Our safeguarding arrangements will effectively prevent and respond to adult abuse

SAFEGUARDING ADULTS WORKBOOK

Module Two

The Mental Capacity Act and Deprivation of Liberty Safeguards

Teeswide Safeguarding Adults Board

Contents

Revision Number	Date Approved by the Board	Links to Other Policies	Review Date:
One	28 June 2016		June 2017
Two	May 2017	MCA 2005 DoLS Interim Policy 2016-17	May 2018
Three	Sept 2018 (Business Unit)	As above	Sept 2019

Introduction

This workbook has been developed for staff and volunteers who have completed Safeguarding Adults awareness training, which may have been through attending a tutor-led course, completing an e-learning course or the TSAB Safeguarding Adults Awareness workbook. This workbook will build on your prior learning and is module 2 of 8. The modules are as follows:

Module 1: Learning from Serious Instances of Abuse and Neglect
Module 2: The Mental Capacity Act and Deprivation of Liberty Safeguards
Module 3: Domestic Abuse
Module 4: Forced Marriage
Module 5: Female Genital Mutilation
Module 6: Prevent
Module 7: Modern Slavery
Module 8: Self-Neglect.

You must complete all sections of the workbooks and return them to your Manager for assessment. When you have successfully completed all of the modules, you will be issued with a certificate and your training records will be updated: the workbooks will be returned to you to be used as a reference tool.

In the appendices, you will find the current Teeswide Inter-Agency Safeguarding Adults Policy and Procedures for reference purposes.

The workbook has been checked for legal accuracy and is accurate as of Sept 2018. Suggested study time to be allocated to complete this module: 2½ hours.

Once you have completed the workbooks please forward the ***Certificate of Completion*** page to the Teeswide Safeguarding Adults Board, Business Unit, using the contact details below, who will make a record of completion and issue a certificate.

Teeswide Safeguarding Adults Board Business Unit, Kingsway House, West Precinct, Billingham, TS23 2NX Email: tsab.businessunit@stockton.gov.uk

This workbook is aligned with nationally recognised competencies. It is based on the Bournemouth University National Competence Framework for Safeguarding Adults, **and** the MCA Competency Framework, and mapped against the Safeguarding Adults: Roles and competences for health care staff- Intercollegiate Document issued August 2018.

On completing of this workbook, you will be able to:

Level 1 (Foundation)

1. Understand and demonstrate what Adult Safeguarding is
2. Recognise adults in need of Safeguarding and take appropriate action
3. Understand dignity and respect when working with individuals
4. Understand the procedures for raising a Safeguarding Concern
5. Have knowledge of policy, procedures and legislation that supports Safeguarding Adults activity
6. Ensuring effective administration and quality of safeguarding processes.

Target groups: **Alerters and NHS Level 1 & part of Level 2**

Including: All staff and volunteers in health and social care settings, all frontline staff in Fire and Rescue, Police and Neighbourhood Teams and Housing, Clerical and Administration staff, Domestic and Ancillary staff, Health and Safety Officers, staff working in Prisons and custodial settings, other support staff, Elected Members, Governing Boards and safeguarding administrative support staff.

Although the word 'Alerter' is used here in conjunction with the national competency framework, the term 'Safeguarding Concern' was introduced in April 2015 to replace this.

Level 2 (Intermediate)

1. Demonstrate skills and knowledge to contribute effectively to the safeguarding process
2. Have awareness and application of legislation, local and national policy and procedural frameworks.

Target Groups: **Responders, Specialist Staff and NHS Level 2 & 3**

Including: Social Workers, Senior Practitioners, Social Work Team Managers, Voluntary and Independent Sector Managers, Heads of Nursing, Health and Social Care Provider Service Managers, Safeguarding Adult Co-ordinators, Police Officers, Probation Officers, Community Safety Managers, Prison Managers, MCA Lead, Best Interests assessors (including DoLS), Advocates, Therapists, Fire and Rescue Officers, staff working in Multi-Agency Safeguarding Hubs.

Mental Capacity Act (MCA) 2005

Assessing the adult's capacity
The Mental Capacity Act (MCA, 2005) outlines key principles. **The first principle** is the assumption of capacity. On the occasion when there is a presenting range of symptoms or behaviors which suggest this individual requires the additional safeguarding which the MCA provides, it is your duty to assess capacity formally by completing the two stage test (MCA1 form).

It must be remembered that you are looking at a particular decision, at a particular time, and not a person's ability to make decisions generally.

It must also be remembered that each decision is time specific. Can this person make this decision at this time?

Assessing the adults capacity

Stage 1
Is there an impairment of, or disturbance in, the functioning of the person's mind or brain (the diagnostic test)? It does not matter if the impairment or disturbance is temporary or permanent. Where a disturbance is a temporary disturbance it is best practice to consider delaying the assessment to see if the situation improves.

Conditions which may trigger a member of staff to suspect that an individual may have an impairment or a disturbance in the functioning of the mind or brain may include (but are not limited to) the following:

- Stroke or brain injury
- Brain disease
- Dementia
- Learning disability
- Mental health problem
- Substance misuse or medication use
- Confusion, drowsiness
- Or unconsciousness because of an illness or the treatment for it.

The above are triggers only and many individuals can retain the ability or mental capacity to make decisions regardless of the above emerging from an assessment.

All steps should be taken to assist the person to make their own decision.

If the answer to step 1 is:
NO The adult has capacity.
YES Move to stage 2.

Stage 2
Does the impairment of, or disturbance in, the functioning of the mind or brain render the person unable to make a particular decision for him/herself?

A person is unable to make a decision for him/herself if he/she is unable to:
(a) understand the information relevant to the decision,
(b) retain that information,
(c) use or weigh that information as part of the process of making the decision, or
(d) communicate his decision (whether by talking, using sign language or any other means).

