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Blackburn with Darwen Borough Council  
Blackburn with Darwen Primary Care Trust  
Blackpool Council  
Blackpool, Fylde and Wyre Hospitals NHS Trust  
Blackpool Primary Care Trust  
Central Lancashire Primary Care Trust  
East Lancashire Hospitals NHS Trust  
East Lancashire Primary Care Trust  
Lancashire Care NHS Trust  
Lancashire County Council  
Lancashire Teaching Hospitals NHS Foundation Trust  
North Lancashire Primary Care Trust  
Southport & Ormskirk Hospital NHS Trust  
University Hospitals of Morecambe Bay NHS Trust  

JOINT MENTAL CAPACITY POLICY STATEMENT  

<table>
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<tr>
<th>AUTHOR(S) / FURTHER INFORMATION</th>
<th>Multi agency steering group</th>
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1 Introduction

The Mental Capacity Act enshrines in statute current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf.

The Mental Capacity Act 2005 also provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity.

Guidance on the Act is provided in a Code of Practice. All staff working in a professional capacity are placed under a duty to have regard to the Code (see appendix 1).

2 Principles

Internal policies and procedures will be maintained that will:

- ensure that every adult has the right to make his or her own decisions and that every adult is assumed to have capacity to do so unless it is proved otherwise
- ensure the provision of all appropriate help before concluding that someone cannot make their own decisions
- ensure that individuals retain the right to make what might be seen as eccentric or unwise decisions
- ensure that anything done for or on behalf of people without capacity will be in their best interests
- ensure that anything done for or on behalf of people without capacity will be the least restrictive of their basic rights and freedoms.

3 Assessing lack of capacity

A single clear test will be used for assessing whether a person lacks capacity to take a particular decision at a particular time. It is a ‘decision-specific’ test. No one can be labelled ‘incapable’ as a result of a particular medical condition or diagnosis and the starting point for all assessments of capacity will be the assumption of capacity.

A lack of capacity will not be established merely by reference to a person’s age, appearance, or any condition or aspect of a person’s behaviour, which might lead others to make unjustified assumptions about capacity.

Assessments of a person's capacity could be made by health or social care professionals and may involve multi-disciplinary teams, but are the responsibility of the person who intends to make the decision or carry out an action on behalf of the person who lacks capacity.
4 'Best interests'

Everything that is done for or on behalf of a person who lacks capacity will be in that person’s best interests. Decision-makers will use the common checklist of factors in the Mental Capacity Act Code of Practice, when deciding what is in a person’s best interests.

Written statements about wishes and feelings will be considered, and carers and family members will be consulted in deciding what is in someone’s best interests.

5 Acts in connection with care or treatment

Policies and procedures will be maintained to ensure proper assessment of capacity and best interests, and to ensure that staff providing care and treatment for someone who lacks capacity can do so without incurring legal liability.

6 Restraint/deprivation of liberty.

Restraint will only be used when the person using it reasonably believes it is necessary to prevent harm to the incapacitated person, and the restraint used will be proportionate to the likelihood and seriousness of the harm. This is to ensure that people who lack capacity will not be deprived of their liberty within the meaning of Article 5(1) of the European Convention on Human Rights.

7 Independent Mental Capacity Advocate (IMCA) service

An IMCA is someone appointed to support a person who lacks capacity but has no one to speak for them.

An IMCA will be instructed where:

- an NHS body is proposing serious medical treatment
- an NHS body is proposing to provide hospital accommodation for more than 8 weeks
- an NHS body is proposing to change a person’s accommodation to another hospital or care home for more than 28 days
- the local authority proposes to provide or to change residential accommodation for more than 8 weeks

and, the person has no relative, friend or carer, Lasting Power of Attorney (LPA), deputy or individual nominated by the person to represent their best interests.

Additionally Local Authorities will give consideration to instructing an IMCA where

- a care package, which includes accommodation, is to be reviewed.
- action to protect a vulnerable adult is proposed as part of Safeguarding Adults procedures.

