Mental Capacity Act 2005
Policy and Procedures
Including the Deprivation of Liberty Safeguards

May 2010
Practice and Guidance for all staff involved with persons who lack or may lack capacity

October 2008
Reviewed May 2009
Reviewed May 2010
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Policy.</td>
<td>3</td>
</tr>
<tr>
<td>Implementation of the Act and Code of Practice</td>
<td>5</td>
</tr>
<tr>
<td>Limitations of the Act.</td>
<td>7</td>
</tr>
<tr>
<td>Capacity, ‘Meaning Within the Act’.</td>
<td>9</td>
</tr>
<tr>
<td>Decision making.</td>
<td>11</td>
</tr>
<tr>
<td>Best Interests decisions .</td>
<td>12</td>
</tr>
<tr>
<td>Independent Mental Capacity Advocates (IMCA).</td>
<td>13</td>
</tr>
<tr>
<td>Goods and Services.</td>
<td>18</td>
</tr>
<tr>
<td>Restraint.</td>
<td>19</td>
</tr>
<tr>
<td>Criminal Offences.</td>
<td>20</td>
</tr>
<tr>
<td>Enduring Power of Attorney.</td>
<td>21</td>
</tr>
<tr>
<td>Lasting Power of Attorney.</td>
<td>22</td>
</tr>
<tr>
<td>Advance Decisions to Refuse Treatment.</td>
<td>24</td>
</tr>
<tr>
<td>Court of Protection and Office of Public Guardian.</td>
<td>25</td>
</tr>
<tr>
<td>Access to Files.</td>
<td>27</td>
</tr>
<tr>
<td>Disputes.</td>
<td>28</td>
</tr>
<tr>
<td>Research.</td>
<td>29</td>
</tr>
<tr>
<td>Deprivation of Liberty.</td>
<td>30</td>
</tr>
<tr>
<td>What is Deprivation of Liberty?</td>
<td>40</td>
</tr>
<tr>
<td>Roles and Responsibilities</td>
<td>41</td>
</tr>
<tr>
<td>Role of the IMCA in the DoL Process</td>
<td>43</td>
</tr>
<tr>
<td>Application Process</td>
<td>44</td>
</tr>
<tr>
<td>Authorisations</td>
<td>47</td>
</tr>
<tr>
<td>The Review</td>
<td>52</td>
</tr>
<tr>
<td>When a DoL Authorisation Ends</td>
<td>53</td>
</tr>
<tr>
<td>Reporting an Unauthorised DoL</td>
<td>54</td>
</tr>
<tr>
<td>Court of Protection Application</td>
<td>56</td>
</tr>
<tr>
<td>Appendices:</td>
<td></td>
</tr>
<tr>
<td>1. MCA Form 1 - Form for Recording Mental Capacity Assessment.</td>
<td>57</td>
</tr>
<tr>
<td>2. IMCA Form 2 – Form for Recording Best Interests Decision Making.</td>
<td>60</td>
</tr>
<tr>
<td>3. IMCA referral chart.</td>
<td>64</td>
</tr>
<tr>
<td>4. IMCA referral form.</td>
<td>65</td>
</tr>
<tr>
<td>5. ADASS Practice guidance: Criteria for the Use of IMCA in Safeguarding Adults Cases</td>
<td>72</td>
</tr>
<tr>
<td>6 Appointee/Property and Affairs referral form</td>
<td>77</td>
</tr>
<tr>
<td>7 MCA: Access to Records Request Forms</td>
<td>87</td>
</tr>
</tbody>
</table>
Introduction

This policy and procedure is being issued to support staff on the use of the Mental Capacity Act 2005, (MCA), which came into force on the 1 October 2007. This includes the Deprivation of Liberty Safeguards which were fully implemented in April 2009.

This policy and procedure and relevant documentation are part of Adult Services Directorate policy and procedures.
Mental Capacity Act Policy and Procedure

This policy and procedure is intended for staff acting as decision makers working within the Adult Services Directorate of Newcastle City Council and should be used in conjunction with the Mental Capacity Act (The Act) Code of Practice and the Deprivation of Liberty Safeguards (DoLS) Code of Practice.

Copies of the MCA Code of Practice can be accessed/downloaded from [www.guardianship.gov.uk](http://www.guardianship.gov.uk)

Adult Services Directorate staff working under other arrangements e.g. care co-ordination in Adult mental health services should follow the guidance and documentation of these assessments and care planning arrangements while ensuring that the principles of the Act and the Code of Practice are applied.

The Act has taken examples of good practice and common law principles relating to those people who lack capacity and those who may take decisions on their behalf and sets this in statute. This policy and procedure includes the implementation of the Deprivation of Liberty Safeguards.
As with any new legislation it is anticipated that case law will inform the future implementation and interpretation of the Act resulting in the review and updating of this policy and procedure.
Any practice issues that arise during the implementation of the Act should be reported to your line manager who will inform the MCA lead in the Safeguarding Adult Unit.
Newcastle Adult Services Directorate is committed to the implementation of, and adherence to, the Mental Capacity Act 2005 (MCA) and the Deprivation of Liberty Safeguards (DoLS), the two Codes of Practice and associated regulations.


A new Court of Protection with more comprehensive powers has also been introduced by the Act.

The interface of the MCA with other relevant legislation needs to be considered.

This would include, for example:

- Mental Health Act 1983
- Mental Health Act 2007
- Disability Discrimination Act 1995
- Human Rights Act 1998
- Data Protection Act 1998
- National Health Service and Community Care Act 1990
- The Care Standards Act 2000
- Legislation and guidance concerning the provision of treatment of physical and mental health conditions.
Newcastle Adult Services Directorate staff will need to determine, in relation to each specific decision to be made, the mental capacity of the people with whom they work.

The MCA provides a statutory framework within which staff must work with service users when determining capacity and best interest decisions.

In turn if the Act and Code are adhered to, the MCA provides the worker with protection when working with people lacking capacity provided decision making processes are fully recorded and decisions justified.

All staff acting in a professional capacity are expected to have regard to the MCA and DoLS Code of Practice in all aspects of their involvement with people who lack capacity.

Each Adult Services Team has a paper copy of both the MCA and DoLS Code.

The MCA Code of Practice can also be accessed at:

The DoLS Code of Practice can be accessed at:
The Mental Capacity Act 2005 provides a statutory framework for people who lack capacity to make decisions for themselves.

The Act provides for those people who have capacity and want to make plans for a time when they may lack capacity in the future.

The Act sets out who can take decisions, in which situations, and how to go about this.

The Mental Capacity Act received royal assent on the 7th April 2005 and was implemented in two parts in April and October 2007.

The Act has an accompanying Code of Practice. People acting in a professional capacity for, or in relation to, a person who lacks capacity are legally required to have regard to the Code of Practice.

This category of people is inclusive of social care staff (social workers, care managers, care workers etc), and health care staff (doctors, nurses and other health workers etc).

The Code of Practice provides guidance to anyone who is working with and/or caring for adults who may lack capacity to make particular decisions.

The Act does not impose a legal duty on anyone to ‘comply with the Code’ so it should be viewed as guidance rather than instruction.

However, if a person does not follow the relevant guidance contained in the Code then they will be expected to give good reason why they have departed from it.
The MCA has five statutory principles

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 to do so have been taken without success.

3. A person is not to be treated as unable to make a decision 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 the act is done, or the decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

Practice Guidance:

The Act and the Code of Practice should be seen as an articulation of best practice to be followed by staff in all matters.

Any person working with a person assessed as lacking capacity must act within the provisions of the Act and the Code of Practice. A copy of the MCA Code of Practice can be found at: www.publicguardian.gov.uk/docs/code-of-practice-041007.pdf

Limitations of the Act

Sections 27-29 and section 62 of the MCA set out the specific decisions which can never be made or actions which can never be carried out under the Act, whether by family members, carers, professionals, attorneys or the Court of Protection.

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

Section 27:

- Consenting to marriage or a civil partnership.
- Consenting to have sexual relations.
- Consenting to a decree of divorce on the basis of two years’ separation.
- Consenting to the dissolution of a civil partnership.
- Consenting to a child being placed for adoption or making of an adoption order.
- Discharging parental responsibility for a child in matters not relating to child’s property.
- Giving consent under the Human Fertilisation and Embryology Act 1990.

Mental Health Act matters (section 28)

Where a person who lacks capacity to consent is currently detained and being treated under Part 4 of the Mental Health Act 1983, nothing in the Act authorises anyone to:

- Give the person treatment for mental disorder, or
- Consent to the person being given treatment for mental disorder.

Voting rights (section 29)

Nothing in the act permits a decision on voting, at an election for any public office or at a referendum, to be made on behalf of a person who lacks capacity to vote.

Unlawful killing or assisting suicide (section 62)
For the avoidance of doubt, nothing in the Act is to be taken to affect the law relating to murder, manslaughter or assisting suicide.

Practice Guidance:

Although the Act does not allow anyone to make a decision about these matters on behalf of someone who lacks capacity to make such a decision for themselves (for example, consenting to have sexual relations), this does not prevent action being taken to protect a vulnerable person from abuse or exploitation.

If you have safeguarding concerns please contact the Safeguarding unit or speak to your team manager.

Please refer to safeguarding policy and procedures at www.newcastle.gov.uk/safeguardingadults

Staff must familiarise themselves with the limitations under the Act – See Chapter 1 – Code of Practice.
Capacity - ‘Meaning within the Act’

Presumption of Capacity

The starting point of the Act is to confirm in legislation that anyone (aged 16 or over) has full legal capacity to make decisions for themselves unless it can be shown that they lack capacity to make decisions for themselves at the time the decision needs to be made.