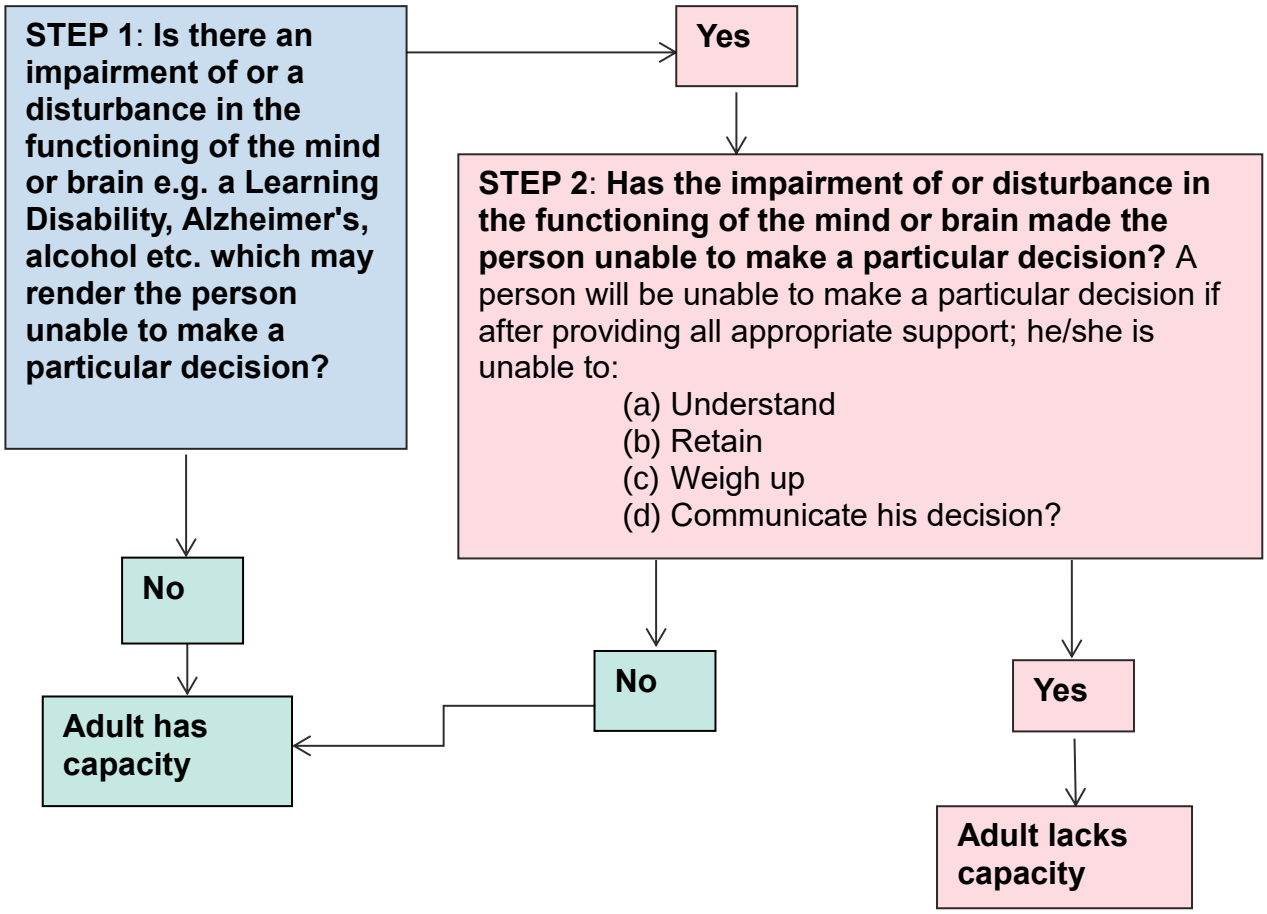
Note: the test requires the adult to be able to do all 4 factors (a – d) to be able to make a decision for him/herself. If the adult is unable to do one or more of factors (a) to (d) after all appropriate help and support has been provided, he/she is unable to make the decision for him/herself.

Note: the information relevant to a particular decision includes understanding the consequences of deciding or failing to decide a particular matter.

If the answer to stage 2 is:
Positive: The adult is able to make the decision – the adult has capacity.
Negative: The adult is unable to make the decision – the adult lacks capacity in relation to that particular decision.

Record the process and outcome on the Mental Capacity Screening Tool (MCA1).

By way of summary:



Principles of the Mental Capacity Act 2005

The Mental Capacity Act is underpinned by a set of five key principles which should be adhered to at all times:

1. **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless proven otherwise.
2. **The right for individuals to be supported to make their own decisions –** people must be given all appropriate help before anyone concludes that they cannot make their own decisions. This is particularly relevant to individuals who require assistance with communication.
3. **The right of individuals to make what might be seen as eccentric or unwise decisions** – if they have capacity**.**
4. **Best interests** – anything done for or on behalf of people without capacity must be in their best interests.
5. **Least restrictive intervention** – anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms.

Staff should make every effort to encourage and support the person to make the decision.

The following points should be applied:

- Ensure the person has all of the relevant available information
- Ensure information is available in relevant format such as; easy read format / correct language / relevant font and colour / pictorial format / Braille / models that may assist explanations / charts
- Ensure that individual requirements are in place such as a hearing aid or spectacles
- Ensure the time of day or place reflects when the person is most lucid
- Someone else who can help or support the person to understand the information is made available such as interpreters.
- If fluctuating capacity – consider if delaying the assessment is appropriate.

Best Interests

Everything that is done for, or on behalf of, a person who lacks capacity must be in that person's best interests. The Code of Practice provides a checklist of factors that decision-makers must work through in deciding what is in a person's best interests (see Chapter 5 of the MCA Code of Practice). A person can put his / her wishes and feelings into a written statement if he/she so wish. This must be considered by the decision maker as part of the best interest process. The "decision maker" should document consultation with relevant others which may include carers and family members.

Best interest decisions relating to life sustaining treatment

The Mental Capacity Act 2005 states that anyone who is deciding whether or not life-sustaining treatment is in the best interests of someone who lacks capacity to consent to or refuse such treatment must not be motivated by a desire to bring about the person's death (section 4(5) MCA 2005). The Code of Practice suggests the decision-maker must consider the range of treatment options available to work out what would be in the person's best interests. All the factors in the best interest's checklist should be considered. In particular, consideration should be given to any statements that the person has previously made about their wishes and feelings about life-sustaining treatment.
https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice

Acts in connection with care or treatment

The Mental Capacity Act 2005 affords legal protection to those who deliver care and treatment to people who lack capacity. Actions that might be covered by section 5 include:

Personal Care:

- helping with washing, dressing or personal hygiene
- helping with eating and drinking
- helping with communication
- helping with mobility (moving around)
- helping someone take part in education, social or leisure activities
- going into a person's home to drop off shopping or to see if they are alright
- doing the shopping or buying necessary goods with the person's money
- arranging household services (for example, arranging repairs or maintenance for gas and electricity supplies)
- providing services that help around the home (such as homecare or meals on wheels)
- undertaking actions related to community care services (for example, day care, residential accommodation or nursing care)
- helping someone to move home (including moving property and clearing the former home).

