TURNER HOME

MENTAL CAPACITY ACT (2005) POLICY & PROCEDURE

Policy Sponsor:	Clinical Lead
Approving Body:	Leadership Team
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1. Purpose

1.1 To meet the provisions of the Mental Capacity Act 2005 (occasionally referred to as 'The Act' in this policy).

1.2 To support Turner Home in meeting Key Lines of Enquiry/Quality Statements (New)

1.3 To meet the legal requirements of the regulated activities that {The Turner Home} is registered to provide:

- The Care Act 2014
- Equality Act 2010
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Health and Care Act 2005

2. Scope

2.1 The following roles may be affected by this policy:

- Home Manager
- Other management
- All workers delivering support or care

2.2 The following Residents may be affected by this policy:

- All adult Residents who might lack mental capacity as defined under the Act in England and Wales

2.3 The following stakeholders may be affected by this policy:

- Advocates
- Representatives
- Commissioners
- The family and friends of Residents who might lack mental capacity as defined under the Act in England and Wales

3. Objectives

3.1 To ensure that The Turner Home follows the statutory framework of the MCA, including the five principles, to empower and protect vulnerable Residents who may lack capacity to always make their own decisions; to support them to plan ahead (if they wish) for a time when they may lose capacity.

3.2 To ensure that staff assume the capacity of Residents until proven otherwise by use of a decision and time-specific mental capacity assessment.

Staff and volunteers understand that the empowering, human rights-based ethos of the Mental Capacity Act is a crucial framework for ensuring human rights-based care and interactions with any Residents who may lack the capacity to make some decisions at the time they need to be made.

3.3 Staff empower and protect Residents who are not able to make their own decisions by use of the Mental Capacity Act Framework. By following the mental capacity code of practice, staff are supported to make decisions in the Residents' best interests and encouraged to identify the least restrictive of all available options.

3.4 To ensure that all staff at The Turner Home are given training in the Mental Capacity Act relevant to their role; regarding how, who and when to assess someone's mental capacity, and how to make best interest decisions when necessary, whilst also ensuring that staff are aware of their responsibilities and are legally protected through following the principles of the MCA.

4. Policy

4.1 Mental Capacity Act: 5 Principles

The Turner Home will ensure that all staff are aware of and work within the **Mental Capacity Act and its 5 underpinning principles:**

- The presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have the capacity to do so unless it is proved otherwise
- Individuals must be supported to make their own decisions – people must be given all appropriate help before anyone concludes that they cannot make their own decisions
- Individuals must be able to make what might be seen as eccentric or unwise decisions, without this being used as the sole reason to say they lack capacity
- Best interests – anything done for, or on behalf of people who lack capacity must be in their best interests
- Least restrictive option – before any act is done or a decision is made, staff must consider if they have found the option that, while meeting the need, is the least restrictive possible of the person's basic rights and freedoms

4.2 Supporting Residents to Make their Own Decisions - Consent

The Turner Home staff ensure that they support Residents to make their own decisions at every opportunity by using all available means to enhance their capacity for each specific decision.
The Turner Home will never pressure, coerce Residents or withhold information which is relevant to their decision making process.

4.3 Assessing Capacity

The Turner Home understands that all Resident will be presumed to have capacity unless there is reason to believe otherwise. The Turner Home understands that a capacity assessment is not required if there is no doubt about a Resident's capacity.

When a Resident lacks the mental capacity to make a particular decision, all actions taken are in the best interests of that person and align as far as possible with the person's wishes and feelings. Where appropriate (for more major decisions), staff will ensure that they use the MCA best interests checklist to inform best interest decision making.

Any assessment of a Resident's mental capacity is decision-specific and time-specific to decide whether they can make a particular decision at the time it needs to be made.

Registered Manager/Clinical Lead or a designated and trained individual will undertake

capacity assessments when they are required.

All assessments will be completed using the templates found in the 'Forms' section of this policy.