Prejudicial assumptions regarding such things as the service user’s age, appearance, condition or behaviour must be avoided when considering capacity.

A person is defined as lacking capacity (Section 2 of the MCA), when, if at the material time he/she is unable to make a decision for him/herself in relation to a matter because of an impairment of, or a disturbance in the function of the mind or brain.

No one can be regarded as lacking capacity based simply on their condition or diagnosis nor can it be made purely on the grounds of a person’s age or appearance.

The MCA sets out a single test for assessing whether a person lacks capacity to make a particular decision at a particular time.

Whether a person lacks capacity or not will be decided on the balance of probability.

The Act also states that individuals must be given all appropriate help and support to enable them to make their own decisions or to maximise their participation in any decision making process.
Practice Guidance:

Any MCA assessment **must** be recorded on the Adult Services Directorate’s Care Assess system.

It is a requirement that a capacity assessment is recorded :- staff should access CareAssess to record their assessment.

- Go to Care Assess.
- Go to find assessments
- Select Safeguarding Adults from Questionaire Context.
- From the Assessment type select Record of a Mental Capacity Assessment (Form MCA1)

See Appendix One attached and Chapter 4 - Code of Practice.
Decision Making

Under the MCA a person is deemed as having the ability to make a decision if they are able to:

- Understand the information relevant to the decision.
- Retain that information.
- Use or weigh up the information as part of the decision making process.
- Communicate their decision.

If a person cannot undertake any one of these four aspects of the decision making process, then they will be deemed as lacking capacity to make the decision.

Some people may have fluctuating capacity and if this is the case then it should be demonstrated and recorded that every effort has been made to accommodate this when looking at capacity issues.

The MCA states that capacity relates to a decision specific situation.
This means that a person may have capacity to make some decisions but not others.

The information surrounding the decision to be made should be presented in a format most appropriate to the individual making the decision.

Practice guidance:

- If the person is deemed to have capacity under the meaning of the Act then they are entitled to make their own decision.

- If not, a Best Interests decision will need to be made.
**Best Interest Decisions**

An essential foundation of the Act is to ensure that any decision made, or action taken, on behalf of someone who lacks the capacity to make the decision or act for themselves is made in their best interests and not on the basis of any unjustified and prejudicial assumptions.

The Act requires that any Best Interest decision or act must be the least restrictive option to the person in terms of their rights and freedom of actions.

The Act recognises the right of a capacitated individual to make what may be considered by others to be an unwise decision.

**Consultation with others to make a best interest decision**

The decision maker needs to consult with all other professionals and anyone else involved with the person in order to make a Best Interest decision.

Where the decision maker needs to balance a range of views simultaneously or there are several interrelated decisions to be made, a meeting may be the most appropriate forum.

It is recognised however that consultation in an emergency situation may not always be possible.

The views of all parties consulted, including the person deemed as lacking capacity to make the particular decision, need to be considered and recorded as part of the Best Interest decision making process.
Practice Guidance:
It is a requirement that a Best Interest decision is recorded – staff should access Care Assess to record their assessment:

- Go to Care Assess Find Assessments
- Select Safeguarding Adults from Questionnaire Context
- Select Actions Taken to Make a Best Interest decision from the Safeguarding pick list.
- Record the Best Interest decision (Form MCA 2 form)

See Appendix Two attached and Chapter 5 - Code of Practice
The aim of the IMCA service is to provide independent safeguards for people who lack capacity to make certain important decisions and at the time such decisions need to be made, they have no-one (other than paid staff) to support or represent them or who could be consulted.

In certain circumstances the decision maker has a duty to refer to Independent Mental Capacity Advocate (IMCA) service.

Local Authority decision makers must refer to the IMCA service when the decision relates to:

- The Local Authority proposing to provide or charge for residential accommodation for more than 8 weeks whilst acting under section 21 or 29 of the National Assistance Act 1948.

or

- Under section 117 Mental Health Act 1983 (S47 of the National Health Service and Community Care Act 1990).

and

- A capacity assessment has been completed under the Act and as a result of this assessment the person is considered not to have the mental capacity to make the decision required at that particular time.

and

- There is a best interest decision in relation to the above to be made.
and

To the best of your knowledge the person to be referred and who lacks capacity:

- Does not have any friends or relatives to consult or it is impracticable to consult them (there is no one to speak for them).
- There is no nominated person.
- No valid and applicable advanced directive.
- No Court appointed Deputy and no Enduring Power of Attorney or Lasting Power of Attorney.

**Practice Guidance**

Social care staff should only make a referral for an IMCA where they are the decision-maker.

Complete Form Appendix Four attached

See Appendix Three and Chapter 10 – Code of Practice

For Health decision makers a referral must be made to the IMCA service when the decision relates to:

- Serious medical treatment.
- NHS to arrange a hospital stay for 28 days or more.
- NHS to arrange accommodation for 8 weeks or more.
Decision makers power to refer for an IMCA

The decision maker has a power to refer to an IMCA in the following circumstances, any referral to the IMCA service under this power must be agreed with your Team Manager:

- Where there is an accommodation review that would lead to a significant change in the way the person’s care is provided.

- The LA or the NHS has arranged the original accommodation.

And

- The person has been assessed as lacking capacity in relation to this review.

And

To the best of your knowledge the person to be referred and who lacks capacity:

- Does not have any friends or relatives to consult or it is impracticable to consult them (there is no one to speak for them).

- There is no nominated person.

- No valid and applicable advanced directive.

- Court appointed Deputy.

- No Enduring Power of Attorney or Lasting Power of Attorney.

And

- The accommodation has been provided to the person for a period of 12 weeks or more.

And

- The accommodation has not been provided under the provisions of the Mental Health Act 1983.
Referral to IMCA for Safeguarding

A referral to the IMCA would be undertaken in the following circumstances:

- The Local Authority or the NHS propose to take or have taken protective measures in relation to a person who lacks capacity to agree to those measures.

- The protective measures have been taken after receipt of an allegation or evidence that the person lacking capacity is being or has been abused or neglected by another OR is / has abused another person.

In safeguarding cases only the person does not have to be unrepresented to qualify for an IMCA.

A referral under this power should only be made where there has been a recommendation by the Safeguarding manager that the circumstances of the case are such that a referral would be of particular benefit to the person and where there is no other advocate involved.

Practice Guidance

- IMCA referral form can be found in Appendix 4

- ADASS guidance on use of IMCA’s in safeguarding can be found in Appendix 5 and also refer to the safeguarding policy and procedures at:

  www.newcastle.gov.uk/safeguardingadults.
Goods and Services

Carers may have to pay for necessary goods and/or services on behalf of the person who lacks capacity.

The Act defines necessary as:-

“something that is suitable to the person’s condition in life (their place in society, rather than any mental or physical condition) and their actual requirements when goods and services are provided.”

The idea is that people can maintain the standard of living that they had before lacking capacity.

The Act confirms that a person acting as an “agent of necessity” (arranging necessary goods or services) for another person should not be out of pocket as a result, and that those lacking capacity must still pay a reasonable price for necessities.

To balance this and to protect against exploitation, where purchased / contracted services may not be justifiably accepted as necessities the Act can also be used to void any contracts where the contractor has known of (or could be taken to have known of) a person’s lack of capacity.

Practice Guidance:

The Act does not authorise access to a person’s income or assets and does not allow a person’s property to be sold. Separate legal authority is required.

For further guidance see Chapter 6 - Code of Practice
Restraint

A person uses restraint if they:

- Use force or threaten to use force to make someone do something that they are resisting.

OR

- Restrict a person’s freedom of movement, whether resisting or not.

In order to attract protection from liability in relation to the use of restraint, the person restraining must:

- Reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity.

- The amount and type of restraint used and the time it lasts is a proportionate response to the likelihood and seriousness of the harm.

Practice Guidance:

Staff must have due regard to professional and other guidance on restraint and physical intervention and to minimum standards for care services. In addition, common law imposes a duty of care on social care staff. If in doubt staff must seek legal advice from the local authority legal department.

This provision cannot have the effect of depriving someone of their liberty

For further guidance see Chapter 6 - Code of Practice
Criminal offences

The Act introduces two new and separate criminal offences in relation to a person who lacks capacity:

- **Ill treatment** - where someone has deliberately ill-treated the person or has been reckless in the way they were ill-treating the person or not.

- **Wilful neglect** - the meaning varies depending on the circumstances but usually means that a person has deliberately failed to carry out the act they knew they had a duty to do.

The offences may apply to:

- Anyone caring for a person who lacks capacity - this includes family carers, healthcare and social care staff in hospital or care homes and those providing care in a person’s home.

- An attorney appointed under an LPA or an EPA.

- A deputy appointed by the court.

Penalties for anyone found guilty of either offence will range from a fine to a sentence of imprisonment of up to five years or both.

**Practice Guidance:**

If there is good reason to suspect that someone has committed a crime against a person who lacks capacity, such as theft, physical assault or sexual assault or neglect the worker should:

**Immediately** discuss the circumstances of the case with their line manager, considering the issues of severity and intent. Advice is available from the Safeguarding Unit.
Consideration needs to be given to making a referral to the Police and/or the Adult Social Care Direct team.

See Chapter 14 - Code of Practice and Safeguarding policy and procedures
www.newcastle.gov.uk/safeguardingadults.
From October 2007, no new Enduring Power of Attorney’s (EPAs) can be created although the MCA continues to recognise any existing EPA. An EPA enabled people to plan ahead for a time when they may lose capacity.