Healthcare and Treatment:

- carrying out diagnostic examinations and tests (to identify an illness, condition or other problem)
- providing professional medical, dental and similar treatment
- giving medication
- taking someone to hospital for assessment or treatment
- providing nursing care (whether in hospital or in the community)
- carrying out any other necessary medical procedures (for example, taking a blood sample) or therapies (for example, physiotherapy or chiropody)
- providing care in an emergency.

The person providing care and treatment has a duty in these circumstances to assess a person's capacity and where a person lacks capacity, to make decisions in that persons best interests. The person providing care must record two important components of that process:

- Establish the person lacks capacity for that specific decision at that specific point in time by completing the two stage test (section 2 and 3 MCA 2005, page 44 of The Code of Practice MCA) and retaining the MCA 1 and 2 forms in the health or social care record.
- Ensuring the best interest process is undertaken and recorded on the MCA 2 form then retained within the health or social care record.

This will provide legal authority for actions that may otherwise result in a civil wrong doing or crime such as assault or battery if someone has to interfere with the person's body or property in the ordinary course of caring - for example by giving an injection or by using the person's money to buy items for them. It is important that the assessment of capacity and best interest decision is properly recorded and evidenced.

Consider risks to others - 'Think Family'

Consideration must also be given as to whether anyone else is at risk as a result of an adult's mental capacity. This may include children or other adults with care and support needs. Whilst actions may be limited in relation to the individual themselves, there may be a duty to take action to safeguard others. Should there be a concern that a parent may be neglecting children in their care, concerns must be reported to Children's' Social Care. See: **Safeguarding and Promoting the Welfare of Adults and Children at Risk Guidance** (signposted on page 27).

Assessing Best interests (S4 MCA)

Any action taken or decision made for or on behalf of someone lacking capacity must be made in his or her best interests. The Act refers to key factors for the decision maker to consider when determining what is in a person's best interests. This includes consideration of:

- Whether the person is likely to regain capacity and if the decision can wait until then
- The ability or otherwise of the patient to participate in any act done for them and any decision affecting them
- All the relevant circumstances relating to the decision in question
- The person's past and present wishes and feelings
- Any beliefs and values (religious, cultural, moral) that might influence the decision
- Any other factors which the patient would be likely to consider if they were able to do so.

There is also an obligation for the decision maker to take into account the views of other people such as carers, close relatives or close friends or anyone else interested in the person's welfare, any attorney appointed under a Lasting Power of Attorney, or Enduring Power of Attorney, any Deputy appointed by the Court of Protection to make decisions for that person. You should always consult with any person named by the person, as person with whom they would wish you to consult.

Note: The law says that you should consult if it is practicable and appropriate to consult. In some situations consultation with others may not always be appropriate. For example: where a person is a perpetrator of abuse.

Note: Where a person has a legal power such as a Deputyship/LPA you should always check the validity of the power and be aware that the power gives them legal authority to make decisions.

Where there is no friend or family member for the decision maker to consult, the decision maker **must** involve an Independent Mental Capacity Advocate (IMCA) for decisions about serious medical treatment/withdrawal of medical treatment (Do Not Attempt Resuscitation) or certain changes of accommodation whenever the person lacks capacity.

Note: Where there is disagreement as to the persons best interests then an IMCA should be instructed.

In some cases it will not be straightforward to determine what is in a person's best interests and a meeting will be required for all relevant people to discuss and agree what will be in a person's best interest. Where there is a disagreement as to the person's best interests then a meeting should be convened.

Whether a best interests meeting takes place or not, there must be a record in the health or social care records of the process of how a **best interest decision** was reached using the MCA 2 form. This includes detailing the following aspects:

- The decision discussed
- The relevant people consulted; who they were / names / job titles / or relationship with the person who lacks capacity
- Location date and time of discussion (this is called a Best Interest meeting)
- If it was a telephone discussion
- Result of enquiry to establish if a valid advanced decision exists
- If a Lasting Power of Attorney exists (retain a copy of the LPA in the health or social care record and record outcome of checks with the Office of Public Guardian). This also includes Court appointee views and judgements of Court of Protection proceedings where relevant.
- Consideration for an IMCA referral and outcome. Any subsequent input and view from an appointed IMCA.
- Any Adult Safeguarding considerations
- Options around the care and treatment associated with the decision discussed even if discarded as not possible
- Where appropriate, consideration around Court of Protection referral
- The decision outcome, how the decision was reached, the factors taken into account and the reasons for the decision
- The decision maker
- Any dissent from the decision.

All of this detail should be recorded using the MCA 2 form.

What happens if an agreement cannot be reached as to what is in an adult's best interest?

Every effort should be made for all those involved to agree as to what is in an adult's best interest. In some cases it may not be possible to resolve this, for example if a family are not agreeable to a proposed course of treatment.

Consideration should be given as to whether the adult may regain capacity to make this decision if there is sufficient time to do so. In complex or extreme cases if agreement cannot be reached, legal advice should be sought as to whether the case should be determined by the Court of Protection.

If there is a dispute about capacity or best interests one or more of the following actions may also be of assistance:

- Hold a Best Interests Meeting or conference
- Referral to Adult Safeguarding if appropriate
- Obtain a second opinion
- Ask for support during the best interest meeting from adult safeguarding team
- Consider mediation
- Involve an IMCA.

Decision Makers

The person identified to be the decision maker is determined by the nature and complexity of the decision to be made but will usually be the person carrying out the intervention.

In most cases:

- Doctors are the decision makers for medical decisions
- Nurses are decision makers around nursing interventions
- Social Workers are decision makers for the social care decisions
- Therapists are the decision makers with regard to therapy interventions
- Personal care decision makers are often Senior Care Assistants or Health Care Assistants.

Evidence of the completion and outcome of MCA1 should be documented within the person's notes. **It is your duty to consider whether a referral to an independent mental capacity advocate (IMCA) is required (refer to your organisation's guidelines).**

What is an Independent Mental Capacity Advocate (IMCA)?