4.4 Best Interest Decisions

When a person lacks the mental capacity to make a particular decision, everything that is done for or on behalf of that person is in the person's best interests and restricts their rights as little as possible. In working out what is in someone's best interests, the Home Manager or appointed trained staff apply
the mandatory checklist of factors laid out in the Mental Capacity Act.

4.5 Restrictive Practices

Staff refer to the associated policies and procedures at The Turner Home, such as restraint/physical interventions and restriction of freedom of movement, when considering capacity and best interest decision-making and ensure that their actions are in accordance with the MCA.

Staff know how the Mental Capacity Act defines restraint, and that restraint can be:

- Physical or mechanical
- Environmental
- Chemical

Any physical intervention must be agreed as part of a multidisciplinary decision involving external health professionals and senior managers in the organisation. Staff must follow strategies as detailed by an approved, accredited training provider (please refer to the Reducing Physical Intervention Policy and Procedure).

4.6 Deprivation of Liberty

Staff know that the Mental Capacity Act does not allow a person aged 18 or over to be deprived of their liberty in a care home or hospital, unless the person's rights are protected by the Deprivation of Liberty Safeguards (DoLS). Staff can refer to the Deprivation of Liberty Safeguards (DoLS) Policy and Procedure at The Turner Home for further details.

4.7 Third Parties with Legal Responsibilities

The Turner Home understands that family and friends do not have the legal right to make decisions on behalf of Residents without their consent, or if they do not have capacity.

The Turner Home will ensure that they have a record of those lawfully able to act on a Resident's behalf and under which circumstances. This includes:

- Lasting Power of Attorney (Health and welfare)

- Lasting Power of Attorney (Property and finance)
- Enduring powers of attorney (signed and dated before 2007 and applicable to the decision and circumstances)
- Court Appointed Deputies
- Advance Decisions

The Turner Home will ensure that all legal requirements are met (including registration) before accepting the above.

4.8 Advance Statements of Wishes

These are not legally binding, but it is good practice to encourage people to think about the ways they would like to be cared for if they should lose mental capacity.

The Turner Home will make sure that Advance Statements are considered thoroughly when making best-interest decisions for Residents.

4.9 Advocacy/IMCA

Staff support Residents to access an Advocate or Independent Mental Capacity Advocate (IMCA) when required.
Staff can refer to the Advocacy Policy and Procedure at The Turner Home for further details.

4.10 Training

All staff at The Turner Home are given training in the Mental Capacity Act. Staff at The Turner Home know and work within the Mental Capacity Act principles and codes of practice, including what deprivation of liberty is and the legal framework to support Residents lacking mental capacity, and the procedures that must be followed in such circumstances.

The Government have also introduced a requirement for CQC registered service providers to ensure their employees receive learning disability and autism training appropriate to their role. This is to ensure the health and social care workforce have the right skills and knowledge to provide safe, compassionate and informed care to autistic people and people with a learning disability. This requirement is set out in the Health and Care Act 2022.

5. Procedure

5.1 Roles and Responsibilities

Clinical lead

- Responsible for this policy and the dissemination of its contents
- Registered Manager maintains and raises awareness among all staff of the Mental Capacity Act's principles and practice, including:
  - Recognising the central importance of the MCA to protect the human rights of vulnerable people
  - The understanding among all staff that the MCA springs out of human rights law

combined with existing best practice in health and social care, so it is intuitive to work within, and aligns with good person-centred practice

- The requirement to do everything possible to enable Residents to make their own decisions, even small ones, wherever they can do so
- The definition of restrictive interventions/restraint within the MCA, and how to recognise when deprivation of liberty is unavoidable in the person's best interests
- The requirement to interfere with the person's basic rights and freedoms as little as possible, while keeping them as safe as possible
- Responsibility for assessing the capacity and best interest meetings and more complex best interest decisions of Residents, if this is required, or delegating responsibility to a trained deputy
- Reporting all breaches and raising safeguarding concerns to the regulator and local authority
- Checking the registration of those with third-party legal responsibilities

All Staff

All staff have a responsibility to read this policy and procedure and direct questions to their line manager or the Home Manager if there is any element they do not understand.
Staff have a responsibility to follow this policy and procedure and report any intentional or accidental breach of the process.