An EPA relates to arrangements for a person’s property and financial affairs only.

An EPA can be used by an Attorney while the person still has capacity to handle their own affairs provided they consent to the Attorney having that power.

An EPA must be registered with the Public Guardian when a person can no longer manage their own affairs or when they start to lose capacity.

In order to establish whether an EPA has been registered, a search can be made of the Registers.

**Practice Guidance:**

A valid reason must exist for a search of the Registers to be undertaken.

**Searches of the Public Guardian registers will be undertaken by the Legal Section.**

Please contact the Adult Services Solicitors for further advice and guidance.

**See Chapter 7 - Code of Practice**
The Act introduces two new types of Lasting Powers of Attorney (LPA).

An LPA enables a person (donor) to plan for a time when they lose capacity to make decisions in relation to either:

- Property and affairs (finances)
- Personal welfare

Each type of LPA has a separate form and enables people to choose who can make decisions on their behalf and the nature and extent of those decisions.

Conditions and restrictions can be attached to each type of LPA. An Attorney will only have authority to act within the limitations that have been set.

The donor must have an LPA certificate confirming that they had capacity at the time that the LPA was made. Completion of an LPA certificate can be the subject of challenge should any person doubt the validity of an LPA.

This may result in the signatory of the LPA certificate being required to provide evidence to the Court of Protection.

An LPA can be registered with the Public Guardian as soon as it has been prepared while the donor still has capacity. Once the donor loses capacity, the Attorney must notify the Office of the Public Guardian that the LPA will be activated. Alternatively, an LPA can be registered by the Attorney at the point that the donor loses capacity.

An LPA that is unregistered confers no power on the Attorney.

Practice guidance:
Any requests should be discussed with the local authority legal department
Adult Services staff are NOT permitted to act as Attorney for any person that they are involved with in a professional capacity. An LPA must name an individual to act as Attorney.
Qualified Social Workers are permitted to complete LPA certificates provided they have discussed the request with their Team Manager, referred to and understood the “Guidance for LPA Certificate Providers” and discussed any outstanding concerns with an Adult Services Solicitor.

An entry must be made on Care First of the discussions that took place with the service user and a MCA assessment form (Appendix One - MCA Form 1) needs to be completed at the time that the certificate is signed.

See Chapter 7 – Code of Practice
Advance Decisions to Refuse Treatment

An Advance Decision enables someone aged 18 or over, whilst still capable, to refuse specified medical treatment for a time in the future when they may lack capacity to consent to or refuse that treatment.

Advance Decisions will not be applicable if the person has the capacity to make the decision when the treatment(s) concerned is / are proposed, or in circumstances not specified in the decision, or where there are reasonable grounds for believing that the current circumstances were not anticipated by the person.

If an Advanced Decision relates to life sustaining treatment it must be made in writing, be signed and witnessed and state clearly that the decision is valid even if life is at risk. In all other circumstances, there is no requirement for an Advance Decision to be made in writing.

Practice Guidance:

Encouragement should be given to any individual to put their wishes in writing and to inform those closest to them of the existence of such a document.

Staff should alert any person stating a particular wish of the difficulties of a verbal Advance Decision.

The decision around the existence, validity and applicability of an Advance Decision is for the health professional to make.

Note – An Advance Decision may not apply where the person is or is liable to be detained under the Mental Health Act 1983 (MHA 2007).

For further guidance see Chapter 9 - Code of Practice
The MCA provides for two new public bodies to support the statutory framework.

- The Court of Protection

The Court Protection has jurisdiction relating to the MCA and is the final arbitrator for capacity matters. It has its own procedures and nominated judges.

Where a person has not made an EPA or LPA prior to losing capacity, the only other legal authority that can be obtained to handle their affairs is through the Court of Protection either appointing a person as their Deputy (Property and Affairs and / or Personal Welfare) or the Court making a Short Order.

The nature of the authority will depend on the issues presented to the Court.

The Court can determine amongst other things, a person’s place of residence (where that is in dispute), contact with family and friends and prevent individuals from acting in certain ways towards the person concerned.

Evidence by way of written statements will be required.

Contact an Adult and Culture Services Solicitor to discuss the circumstances of your particular case should you be unclear. For further information see pages relating to EPA and LPA within this document.

The Court of protection has power to remove Deputies or Attorneys where there are concerns about how they undertake their duties.

The Court of protection can appoint a Court of Protection Visitor to investigate any concerns in relation to Deputies and Attorneys.
The Court of protection can also determine disputes in relation to a person’s capacity.

For more information please refer to Court of Protection (page 25) and Deprivation of Liberty (page 30).

- The Office of the Public Guardian:

The OPG is responsible for setting up and managing a register of EPAs, LPAs and court orders appointing Deputies.

It supervises the Deputies, and directs visits by Court of Protection Visitors.

The OPG receives and prepares reports in relation to LPAs and the Court of Protection.
The OPG handles representations in relation to issues around actions of Attorneys and Deputies.

Practice guidance:

For applications solely in relation to Property and Affairs, staff should send the completed Form (MCA) from Appendix 6 to the Service User Finance Manager who will advise of what action is required.

For further Guidance refer to Chapters 8, 14 &16 – Code of Practice
Practice guidance:

A Safeguarding or Multi-disciplinary meeting will usually determine whether an application to the Court of Protection in relation to only Personal Welfare or both Personal Welfare and Property and Affairs is required.

An Adult Services Solicitor must have provided advice in relation to the basis for the application(s).

The Social Work Team Manager must advise their Service Manager of the application.

Statement guidance is available from the Adult Services Solicitors.

For further Guidance refer to Chapters 8, 14 &16 – Code of Practice
Access to Files

Staff need to be aware that there may be requests for access to a service user’s records or information from:

- Attorneys acting under a valid LPA or EPA.
- IMCA.
- Court of Protection Visitors.
- Relevant Persons Representatives and Best Interests Assessors under DoLS.

The Court of Protection or High Court can also grant permission to the Official Solicitor’s representative and independent experts to view records.

The request for information from an IMCA should be information relevant to the decision to be made in respect of which they have been appointed.
Practice Guidance:

Any member of staff approached for access to files by:

- Attorneys acting under a valid LPA or EPA
- IMCA
- Court of Protection Visitors
- Best Interests Assessors under DoLS
- Relevant Persons Representatives under DoLS

should request completion of the Access to Files Request form (Appendix 7) prior to allowing access to the files.

Clarify the authority under which the individual is making the request and ensure that all recordings, observations and activities are available.

Any queries in relation to a request should be raised with your Team Manager who may then refer the matter to an Adult Services Solicitor for further advice.

For further guidance see Chapter 16 - Code of Practice
Disputes

People may disagree about:

- A person’s capacity to make a decision.
- What is in the person’s best interests.
- A decision that someone is making on their behalf.
- An action someone is taking on their behalf.

It is in everyone’s interests to settle disagreements and disputes quickly and effectively, with minimal stress and cost.

Consideration needs to be given to holding a meeting to clarify the areas of dispute, asking for a second opinion in relation to a decision on capacity or referring the matter to mediation.

The last resort is to take the matter to the Court of Protection however, this decision should not be taken lightly.

Practice Guidance:

See Chapter 15 - Code of Practice which sets out the different options available for settling disagreements, suggests ways of to avoid letting a disagreement becoming a serious dispute and when it might be necessary to discuss with the Local Authority legal department an application to the Court of Protection.
Research

It is important that research involving people who lack capacity can be carried out and that it is carried out properly.

Without it we would not improve our knowledge of what causes a person to lack or lose capacity and the diagnosis, treatment, care and needs of people who lack capacity.

The Act sets out when research can be carried out, the ethical approval process, respecting the wishes and feelings of people who lack capacity.

It includes other safeguards to protect people who lack capacity, how to engage with a person who lack capacity and how to engage with carers and other people.

Practice guidance:

A Service User must not be put forward for participation in any research without the express authority of the Research Governance Lead for Adult Services.

No staff member should agree to be a nominated person for research purposes under the Act without the express consent of Research Governance Lead for Adult Services.

For further guidance refer to the Research Governance Framework for procedural requirements. See also the DH “Guidance on nominating a consultee for research involving adults who lack capacity to consent.”

For further guidance refer to Chapter 11 – Code of Practice.
Deprivation of Liberty

For detailed information please refer to the Deprivation of Liberty Safeguards Policy and Procedures on the Newcastle City Council Safeguarding Website at:

www.newcastle.gov/safeguardingadults

Under the Deprivation of Liberty (DoL) Safeguards Newcastle City Council (NCC) are the supervisory body for Care Homes, with in their geographical jurisdiction, registered in Newcastle under the Care Homes Act 2000 or for out of area placements for which they provide funding. As such they have statutory roles and responsibilities.

From 1 April 2009, the Deprivation of Liberty (DOL) safeguards will be brought into effect through the Mental Health Act 2007 as an amendment to the Mental Capacity Act 2005. These could impact upon every resident in a care home who lacks capacity, whether they are Local Authority, Health, Self or otherwise funded.

Under the new provisions the Managing authorities (care homes) must obtain an authorisation from the supervisory body to deprive mentally incapacitated persons of their liberty where:

- The patient has a mental disorder and lacks the capacity to consent to remain.
- The patient needs to remain in care home to receive care or treatment.
- The treatment is necessary to prevent harm to themselves.
- The circumstances around their treatment or care deprives them of their liberty.

This will not apply to people who are already subject to a provision of the Mental Health Act 1983 or a Court Order dealing with their particular circumstances.
An additional Code of Practice called the Deprivation of Liberty Safeguards - Code of Practice is now available at:


Staff involved with service users who may be deprived of their liberty have a legal duty to have regard to this Code.