The Mental Capacity Act 2005 introduces an advocate with a specific role and remit to support individuals who lack capacity and who have no other appropriate person to represent and support them in deciding what is in their best interests.

An IMCA **must** be appointed to support a person who lacks capacity and has no family or friends to consult if:

- It is proposed that the person needs serious medical treatment or withdrawal of medical treatment (DNAR). Emergency treatment can be carried out without waiting for the appointment or involvement of an IMCA (further information can be found in the Deciding Right information book: www.theclinicalnetwork.org
- It is proposed that the person is moved into long term care of more than 28 days in hospital
  It is proposed that the person is moved into long term care of more than 8 weeks in a care home
- It is proposed that the person is to be moved (for more than 8 weeks) to different accommodation, such as a hospital or a care home.

An IMCA may also be appointed in cases of Adult Safeguarding and care reviews, where there is no other appropriate person. The IMCA makes representations about the person's wishes, feelings, beliefs and values looking at all factors that are relevant to the decision. If necessary the IMCA can challenge the decision-maker on behalf of the person lacking capacity. However the decision maker is responsible for the final outcome. **Because of this, IMCAs have the right to see relevant healthcare and social care records.**

An IMCA **may** be instructed to support someone who lacks capacity to make decisions on their behalf concerning:

- Care reviews, where no-one else is available to be consulted
- Adult safeguarding cases, whether or not family, friends or others are involved.

An IMCA should *not* be involved if:

- An urgent decision is required, and appointment would cause delay
- The individual has capacity for the care decision being made
- The individual has an appropriate person who can speak on his behalf and who the decision maker can consult with about the specific decision.

If urgent intervention is required an alert should be made without delay regardless of making an IMCA referral.

Making an IMCA referral you will need to consider:

- Is the individual over 16 years old?
- Does the individual lack capacity?
- Have you assessed the individual's mental capacity?
- Does the individual only have paid carers looking after them and no other appropriate person to consult
- If **YES:** complete an IMCA referral form

NB. An IMCA referral should not delay any serious medical intervention or emergency actions

If the IMCA disagrees with the decision made

The IMCA's role is to support and represent his/her client. They may do this through asking questions, raising issues, offering information and writing a report. They will often take part in a meeting involving different healthcare and social care staff to work out what is in the person's best interests. There may sometimes be cases when an IMCA thinks that a decision-maker has not paid enough attention to his/her report, and other relevant information, and is particularly concerned about the decision made. The IMCA may then need to challenge the decision.

An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in his welfare.

Deprivation of Liberty Safeguards (DoLS)

The Mental Capacity Act 2005 (MCA) identifies the duties placed on staff and constitutes the basis for the detailed procedures derived from The MCA Code of Practice (2005), the Deprivation of Liberty Safeguards Code of Practice (2008) and relevant case law. This Act applies to staff who provide care for people who lack the mental capacity to make specific decisions for themselves at a specific point in time.

The Mental Capacity Act 2005 came into effect April 2007. A Schedule to the main Act (schedule A1), the Deprivation of Liberty Safeguards, came into force in April 2008. The Mental Capacity Act provides a statutory framework to empower and protect any adult over the age of 16 who may not be able to make their own decisions. **The Mental Capacity Act assumes people have capacity unless it is established otherwise.**

If it is considered that an adult may lack capacity, this should be appropriately assessed with reference to the test set out in the Mental Capacity Act (MCA1 form). If following assessment it is confirmed that an adult lacks capacity in relation to a particular decision, the MCA provides the legal framework to authorise care or treatment in an adult's best interests. The Act sets out what the test is to determine whether an adult lacks capacity and the factors which are relevant to determine what is in the individual's best interest.

Hospitals and Care Homes

In some circumstances it will not be in an adult's best interests to be allowed to leave hospital or a care home if he/she lacks capacity. The Deprivation of Liberty Safeguards (DoLS) were established to provide a legal framework to allow adults to be deprived of their liberty where they lack capacity. DoLS can only apply to individuals over the age of 18 years.

In March 2014 the Supreme Court confirmed in the case of *P v Cheshire West and Chester Council and another; (2) P and Q v Surrey County Council [2014] UKSC 19* that a person who lacks capacity will be deprived of their liberty if they satisfy the 'acid test'. This means an adult who lacks capacity will be deprived of his/her liberty if he/she **is subject to continuous supervision and control; and is not free to leave**.

If both elements of this test are satisfied then the deprivation of liberty legally requires authorisation.

Supported Living and Other Environments

It must be noted that those living in supported living schemes or those being cared for in a home environment can equally be deprived of their liberty if the effect of the Care Plan meets the acid test. Where the person meets the acid test then an application to the Court of Protection to authorise the person's deprivation of liberty must be made. You should seek advice from your legal department in these situations. This applies to those who are under and over 18 years of age.

The Deprivation of Liberty Assessment Process

Review Triggers

A review of a standard authorisation can be carried out if:

- The adult no longer meets the requirements of any of the six assessments
- A change in the adult's situation makes it appropriate to:
  - amend or cancel an existing condition to which the authorisation is applicable
  - add a new condition
- The reason(s) the adult meets the criteria are now different as to when the DoLS was first authorised.

The Six Assessments:

1. **An age assessment** to make sure that the person is aged 18 or over.
2. **A mental health assessment** to confirm that the adult has been diagnosed with a 'mental disorder' within the meaning of the Mental Health Act.
3. **A mental capacity assessment** to see whether the adult has capacity to decide where their accommodation should be. If they have, they should not be deprived of their liberty and the authorisation procedure should not go ahead.
4. **A best interests assessment** to see whether the adult is being, or are going to be, deprived of their liberty and whether it is in their best interests. This should take account of the adult's values and any views they have expressed in the past, and the views of friends, family, informal carers and any professionals involved in their care.
5. **An eligibility assessment** to confirm that the adult is not detained under the Mental Health Act 1983 or subject to a requirement that would conflict with the Deprivation of Liberty Safeguards. This includes being required to live somewhere else under Mental Health Act guardianship.
6. **A 'no refusals' assessment** to make sure that the deprivation of liberty does not conflict with any advance decision the adult has made, or the decision of an attorney under a lasting power of attorney or a deputy appointed by the Court of Protection.