Training will be set by the Registered Manager, and staff have a duty to attend or make alternative arrangements to attend. It is every member of staff's responsibility to maintain this knowledge and raise any concerns or gaps in knowledge with the Registered Manager.

Staff can access the Whistleblowing Policy and Procedure if they have witnessed any wrongdoing and wish to use this process to report a concern.

5.2 Consent

Any decision about a Resident's care or treatment must involve the informed and lawful consent of the Resident. A list of considerations can be found below in 5.3, to ensure that the Resident is offering their informed consent.

If a Care Worker has concerns that a Resident is unable to give informed and lawful consent (whether that be a refusal or agreement on the issue), the Care Worker must inform the Home Manager and record this information in the Care Plan notes to see if a capacity assessment needs to be completed.

5.3 Supporting Residents to Make Decisions and the MCA Process

Where it is helpful for the Resident, a Care Worker or a family member, advocate, or representative may sit with them during the assessment process to reassure and help them relax and feel comfortable.

Staff adopt the following best practice in relation to supporting Residents to make decisions:

- Knowing how to present the right information in the right way, including being clear about all the available options
- Actively looking for the best ways to communicate with a Resident, including checking whether they can see and hear as well as possible, or need an interpreter, or need to have pictures to understand their options
- Putting the person at ease, choosing the right time of day to explain about a decision to the Resident, or asking whether they would like a relative or friend present
- Taking care to enable the Resident, wherever possible, to take away the information (in an accessible format such as easy-read where suitable) and think it over, or to discuss it with trusted friends or family
- Actively trying to create options that will fit with the Resident's wishes, feelings, history and personality
- Support to help the Resident make decisions must be documented in the Resident's Care Plan

5.4 Day-to-Day Decisions

Care Workers must work from the Care Plan for day-to-day decisions. For more important decisions, best interests decisions should be recorded. This can be done by completing the forms accompanying this policy with the Resident.

5.5 Advance Care Planning

Staff should ensure that Residents who are at risk of losing capacity to make decisions and Residents with fluctuating capacity have the opportunity to discuss advance care planning on admission and when Care Plans are reviewed.

This will ensure that the Resident's wishes are known and documented for the future.

5.6 Who Should Assess Capacity

A Resident's capacity should be assessed by the staff member caring for the Resident when the decision needs to be made. Staff completing capacity assessments must be trained, confident and competent to carry out assessments, and have the communication skills and ability necessary.

If a healthcare professional is proposing treatment, it is their responsibility to assess capacity. For complex decisions, a formal assessment may be required from a social worker, occupational therapist, psychologist or psychiatrist, who will advise those making the decision.

5.7 Assessment of Capacity

Any assessment of a Resident's mental capacity is **decision-specific** and **time specific** to decide whether they can make a particular decision at the time it needs to be made. It is not about a range of decisions.

Staff should involve the Resident's family or significant others or an Independent Mental Capacity Advocate if one has been appointed.

Staff assessing a Resident's capacity to make a decision for themselves should use the two-stage test of capacity.

Stage 1: Does the Resident have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It doesn't matter whether the impairment or disturbance is temporary or permanent.)

- If a Resident does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under the Act
- These could include:
  - Conditions associated with some forms of mental illness
  - Dementia
  - Significant learning disabilities
  - Long-term effects of brain damage
  - Delirium
  - Physical or medical conditions that causes drowsiness or loss of consciousness
- If yes, does that impairment or disturbance mean that the Resident is unable to make the decision in question at the time it needs to be made?

Stage 2: Does the impairment or disturbance mean that the Resident is unable to make a specific decision when they need to, after being given all the practical and appropriate support to help them make the decision for themselves? Staff must have supported the Resident to make the decision for Stage 2 to apply.

A Resident is unable to make a decision if they are unable to do the following:

- **Understand** information relevant to the decision that is to be made
- **Retain** that information in their mind
- **Use or weigh** the information to reach a decision, and
- **Communicate** their decision, by any means at all that can be understood

There must **never** be a generalised statement that someone lacks mental capacity. It is **never** enough to say that the Resident lacks mental capacity solely because of a

diagnosis (such as dementia), or because someone thinks their decision is unwise, or because of their age, or their appearance.