Care Homes and Hospitals (“managing authorities” MA) need to apply for a DOL authorisation where a person is or is likely to be deprived of their liberty within their establishment.

The application is made to the Local Authority or PCT (“supervisory body” SB) in whose area the home or hospital is situated.

Where a service user is placed outside of this LA area and SB retain responsibility for that individual. Newcastle would be the supervisory body to whom any application for a DOL authorisation is made. The normal issues regarding ordinary residence apply.

There are 6 assessments that need to be undertaken to establish whether the circumstances of an individual amounts to a deprivation of liberty. There will be specially trained best interest assessors and health professionals who will conduct the assessments.

Staff should work with care home managers / ward managers to try to reduce any possible deprivation to a restriction at the point that the decision is made for a person to enter a care home / hospital.

It is expected that changes to care plans should be able to reduce the number of people who may need to be the subject of a DOL authorisation.

The application for a DOL authorisation should be made in advance of the person becoming deprived of their liberty, wherever possible. There are provisions for urgent authorisations to be granted in emergency situations.
Some staff have been trained on this area given the issues and complexities involved. Any queries in relation to the need for a DOL authorisation should be raised initially with the Safeguarding Adults Unit.

**People who may Deprived of their Liberty in environments not covered by the Deprivation of Liberty Safeguards**

For those service users who are assessed as not having mental capacity in environments other than hospitals and care homes a different process will need to be followed.

Staff will need to discuss these cases with their line manager and the local authority legal department in the first instance.

Regardless of the environment or situation personalised care planning should be adopted at all times involving the individual, their carers and family and delivering care in such a way that minimises control and promotes independence and freedom of choice.
There is no legal definition as to what constitutes a Deprivation of Liberty, the judge in the Bournwood case stated that:

‘To determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance.’

When considering if a Deprivation of Liberty is taking place staff need to refer to Chapter 2 in the DoLS code of practice.
Supervisory Bodies.

As the supervisory body for Care Homes which fall under our legislative jurisdiction Newcastle City Council has roles and responsibilities within the DoL safeguards.

A team within the Safeguarding Adults Unit with specially trained workers has been set up to respond to these responsibilities and all DoLS requests and referrals.

If any other worker has any questions or are unsure about whether a DoL is occurring they should contact the Safeguarding Adults Unit on 0191 2788156.

Managing Authorities

The Managing authority has the responsibility for identifying and applying for an authorisation to deprive someone of their liberty within the scope of the DoL safeguards.

The Managing authority in the case of a specific care home will be the person registered, or required to be registered, under part 2 of the Care Standards Act 2000

They should have policies and procedures in place that identify:
1. Whether a DoL is or may be necessary in a particular case.
2. What steps should be taken to assess whether to seek an authorisation.

Roles and Responsibilities of others

If a Health or Social Care member of staff feels that a Deprivation of Liberty authorisation is or may be needed they should inform the Managing Authority. This could happen at any time but will usually be as a result of a care review or needs assessment. Assessing professionals should work with managing authorities through the care planning process to take all practical and reasonable steps to avoid a DoL occurring.
They should ensure:

- That all decisions taken and reviewed are done so in a structured way.
- That all decisions and the reasons for them are recorded.
- That established good practice for care planning is followed.
- A proper assessment of whether a person lacks capacity to decide whether or not to accept the care or treatment proposed in the care home is carried out.
- Before admitting a person to a care home in circumstances which amount to a DoL consider whether their needs could be met in a less restrictive way.
- Any restrictions placed on the person should be kept to a minimum and should be in place for the shortest possible period of time.
- Proper steps are taken to help the person to retain contact with family, friends and carers.
- Review the care plan on a regular basis.
- Involve advocacy services wherever practical and possible.
Newcastle City council as part of their supervisory responsibilities has the responsibility to appoint an IMCA as soon as it has been identified that the person subject to the application is unrepresented.

Once a DoLS Authorisation has been granted:

- The relevant person (the person subject to the DoL) and their unpaid personal representative have a statutory right to access an IMCA and the supervisory body should make them aware of this.
- The IMCA’s role is to support the relevant person and their unpaid representative.
- This may be to help them to better understand process and effects of the DoL authorisation.
- This may also be if they need help to use the review system or to access the court of protection.
Newcastle City Council have a DoL team office based within the Safeguarding Adults Unit who are available to discuss any issues relating to the DoL safeguards.

This is also the office which will receive all of the Managing Authority applications and co-ordinate the assessment and DoL process

Deprivation of Liberty Team
Safeguarding Adults Unit
Shieldfield Centre
4-8, Clarence Walk
Shieldfield
Newcastle
NE2 1AL

Tel no: 0191 2788156
Fax: 0191 2788 102

Currently there is no secure email therefore NO personal or confidential information should be sent via this media.

It is expected that prior to any application to Newcastle City Council that the issue relating to a person’s DoL will be discussed with the Newcastle DoL team.

Following that telephone conversation it is expected that any urgent authorisation and the request for a standard authorisation will be presented on the standard forms issued by the Department of Health. These can be found at:


Each application should also be accompanied by a copy of the person’s care plan

Form 1 is the Urgent Authorisation
Form 4 is the request for a standard authorisation
On receipt of form 1 and / or 4 the DoLS team will consider if the referral is appropriate and may request further information from the managing authority at this point.

From the date of receipt of the Request for Authorisation the Supervisory Body have 21 calendar days ( 7 if the Managing Authority have issued themselves with an Urgent Authorisation) to commission and complete all 6 assessments and to respond to the Managing Authority.
Deprivation of liberty process

Assessment of Capacity
Does the person have the Capacity to make their own decision about whether to be accommodated in this care home for the purpose of being given the proposed care or treatment?

Are they able to:
- Understand the information?
- Retain the information?
- Weigh up the information?
- And communicate their decision?

Has it been established through wider consultation (other professionals, family, friends, carers...) that accommodating them in this care home is the least restrictive option and in their best interests (and paper work completed)?

Have you all considered the circumstances of this particular case, the code of practice and current court judgements to identify factors that may indicate a Deprivation of Liberty is occurring?

Have you discussed the circumstances with the Newcastle Deprivation of Liberty Team?
(Tel: 0191 2788156)
Remember that ultimately it is your responsibility to make the decision as to whether you feel the person concerned is being deprived of their liberty and whether you need to make a request for authorisation.

You will need to issue yourself with an urgent authorisation if: the person lacks capacity, they are resident in your care home, this is in their best interests for them to be accommodated there and you think they are deprived of their liberty. If the person is not yet resident with you, you only need the standard authorisation.

Fill in: Form 1 - Urgent Authorisation (only lasts 7 days)
for this to be legal you will also need to submit this form along with Form 4 - Standard Authorisation
(if no urgent authorisation in place this can be applied for 28 days in advance).

Send them to the DoLs office:
Safeguarding Adults Unit
Shieldfield Centre, Clarence Walk
Newcastle upon Tyne, NE2 1AL
In circumstances where the Managing Authority feels a DoL is already taking place they can issue themselves with an urgent authorisation (Form 1) which can last for a maximum of 7 calendar days - refer to chapter 6 of the DoLS code of practice.

This authorisation is only permissible if the managing authority immediately apply for a standard authorisation (Form4) from the supervisory body.

The supervisory body has to then complete the six necessary assessments within the seven days and can only issue an extension of a further 7 days (Form 2) in exceptional circumstances. The outcome of the extension is recorded on Form 3.

It is at this point that the DoLS Manager would, if the relevant person is unrepresented, appoint an IMCA using form 30. The IMCA service for Newcastle is commissioned from:

Gemma Hill  
Skills for People  
Tankerville Place  
Jesmond  
Newcastle

In line with other local and regional Local Authorities the Newcastle DoLS Manager will commission the 6 required assessments in the following way and order:
1. Age Assessment (Form 5) - this will be carried out using information from the Request for Authorisation and Newcastle City Council computer records - the assessment will be carried out by a Best Interests Assessor.

The DoLS Manager will use the DoH standard form 29 to appoint the Section 12 doctor and specify in Part B any other assessments they will be required to carry out.

2. Mental Health Assessment (Form 6) - this will be carried out by a section 12 doctor from the regional list.

3. Mental Capacity Assessment (Form 7) - this will be carried out by a section 12 doctor from the regional list who has a specialism in the area required.

4. Eligibility Assessment (Form 9) - this will be carried out by a section 12 doctor from the regional list.

The DoLS Manager will use the DoH standard form 28 to appoint the Best Interests Assessor and specify in Part B any other assessments they will be required to carry out.

5. No refusals Assessment (Form 8) - this will be carried out by a Best Interests Assessor.

6. Best Interests Assessment (Form 10) - this will be carried out by a Best Interests Assessor. This is probably one of the most important assessments as it is the Best Interests assessor who establishes if a DoL is occurring or is likely to occur and who determines if it is in the relevant person’s best interests. In addition they have to identify someone who can act as the relevant person’s representative using form 24 getting that person to sign the form saying they agreed to the appointment.

All assessments have to concur for a DoLS authorisation to be granted. If any one of the assessments is negative then the DoLS assessment process must stop.

The DoLS Manager can use an equivalent assessment instead of requesting a new assessment. The equivalent assessment does not have to have been done for the purpose of DoLS but has to have been completed within the last year. If an equivalent assessment is used the DoLS Manager needs to complete Form 11.

Please see section on access to records in relating to IMCA access to records
Once an authorisation has been granted the DoLS Manager will need to appoint a Relevant Person’s Representative as recommended by the Best Interests Assessor (Form 24).

