Mental Capacity, Consent and Best-Interest Decision-Making Policy and Procedure

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Approved By: Michael Burke, Registered Manager
Applies To: Foundry Wharf, Heyeswood and all TogetherCare staff working within these services.

1. Introduction

TogetherCare is committed to respecting each person's rights, dignity, autonomy and freedom to make decisions about their own care, treatment, home and daily life.

Foundry Wharf and Heyeswood are Extra Care schemes where people live in their own homes. People remain tenants with the right to make choices, take reasonable risks, receive visitors, access the community and refuse care or treatment where they have capacity to do so.

Capacity and consent must never be treated as a one-off assessment completed at admission. They are specific to the decision that needs to be made and the time at which it is needed.

TogetherCare will take all practicable steps to support people to make their own decisions before concluding that they lack capacity. Where a person lacks capacity for a particular decision, any action taken must be in their best interests and be the least restrictive option available.

This policy must be read and used in conjunction with the current **St Helens Safeguarding Adults Multi-Agency Policy, Procedures and Good Practice Guidance** where concerns arise about coercion, undue influence, abuse, neglect, self-neglect, exploitation, unsafe restrictions, organisational abuse or avoidable harm.

2. Purpose

The purpose of this policy is to ensure that TogetherCare:

- obtains valid consent before care and support is provided
- supports people to make their own decisions wherever possible
- applies the five principles of the Mental Capacity Act 2005
- completes and records decision-specific capacity assessments where there is reasonable doubt
- makes lawful, person-centred best-interest decisions where a person lacks capacity
- recognises the legal role of attorneys, deputies, advocates and healthcare professionals
- identifies and escalates restrictions which may amount to a deprivation of liberty
- protects people from coercion, manipulation or abuse affecting their decision-making
- maintains accurate and auditable records
- ensures staff work within their competence and obtain advice where decisions are complex.

3. Scope

This policy applies to all TogetherCare employees, bank staff, agency workers, managers, volunteers, contractors and other persons acting on behalf of TogetherCare.

It applies to decisions relating to:

- daily care and personal care
- medication support
- food and fluid support
- moving and handling
- access to a person's home
- welfare checks
- finances where TogetherCare provides agreed support
- health appointments
- accommodation and living arrangements
- use of equipment or technology
- restrictive practices
- covert medication
- safeguarding plans
- emergency decisions
- treatment decisions where TogetherCare is involved in supporting a person.

4. Legal and Regulatory Framework

This policy is operated in line with:

- Mental Capacity Act 2005
- Mental Capacity Act 2005 Code of Practice
- Health and Social Care Act 2008
- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, including Regulations 9, 11, 12, 13 and 17
- Care Act 2014
- Human Rights Act 1998
- Equality Act 2010
- Data Protection Act 2018 and UK GDPR
- Mental Health Act 1983, where applicable
- Court of Protection requirements
- current St Helens safeguarding procedures.

CQC Regulation 11 requires providers to obtain consent lawfully before providing care or treatment and to ensure staff understand the Mental Capacity Act.

5. The Five Principles of the Mental Capacity Act

All staff must apply the following principles:

5.1 Presumption of Capacity

Every adult must be assumed to have capacity unless it is established that they lack capacity for the specific decision required.

A diagnosis of dementia, learning disability, autism, mental illness, brain injury, stroke, substance misuse or other condition does not automatically mean that a person lacks capacity.

5.2 Support to Make Decisions

All practicable steps must be taken to support the person before concluding that they are unable to make the decision.

This may include:

- choosing the best time of day
- using simple language
- providing information in small stages
- using visual aids, pictures or easy-read information
- arranging an interpreter
- involving a trusted person where appropriate
- allowing additional time
- reducing noise or distractions
- checking hearing aids, glasses or communication aids
- revisiting the decision later where capacity may fluctuate.

5.3 Right to Make Unwise Decisions

A person must not be treated as lacking capacity merely because they make a decision others consider unwise, risky or unusual.

5.4 Best Interests

Any decision made on behalf of a person who lacks capacity must be made in their best interests.

5.5 Least Restrictive Option

Any action taken for, or on behalf of, a person who lacks capacity must be the least restrictive option capable of achieving the intended purpose.