8 Advance decisions to refuse treatment
An advance decision will have no application to any treatment, which a doctor considers necessary to sustain life, unless strict formalities have been complied with.

These formalities are that the decision must be in writing, signed and witnessed. In addition, there must be an express statement that the decision stands ‘even if life is at risk’.

9 A criminal offence

The ill treatment or neglect of a person who lacks capacity is a criminal offence. A person found guilty of such an offence may be liable to imprisonment for a term of up to five years.

10 Research

Research governance arrangements that are compliant with the Mental Capacity Act 2005 will be maintained to ensure that research produces a benefit to the person who lacks capacity that outweighs any risk and that any activity is carried out with minimal intrusion or interference with their rights.

11 Confidentiality

Confidentiality and Information Security policies and procedures on the Trust Document Library will be maintained that are compliant with the Data Protection Act 1998 and Freedom of Information Act 2001 and with relevant professional standards and good practice.

12 Common recording framework

Assessing capacity

In the course of assessing capacity the following will be recorded:

- the decision that needs to be made
- information used to decide that there may be a capacity issue
- whether the person has a general understanding of what the decision is and why they are being asked to make it
- relevance of any advance decisions or written statements of preference
- whether the person has a general understanding of the consequences of making or not making the decision
- whether there is an impairment or disturbance of the person’s mind or brain
- whether the disturbance is sufficient that the person lacks capacity to make the decision
- steps taken to help the person make the decision
- determination of whether an IMCA should be involved
- the finding of capacity, who has made it, and when.

Best interests
In the course of determining best interests and making best interests decisions, the following will be recorded:

- identification of all of the issues and circumstances that are relevant to the person
- consideration of the person regaining capacity and the consequences
- consideration of delaying the decision
- steps taken to permit and encourage the person to participate in making the decision
- consideration of the person’s wishes, feelings, values and beliefs
- consideration of the views of people who know the person lacking capacity well
- details of any multi agency discussion held to determine best interests, including reasons for reaching the best interests decision
- details of the best interests decision and the reasons for it.

**Involving an IMCA**

In the course of determining whether or not to involve an IMCA, the following will be recorded to facilitate referral to the IMCA service and to enable the maintenance of robust processes that will ensure good practice is followed:

- details of the decision that needs to be made
- details of when the decision needs to be made
- existence of a finding of lack of capacity
- whether the person has any relatives or friend that can speak for them
- whether someone has an LPA or whether there is a deputy appointed
- whether there is a generic advocate already involved with the person.

**13 Arrangements for reviewing this joint policy statement**

This policy statement will be subject to annual review, to be first initiated prior to April 2008 by the chair of the Lancashire-wide multi-agency steering group for implementation of the Mental Capacity Act and Mental Health Bill. Subsequent review arrangements will be proposed by that group for consideration by all the parties to this joint policy statement.
Appendix 1

Links to more information about the Mental Capacity Act 2005

Information and guidance on dealing with mental capacity issues and the Mental Capacity Act are available from the Department for Constitutional Affairs, now Ministry of Justice, website at: 

Mental Capacity Act code of practice is available at: 

Information from the Public Guardianship Office (soon to become Office of the Public Guardian) is available at: 
http://www.guardianship.gov.uk/partnership/mca.htm

and the full range of the useful 'Making Decisions' leaflets and booklets are available at: 
http://www.guardianship.gov.uk/formsdocuments/publications.htm

These booklets include:
- Booklet 1 For people who may be unable to make some decisions for themselves/who wish to plan ahead for the future
- Booklet 2 For family, friends and unpaid carers
- Booklet 3 For people who work in health and social care
- Booklet 4 For advice workers
- Booklet 5 The Mental Capacity Act - Easyread
- Booklet 6 The Independent Mental Capacity Advocacy (IMCA) Service

Other sources of information include:

Ministry of Justice: 
http://www.justice.gov.uk/guidance/mental-capacity.htm

Department of Health: 

Lancashire County Council: 
http://www.lancashire.gov.uk/social%2Dservices/mental%2Dcapacity/