The role of the Relevant Person’s Representative is to maintain contact with the relevant person and to support them in all aspects relating to the DoL. Chapter 7 in the DoLS code of practice explains more fully the role of the Relevant Person’s Representative.

The Managing Authority should provide the relevant person and their representative with the following information both orally and in writing:

- The effects of the authorisation.
- Complaints procedures.
- The right to apply to the court of protection.
- The right to have the support of an IMCA if the RPR is unpaid.

The Managing Authority also need to review the relevant person’s care plan to include any conditions attached to the authorisation.

When a standard authorisation is denied

The actions needed when a request for authorisation is denied will depend on the circumstances. Some examples may be:

If the outcome of the process is that the person is not being deprived of their liberty the Managing Authority should be able to continue to support them without any further action being needed.

If the Age assessment is not met then action under the Children Act 1989 may need to be considered.

If the Mental Health Assessment or Eligibility Assessment are not met then action under the Mental Health Act 1983 may need to be considered.
If the Mental Health Assessment is not met then the Managing authority and commissioners will need to consider how they will support the person to make their own decisions.

Form 13 may give recommendations for alternative actions.

The Managing Authority should make alternative arrangements for the delivery of care having mind for the potential for unlawful DoL.

A referral through the Safeguarding process may need to be discussed with the Safeguarding Unit should concerns be raised about an unlawful DoL.

The case may be returned for the care management system to address issues raised.
Monitoring the DoL Authorisation

The Managing Authority need to:

- Record in the relevant person’s care plan who within their organisation will be responsible for monitoring the DoL and its conditions.
- Monitor, support and facilitate visits by the Relevant Person’s Representative.
- Report to the Supervisory Body any concerns relating to the Relevant Person’s Representative and their involvement.
- How often the situation will be reviewed.
- What circumstances will trigger a review.
- How any change in circumstance will be monitored and reported to the supervisory body - Form 19.
- If the Eligibility Assessment is no longer valid then the Managing Authority should report this to the Supervisory Body - Form 14 - If within 28 days the person once again becomes eligible for the DoL then the managing Authority should inform the Supervisory Body – Form 15.
- Continue to try to reduce the restrictions to a level where a DoL would no longer be needed.

The Relevant Person’s Representative:

Has responsibilities in this area which are highlighted in Chapter 7 of the DoLS code of practice.

Any Professional involved in the welfare or care of the individual such as social workers, nurses, ward staff, care home staff, care managers, nurse assessors, GP’s.

Have responsibilities to inform the managing authority and supervisory bodies of anything they perceive as affecting the DoLS authorisation and any conditions.
The Review

When the Supervisory Body is to carry out a review they need to inform the Relevant Person and their Representative and the Managing Authority using form 20.

The DoLS Manager will need to decide which elements need to be reviewed and record the decisions relating to any review on form 21. A review assessment will need to be carried out for each element where there has been a change of circumstance.

The review process will follow the same lines as the original DoLS assessment process but if the DoLS Manager does not feel that any of the qualifying requirements need to be reviewed then there need be no further action.

Form 22 should be used to summarise the outcome of the review and should be authorised by a signatory from the Supervisory Body then form 22 and copies of any assessments carried out during the review should be sent to:

- The relevant person
- The Relevant Person's Representative
- The Managing Authority
- IMCA
- Any other person consulted in the assessment
If any of the requirements cease to be met then the authorisation should be terminated with immediate effect.

Once an Authorisation comes to an end the Managing Authority cannot lawfully continue to deprive the relevant person of their liberty.

If the Authorisation is about to come to an end and the Managing Authority feel the person will still be deprived of their liberty then it must apply for a further Standard Authorisation.

There is no statutory guidance as to how far in advance of the expiry of one authorisation another can be applied for. In Newcastle it would be expected that the care home will apply 28 days in advance.

Once requested the process for renewing an authorisation is the same as that for obtaining the original authorisation.
What happens if someone thinks a person is being deprived of their liberty without authorisation?

It is a serious issue to deprive someone of their liberty without authorisation and if anyone feels this is the case they should report it to the appropriate authorities.

Chapter 9 of the DoLS code of practice explains this in more detail.

Initially anyone believing that a person is being deprived of their liberty without authorisation they should initially discuss this with the Managing Authority.

The Managing Authority should respond within 24 hours.

If the Managing Authority does not resolve the situation or apply for an authorisation then the concerned person can ask the Supervisory Body to decide. They should:

- Tell the supervisory body the name of the relevant person and the care home or hospital where they are Deprived of their liberty.
- As far as they can they should explain why they feel that the relevant person may be deprived of their liberty.

The Supervisory Body does not have to investigate this further if:

- If the request appears to be vexatious or frivolous.
- Where a recent assessment has been carried out and repeat requests are received.
- Where there is no change of circumstance that would merit the question being considered again.

If the request appears genuine the Supervisory Body should appoint someone eligible to be a Best Interests Assessor to consider if the relevant person is deprived of their liberty.

They will notify all concerned using form 16:

- That they have been asked to assess whether a DoL is taking place.
- Whether or not they have decided to commission an assessment.
- Who the relevant assessor is.
The Supervisory Body will use Form 17 to record their decision and forward this to the person who raised the concern, the relevant person, the Managing Authority and any IMCA involved.

If the BIA’s assessment indicates a DoL is taking place then they will start the process as if the Managing Authority had applied for a Standard Authorisation.

The DoLS manager will also discuss the case with the Newcastle Safeguarding Adults Unit if they feel the Managing Authorities failure to apply for a DoLS authorisation constitutes abuse.

### Out of Area Requests

Managing Authorities need to know which Supervisory Body to apply to for each DoLS request for authorisation.

- For hospitals this will be the PCT that commissions the care or treatment.
- For care homes this will be the local authority for the area in which the relevant person is ordinarily resident. Generally speaking this would be the local authority funding the placement.
- If the relevant person is not ordinarily resident in any area then the supervisory body will be the local authority where the care home is geographically located.

If any person is unsure about who the Supervisory Body would be then they can contact the DoLS team to discuss this.
Chapter 10 of the DoLS code of practice and chapter 15 of the main MCA code of practice contain further information explaining how complaints and disputes are managed under the Mental Capacity Act 2005.

Whenever possible any disputes should be resolved informally or through Managing Authority and Supervisory Body Complaints procedures with referrals to the Court of Protection kept to a minimum, although relevant persons and their representatives should not be discouraged from doing so.

The relevant person or their representative can make a referral before a decision has been made on an application to deprive the person of their liberty. This may for example be to ask the court to decide if the relevant person lacks capacity.

Once a standard authorisation has been given the relevant person or their representative have a right to apply to the Court of Protection in relation to the following matters. They may also ask the same questions of the court relating to an urgent authorisation:

- Whether the relevant person meets one or more of the qualifying requirements for DoLS.
- The period for which the authorisation should be in force.
- The purpose for which the standard authorisation is given.
- The conditions of that authorisation.
### Form MCA1
Record of a Mental Capacity Assessment

**Practice guidance:**
You are completing this form because you were uncertain if the person identified below had mental capacity to make a particular decision or that you had information that led you to believe this person did not have mental capacity to make a particular decision.

<table>
<thead>
<tr>
<th>Name Of Service User:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name Of Assessing Officer:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date assessment started:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Please give the name and status of anyone who assisted with this assessment:

<table>
<thead>
<tr>
<th>Name</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Description Of The Decision To Be Made By Service User In Relation To Their Care Or Treatment:
STAGE 1 - DETERMINING IMPAIRMENT OR DISTURBANCE OF MIND OR BRAIN

Practice Guidance: Every adult should be assumed to have the capacity to make a decision unless it is proved that they lack capacity.
An assumption about someone’s capacity cannot be made merely on the basis of a Service User’s age or appearance, condition or aspect of his or her behaviour.

<table>
<thead>
<tr>
<th>Response</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Q1. Is there an impairment of, or disturbance in the functioning of the Service User’s mind or brain? (For example, symptoms of alcohol or drug use, delirium, concussion following head injury, conditions associated with some forms of mental illness, dementia, significant learning disability, long term effects of brain damage, confusion, drowsiness or loss of consciousness due to a physical or medical condition)

Please detail:

If you have answered **YES** to Question 1, **PROCEED TO STAGE 2**

If you have answered **NO** to the above, there is no such impairment or disturbance and thus **THE SERVICE USER CANNOT LACK CAPACITY** within the meaning of the Mental Capacity Act 2005.
Sign/date this form, record the outcome within the Service User records and **PROCEED NO FURTHER WITH THIS RECORD OF ASSESSMENT OF CAPACITY**.

STAGE 2 - ASSESSMENT

Having determined impairment or disturbance (Stage 1) and given consideration to the ease, location and timing; relevance of information communicated; the communication method used; and others involvement, you now need to complete your assessment and form your opinion as to whether the impairment or disturbance is sufficient that the Service User lacks the capacity to make this particular decision at this moment in time.

<table>
<thead>
<tr>
<th>Response</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Q2. Do you consider the Service User **able** to understand the information relevant to the decision and that this information has been provided in a way that the service user is most probably able to understand?
Q3. Do you consider the Service User able to retain the information for long enough to use it in order to make a choice or an effective decision?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Comments</th>
</tr>
</thead>
</table>

Q4. Do you consider the Service User able to use or weigh that information as part of the process of making the decision?  

Q5. Do you consider the Service User able to communicate their decision?  

If you have answered YES consistently to Q2 to Q5, the Service User is considered on the balance of probability, to have the capacity to make this particular decision at this time. Sign/date this form and record the outcome within the Service User records and PROCEED NO FURTHER WITH THIS CAPACITY ASSESSMENT.  