6. Responsibilities

6.1 Registered Manager

The Registered Manager will:

- ensure this policy is implemented and reviewed
- ensure staff receive Mental Capacity Act and consent training
- support staff with complex or disputed decisions
- ensure appropriate capacity assessments and best-interest decisions are recorded
- ensure restrictions are reviewed and escalated where necessary
- ensure staff do not impose unlawful restrictions
- monitor consent, capacity and best-interest records through audit
- ensure safeguarding procedures are followed where coercion, abuse or exploitation is suspected
- seek professional, legal or local-authority advice where required.

6.2 Managers and Senior Staff

Managers and senior staff will:

- support care staff to understand the person's capacity and consent arrangements
- ensure capacity assessments are decision and time specific
- arrange reviews where needs or risks change
- ensure care plans accurately reflect consent, capacity and best-interest arrangements
- escalate complex decisions to relevant professionals
- consider advocacy, legal authority and deprivation-of-liberty issues where relevant
- ensure staff work within their competence.

6.3 All Staff

All staff must:

- seek consent before providing care or support
- respect a person's right to decline care where they have capacity
- identify and report concerns about capacity, coercion or undue influence
- follow recorded care-plan guidance
- record refusals, concerns and decisions factually
- avoid making assumptions based on age, diagnosis, appearance or behaviour
- not impose restrictions outside the agreed care plan or legal framework
- seek management support where they are unsure.

6.4 Families, Representatives and Advocates

Families, representatives and advocates may provide important information about a person's wishes, history, beliefs and values.

Family members do not automatically have legal authority to make decisions on behalf of an adult. Authority depends on whether they hold a valid and registered Health and Welfare Lasting Power of Attorney, are a court-appointed deputy, or have another recognised legal role.

7. Consent to Care and Support

Consent must be obtained before care, support or treatment is provided.

Consent may be:

- verbal
- written
- non-verbal
- implied through a person's clear cooperation with a routine, low-risk care task.

Consent must be voluntary, informed and given by a person with capacity to make that decision.

Staff must explain care in a way the person can understand and check that they are happy to proceed.

Consent is ongoing. A person may withdraw consent at any time.

For routine care, staff must seek consent at each visit or before each relevant task. A person's agreement to receive care generally does not mean they have consented to every aspect of personal care, medication support, moving and handling or access to their home.

8. Refusal of Care or Support

A person with capacity has the right to refuse care, support, medication, food, drink, personal care, appointments or other interventions.

Where a person refuses care, staff must:

- remain calm and respectful
- explore whether there is a reason for the refusal
- offer reassurance or an alternative approach where appropriate
- avoid pressure, threats or coercion
- consider whether the person needs more time or information
- record the refusal accurately
- inform management where refusal creates a significant health, safeguarding or safety risk
- seek professional advice where appropriate.

Repeated refusal does not automatically mean that a person lacks capacity. Staff must consider whether the refusal may be linked to pain, distress, communication needs, mental health, fear, abuse, coercion, self-neglect or a change in health.

9. Assessing Capacity

Capacity assessments must only be completed where there is a reasonable doubt about a person's ability to make a specific decision.

Capacity is:

- decision specific
- time specific
- person specific.

A person may have capacity to decide what to wear but not have capacity to make a complex decision about accommodation, finances, major treatment or significant restrictions.

9.1 Who Can Assess Capacity

The person responsible for the particular decision should normally assess capacity.

TogetherCare staff may assess capacity for everyday care decisions within their competence, such as accepting personal care, agreeing to medication prompts, using equipment or allowing entry for planned support.

Complex, high-risk or disputed decisions must be referred to the appropriate professional, such as a social worker, GP, district nurse, mental-health professional, prescriber, occupational therapist or care manager.

9.2 The Two-Stage Test

A person lacks capacity if, at the time the decision is required:

1. They have an impairment of, or disturbance in, the functioning of the mind or brain; and
2. The impairment means they are unable to make the specific decision.

A person is unable to make the decision if they cannot:

- understand relevant information
- retain that information long enough to make the decision
- use or weigh the information as part of the decision-making process
- communicate their decision by any means.

The Mental Capacity Act requires capacity to be considered in relation to the specific matter and the time when the decision must be made.

9.3 Recording a Capacity Assessment

Capacity assessments must record:

- the specific decision being assessed
- date, time and location
- people involved

- information provided to the person
- practical steps taken to support the person
- the impairment or disturbance identified
- the person's ability to understand, retain, use or weigh information and communicate a decision
- the outcome and rationale
- when the assessment should be reviewed
- any referral or further action needed.