When assessing a Resident's capacity, the Resident does not have to prove that they have capacity to make a certain decision. It is up to the person(s) who will make decisions on behalf of the Resident to prove that, on the balance of probabilities, the Resident lacks the mental capacity to make this decision.

If it is decided that, on the balance of probabilities, and after all possible help has been given to enable them to do so, the Resident does not have the mental capacity to make a particular decision at the time it needs to be made, any action taken or any decision made must be in the Resident best interests and recorded by the Care Worker.

5.8 Fluctuating Capacity or Temporary Capacity

Some Residents may have fluctuating capacity, meaning at times they can make decisions, but at other times their condition may affect their ability to make decisions. This could include:

- A psychotic episode during a delusion phase
- Manic depression during a manic phase
- Acute illness, severe pain, effect of medication

Staff must assess the Resident's capacity to make the particular decision at the time it needs to be made. They should also consider if the decision can wait until the Resident has the capacity to make it.

5.9 Where a Resident lacks capacity over a long period of time for many kinds of decisions, capacity must be reviewed whenever a Resident's Care Plan is being developed or reviewed; or if there appears to be some change in their capacity to make decisions or when they lack capacity for a major decision that needs to be made, for example, about where to live or whether to have serious medical treatment.

5.10 Complete Record of Assessment

Any member of staff responsible for assessing capacity must ensure that all required documentation is complete to evidence that the Mental Capacity Act has been followed. Staff must refer to the documentation that can be located in the Forms section of this policy.

The capacity assessment must clearly document:

- The decision to be made
- The domains of capacity that the Resident is lacking (understanding, retaining, weighing and/or communicating)
- Details of how staff have attempted to maximise the Resident's capacity

Care Workers must work to a Care Plan which is clearly based on the assessment of capacity and best interests and is subject to review in accordance with local agreement and the Service User Care Planning Policy and Procedure at The Turner Home. All Care Workers know that they can raise with senior staff issues that might show that the Care Plan should be reviewed more urgently. Examples of this include when the staff member thinks the person has regained capacity, or that there is a decision they used to be able to make but now might have lost that capacity.

The records of all assessments must be completed fully, signed by the assessor and dated. Assessments will be kept with the Care Plan so they are readily available and can be revisited when reviewing aspects of the Resident's care.

All information will be stored in line with UK General Data Protection Regulation.

5.11 Disputes

If there is a dispute about best interests, firstly ensure that you have followed the mandatory best interests checklist, and tried to make a decision that is in alignment with what the Resident wants. The following must be considered:

- Family and friends with legal responsibilities will not always agree about what is in the best interests of an individual. However, they usually have greater knowledge than Care Workers of what the Resident would have wanted, and sometimes of what the Resident now wants
- The decision-maker will need to clearly demonstrate in the record kept that the decision is based on all available evidence and has taken into account all conflicting views. Particular care will be taken to look for the option that is the least restrictive of the Resident's rights

5.12 If there is a dispute, the Home Manager will consider the following things to assist in determining what is in the Resident's best interests:

- Where it might help, involve an advocate who can represent the Resident and highlight their relevant wishes and feelings
- Hold a best interests meeting to identify all the possible options and explore the pros and cons of each, or, if for example, relatives or some professionals cannot attend in person, enable all relevant views to be properly recorded and shared
- Consider mediation
- As a last resort, apply to the Court of Protection for a ruling (normally undertaken by the relevant Local Authority or NHS Trust when a complex and serious decision is to be made)

The Home Manager must ensure that all documents completed are both signed and dated.

5.13 Best Interest Meetings/Mental Capacity Act Checklist

In making a decision in a Resident's best interests, because they lack capacity to make this decision for themselves, the Mental Capacity Act makes it compulsory to use a checklist covering matters to be considered (except in an emergency).

