**Briefing on COVID 19 Vaccination and Mental Capacity Act Process**

This briefing is sadly in response to two patients who lost their life due to COVID related complications. One patient had Learning difficulties and the other a diagnosis of Down syndrome. The patients had not been vaccinated and some family members did not want them to be vaccinated due to their concerns about the vaccine and its impact. It is important to ensure the MCA process is followed for those lacking capacity. This includes people with various mental disorders like advanced dementia, significant cognitive impairment, or any cases where you are not able to presume mental capacity because of the presentation. The principles below were extracted the from Mental Capacity Act its code of practice and from caselaw including emerging [COVID-19 Vaccination Case Law](https://www.edgetraining.org.uk/post/covid-19-vaccinations-and-the-mental-capacity-act). The guidance applies to all individuals aged 16 and older with the exception that 16- and 17-year-olds cannot make a Lasting Power of Attorney or an Advance decision to refuse treatment and if they lack capacity to consent to the vaccine those with parental responsibility can consent on their behalf

* The 5 principles of MCA remain the standard main guidance, if you follow the principles, you will come out right, here is a link to these. [MCA Principles: SCIE](https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance#principles)
* Do not utilise blanket decisions but rather focus on the individual and involve them in all processes
* Consent for the vaccine should be sought from the individual who is going to receive the vaccine
* We should presume capacity and only assess for capacity to consent to the vaccine where there is evidence to indicate the individual might lack capacity to consent to the vaccine.
* For those whose capacity to consent is certain obtain consent, see [PHE link](https://www.gov.uk/government/collections/covid-19-vaccination-programme)  for forms you can use if you do not have any. If they refuse respect their decision and continue to share knowledge and benefits of the vaccine in a respectful manner.
* Explain MCA process to the individual, family and significant others who are not familiar with the concepts and provide, here is a link from LYPFT CDLT with easy read materials [LYPFT useful resources for LD](https://www.learningdisabilityservice-leeds.nhs.uk/get-checked-out/resources/covid-19/) . They can also support you with the process including desensitisations work around barriers like fear of needles
* For cases where you think the individual might lack the capacity to consent to the vaccine you should complete a capacity assessment and best interests process should be engaged. See this link for more information. [Key points on assessing mental capacity and best interests decisions: COVID 19 vaccine](https://71633548c5390f9d8a76-11ea5efadf29c8f7bdcc6a216b02560a.ssl.cf3.rackcdn.com/content/uploads/2021/09/COVID-19-Vaccination-and-Mental-capacity-assessments-and-best-interests-decision-process.pdf)
* For further guidance and information on information to consider for capacity assessments and best interests decision for LD client group The MCA lead and the [Community Learning Disability Community Team](https://www.leedsandyorkpft.nhs.uk/our-services/community-learning-disability-teams-cldt) can support you further.
* Appointed deputies with a mandate to make the decision and individuals appointed with a registered health and welfare Lasting Power of Attorney (LPA) can make the decision in relation to consenting to the vaccine. If their decision is not in line with the individual’s best interests it should be reviewed with input from MCA Lead who can advice on next steps e.g., further engagement, COP, approaching the Office of the Public Guardian. You can [Check if a COVID-19 patient has an attorney (LPA) or deputy](https://www.gov.uk/guidance/nhs-staff-searching-our-registers-of-attorneys-and-deputies)
* To ascertain best interests, you do not need a big meeting as long as you have consulted with relevant key people like other professionals or staff, family, friends and advocates, (IMCA) if indicated e.g., in cases were restraint might be indicated. Such consultation can take various forms including face to face meetings, audio and video consultations.
* If the individual is unbefriend or if it appears as if the carer or family are making decisions that are not in line with the individuals’ best interests and for cases where it is envisaged that the individual would actively resist the administration of the vaccine it is good practice to [make a referral for advocacy services – The Advonet Group](https://advonet.org.uk/how-we-can-help-you/make-a-referral/)
* For cases where significant others are not acting in the best interests of the individual and the individual needs to be safeguarded the case can be discussed with the safeguarding team at [leeds.safeguarding@nhs.net](mailto:leeds.safeguarding@nhs.net)
* If there are difference of opinion on best interests, try to resolve these by compassionate respectful, non-judgemental dialogue. MCA Lead is also available for advice on next steps and support.
* No carer or family can refuse or accept the vaccine on behalf of someone who is 18 years and above who may lack capacity except as indicted above for those with LPA and deputies and within the confines of best interests.
* Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there's significant evidence to suggest otherwise and for exceptional circumstances. It is however good practice to involve those with parental responsibility as much as possible. If they lack capacity those with parental responsibility can consent on their behalf. See [NICE Guidance: consent for under 18](https://www.cqc.org.uk/sites/default/files/Brief_guide_Capacity_and_consent_in_under_18s%20v3.pdf)
* Where disputes are not getting resolved time should not be wasted going back and forth but decision should be made to seek Court of Protection (COP) guidance, again consult with MCA Lead and your managers first to see if this is warranted
* COP guidance might also be needed and useful for complex cases for example where there are significant unresolved disputes on best interests, concerns around fear of needles, restraint. Again, consult with MCA lead who will take a lead on next steps and consult with senior mangers in relation to legal advice and the option of seeking Court of Protection guidance.
* Document capacity assessments and best interests. Keep it brief and to the point for most cases. For complex or disputed cases do a more detailed record to evidence your decision-making process bearing in mind these might end up being needed in the COP. Using capacity assessment and best interests tools can help you structure your findings and evidence your decision-making process. Tools to assess capacity and record best interests are on Systems 1 and Emis. Here is a copy [Mental Capacity Assessment and Best Interests Decision Tool](https://71633548c5390f9d8a76-11ea5efadf29c8f7bdcc6a216b02560a.ssl.cf3.rackcdn.com/content/uploads/2021/09/Example-of-Mental-Capacity-Assessment-to-consent-for-COVID-19-vaccine-and-record-of-best-interets-decision.pdf)
* Children under the age of 16 can consent to their own vaccination if they're believed to have enough intelligence, competence and understanding to fully appreciate what's involved in their treatment. This is known as being Gillick competent. Otherwise, someone with parental responsibility can consent for them, for more information see information in the [Greenbook chapter 2 consent.](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994850/PHE_Greenbook_of_immunisation_chapter_2_consent_18_June21.pdf) and in [NICE Guidance: consent for under 18](https://www.cqc.org.uk/sites/default/files/Brief_guide_Capacity_and_consent_in_under_18s%20v3.pdf)
* For any specific MCA training needs do contact the MCA Lead and I will be happy to deliver some bespoke training. I continue to run MCA training on a monthly basis if there are enough delegates. Future MCA training dates are 20/10/21, 26/11/21 from 1200-1430. To book email [leeds.safeguarding@nhs.net](mailto:leeds.safeguarding@nhs.net)