10. Best-Interest Decision-Making

Where a person lacks capacity for a specific decision, TogetherCare must make or contribute to a best-interest decision.

The decision-maker must:

- involve the person as fully as possible
- consider whether the decision can wait until capacity may return
- consider the person's past and present wishes
- consider beliefs, values, cultural background and preferences
- consider views of relevant family, friends, attorneys, deputies, advocates and professionals
- consider any Advance Decision to Refuse Treatment
- consider any relevant advance statement
- identify all reasonable options
- choose the least restrictive option
- clearly record the decision and rationale.

A best-interest decision is not simply what staff, family members or professionals believe is easiest, safest or most convenient.

11. Best-Interest Meetings

A formal best-interest meeting should be considered where the decision is complex, serious, disputed or likely to have a significant impact on the person's rights or daily life.

Examples include:

- covert medication
- major restrictions on a person's freedom
- change of accommodation
- safeguarding plans

- serious medical treatment
- financial decisions where there is risk of exploitation
- ongoing refusal of essential care where capacity is in doubt
- use of monitoring technology
- restrictions on visitors, community access or access to the person's home.

The meeting record must identify:

- the decision required
- the person's known wishes and views
- capacity outcome
- people consulted
- options considered
- risks and benefits
- least restrictive option
- agreed actions
- review date.

12. Lasting Powers of Attorney and Deputies

A Health and Welfare Lasting Power of Attorney may make decisions about personal welfare, care, medical treatment and living arrangements only when the person lacks capacity for the relevant decision.

A Property and Financial Affairs Lasting Power of Attorney may make decisions about finances and property. It does not give authority to make healthcare or care decisions.

Before relying on an attorney's decision, TogetherCare must check:

- that the LPA is registered with the Office of the Public Guardian
- the type of LPA held
- any restrictions or instructions within the document
- whether the decision falls within the attorney's authority
- whether the person currently has capacity for the decision.

Health and Welfare attorneys can act only when the person lacks capacity to make the relevant decision.

13. Advance Decisions and Advance Statements

An Advance Decision to Refuse Treatment is a legally recognised decision made by a person with capacity to refuse specified medical treatment in the future.

Where an Advance Decision is identified, staff must:

- record its existence in the care plan
- ensure relevant professionals are aware
- seek urgent clinical advice where treatment is being considered
- not assume it applies without checking whether it is valid and applicable.

An advance statement is not legally binding but should be considered when making best-interest decisions because it may provide important information about the person's preferences and values.

14. Independent Mental Capacity Advocacy

An Independent Mental Capacity Advocate, known as an IMCA, may be required where a person lacks capacity and has no appropriate family member or friend able to support or represent them.

TogetherCare will contact the relevant local authority or NHS body where an IMCA may be needed for:

- serious medical treatment
- long-term changes in accommodation
- care reviews where statutory criteria apply
- safeguarding processes
- possible deprivation of liberty arrangements.

The responsibility to instruct an IMCA normally sits with the relevant local authority or NHS body, not TogetherCare.

15. Restrictive Practice and Deprivation of Liberty

TogetherCare must not impose restrictions simply because a person is older, has dementia, has learning disabilities, has mental-health needs or is considered at risk.

Restrictions may include:

- preventing a person leaving their home
- locking doors or removing keys
- controlling access to visitors
- using door sensors, alarms or surveillance
- restricting use of money, phones or the internet
- continuous supervision
- physically preventing someone from leaving
- restricting medication, food, cigarettes, alcohol or community access
- preventing a person from making ordinary choices in their own home.

Any restriction must be:

- necessary

- proportionate
- based on a decision-specific capacity assessment where required
- in the person's best interests
- the least restrictive option
- clearly recorded and reviewed.

The Deprivation of Liberty Safeguards apply to hospitals and care homes. They do not apply to people living in Extra Care, supported living or their own homes.

Where care arrangements at Foundry Wharf or Heyeswood may amount to a deprivation of liberty, TogetherCare must escalate immediately to the Registered Manager, social worker, commissioner or local authority so that legal advice and Court of Protection authorisation can be considered.

For community and domestic settings, including Extra Care, a deprivation of liberty may require authorisation from the Court of Protection.

16. Restraint

Staff must not restrain a person unless it is necessary to prevent harm and is proportionate to the likelihood and seriousness of that harm.

Restraint includes physical restraint, environmental restraint, use of equipment to prevent movement, or restricting a person's access to places or belongings.