Decisions can be complex or life changing and a formal best interest decision meeting may be required. A number of different people may be involved if the decision would benefit from their input for the Resident such as:

- Staff
- Third parties such as power of attorney
- Family/close friendships

A record of the conversations and conclusions should be recorded. In making a decision in someone's best interests, the following **must** be taken into account (except in an emergency, when there is no time). The following checklist is a mandatory requirement under the Mental Capacity Act of matters to consider by a decision-maker:

- Is the person likely to regain the mental capacity to make this decision and, if so, can this decision wait until then?
- Do everything possible to encourage the person to take part in the making of the decision, even though they lack the capacity to make the decision
- Give great weight to the person's past and present wishes and feelings (in particular if they have been written down)
- Identify any beliefs and values (e.g. religious, cultural or moral) that would be likely to influence the decision in question
- Include any other factors that would be relevant and important to this person if they were able to make their own decision
- Be sure that you are not making assumptions about this person's best interests simply based upon the person's age, appearance, condition or behaviour
- As far as possible, the decision-maker must consult other people who might have views on the person's best interests and what they would have wanted when they had mental capacity, especially the following people:
  - Anyone previously named by the person lacking capacity as someone to be consulted
  - Carers, close relatives, friends or anyone else interested in the person's welfare
  - Any attorney appointed under a Lasting Power of Attorney
  - Any deputy appointed by the Court of Protection to make decisions for the person

Making a decision in a person's best interests requires evidence of the following:

- That the Act's statutory principles and best interests checklist are properly considered
- That the Resident remains central to the decision or decisions needing to be made and they are involved in the decision-making process where possible

- That relevant professionals and informal networks are properly consulted and if the statutory criteria is met, an Independent Mental Capacity Advocate is instructed
- A clear structure to the meeting, promoting partnership and collaborative working, the sharing of relevant information, the positive expression of different views, and an analysis of the risks and benefits attached to different options

5.14 Advocacy

An advocate is someone who can help the Residents express their wishes and views, and support them if:

- They have no family or friends and do not qualify for an Independent Mental Capacity Advocate (IMCA)
- Their family members disagree about their best interest
- There is conflict of interest with those who have been consulted over the best interest decision
- The Resident has previously used an advocate

5.15 Independent Mental Capacity Advocate (IMCA)

The IMCA service helps vulnerable Residents who lack the capacity to 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.
IMCAs are independent and will work with and support the Residents who lack capacity, to express their views to those who are working out their best interests.
An IMCA must be instructed when a Resident with no one else to support them, lacks capacity and:

- An NHS body is proposing to provide serious medical treatment, or
- An NHS body or local authority is proposing to arrange accommodation (or a change of accommodation) in hospital or a care home, and
  - The Resident will stay in hospital longer than 28 days, or
  - They will stay in the care home for more than

eight weeks The Turner Home should also consider

an IMCA for:

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

5.16 Education and Training

- All staff at The Turner Home are given training (including regular refresher training) in the Mental Capacity Act and the attendance of staff is recorded on a matrix at The Turner Home
- All staff understand the importance of seeking consent whenever staff intervene in a Resident's privacy or lifestyle, unless it can be shown that the person lacks capacity

to make this specific decision

- All staff understand that capacity is 'decision and time specific', so they must do all they can to enable this person to make this particular decision at the time it needs to be made, for example by clearly explaining their options and the likely outcomes of different decisions they might make
- Staff recognise that Residents have the important right to consent to or refuse any staff interventions in their lives, provided they have capacity to do so
- All staff understand how to assess capacity when required, if appropriate in cooperation with more senior staff
- All staff evaluate how effective training is and feedback their views to Registered Manager
- New Care Workers are expected to complete standard 9 of the Skills for Care Certificate
- Forums such as supervision, team meetings and observation of practice are used to continue improving staff practice in applying the MCA

The Turner Home makes available to staff accessible documents and resources about the Act, including training resources.
References to resources can be found in the Further Reading and Underpinning Knowledge sections of this policy.