If you have answered NO to any of the questions, proceed to Q6.  

Q6. Overall, do you consider on the balance of probability, that the impairment or disturbance as identified in STAGE 1, is sufficient that the Service User lacks the capacity to make this particular decision?  

On the balance of probability, the Service User Lacks Capacity to make this decision at this particular time. Sign and date this form and proceed to consider ‘Best Interests’

Signature:  

Date assessment completed

59
Record of actions taken to make a best interest decision

<table>
<thead>
<tr>
<th>Name Of Service User:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name Of Decision Making Officer:</td>
<td></td>
</tr>
<tr>
<td>Date best interest decision making process started:</td>
<td></td>
</tr>
</tbody>
</table>

Please give the name and status of anyone who assisted with making this best interest decision:

<table>
<thead>
<tr>
<th>Name</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Description of the decision to be made regarding the service user (in relation to their care or treatment):

PART 1 DETERMINING LACK OF CAPACITY

Every adult should be assumed to have the capacity to make a decision unless it is proved that they lack capacity. An assumption about someone's capacity cannot be made merely on the basis of a Service User's age or appearance, condition or aspect of...
his or her behaviour.

<table>
<thead>
<tr>
<th>Has the Service User been determined as lacking capacity to make this particular decision at this moment in time?</th>
<th>Yes</th>
<th>No</th>
<th>Guidance: give date of capacity assessment (form MCA1)</th>
</tr>
</thead>
</table>

If you have answered **YES**, **PROCEED TO PART 2** of this document.  
If you have answered **NO**, identify decision(s) to be made and complete capacity assessment.

**PART 2 – DETERMINING BEST INTERESTS**  
All steps and decisions taken for someone who lacks capacity must be taken in the their best interests.

<table>
<thead>
<tr>
<th>Q1. Avoid Discrimination – <strong>Guidance</strong>: Have you avoided making assumptions merely on the basis of the Service Users age, appearance, condition or behaviour?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Q2. Relevant Circumstances – <strong>Guidance</strong>: Have you identified all the things the Service User would have taken into account when making the decision for themselves?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Q3. Regaining Capacity – <strong>Guidance</strong>: Have you considered if the Service User is likely to have capacity at some date in the future and if the decision can be delayed until that time?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Q4. Encourage Participation – <strong>Guidance</strong>: Have you done whatever is possible to permit and encourage the Service User to take part in making the decision?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

| Q5. Special Considerations – **Guidance**: Where the decision relates to life sustaining treatment, have you ensured that the decision has not been motivated in any way, by a desire to bring about their death? | Yes | No |
Q6. **The Persons Wishes** –
**Guidance:** Has consideration been given to the Service Users past and present wishes and feelings, beliefs and values, that would be likely to influence this decision?

Q7. **Written statements** –
**Guidance:** Have you considered any written statement made by the person when they had capacity?

<table>
<thead>
<tr>
<th>Response</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Q8. **Consult Others** –
**Guidance:** Have you where practicable and appropriate, consulted and taken into account the views of others including those engaged in caring for the Service User, relatives and friends, persons previously named by the Service User, Attorney under a Lasting or Enduring Power of Attorney or Deputy of the Court of Protection?

Q9. **IMCA** –
**Guidance:** If the decision relates to serious medical treatment or changes to accommodation and there is no one identified in Q8, you must consider instructing an Independent Mental Capacity Advocate and receive a report from an IMCA. See IMCA referral document for relevant guidance regarding referral to the IMCA service.

Q9. **Avoid Restricting Rights** –
**Guidance:** Has consideration been given to the least restrictive option for the service user?

Q10. **Other Considerations** –
**Guidance:** Have you considered factors such as emotional bonds, family obligations that the person would be likely to consider if they were making the
Q11. Having considered all the relevant circumstances, what decision/action do you intend to take whilst acting in the Best Interests of the Service User?

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Date:</th>
</tr>
</thead>
</table>
APPENDIX 3

Contacting the Independent Mental Capacity Advocate

You have assessed a service user as not having capacity to make a particular decision

Is the person without capacity the subject or alleged perpetrator in an adult protection issue?

YES

Consider engaging IMCA

NO

Does the service user have appropriate support apart from paid carers?

YES

Do not engage IMCA

NO

Is the decision about serious medical treatment or change of accommodation?

YES

You must engage IMCA

NO

Is the decision about a review of accommodation?

YES

Consider engaging IMCA

NO

Do not engage IMCA

There are some exceptions for self-funders and some people placed under Mental Health Act. Consult the IMCA instructions or check with providers.

For further info:
- Consult pages 178-198 of the Code of Practice
- Contact Safeguarding Unit– 0191 2788156

Contact:
Skills for People
Key House, Tankerville Place, Newcastle upon Tyne NE2 3AT
Telephone: 0191 281 7322
Fax: 0191 212 0300

Adapted from Birmingham and Solihull Mental Health NHS Trust Flow Diagram
APPENDIX 4

Newcastle/North Tyneside

Form MCA 3 : Referral form for the involvement of an Independent Mental Capacity Advocate (IMCA).

For the making of a best interests decision.

Practice Guidance :

- This form must be completed in full by the person responsible for making the best interest decision.

- Questions 1–4 below are situations where a referral to the IMCA service **MUST** be made.

- Guidance for referral regarding safeguarding adults and care reviews is on page 4.

- **Complete Part 1** of this form prior to making contact with the IMCA service. **Referrals for this service can be made initially by phone but must be followed immediately by a completed form.**

- Receipt of a completed form will be the trigger for involvement of the IMCA service

Independent Mental Capacity Advocates are provided to Newcastle by:

**Newcastle and North Tyneside: Skills for People**  
Key House, Tankerville Place, Newcastle upon Tyne NE2 3AT  
Telephone: 0191 281 7322  Fax: 0191 212 0300  
Email: terri.clibery@skillsforpeople.org.uk

REFERRER CONTACT DETAILS:

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Designation</td>
<td></td>
</tr>
<tr>
<td>Team Designation</td>
<td>(e.g.</td>
</tr>
</tbody>
</table>
Part 1: eligibility for service.
1. You are making this referral because:

**Q1.** A capacity assessment has been made under the arrangements of the Mental Capacity Act 2005 (Section 3 MCA 2005 / Code: Chapter 4) and as a result of this assessment the person is considered not to have the mental capacity to make the decision required.

| Yes | No | Date assessment completed |

**Q2.** There is a best interest decision to be made (Section 4 & 5 MCA 2005/Code: Chapter 5)

| Yes | No | Date commenced |

**Q3.** To the best of your knowledge the person referred who lacks capacity does not have any friends or relatives to consult or it is impracticable to consult them (there is no one to speak for them), there is no nominated person, valid and applicable advanced directive, Court appointed Deputy and no EPA / LPA

| Yes | No |

**Q4.** The decision to be made relates to (select):

<table>
<thead>
<tr>
<th>Serious medical treatment</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guidance</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Treatments regulated under Part 4 of the Mental Health Act 1983 are excluded from referral to the IMCA service or</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NHS to arrange a hospital stay for 28 days or more or</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>NHS to arrange accommodation for 8 weeks or more or</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>The Local Authority proposes to provide residential accommodation for more than 8 weeks whilst acting under the National Assistance Act</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please provide a brief summary:

**Practice Guidance:** If you have answered “yes” to questions Q1 to Q3 and yes to an element of Q4 please complete Part 2 of this form and send it to the IMCA service. If you have answered “no” or are unable to answer any of...
the questions seek advice before taking forward a referral to the IMCA service.

2. Care Review: If your referral is related to care review and is consistent with the guidance on page 4 and you have answered yes to questions 1 to 3 please continue to part 2 of this form.

| Care Review | Yes |

3. Safeguarding adults: If your referral is related to a safeguarding adults case and conforms to questions 1 to 4 above a referral to IMCA must be made - continue to part 2 of this form.

OR

If the person speaking for the person without capacity is considered not to be acting in the best interests of the person without capacity a referral should be made to general advocacy services and not the IMCA. If however the position is consistent with the exceptional criteria guidance on page 4, continue to part 2 of this form.

| Safeguarding Adults | Yes |

Part 2. Referral details:

Practice Guidance:

Wherever possible please send additional relevant information (Background information, Assessment, Care Plan etc), this will facilitate the IMCA’s involvement.

Please keep a copy of this referral for your records.

<table>
<thead>
<tr>
<th>Name of Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persons Date Of Birth</td>
</tr>
<tr>
<td>Persons Age</td>
</tr>
</tbody>
</table>

| Persons home address: |

| How can the person be contacted? |

<p>| In which local Authority district is the person now? Newcastle |
| North Tyneside |</p>
<table>
<thead>
<tr>
<th>Does the person have any specific communication needs?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes please detail</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is there any risk of violent or dangerous behaviour or any other pertinent risks the IMCA should be aware of?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes please explain:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Estimated date by which report from the IMCA is required</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dates of meetings relating to decision</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Who else is involved in making this best interest decision?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name and contact details of the person making this referral:</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date this referral was sent to the IMCA service</th>
<th></th>
</tr>
</thead>
</table>
Referral criteria for advocacy in relation to safeguarding adults and care reviews:

The IMCA Service is a limited resource, and is not intended to duplicate the services offered by other local advocacy services.

Care Reviews

In cases, a referral can be made to the IMCA service in relation to:

- Care reviews regarding accommodation or.

Cases of adult protection (where it is alleged that a person who may lack capacity has been abused or neglected by another person; or may have abused another – see Appendix 5 for details).