Review Process
The review process should follow the standard authorisation process and involve conducting assessments for any of the qualifying requirements that need to be reviewed. However, the need to instruct an IMCA will not usually arise because the adult should at this stage already have a responsible person's representative (RPR) appointed.

If any requirements are not met then the authorisation must be terminated immediately.

When an Authorisation Ends
When an authorisation ends, the managing authority *(e.g. care provider)* cannot lawfully continue to deprive an adult of their liberty.

If the managing authority considers that a person will still need to be deprived of liberty after the authorisation is going to end, they must request a new authorisation in sufficient time for assessments to be carried out and authorisation given so there is continuity and no unlawful gap. The managing authority cannot give itself an urgent authorisation to bridge this gap.

When the standard authorisation ends, the supervisory body *(e.g. local authority)* must notify all parties involved in the process (e.g. the adult, the RPR, the managing authority and any other interested party's names and consulted by the Best Interests Assessor during the assessment.

Challenging Decisions
If an adult lacks the capacity to consent then it is a serious issue to deprive them of their liberty without authorisation.

If it is believed that an adult is being deprived of their liberty without authorisation, this should be raised with the relevant authorities, such as the managing authority, the supervisory body or Care Quality Commission (CQC).

It is therefore important to be aware of how concerns can be raised and, if necessary, how to make formal challenges to decisions.

Options for Challenging Unlawful DoL:

- **Flag potentially unlawful DoL**

If anyone believes that a person is deprived of liberty without the managing authority having applied for an authorisation, they should initially draw this to the attention of the managing authority. The matter may be resolved by the managing authority informally with the concerned person. For example: following discussion, adjustments to care arrangements could be made, thus removing any concerns.

Failing this, they will need to submit a request for a standard authorisation to the supervisory body.

- **Standard authorisation review**
- **Complaints procedure**

Concerns about actions or decisions made relating to the DoL should ideally be resolved informally or through the relevant managing authority or supervisory body's complaints procedures. The respective bodies will then decide the best way to deal with the complaint according to the type of complaint and the circumstances of the adult to whom it relates.

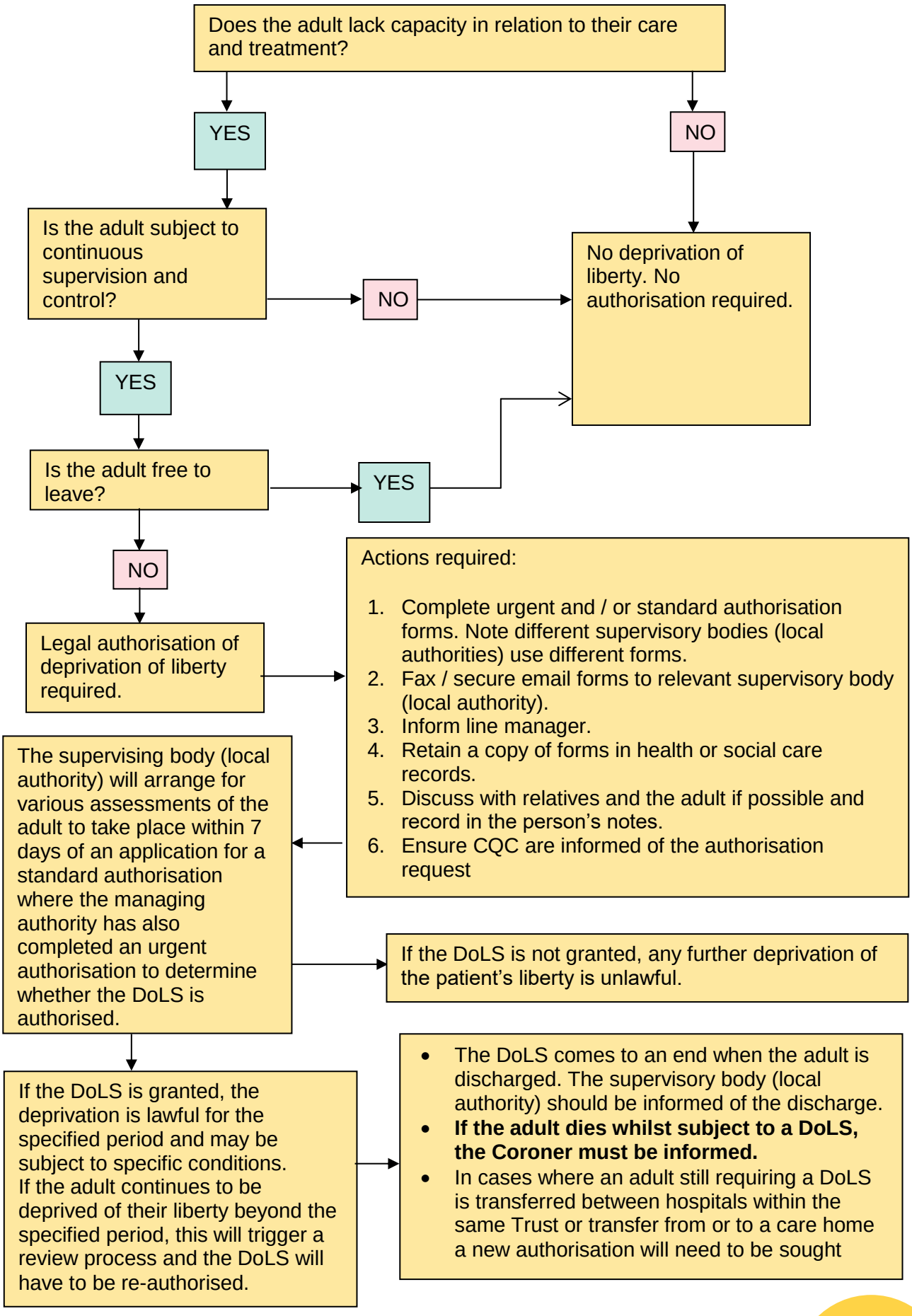
- **Court of Protection**

Anybody deprived of their liberty under the DoLS has the right for the Court of Protection (established under the Mental Capacity Act 2005) to review the lawfulness of the decision, or if they believe that an authorisation would not be in their best interests.

Before an authorisation has been given: this could be to ask the court to declare whether the adult has capacity, or whether a proposed action or one undertaken in relation to the adult is lawful.