**Below are further links to other key resources:**

1. [COVID 19 Vaccination: A case study: Summarising the key facts and points of learning](https://71633548c5390f9d8a76-11ea5efadf29c8f7bdcc6a216b02560a.ssl.cf3.rackcdn.com/content/uploads/2021/09/Covid-19-and-MCA-vaccination-case-study-003.pdf)
2. [COVID-19 Vaccination and MCA Flow Chart](https://71633548c5390f9d8a76-11ea5efadf29c8f7bdcc6a216b02560a.ssl.cf3.rackcdn.com/content/uploads/2021/09/Vaccination-consent-and-MCA-flow-chart.pdf)
3. [Find out if someone has an attorney, deputy or guardian acting for them](https://www.gov.uk/find-someones-attorney-deputy-or-guardian)
4. [Essex Chambers Rapid Response Guidance note: Vaccination and Mental Capacity 3rd update](https://1f2ca7mxjow42e65q49871m1-wpengine.netdna-ssl.com/wp-content/uploads/2021/01/Mental-Capacity-Guidance-Note-COVID-19-vaccination-and-capacity-v4.pdf)

1. [PHE Documents relating to the new coronavirus (COVID-19) vaccination programme](https://www.gov.uk/government/collections/covid-19-vaccination-programme)
2. [The Covid-19 Vaccine and Human Rights: A short guide | British Institute of Human Rights](https://www.bihr.org.uk/the-covid-19-vaccine-and-human-rights-a-short-guide)
3. [Coronavirus (COVID-19): Vaccine | Mencap](https://www.mencap.org.uk/coronavirus/coronavirus-covid-19-vaccine)

1. [Key points on assessing mental capacity and best interests decisions: COVID 19 vaccine](https://71633548c5390f9d8a76-11ea5efadf29c8f7bdcc6a216b02560a.ssl.cf3.rackcdn.com/content/uploads/2021/09/Key-points-on-assessing-mental-capacity-and-best-interest-decisions-COVID-19-vaccine_.pdf)

**LYPFT in collaboration with the CCG are running a monthly group to review complex cases of individuals with a diagnosis of learning disabilities who might lack capacity to consent to the vaccine. Colleagues from Primary Care will get an invite from LYPFT to ensure that the discussions are holistic and if they are not able to attend some request for views and information will be made. The sessions will be on teams. Health facilitation team and CDLT are keen to work in collaboration with primary care to ensure that vulnerable citizens who lack capacity are safeguarded as envisaged by the Mental Capacity Act and Human rights Act.** Contact Mary Kadzirange Mental

Capacity Act Lead, Leeds CCG Safeguarding Team, at [mary.kadzirange@nhs.net](mailto:mary.kadzirange@nhs.net) or [leeds.safeguarding@nhs.net](mailto:leeds.safeguarding@nhs.net) 07917514196.