However in most cases a referral to a local relevant advocacy service and not an IMCA service will suffice.

When to refer to a local advocacy service:

Local commissioners expect local advocacy services should be referred to for professional issue specific advocacy in cases of care reviews regarding accommodation where:

- There is a conflict of interest between the professionals or carers.

- Cases where consulting family or friends is compromised by the reasonable belief that they would not have the person’s best interests at heart.

It is expected that when undertaking such work local advocacy services follow the best practice guidelines within the Code of Practice. Such best practice would include:

- Meeting with the Vulnerable Adult.

- Discussing the issue with appropriate others.
- Producing a report outlining their best interest recommendation.
- Being involved in the final decision of best interest.

**When to refer to IMCA service in relation to care reviews:**

Referral should ONLY be made to an IMCA service where it is felt that the IMCA's legal right to full access of medical notes, or to obtaining a second opinion may be required i.e. in areas of conflict where otherwise good practice may be denied to the person without capacity.

**Additional information about functions of Independent Mental Capacity Advocates:**

- Must confirm that the person instructing them has authority to do so.
- Should interview or meet the person who lacks capacity, if possible.
- Must act in accordance with the principles of the Act, particularly in the duty to act in the persons best interests, and take account of the relevant guidance in the Code.
- May examine any relevant records that the Act gives them access to.
- Should obtain the views of professionals and paid workers providing care or treatment for the person who lacks capacity.
- Should obtain the views of anybody else who can give information about the wishes and feelings, beliefs and values of the person who lacks capacity.
- Should obtain any other information they think necessary.
- Must find out what support a person who lacks capacity has had to help them make the specific decision.
• Must try to find out what the person’s wishes and feeling, beliefs and values would be likely to be if the person had capacity.

• Must try to find out what the person’s past and present wishes and feeling, beliefs and values are.

• Should find out what alternative options there are.

• Should consider whether getting another medical opinion would help the person who lacks capacity.

• Must write a report on their findings for the local authority or the NHS.

An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in his welfare. The right of challenge applies both to decisions about lack of capacity and a person’s best interests.

Taken from D. of H. document ‘The Mental Capacity act 2005, issued in February 2007 – Gateway reference 7890 part 2.4 other information can be found in the Mental Capacity Act Code of Practice.'
APPENDIX 5

ADASS
PRACTICE GUIDANCE
CRITERIA FOR THE USE OF IMCA’S IN
SAFEGUARDING ADULTS CASES

Introduction

The Mental Capacity Act 2005 provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves.

The Act sets out core principles and methods for making decisions and carrying out actions in relation to personal welfare, healthcare and financial matters affecting people who may lack capacity to make specific decisions about these issues for themselves.

The Act introduces several new roles, bodies and powers, all of which support the Act’s provisions. One of these is the Act is the Independent Mental Capacity Advocacy (IMCA) Service, which introduces the role of the Independent Mental Capacity Advocate (IMCA).

Independent Mental Capacity Advocate (IMCA) Service

The purpose of the Independent Mental Capacity Advocacy Service is to help particularly vulnerable people who lack capacity, make important decisions about serious medical treatment and changes of accommodation, and who have no family or friends that it would be appropriate to consult about those decisions. The role of the Independent Mental Capacity Advocate (IMCA) is to work with and support people who lack capacity, and
represent their views to those who are working to determine their best interests.

More recently the DoH extended the Act through Regulations to cover two additional circumstances a) where a safeguarding adults allegation has been made and b) in care reviews.

This ADASS Practice Guidance focuses on the first circumstance and provides guidance on which eligible individuals under safeguarding adults measures would benefit from having the involvement of an IMCA, ensuring that the available resources are targeted to those in most need.

This ADASS Practice Guidance should be read in conjunction with your own Local Authority’s Safeguarding Adults Multi-Agency Policy and Procedures.

Who is Eligible?
In relation to safeguarding adults cases, the Regulations specify that Local Authorities and the NHS have powers to instruct an IMCA if the following requirements are met:

- Where safeguarding measures are being put in place in relation to the protection of vulnerable adults from abuse.
- Where the person lacks capacity

The Local Authority or NHS body may instruct an IMCA to represent the person concerned if it is satisfied that it would be of benefit for the person to do so.

In safeguarding adults cases only, access to IMCAs is not restricted to people who have no one else to support or represent them. Therefore, people who lack capacity who have family and friends can still have an IMCA to support them through the safeguarding process.

The regulations equally apply to a person:

- Who may have been abused.
- Who has been neglected.
- Who is alleged to be the abuser.

Where the qualifying criteria are met, it would be unlawful for the Local Authority or the NHS not to consider the exercise of their power to instruct an IMCA for safeguarding adults cases.
Assessing Capacity in relation to Safeguarding Adults Issues

Someone is said to lack capacity if they are unable to make a particular decision at a specific time. This inability must be caused by an impediment or disturbance of the mind or brain, whether temporary or permanent.

In order to make a decision, the person needs to be able to:

- Absorb basic information about the pros and cons of an issue.
- Retain the information for long enough to process it.
- Weigh up the pros and cons against their own value system and arrive at a decision.
- Communicate that decision.

The Mental Capacity Act Code of Practice includes a two-stage test of capacity and to be eligible for the IMCA service a person must lack capacity in relation to a specific issue or decision in question.

For example:

A person may not be able to absorb and weigh up the pros and cons of continuing to live with an abusive family member.

**At what point in the process should an IMCA become involved?**

Consideration should be given as to the most appropriate time to instruct an IMCA in safeguarding adults cases. This will be dependent on the decisions to be made and the risks to those involved. In some cases it will be appropriate to involve an IMCA at the Strategy Discussion / Meeting stage. This would need to happen for cases where the wishes / decisions made by the individual would have a significant impact on the investigative process or where immediate actions need to be taken to safeguard the individual prior to further investigation taking place.

In other cases, it may be more appropriate for an IMCA to become involved at the case conference / safeguarding planning stage so that they can provide input into the safeguarding plan. This would be more appropriate in cases where decisions need to be made as a result of findings of the investigation.
Where an IMCA has been involved at any stage of the safeguarding process, they should be invited to attend Safeguarding Adults Meetings, as appropriate, including any subsequent reviews. The involvement of the IMCA should be reviewed once the specific decisions that prompted the referral have been resolved.

In some situations, a case may start out as a safeguarding adults case, where consideration is given whether or not to involve an IMCA under the set criteria – but this subsequently becomes a case where the allegations or evidence give rise to the question of whether the person should be moved in their best interests. The case then becomes one where an IMCA must be involved if there is no one else appropriate to support and represent the person in this decision.

In those cases involving Lasting Powers of Attorney, where there is reasonable belief that the person holding the LPA is not acting in the best interests of the person lacking capacity, an application should be made to the Court of Protection for either a best interest decision or to displace the LPA before an IMCA is considered.

**What are the criteria for referring someone to the IMCA Service?**

The IMCA Service is a limited resource and it is important that the use of IMCAS focuses on cases where other arrangements are not robust enough to support the necessary decision - making for the individual. An external (IMCA) opinion will give a more defensible and more person-centred outcome.

In order to ensure that the IMCA Service is targeted to those in most need it is recommended that, in relation to safeguarding adults, referrals to the IMCA Service are made in cases where one of the following applies:

**For someone who may have been abused or neglected**

- Where there is a serious exposure to risk:
  - Risk of death
  - Risk of serious physical injury or illness
  - Risk of serious deterioration in physical or mental health
  - Risk of serious emotional distress
• Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person’s best interests at heart.

• Where there is a conflict of views between the decision makers regarding the best interests of the person.

**For someone who is alleged to be the abuser**

• Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person’s best interests at heart.

• Where there is a conflict of views between the decision makers regarding the best interests of the person.

**Traditional Advocacy Services**

When the person is already supported by an approved advocacy service, there should be no need to involve the IMCA Service. In many cases a person will be best served having an ‘ordinary’ advocate who can cover all issues and not have strict time limits on their involvement.
Referrals can **only** be made by Social Workers or CPNs (as part of MDT)

Once all information completed, please send to Cher Thompson, Service User Finance, Room 143, Civic Centre, Newcastle upon Tyne

<table>
<thead>
<tr>
<th>NAME OF REFERRER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>POSITION HELD:</td>
</tr>
<tr>
<td>LOCATION:</td>
</tr>
</tbody>
</table>

| CONTACT TELEPHONE NUMBER: |

| FULL NAME OF SERVICE USER: |

| USUAL ADDRESS: |

| TEMPORARY ADDRESS (if different): |

| Date of Admission to Temporary Address: |
| Give Details of Reasons for Temporary Placement: |

<table>
<thead>
<tr>
<th>DOB:</th>
<th>NI Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>IS SU ENTITLED TO S117:</td>
<td>YES/NO</td>
</tr>
<tr>
<td>HAS AN ASSESSMENT OF CAPACITY RE FINANCES UNDER MCA 2005 BEEN COMPLETED AND RECORDED ON SU’S FILE?:</td>
<td>YES/NO</td>
</tr>
<tr>
<td>Question</td>
<td>YES/NO</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td><strong>DOES THE SU HAVE CAPACITY?:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>HAS THE “BEST INTEREST DECISION” TEST BEEN</strong></td>
<td></td>
</tr>
<tr>
<td><strong>WHAT TYPE OF AUTHORITY IS BEING SOUGHT?</strong></td>
<td></td>
</tr>
<tr>
<td>Appointeeship:</td>
<td></td>
</tr>
<tr>
<td>Financial Deputy:</td>
<td></td>
</tr>
<tr>
<td>Is an application being made for a Health and Welfare Deputy?:</td>
<td>YES/NO</td>
</tr>
<tr>
<td><strong>GIVE REASONS FOR APPLICATION:</strong></td>
<td></td>
</tr>
</tbody>
</table>
**EXISTING ARRANGEMENTS – please answer all questions:**