Blackburn with Darwen Borough Council: 
Appendix 2

This joint mental capacity policy statement was developed by a steering group of representatives from local health and social care organisations listed on the front page. Members of the group included:

David Adamson  University Hospitals of Morecambe Bay NHS Trust  
Mary Aubrey  Blackpool, Fylde & Wyre Hospitals NHS Trust  
David Bond  Lancashire County Council  
Angela Brown  Blackpool, Fylde & Wyre Hospitals NHS Trust  
Jackie Clark  Southport & Ormskirk Hospital NHS Trust  
Meg Davey  East Lancashire Hospitals NHS Trust  
Janet Dawson  Lancashire County Council  
Louise Dowell  Blackpool, Fylde & Wyre Hospitals NHS Trust  
Helen Gorton  East Lancashire Primary Care Trust  
Julie Haywood  North Lancashire Primary Care Trust  
Phil Hesketh  Lancashire Care NHS Trust  
Ron Holker  Blackburn with Darwen Borough Council  
Sharron Haworth  East Lancashire Primary Care Trust  
Joanne Hunt  Blackpool Council  
Gary Jackson  North Lancashire Primary Care Trust  
Deb Jacobs  Central Lancashire Primary Care Trust  
Judith Johnston  Blackburn with Darwen Primary Care Trust  
Karen Little  Central Lancashire Primary Care Trust  
Karen Mahon  Lancashire Teaching Hospitals NHS Foundation Trust  
Bernard Mallabone  Blackpool Primary Care Trust  
Phil Morgan  North Lancashire Primary Care Trust  
Debbie O'Brien  East Lancashire Primary Care Trust  
Ruth Roberts  North Lancashire Primary Care Trust  
Mike Smith  Lancashire Teaching Hospitals NHS Foundation Trust  
Christine Smithson  Lancashire Care NHS Trust  
Kevin Spencer  North Lancashire Primary Care Trust  
Judith Sunderland  East Lancashire Primary Care Trust  
Paul Thomas  North Lancashire Primary Care Trust  
Michael Watson  Blackpool Council
**Equality Impact Assessment Tool**

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

Would the relevant Equality groups be affected by the document? (If Yes please explain why you believe this to be discriminatory in Comment box)

*Title & Identification Number - Implementing the Mental Capacity Act 2005 and apply the Supporting Code of Practice Corp/Pol/196*

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<td>No</td>
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<td>2 Grounds of Gender including Transsexual, Transgender people</td>
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<td>3 Grounds of Religion or belief e.g. religious /faith or other groups with recognised belief systems</td>
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<td>4 Grounds of Sexual orientation including lesbian, gay and bisexual people</td>
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**14 Q1 (a) Is the document directly discriminatory?**
No
(under any discrimination legislation)
- Racial Discrimination
- Age Discrimination
- Disability Discrimination
- Gender Equality
- Sexual Discrimination

**Q2 (b) (i) Is the document indirectly discriminatory?**
No
**Q2 (b) (ii) If you said yes , is this justifiable in meeting a legitimate aim**
Yes

**Q3 (c) Is the document intended to increase equality of opportunity by positive action or action to redress disadvantage**
No
Please give details

**15 If you have answered no to all the above questions 1-14 and the document does not discriminate any Equality Groups please go to section 16**

If you answered yes to Q1 (a) and no to Q3 (b) this is unlawful discrimination.
If you answered yes to Q2 (b) (i) no to Q2 (b) (ii) and no to Q3 (c), this is unlawful discrimination

**If the content of the document is not directly or indirectly discriminatory, does it still have an adverse impact?**
No
Please give details
If the content document is unlawfully discriminatory, you must decide how to ensure the organisation acts lawfully and amend the document accordingly to avoid or reduce this impact

16 Name of the Author completing the Equality Impact Assessment Tool.

Name… ………………………………………………………………………

Signature……………………………………………………………………

Designation…Associate Director of Governance……………………………….

Date……27th September 2007…………………………………………………………