TRANSPORTING UNDER THE MENTAL CAPACITY ACT

GUIDANCE

1ST EDITION

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Appendix A
1. Purpose of Guidance

The purpose of this document is to provide staff with guidance on arranging transfers of persons who lack capacity from one place of residence to another.

The guidance aims to:

- Raise awareness amongst staff about their statutory duties with regards to the Mental Capacity Act.
- Ensure the physical transfer of customer’s proceeds as smoothly as possible.
- Ensure the dignity and human rights of the person are considered at all times.

This guidance will need to be observed when transferring a person who appears to lack capacity to carry out the decision(s) in relation to this.

2. Scope of Guidance

This guidance applies to all staff within the Adult Social Care service, in particular those who are involved in frontline practice. The policy covers permanent staff and staff on a fixed term contract.

It is the responsibility of all frontline ASC practitioners to familiarise themselves with this guidance.

3. Assessment of Transport Needs

When arranging for a person to be physically transferred from one setting to another, social care practitioners will need to make an assessment of the person’s transport needs and also carry out a risk assessment.

These assessments will need to take into account the person’s health, medical, physical, psychological and cognitive limitations. In addition Practitioners should identify whether any form of restraint will be required at the point of transfer.

It is during this process that the social worker should establish whether the person appears to have difficulty making a decision around the transfer and whether a capacity assessment is required.

Following these assessments the social worker should establish the transfer options available.

4. Capacity Assessments

Duties under the Mental Capacity Act 2005 (MCA) *

* “The MCA provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make particular decisions for themselves. Everyone working with and/or caring for an adult who may lack capacity
to make specific decisions must comply with this Act when making decisions or acting for that person, when the person lacks the capacity to make a particular decision for themselves. The same rules apply whether the decisions are life-changing events or everyday matters” (MCA Code of Practice).

Capacity Assessments are time and decision specific, so whilst it may have been decided that the person lacks capacity regarding moving to alternative accommodation, a separate capacity assessment is required regarding the decision to be conveyed to that accommodation.

Where the customer appears to lack capacity with regards to this decision, Practitioners will need to satisfy themselves that the first stage of the Capacity test has been met.

Following on from this, In accordance with guidance issued following a recent case from the Court of Protection, Practitioners will need to have identified all potential transport options available before commencing the 2nd stage of the capacity assessment. (Case CC V KK 2012 – COP). Practitioners should use the information in relation to the options for the purposes of enabling the person to weigh up the information and make a choice where possible.

The Capacity Assessment needs to be documented in the MCA Episode on FWI.

5. Best Interests Decision

If the Assessment of the person concludes that they lack capacity, then a Best Interest Decision is required. The Statutory Best Interest Checklist needs to be observed (See appendix A)

When deciding which option/decisions are required, Practitioners will need to use a balance sheet approach and weigh up all the options considering all the advantages and disadvantages of each option.

Once a best interest decision has been made the decision maker will need to consider how the decision will be implemented. They must give thought to how the person’s dignity and human rights can be maintained and how any restrictions that may be needed can be minimised.

6. Restraint

The use of Restraint in some circumstances is permitted under the Mental Capacity Act without a need for further legal authority, providing that:

- the purpose is to prevent harm;
- is proportionate to the likelihood and seriousness of that harm;
- is conducted with minimal force
- is for the Shortest time possible

A carer or professional must not use restraint so that they can do something more easily.
Anybody considering using restraint must have objective reasons to justify that restraint is necessary.

Section 6(4) of the MCA Act states that someone is using 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 they are resisting or not.
- Restraint can include manual restraint; chemical restraint; environmental restraint; institutional rules/practices

In accordance with the principle of least restrictive option, Practitioners will need to review whether any alternative measures can be implemented to minimise or avoid the use of restraint.

Where possible, they should ask other people involved in the person’s care what action they think is necessary to protect the person from harm. For example, it may be appropriate to get an advocate to work with the person to see if they can avoid or minimise the need for restraint to be used, or it may be appropriate to involve the person’s GP.

If it has been identified that restraint seems the only alternative for the safety of all, the following needs to happen:

- a thorough risk assessment needs to be undertaken;
- care plans agreed with the resident/relatives; and
- advice sought from external agencies about any other interventions that might be developed.