After an authorisation has been given: the adult or RPR apply to the Court of Protection (CoP) to get confirmation of matters such as the purpose and duration of the authorisation; whether the adult meets qualifying criteria for deprivation; any conditions attached to the authorisation. This applies to either a standard or urgent authorisation. Increasingly, professionals are being advised by Court that in cases of unresolved disagreements they should bring the case to CoP rather than expecting the adult or RPR to do it.

Overview of Deprivation of Liberty Safeguards Process



Advance Decisions

When a person aged 18 or over has capacity, they may make a decision about what care and treatment they would like if they were to lose capacity to consent or refuse in the future. This is known as an advance decision. For example, a person with capacity may decide that if he/she were to lose capacity at some point in the future, he/she would not like to have a certain course of treatment. If that person goes on to lose capacity at a later date, those treating that person may be able to rely on the previously made advance decision in order to determine what treatment the adult receives. This approach is known as "Deciding Right". The content of this approach reflects the Mental Capacity Act 2005.

In order for an advance decision to be effective, it must be **valid and applicable** to the decision being made. If it is valid and applicable, those treating the adult must follow the wishes in the advance decision. An Advance Decision can be verbal or in writing (special provisions relate to life sustaining treatment, see below). An Advance Decision cannot refuse basic actions and essential care such as warmth and shelter, keeping a person clean and offering food and water by mouth.

Is the Advance Decision valid?

To establish whether an advance decision is **valid**, the professionals must try to find out if the person:

- made the decision when aged 18 or over
- has done anything that is inconsistent with their advance decision
- has withdrawn their decision
- would have changed their decision if they had known more about the current circumstances
- lacks capacity to make a current decision
- has created a Lasting Power of Attorney (LPA) after the advanced decision giving the donee the ability to consent to treatment.

Is the Advance Decision applicable?

To establish whether the advance decision is **applicable**, the healthcare professional must:

- establish whether the advance decision to refuse treatment states precisely what treatment is to be refused – a statement giving a general desire not to be treated is not enough
- establish whether the advance decision to refuse treatment sets out the circumstances when the refusal should apply – it is helpful to include as much detail as possible
- note that the advance decision will only apply at a time when the person lacks capacity to consent to, or refuse, the specific treatment.

Further considerations if the Advance Decision concerns life sustaining treatment

Life-sustaining treatment is defined under the MCA 2005 as treatment which a healthcare professional who is providing care to the person regards as necessary to sustain life. It will depend on the type of treatment and the circumstances – for example, antibiotics can be life sustaining in certain circumstances.

As well as the requirements above in relation to the validity and applicability of the Advance Decision, any Advance Decision to refuse life sustaining treatment must:

- Be in writing
- Be signed
- Be witnessed
- Include a clear, specific written statement that the Advance Decision is to apply to the specific treatment even if life is at risk.

Artificial nutrition and hydration (ANH) has been recognised as a form of medical treatment. An advance decision can refuse ANH. Refusing ANH in an advance decision is likely to result in the person's death. If the advance decision is followed, therefore, it may be regarded as life sustaining treatment.

The Deciding Right approach has standardised the forms used to record advanced decisions and Do Not Attempt to Resuscitate (DNAR) forms (further information is available from www.theclinicalnetwork.org).

Lasting Power of Attorney (LPAs)

The Mental Capacity Act 2005 allows a person to appoint a person (known as an attorney) to act on their behalf if they should lose capacity in the future. The Lasting Power of Attorney replaced Enduring Powers of Attorney. Whilst there will be no more Enduring Powers of Attorney, it has to be remembered that those created before the 1st October 2007 potentially remain valid.

A Lasting Power of Attorney can be appointed to make decisions in relation to a person's health and welfare or property and affairs (or both). A LPA relating to health and welfare can confer power on the attorney to make decisions for the incapacitated person, as if they were making that decision for him/herself. It therefore includes consenting to, or refusing, treatment on behalf of the incapacitated person.

Note: A LPA relating to property and affairs will not confer power on the attorney in relation to decisions relating to health and welfare (and vice versa). It is also the case the people may exclude certain matters when creating an LPA so it is vital to check the actual document.

An LPA will be valid only if:

- Made by a person who has capacity and is over the age of 18
- It is in a written document set out in the required legal format
- It includes prescribed information about the nature and effect of the LPA
- It is signed by the person indicating he/she wishes for it to apply when he/she no longer has capacity.
- It names people who should be told about the LPA, or that the person wishes no-one be told.
- The attorney has signed to indicate he/she understands his/her duties under the LPA.
- It includes a certificate completed by a third party confirming that in he/she opinion, the person understands the purpose of the LPA, that nobody used fraud or undue pressure to force the person in making the LPA and that there is nothing to stop the LPA being created.
- Registered with the Court of Protection before use.

Note: The attorney must make decisions in accordance with s4 of the Mental Capacity Act – in the best interests of the person.

The Court of Protection and the role of Court Appointed Deputies

The Court of Protection has jurisdiction (power/ legal authority) relating to the MCA 2005 and will be the final arbiter for capacity matters. It has its own procedures and nominated judges. If there is a complex issue, dispute or case which cannot be resolved, consideration should be given as soon as possible to whether the matter should be referred to the Court of Protection. Legal advice should be sought at the earliest opportunity if you are unsure as to whether an application to the Court of Protection is required.

If there is a need for a person who lacks capacity to have someone who can act on his/her behalf to make on-going decisions and there is no relevant LPA, the Court can appoint a Deputy to act on the individual's behalf. Once a deputy has been appointed by the Court, an order will set out their specific powers and the scope of authority. Deputies will be able to take decisions on welfare, healthcare

and financial matters as authorised by the Court (NOTE they will not be able to refuse consent to life-sustaining treatment).

Note: The Court of Protection very rarely creates Welfare Deputyships, preferring to make one off welfare decisions as and when the need arises.

The Office and role of the Public Guardian

The Public Guardian and his / her staff are the registering authority for LPAs and Court Appointed Deputies. They will supervise deputies appointed by the Court and provide information to help the Court make decisions. Once a deputyship is granted the Office of the Public Guardian is given power to supervise deputies and make sure they carry out their role in accordance with the principles of the MCA. They will also work together with other agencies, such as Health, Police and Social Services to respond to any concerns raised about the way in which an Attorney or Deputy is operating.

