p>Record outcome of MDT and any action plan in care plan/case notes</p>	<p>Inform all relevant health and Social Care professionals of need for multi-disciplinary decision making.</p>

Defining consent

For consent to be valid, it must be voluntary and informed, and the person consenting must have the capacity to make the decision. These terms are explained below.

- **Voluntary:** the decision to consent, or not consent, to treatment must be made alone, and must not be due to pressure by medical staff, friends or family.
- **Informed:** the person must be given full information about what the treatment involves, including the benefits and risks, whether there are reasonable alternative treatments, and what will happen if treatment does not go ahead. Staff should not withhold information just because it may upset or unnerve the person.
- **Capacity:** the person must be capable of giving consent, which means they understand the information given to them and they can use it to make an informed decision.

Usually, any person who has the capacity to make voluntary and informed decisions for themselves about their medical treatment is legally entitled to accept, or refuse, any treatment that is offered to them. This decision must be respected, even if the decision could result in their death. No person has the authority to give or withhold consent on behalf of another person over the age of 18.

There are a few exceptions when treatment may be able to go ahead without the person's consent, even if they're capable of giving their permission. It may not be necessary to obtain consent if a person:

- needs emergency treatment to save their life, but they're incapacitated (for example, they're unconscious) – the reasons why treatment was necessary should be fully explained once they have recovered
- immediately needs an additional emergency procedure during an operation – there has to be a clear medical reason why it would be unsafe to wait to obtain consent
- with a severe mental health condition, such as schizophrenia, bipolar disorder or dementia, lacks the capacity to consent to the treatment of their mental health (under the Mental Health Act 1983) – in these cases, treatment for unrelated physical conditions still requires consent, which the patient may be able to provide, despite their mental illness
- needs hospital treatment for a severe mental health condition, but self-harmed or attempted suicide while competent and is refusing treatment (under the Mental Health Act 1983) – the person's nearest relative or an Approved Mental Health Practitioner must make an application for the person to be forcibly kept in hospital, and 2 doctors must assess the person's condition
- is a risk to public health as a result of rabies, cholera or tuberculosis (TB)

Under the Mental Capacity Act, medical treatment can be given to someone who does not have the capacity to make a treatment decision, as long as such treatment is in his or her best interests and as long as it has not been refused in advance in a valid and applicable advance decision to refuse treatment.

How to give consent

Consent should be given to the staff directly responsible for the person's current treatment, such as the nurse arranging a blood test, the GP prescribing new medication or the surgeon planning an operation.

It can be given:

- verbally
- non-verbally, for example, raising a hand to indicate they are happy for a nurse to take a blood sample
- in writing, by signing a consent form

If someone is going to have major medical intervention, such as an operation, their consent should be obtained well in advance so they have plenty of time to study any information about the procedure and ask questions

Without a Health and Wellbeing LPA, no one can give consent on behalf of adults who are not capable of giving consent for themselves. However, those close to the person should always be involved in decision-making. Legally, the health and social care professionals responsible for the person's care are also responsible for deciding whether or not a particular intervention is in that person's best interests. Ideally decisions will reflect an agreement between professional carers (doctors, nurses, social workers etc.) and the individual's family and friends. If decisions about major issues or treatments are to be made when no friends or relatives are available, an Independent Mental Capacity Advocate (IMCA) must be consulted. The purpose of the IMCA is to represent vulnerable people who lack capacity to make important decisions about medical treatment.

If there is on-going uncertainty about what constitutes the service users' best interests or where there are unresolved differences of opinion then it may be necessary to refer to the [Court of Protection](#). This should only be required if timely negotiations at a local level with the relevant health and social care professionals in charge of the service user's care have failed to resolve the problem. The court is also responsible for appointing deputies to make relevant decisions for people who lack mental capacity, and who have not, prior to the point at which they lost mental capacity to do so, made a lasting power of attorney.

Treatment in the interim must not be stopped or withdrawn, and all attempts to offer appropriate treatment must continue.

Advance decisions

If a person knows that their capacity to consent may be affected in the future, they can arrange a legally binding advance decision. For example, this may be because they have a condition that means they're likely to become unconscious.

An advance decision (sometimes known as an [advance decision to refuse treatment](#), or ADRT, or a living will) is a decision an individual can make now to refuse a specific type of treatment at some time in the future.

An advance decision sets out:

- the procedures and treatments the person consents to
- the procedures and treatments the person doesn't consent to

This means that the staff treating the individual cannot perform specific procedures or treatments against their wishes

Advanced Statements

An advance statement is a written statement that sets down a person's preferences, wishes, beliefs and values regarding their future care.

The aim is to provide a guide to anyone who might have to make decisions in their best interest if the person has lost the capacity to make decisions or to communicate them.

An advance statement can cover any aspect of a person's future health or social care. This could include:

- how they want any religious or spiritual beliefs to be reflected in their care
- where they would like to be cared for – for example, at home or in a hospital, a nursing home, or a hospice
- how they like to do things – for example, if they prefer a shower instead of a bath, or like to sleep with the light on
- concerns about practical issues – for example, who will look after their dog if you become ill

An advance statement is not legally binding, but anyone who is making decisions about a person's care must take it into account.

An advance decision is legally binding.

Appendix 1

Five principles that apply for the purposes of the Mental Capacity Act 2005

- A person must be assumed to have capacity unless it is established that he lacks capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- 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
- 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 persons rights and freedom of action

Assessing capacity

Anyone assessing someone's capacity to make a decision for themselves should use the two-stage test of capacity.

Stage 1. Is there an impairment of, or disturbance in the functioning of a person's mind or brain? This could be due to long-term conditions such as mental illness, dementia, or learning disability, or more temporary states such as confusion, unconsciousness, or the effects of drugs or alcohol. If so,

Stage 2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

Assessing ability to make a decision.

- Does the person have a general understanding of what decision they need to make and why they need to make it?
- Does the person have a general understanding of the likely consequences of making, or not making this decision?
- Is the person able to understand, retain, use and weigh up the information relevant to this decision?
- Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

References

NHS choices – consent to treatment <http://www.nhs.uk/Conditions/Consent-to-treatment/Pages/How-does-it-work.aspx>

Relevant legal terms

- **The Mental Health Act (1983)** sets out various legal rights that apply to people with severe mental health problems. The Act also contains the powers which enable some patients to be compulsorily detained in hospital.
- **The Mental Capacity Act (2005)** is designed to protect people who cannot make decisions for themselves. The Act explains when a person is considered to be lacking capacity, and how decisions should be made in their best interests.
- The **Court of Protection** is the legal body that oversees the operation of the Mental Capacity Act (2005).
- The **Care Act 2014** provides a framework to work with people who have care and support needs and legislates the need for an advocate for someone who has substantial difficulties taking part in an assessment.

For more information please see [Guidance on Giving Medication Covertly](#) published by the Social Care Institute of Excellence, 2019.