Any restraint must:

- be a last resort
- be proportionate
- use the minimum force for the shortest time
- be recorded as an incident
- be reported to management
- lead to review of the care plan and risk assessment
- be considered for safeguarding implications.

Staff must never use restraint for punishment, convenience, staff shortage or to make care easier to deliver.

17. Covert Medication

Covert medication means giving medicine in a disguised form without the person's knowledge or consent.

It must never be used where a person has capacity to decide about the medication.

Covert medication may only be considered where:

- the person actively refuses medication

- a decision-specific capacity assessment confirms they lack capacity to decide about that medication
- a best-interest decision has been completed
- the prescriber and pharmacist have been consulted
- the person's representative or advocate has been involved where appropriate
- the care plan includes clear written instructions
- staff have been trained and assessed as competent.

Covert medication decisions must be medicine specific and reviewed whenever the prescription, dose or circumstances change.

18. Safeguarding, Coercion and Undue Influence

Staff must remain alert to concerns that a person's decisions may be influenced by fear, coercion, manipulation, abuse, neglect, financial exploitation, domestic abuse, self-neglect or undue influence.

Possible concerns include:

- another person speaking for the person at all times
- sudden changes in care choices or finances
- fearfulness when particular people are present
- a person being prevented from accessing care, medication or support
- family members or others demanding restrictions without legal authority
- pressure to refuse or accept care
- unexplained changes in living arrangements or visitors.

Where there is concern, staff must follow TogetherCare's Adult Safeguarding Policy and Procedure and use this policy in conjunction with the current **St Helens Safeguarding Adults Multi-Agency Policy, Procedures and Good Practice Guidance**.

19. Extra Care Arrangements

Staff working at Foundry Wharf and Heyeswood must respect that people live in their own homes.

Staff must not:

- enter a person's home without consent, unless there is an immediate safety concern or lawful emergency access arrangement
- remove keys, restrict visitors or prevent someone leaving their home without clear legal authority
- treat the scheme as a residential care home
- impose communal restrictions on all tenants because of one person's risks
- assume a welfare check gives authority to enter or intervene beyond the agreed care-plan arrangements.

At Heyeswood, planned welfare checks and on-call arrangements must be delivered in line with the person's individual care plan, consent arrangements, risk assessment and any recorded best-interest decision.

20. Record Keeping

TogetherCare will maintain accurate, factual and contemporaneous records of:

- consent discussions
- refusals of care
- capacity assessments
- best-interest decisions
- best-interest meetings
- involvement of attorneys, deputies, family members or advocates
- restrictions and reviews
- safeguarding concerns
- professional advice
- Court of Protection matters where relevant.

Records must be stored securely in Birdie or the approved TogetherCare record system.

21. Training and Competency

All staff will receive Mental Capacity Act and consent awareness training during induction.

Training will include:

- the five principles of the Mental Capacity Act
- valid consent
- decision-specific capacity assessments
- best-interest decision-making
- least restrictive practice
- safeguarding and coercion
- attorneys, deputies and advocates
- deprivation of liberty
- covert medication
- recording requirements.

Managers and senior staff will receive additional training on capacity assessments, best-interest decisions, restrictions, Court of Protection escalation and complex safeguarding decisions.

22. Audit and Monitoring

The Registered Manager or delegated manager will review capacity, consent and best-interest records regularly.

Audits will consider:

- evidence of valid consent
- decision-specific capacity assessments
- quality of best-interest decisions
- involvement of people, families, attorneys and advocates
- use of restrictions
- covert medication arrangements
- safeguarding concerns linked to capacity
- Court of Protection referrals or authorisations
- staff training and competency
- themes from complaints, incidents and audits.

Learning will be shared through supervision, staff meetings, training, care-plan review and governance arrangements.

23. Related Policies and Procedures

This policy must be read alongside:

- Adult Safeguarding Policy and Procedure
- Medication Support and Administration Policy
- Covert Medication Procedure
- Accident, Incident and Near-Miss Reporting Procedure
- Emergency and Business Continuity Procedure
- Complaints, Concerns and Compliments Policy
- Data Protection and Confidentiality Policy
- Lone Working Procedure
- Staff Supervision and Appraisal Policy
- Training, Competency and Workforce Development Policy
- Whistleblowing Procedure.

24. Policy Review

This policy will be reviewed annually, following a serious incident, safeguarding concern, Court of Protection matter, significant audit finding, legal change, CQC feedback or material change to TogetherCare's service delivery.