6. Definitions

6.1 Independent Mental Capacity Advocate (IMCA)

- Registered Manager must ensure that, if an IMCA has been instructed and will visit, staff understand the IMCA has a right to see the person alone if they wish and has a right to see relevant records.
  It is good practice to sort out what notes will be relevant to the decision the IMCA will advise on, to welcome the IMCA as a colleague, and if applicable to provide somewhere private for the IMCA to meet with the person if they wish, to read the information and make notes
- The IMCA finds out about the person's wishes, feelings, beliefs and values, and brings to the attention of the decision-maker all factors that are relevant to the decision. The decision-maker must consider the views of the IMCA but is not bound by them
- An IMCA is an advocate appointed by a Local Authority or NHS body, in certain circumstances, to support a person who lacks capacity but has no one except paid carers who are interested in their welfare

6.2 Deprivation of Liberty

- A person who lacks capacity to consent to or refuse the Care Plan that keeps them safe is deprived of their liberty if this Care Plan shows that they are:
  - Under complete and effective supervision and control by staff (this may not always be 'line of sight' supervision, but staff prevent the person from acting in a way that would cause them harm, and know at all times pretty well what they

are doing) *and* they are

- Not free to leave the place where they are being cared for (in the sense of leaving to go and live somewhere else if they choose, or go away on a trip without permission from others)

6.3 Restraint

- The Mental Capacity Act defines restraint of a person lacking mental capacity to consent to the action for which restraint is needed as:
  - The use, or threat of use of force to make someone do something they are resisting, or
  - The restriction of a person's freedom of movement, whether they are resisting this or not

6.4 Advance Decision to Refuse Treatment (ADRT)

- If it meets the rules above, and applies to the situation at hand, an advance decision to refuse treatment is just the same as if the person is refusing the treatment with capacity.
  care workers must be clear:
  - Whether an advance decision to refuse treatment exists
  - What is in it, and
  - Where it is to be found

  Any doctor or paramedic needs to know if treatment they might suggest would be lawful or whether the person has refused it in advance
- An advance decision to refuse treatment can be used to refuse, in advance, clinically-assisted nutrition and hydration (CANH) because this is regarded as a medical treatment
- A person cannot refuse in advance to be admitted to a care home, or to be offered food and drink by mouth, or to being kept clean and comfortable
- A person can only refuse specified medical treatments; they cannot insist on any particular treatment
- A person who is refusing, in advance, life-sustaining treatment, must make sure that their advance decision meets certain requirements. These are that the decision must be in writing, signed and witnessed (as a safeguard that the person is not subject to undue pressure), with a clear statement of which treatment or treatments the person is refusing. In addition, there must be an express statement the person understands that this may put their life at risk but that the decision still stands
- An advance decision to refuse treatment that is not life-sustaining does not need to be in writing, but the person must ensure that professionals know what treatment(s) the person is refusing
- The Act creates ways for people aged 18 and over to make a decision in advance to refuse medical treatment if they should lose capacity in the future. This is called an advance decision to refuse treatment

6.5 Protection from Liability

- The Mental Capacity Act allows carers, healthcare and social care staff to carry out certain tasks for, or on behalf of people whom they reasonably believe to lack capacity to consent to these actions, without fear of liability
  For actions to receive protection from liability, the worker must
  - Reasonably believe the person lacks capacity to consent to or refuse the proposed actions
  - Reasonably believe the actions they propose are in the person's best interests, and
  - Reasonably believe they have found the least restrictive option to meet the identified need Note that two extra conditions apply for the use of restraint. Any action intended to restrain a person
    who lacks capacity will not attract protection from liability unless the following **two conditions are also**
    met:
    - The person taking action must reasonably believe that restraint is **necessary to prevent harm to the person**, and
    - The amount or type or restraint must be a **proportionate response to the likelihood and seriousness of that harm**

6.6 Court Appointed Deputies

- They are only appointed if the Court cannot make a one-off decision to resolve the issues, and if the person has already lost capacity to make these decisions. Staff should be aware of any Court appointed deputies in place for Residents in their care, and of what decisions any deputy is authorised to make
- The Act provides for a system of court appointed deputies to replace the previous system of receivership in the Court of Protection. Deputies are able to take decisions on welfare, healthcare and financial matters as authorised by the Court but are never able to refuse consent to life-sustaining treatment