Staff should contact the Office of the Public Guardian to ascertain whether a LPA is valid, registered and to seek copies. Such contact should be recorded in the health or social care record.

Contact details for The Office of Public Guardian:
Telephone number: 0300 456 0300
Email: customerservices@publicguardian.gsi.gov.uk
Facsimile: 0870 739 5780

The Use of Restraint under the Mental Capacity Act 2005

In some circumstances it may be necessary to consider the use of restraint (in accordance with organisational policy). Where this is being considered in relation to an adult who lacks capacity, there are additional considerations to be taken into account.

For the purposes of the MCA 2005, a person restrains an adult if he:

a) Uses, or threatens to use, force to secure the doing of an act which the adult resists, or
b) Restricts adult's liberty of movement, whether or not the adult resists.

If a person does an act in connection with the care or treatment of another person (including restraint), they will have legal authority to do so if:
Before doing the act, they take reasonable steps to establish whether the **adult lacks capacity** in relation to the matter in question:
When doing the act, the person reasonably believes

- that the adult **lacks capacity** in relation to the matter; and
- that it will be in the adult's **best interests** for the act to be done; and

The person restraining reasonably believes that it is **necessary** in order to **prevent harm** to the adult; and

- The restraint is a **proportionate** response to the **likelihood** of the adult suffering harm, and the **seriousness** of that harm.

For further information please refer to Department of Health: Positive and Proactive Care: reducing the need for restrictive interventions, April 2014.

Note: For the protection afforded to staff members by s 5 of the Mental Capacity Act to apply - The act must be a proportionate response to the likelihood of the adult suffering harm and the seriousness of that harm. The action taken must be the least restrictive option and for the minimum amount of time required.

Useful References and Websites

Care Act 2014 - Care and Support Statutory Guidance (Revised Feb 2017)
https://www.tsab.org.uk/wp-content/uploads/2015/11/Revised-Care-Act-Guidance-Annotated-Chapter-14-20160311.pdf

Cheshire West Judgement 2014:
http://www.scie.org.uk/mca-directory/keygovernmentdocuments.as

Deciding Right: http://www.necn.nhs.uk/common-themes/deciding-right/

Making Safeguarding Personal:
https://www.tsab.org.uk/key-information/prevention/making-safeguarding-personal-tsab-guidance/

Teeswide Safeguarding Adults Board's Policies, Procedures and Guidance webpage including:

- Decision Support Guidance
- MCA and Deprivation of Liberty Safeguards Policy
- Safeguarding and Promoting the Welfare of Adults and Children at Risk Guidance

https://www.tsab.org.uk/key-information/policies-strategies/

Teeswide Safeguarding Adults Board - Safeguarding Adults Reviews Reports
https://www.tsab.org.uk/key-information/safeguarding-adult-review-sar-reports/

Teeswide Safeguarding Adults Board - You Tube Channel (Playlist):
https://www.youtube.com/channel/UCMxNFNZsoxIc3YZEVXisx_w

Appendix 1

Teeswide Safeguarding Adults Concern Form

https://www.tsab.org.uk/report-abuse/

Appendix 2

Teeswide Safeguarding Adults Inter-Agency Procedure Summary

In accordance with the Care Act 2014, safeguarding duties apply to an adult who:

- has needs for care and support (whether or not the local authority is meeting any of those needs); and
- is experiencing, or at risk of abuse or neglect; and
- as a result of those care and support needs is unable to protect him/herself from either the risk, or the experience, of abuse or neglect

The adult experiencing, or at risk of abuse or neglect will be referred to the ***adult*** throughout this procedure.

		Stage of Procedure	Role	Responsibility	Maximum Timeframe
ENQUIRY PHASE	1	**Concern**	• Take immediate action to safeguard anyone at risk of abuse or neglect • Report and record concerns that an adult maybe at risk of abuse or neglect • Establish the ***adult's*** views, wishes if appropriate • Where an adult dies and abuse or neglect is suspected, a concern must be raised	Person raising concern	Immediate Inter-agency concern form completed within 1 day
	2	**Decision Making**	• Decision made as to whether the Inter-agency Safeguarding Procedure is appropriate to address the concern or whether more information is required as part of the enquiry • Decision support guidance used to inform the decision making process • Ensure that the views and wishes of the ***adult*** are taken into account • Determine who will undertake the initial enquiry if not the LA	Designated Officer	Within 3 days of receiving the concern

	Stage of Procedure	Role	Responsibility	Maximum Timeframe
		• Consider alternative action if safeguarding procedures are not appropriate • Consider providing feedback to the person raising the concern. • If the concern relates to a deceased adult, consideration to be given to raising a SAR notification • If the adult dies after the safeguarding concern has been raised, the enquiry will continue		
3	**Initial Enquiry**	• Further information gathered from identified sources in order to inform the decision as to whether to progress into safeguarding procedures • Seek or review the ***adult's*** views and wishes including their desired outcomes • Consider whether the ***adult*** requires an independent advocate to support them • Consider providing feedback to the person raising the concern *	Safeguarding partners; ***adult,*** their advocate, relative and carers	Within 3 days of receiving the concern
4	**Decision Making**	• Decision made as to whether the safeguarding procedures are appropriate to address the concern or whether more information is required as part of the enquiry • Decision support guidance used • Consider the ***adult's*** views and wishes including their desired outcomes • Consider whether the ***adult*** requires an	Designated Officer	Within 7 days of receiving the concern, if more time is required, the reason for the extended timescale must be recorded.

		Stage of Procedure	Role	Responsibility	Maximum Timeframe
			independent advocate to support them • Consider alternative action if safeguarding procedures are not appropriate • Consider providing feedback to the person raising the concern *		
ENQUIRY PHASE	**5**	**Strategy Meeting**	• Designated Officer co-ordinates the strategy discussion/meeting • Agencies invited to attend the strategy discussion to ensure they are prepared for the meeting and have the relevant information available to contribute to information sharing and decision • If the strategy discussion has taken place via telephone to ensure the adult is protected, then face-to-face strategy meeting will be convened at the earliest opportunity • Formulate a Inter-agency safeguarding plan if needed • Determine who will undertake the further enquiry if not the LA • Agree timescale for completion of enquiry • Involvement of the ***adult,*** their advocate, relative or carers to ensure that their views, wishes and desired outcomes are central to the process • Consider alternative action if safeguarding procedures are not appropriate	Designated Officer/all attendees	Within 7 days of receiving the concern, if more time is required, the reason for the extended timescale must be recorded.