Where Manual force is being implicated, Practitioners will need to consider whether any alternative measures could be used that could avoid this type of restraint. In addition there needs be consideration as to whether there will be a need for formal legal powers, such as Guardianship or Court of Protection.

If restraint will be required than a referral to an IMCA will be required, if there is not already one involved.

In exceptional circumstances, where the police are required to assist in the conveying, this must be carefully considered, coordinated and planned to ensure the person’s dignity and safety are paramount at all times.

In exceptional circumstances where a journey may involve sustained periods requiring high levels of restraint, it may be necessary to seek an order from the Court of Protection to ensure this is lawful. Legal advice should be sought in these circumstances.

Where restraint is to be included in the care plan, the following should be fully documented:
1. Reasons for the restraint
2. The type of restraint to be employed
3. The time and dates
4. The persons involved
5. The length of the restraint
6. The harm that will be prevented.
7. Whether any formal legal authority is required.

The key areas where acts might not be protected from liability are:

- where there is inappropriate use of restraint; or
- where a person who lacks capacity is deprived of their liberty.

The use of restraint should not result in any physical injury to the person concerned. Where disproportionate restraint has been used and this has resulted in harm to the person, than the Adult Safeguarding procedures will need to be followed.

7. Identifying where restraint may be required:

The following will need to be considered:

- The person’s past and present responses to change
- Incidences and patterns of challenging responses
- Previous difficulties with conveyance
- Person’s reaction to place of conveyance
- Any forms of restraint previously or presently used
- The length of the journey
- Type of equipment required

8. Factors that could avoid restraint:

- Consider the timing of the transfer, including day and times
- Consider the type of transport being used
- Involvement of relatives or significant others for the planned transfer
- Involvement of relatives and significant others views on particular strategies that can be employed to minimise the use of restraint.
- Consultation with involved Agencies and Professionals
- If the person is likely to physically resist at the point of transfer, can the transfer be delayed.
- Development of alternative plans if transfer cannot proceed at the planned time.
9. Deprivation of Liberty

Where a person will be subject to a Deprivation of Liberty Safeguards order at the place of conveyance, this does not in itself give authority to convey.

However, transporting a person who lacks capacity from their home, or another location, to a hospital or care home will not usually amount to a deprivation of liberty (for example, to take them to hospital by ambulance in an emergency.)

Even where there is an expectation that the person will be deprived of liberty within the care home or hospital, it is unlikely that the journey itself will constitute a deprivation of liberty so that an authorisation is needed before the journey commences.

In almost all cases, it is likely that a person can be lawfully taken to a hospital or a care home under the wider provisions of the Act, as long as it is considered that being in the hospital or care home will be in their best interests.

In a very few cases, there may be exceptional circumstances where taking a person to a hospital or a care home amounts to a deprivation of liberty, for example where it is necessary to do more than persuade or restrain the person for the purpose of transportation, or where the journey is exceptionally long. In such cases, it may be necessary to seek an order from the Court of Protection to ensure that the journey is taken on a lawful basis.
Appendix A

Mental Capacity Act Principles

The five statutory principles are:

1. **Assumption of capacity** - A person must be assumed to have capacity unless it is established that they lack capacity.

2. **Assistance to make decision** - 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. **Unwise decisions permitted** - A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

4. **All decisions in the person’s best interests** - 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. **Less restrictive** - Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

**Best Interest Decision checklist**

Avoid discrimination - Working out what is in someone’s best interests cannot be based simply on someone’s age, appearance, condition or behaviour.

Identify all relevant circumstances - All relevant circumstances should be considered when working out someone’s best interests.

Encourage participation - Every effort should be made to encourage and enable the person who lacks capacity to take part in making the decision.

Assess whether capacity can be regained - If there is a chance that the person will regain the capacity to make a particular decision, then it may be possible to put off the decision until later if it is not urgent.

Find out the person’s views - The person’s past and present wishes and feelings, beliefs and values should be taken into account.

Consult with others - The views of other people who are close to the person who lacks capacity should be considered, as well as the views of an attorney or deputy.

Special considerations apply to decisions about life-sustaining treatment.