6.7 Lasting Power of Attorney (LPA)

- Staff must be aware of any LPA in place for Residents in their care; they must know which individuals have been given powers to make which specific types of decisions
- The Act allows a person aged 18 and over, who has capacity to make this decision, to appoint attorneys to make decisions in their best interests (rather than leave this to health or care professionals) if they should lose capacity in the future. There are two types of LPA, one to make health and welfare decisions, and the other to make finance and property decisions. The provision replaces the previous role of Enduring Power of Attorney (EPA) though, where these exist, they are still valid for financial and property decisions

6.8 Best Interests

- Everything that is done to, or on behalf of, a person who lacks capacity must be in that person’s best interests. The Mental Capacity Act does not define best interests but lays out how best interests decisions must be made. The Act provides

a checklist of factors that decision-makers must work through, except in an emergency, in deciding what is in a person's best interests. A person can put his/her wishes and feelings into a written statement if they so wish, which the person making the decision must consider

6.9 Mental Capacity Act

- All staff paid to work with any person aged 16 or above, who might lack mental capacity to make certain decisions at the time they need to be made due to a disability or disorder of mind or brain, must consider the MCA code of practice
- It sets out who can take decisions, in what situations, and how they should go about this
- The Mental Capacity Act 2005, covering England and Wales, lays out a legal framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they might lack capacity in the future
- Certain parts, such as the right to make an advance decision to refuse treatment or appoint attorneys under a Lasting Power of Attorney, only relate to people aged 18 and over
- Note that DoLS will be replaced, not before autumn 2023, by the Liberty Protection Safeguards (LPS), which will apply in any settings where a person lacking capacity to consent to their care arrangements might be, such as supported living, extra-care housing, or their own family homes. The Turner Home will update all resources and policies in good time before the implementation
- Certain parts, such as the Deprivation of Liberty Safeguards (DoLS) and the right to make an advance decision to refuse treatment or appoint attorneys under a Lasting Power of Attorney, only relate to people aged 18 and over
- Most of the MCA applies to people from the age of 16 upwards
- Note that a new code of practice is under development, and will supersede the existing code, perhaps in autumn 2023. The Turner Home will update all its resources to take account of the new code in good time

6.10 Court of Protection

- The Court of Protection has jurisdiction relating to the whole Act and is the final arbiter for capacity matters. It has its own procedures and nominated judges

7. Key Facts – Professionals

Professionals providing this service should be aware of the following:

- The Act introduces new criminal offences of ill treatment or neglect of a person who lacks capacity by a paid health or care worker. A person found guilty of such an offence may be liable to imprisonment for a term of up to 5 years
- The Mental Capacity Act 2005 provides a statutory framework to empower and protect people aged 16+ who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they must go about this.

It enables people to plan ahead for a time when they may lose capacity

- When a person aged 16+ lacks capacity to consent to care, deprivation of liberty is only permitted if it has been authorised by the Court of Protection; this is arranged by the Commissioner or the Local Authority. DoLS will be replaced in time by the Liberty Protection Safeguards (LPS). Full guidance will be provided nearer the time
- Guidance on the Act is provided in a statutory Code of Practice. Whilst there is no legal duty on anyone to 'comply' with the Code, those working with people who lack mental capacity must follow its guidance or have extremely good reasons for not doing so. The Code is currently under revision, to include LPS and updates. Full guidance will be provided in good time before implementation

8. Key facts – People affected by the service

People affected by this service should be aware of the following:

- Where a decision needs to be made for someone who lacks the capacity to make that decision, the decision must be made in the person's best interests. The decision maker must take into account the person's wishes and the views of friends and family in making those decisions
- The Mental Capacity Act (MCA) protects the rights of people who lack mental capacity and those who take decisions on their behalf. It provides ways for anyone to plan ahead for a time when capacity might be lost. It also puts an obligation on paid staff to find the least restrictive, most person-centred ways possible to care for someone who lacks mental capacity.