	Stage of Procedure	Role	Responsibility	Maximum Timeframe
		• Consider providing feedback to the person raising the concern * • If a subsequent safeguarding concern is raised during an open safeguarding episode, this new concern must be explicitly considered and if necessary, a further face-to-face strategy meeting must be held		
6	**Further Enquiry**	• Agencies will provide an update on actions allocated at the previous strategy meeting • Co-ordination and collection of information about the safeguarding concern and the context in which it happened • On-going activity to address any protection needs • Involvement of the ***adult,*** their advocate, relative or carers to ensure their views, wishes and desired outcomes are central to the process • Identified lead investigator to report back to the Progress Strategy Discussion/Meeting every 28 days if the enquiry takes more than 28 days	Identified Lead Investigator	Within the timeframe agreed at the Strategy Discussion/Meeting
7	**Progress Strategy Discussion/Meeting**	• Review progress of enquiries, or if concluded evaluate the outcome • Review the views, wishes and desired outcomes of the ***adult*** • Review the interim safeguarding plan • Develop full safeguarding plan if needed	All attendees	Within 28 days of the initial Strategy Discussion/Meeting

	Stage of Procedure	Role	Responsibility	Maximum Timeframe
		• Set a date for the next Progress Strategy Discussion/Meeting if needed • Decision made to conclude Safeguarding Adults Procedures if appropriate and outcome recorded • Consider providing feedback to the person raising the concern *		
8	**Review**	• Review progress of enquiries • Review the views, wishes and desired outcomes of the ***adult*** • Set a date for the next Progress Strategy Discussion/Meeting if needed • Decision made to conclude Safeguarding Adults Procedures and outcome recorded and evaluated • Establish and record whether the ***adult's*** desired outcomes have been met and to what extent (MSP Survey) • Consider whether alternative action is required if safeguarding procedures have been concluded • Provide feedback to the person raising the concern *	All attendees, the adult, their advocate, relative and carers	Within 28 days of the Progress Strategy Discussion/Meeting

* Particularly when the person raising the concern has an ongoing relationship with the adult

Appendix 3

Teeswide Safeguarding Adults Board
Safeguarding Adults Workbook
Module Two Assessment

Notice to Learners: You should complete the following questions without any help and submit answers to your line manager.

Question 1

a) Mental capacity is the ability to make an informed decision.

True / False

b) An individual can lack capacity to make a decision about one issue but not about others

True / False

c) The Mental Capacity Act only applies to people aged 18 or above?

True / False

Question 2

Name 2 conditions that may affect capacity in stage 1 of the Capacity Assessment.

1. _____

_____

2. _____

_____

Question 3

Name the five key principles that underpin the MCA.

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

5. _____

_____

Question 4

What are the 4 questions that are asked as part of the Stage 2 capacity assessment?

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

Question 5

a) What document supports the Act and explains how it should work on a day-to-day basis?

_____

b) The Code sets out a two stage test for assessing capacity. What are the names of the two stages?

1. _____

2. _____

Question 6

What has been introduced by the Act that allows a person with capacity to choose who can make decisions on their behalf if/when they become unable to?

_____

_____

Question 7

What does the abbreviation ADRT stand for?

A_____

D_____

R_____

T_____

Question 8

What does the abbreviation IMCA stand for? *(Please circle your answer)*

a. Independent Mental Capacity Assessment

b. Independent Mental Council Authority

c. Independent Mental Capacity Advocate

Question 9

What do you think is meant by an IMCA? *(Please circle your answer)*

a. Someone who befriends an adult with capacity

b. The representative of an adult who lacks capacity to make a decision about his/her care

c. Someone who supports any adult who has no one to speak for them

d. Someone to represent and support an adult who lacks capacity for a specific care decision *and* who has no one who can support or represent them, or who can be consulted

Question 10

a) An IMCA has the right to see the health or social care records.

True / False

b) An IMCA should *not* be involved if an urgent decision is required.

True / False

c) An IMCA has the same rights to challenge a decision as any other person caring for the person or interested in the person's welfare.

True / False

Question 11

What are the four options for formally challenging a DoL?

1. _____

_____

2. _____

_____

3. _____

_____

4. _____

_____

Question 12

What 2 questions are used in the ‘Acid Test’ when determining if a DoLS application is required?

1. _____

_____

_____

2. _____

_____

_____

Name	
Job Role	

Appendix 4

Evaluation

Name:

Once completed please forward the workbook evaluation *(i.e. this page)* and the Certificate of Completion) to the Teeswide Safeguarding Adults Board, Business Unit, using the contact details below, who will make a record of completion and issue a certificate. Completion records may be shared with the training leads of your commissioning organisation to ensure that your staff development record remains up to date.

Teeswide Safeguarding Adults Board Business Unit, Kingsway House, West Precinct, Billingham, TS23 2NX Email: tsab.businessunit@stockton.gov.uk

Why did you complete this workbook? Module Two
Where did you do your training?
❍ Home ❍ Work ❍ Mixture
Overall, how satisfied were you that the workbook gave you the information that you needed to know?
❍ Very satisfied ❍ Satisfied ❍ Partly satisfied ❍ Dissatisfied
What is the most important thing you have learned from this workbook?
How will you use the information from this workbook in your day to day work?
Would you recommend this workbook to other people? Please explain.
Is there any aspects of the workbook you feel could be improved?

Manager / Supervisor: Please provide feedback on how the learner managed this learning experience.

Appendix 5

Adult Safeguarding Workbook
Certificate of Completion – Module Two

I have discussed the completion of the workbook with my manager / assessor.

Name *(please print)*: _____

Signature of employee: _____

Date: _____ / _____ / _____

Declaration:

I have seen the workbook completed by _____

(as it will appear on the certificate) and I can confirm that I am satisfied that they now have a good knowledge and understanding of MCA and DoLS.

Name *(please print)*: _____

Signature: _____

Date: _____ / _____ / _____

Details of Manager / Assessor:

Job Title: _____

Organisation: _____

E-mail Address: _____

Telephone Number: _____