<table>
<thead>
<tr>
<th>Question</th>
<th>YES/NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is there an Appointee in place for SU?</td>
<td></td>
</tr>
<tr>
<td>If yes, give name and address:</td>
<td></td>
</tr>
<tr>
<td>Relationship to SU:</td>
<td></td>
</tr>
<tr>
<td>Are there any Court Orders in existence in relation to the SU?:</td>
<td></td>
</tr>
<tr>
<td>If yes, please provide a copy of the Order (if available)</td>
<td></td>
</tr>
<tr>
<td><strong>OR provide:</strong></td>
<td></td>
</tr>
<tr>
<td>Name and address of Court:</td>
<td></td>
</tr>
<tr>
<td>Case Number:</td>
<td></td>
</tr>
<tr>
<td>Date of Order:</td>
<td></td>
</tr>
<tr>
<td>Type of Order:</td>
<td></td>
</tr>
<tr>
<td>Contact Details of Parties to proceedings:</td>
<td></td>
</tr>
<tr>
<td>Is there an Enduring Power of Attorney in existence?:</td>
<td></td>
</tr>
<tr>
<td>Name and Addresses of Attorneys:</td>
<td></td>
</tr>
<tr>
<td>If yes, is it registered?:</td>
<td></td>
</tr>
<tr>
<td>Date of Registration:</td>
<td></td>
</tr>
<tr>
<td>Are there any Court Orders in existence in relation to the SU?:</td>
<td></td>
</tr>
<tr>
<td>If yes, please provide a copy of the Order (if available)</td>
<td></td>
</tr>
</tbody>
</table>
OR provide:

Name and address of Court:  
Case Number:  Date of Order:  
Type of Order:  
Contact Details of Parties to proceedings:

<table>
<thead>
<tr>
<th>HAVE YOU ATTACHED A COPY OF THE SU’S CARE ASSESSMENT?:</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES/NO</td>
</tr>
<tr>
<td>If not, why not?:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GP’S NAME:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS:</td>
<td></td>
</tr>
</tbody>
</table>

| CONTACT TELEPHONE NUMBER: |

<table>
<thead>
<tr>
<th>PSYCHIATRIST’S NAME (if any involvement):</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS:</td>
</tr>
</tbody>
</table>

| CONTACT TELEPHONE NUMBER: |
ONLY Complete This Section If Application Is For Financial Deputy –

NOTE: Appointeeship only appropriate where SU has limited savings and no private pension, investments etc

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Relationship to SU:</td>
<td>Level of Involvement:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Why Person not suitable to apply:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Relationship to SU:</td>
<td>Level of Involvement:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Why Person not suitable to apply:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name:</th>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Relationship to SU:</td>
<td>Level of Involvement:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Why Person not suitable to apply:</td>
<td></td>
</tr>
</tbody>
</table>
### INCOME:

**State Pension:** £ per week/monthly

Benefit Office Address:

**Private Pension:** £ per week/monthly

Pension Provider Name:

Address:

Policy Number: Telephone

Contact:
<table>
<thead>
<tr>
<th>IS THE SU IN RECEIPT OF ANY OTHER BENEFITS?:</th>
<th>YES/NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Benefit:</td>
<td></td>
</tr>
<tr>
<td>Benefit Office Address:</td>
<td></td>
</tr>
<tr>
<td>Amount of Benefit: £</td>
<td></td>
</tr>
<tr>
<td>per week/monthal</td>
<td></td>
</tr>
</tbody>
</table>

| Type of Benefit:                           |        |
| Benefit Office Address:                    |        |
| Amount of Benefit: £                       |        |
| per week/monthal                          |        |

| Type of Benefit:                           |        |
| Benefit Office Address:                    |        |
| Amount of Benefit: £                       |        |
| per week/monthal                          |        |

<table>
<thead>
<tr>
<th>ASSETS – please provide full details and copy documents (use separate sheet if required):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the SU own fully or own a part share of any property:</td>
</tr>
<tr>
<td>If yes, please provide:-</td>
</tr>
<tr>
<td>Address of Property:</td>
</tr>
<tr>
<td>Details of Ownership (include details of other part owners):</td>
</tr>
<tr>
<td>Is the property subject to any mortgage?:</td>
</tr>
<tr>
<td>Mortgagor’s Name</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td><strong>Premium</strong> Bonds held:</td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td>Name of Holder:</td>
</tr>
<tr>
<td>Shares held:</td>
</tr>
<tr>
<td>Name of Company:</td>
</tr>
<tr>
<td>Contact Details:</td>
</tr>
<tr>
<td>Number of Shares held:</td>
</tr>
<tr>
<td>Other: (eg ISAs, Bonds etc)</td>
</tr>
<tr>
<td>Building Society Account held:</td>
</tr>
<tr>
<td>If yes, name of Account Holder(s):</td>
</tr>
<tr>
<td>Name of BS:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Sort Code:</td>
</tr>
<tr>
<td>Account No:</td>
</tr>
<tr>
<td>Bank Account held:</td>
</tr>
<tr>
<td>If yes, name of Account Holder(s):</td>
</tr>
<tr>
<td>Bank:</td>
</tr>
<tr>
<td>Address of Bank:</td>
</tr>
<tr>
<td>Sort Code:</td>
</tr>
<tr>
<td>Account No:</td>
</tr>
<tr>
<td><strong>OUTGOINGS</strong> – Please provide copies of invoices/bills (use separate sheet if required):</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td><strong>Mortgage:</strong> £ per week/monthly</td>
</tr>
<tr>
<td><strong>Amount Outstanding:</strong> £</td>
</tr>
<tr>
<td><strong>Rent:</strong> £ per week/monthly</td>
</tr>
<tr>
<td><strong>Payable to:</strong></td>
</tr>
<tr>
<td><strong>Gas:</strong> £ per week/monthly/quarter</td>
</tr>
<tr>
<td><strong>Payable to:</strong></td>
</tr>
<tr>
<td><strong>Electricity:</strong> £ per week/monthly/quarter</td>
</tr>
<tr>
<td><strong>Payable to:</strong></td>
</tr>
<tr>
<td><strong>Council Tax:</strong> £</td>
</tr>
<tr>
<td>---------------------</td>
</tr>
<tr>
<td>Payable to:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Home Care Services:</strong> £</th>
<th>per week/4</th>
</tr>
</thead>
<tbody>
<tr>
<td>weekly/monthly</td>
<td></td>
</tr>
<tr>
<td>Payable to:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Catalogue:</strong> £</th>
<th>per week/4</th>
</tr>
</thead>
<tbody>
<tr>
<td>weekly/monthly</td>
<td></td>
</tr>
<tr>
<td>Payable to:</td>
<td></td>
</tr>
</tbody>
</table>

| Amount outstanding: £    |            |

<table>
<thead>
<tr>
<th><strong>Credit Card:</strong> £</th>
<th>per week/4</th>
</tr>
</thead>
<tbody>
<tr>
<td>weekly/monthly</td>
<td></td>
</tr>
<tr>
<td>Payable to:</td>
<td></td>
</tr>
</tbody>
</table>

| Amount Outstanding: £    |            |
| Other Debts (please provide full details): |

**FAILURE TO PROVIDE ALL THE INFORMATION REQUESTED MAY RESULT IN THE FORM BEING RETURNED WITHOUT ACTION AND WILL RESULT IN DELAY.**

Should you have any queries completing this form, please refer initially to your Line Manager.
Application to see social-care records under the Mental Capacity Act 2005

This application form is to be completed by the following individuals when making requests to access files belonging to a service user who lacks capacity as defined by the Mental Capacity Act 2005:-

- Attorneys acting under a valid Lasting Power of Attorney or Enduring Power of Attorney
- IMCAs (only entitled to the information deemed relevant to decision to be made)
- Court of Protection Visitors
PART ONE – Information in relation to Person Making Request

Surname: .................................................................

First Name: ............................................................

Current Address: ......................................................

..............................................................................

..............................................................................

Daytime Contact Telephone Number: .................................

RELATIONSHIP TO SERVICE USER: ............................
(Family, Friend, Professional etc)

AUTHORITY FOR MAKING REQUEST: ...........................
(EPA/LPA/IMCA/Court Order)

Please note that you will be asked to bring with you the document that grants you authority to access the files when you attend to view the same.

REASON FOR REQUEST
..............................................................................
..............................................................................
..............................................................................

PLEASE CLARIFY WHETHER THERE ARE ANY RECORDS IN PARTICULAR THAT YOU WOULD WISH TO HAVE ACCESS TO (eg current only/previous adult files/all children and adult files etc)

IN RELATION TO AN IMCA – PLEASE STATE DECISION TO BE MADE
..............................................................................
..............................................................................
PART 2– Information in relation to the Service User

Surname: ..............................................
First Names: ..........................................  
Other Names by which person may be known: ..............................................

Current Address: ..............................................

Previous Address (if known): ..............................................

Date of Birth: ..............................................

Signature of Person Making Application ..............................................
Dated: ..............................................

PLEASE COMPLETE ALL SECTIONS. FAILURE TO DO SO MAY RESULT IN A DELAY IN PROVIDING ACCESS TO THE FILES.

PLEASE RETURN THIS FORM TO THE PERSON’S SOCIAL WORKER.