

Reference Number: FOI2021/310
From: Private Individual
Date: 08 September 2021
Subject: Equality and diversity policies for staff, patients and transgender patients

Q1 Please provide any equality and/or diversity policies you have in place for patients.

A1 The Freedom of Information Act gives rights of public access to information held by public authorities, it does not however confer any explicit right to copies of original documents. The Trust has chosen to provide copies of relevant documentation here to assist in the response of the information requested.

Please find attached the Trust's *Learning Disability and Complex Care Needs Policy*.

Q2 Any equality and/or diversity policies you have in place for staff.

A2 Please find attached the Trust's *Equality and Diversity Policy*. The Trust is also developing a Reasonable Adjustments Policy which is currently going through consultation.

Q3 Any guidelines, protocols, policies, or similar relating to care provision for transgender adults.

A3 The Trust has a policy Supporting Transgender, non-binary and non-gender employees and people who use our services at Liverpool Heart and Chest Hospital Knowsley Community Services, however this is currently in consultation phase.

Q4 Any guidelines, protocols, policies, or similar relating to care provision for transgender children and adolescents.

A4 Information not held - Liverpool Heart and Chest Hospital is a specialist adult cardiothoracic centre and does not routinely treat children and adolescents.

Q5 Any guidelines, etc. relating to mental capacity and/or informed consent

A5 Please find attached the Trust's *Mental Capacity Act Policy*

Q6 Any guidelines, etc. relating to shared care agreements and/or working with private services to facilitate treatment, particularly with regards to transgender healthcare.

A6 Information not held – The Trust does not currently have any guidelines in relation this.

Equality & Inclusion Policy

Policy and Procedure

For completion by Author			
Author(s) Name and Title:	Rachael McDonald, HR Business Partner		
Scope:	Trust Wide	Classification:	Human Resources
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Executive Lead	Director of Workforce Development		

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Contents

Document Statement 3

1. Roles and Responsibilities 3

2. Controlled Document Standards 4

3. Procedure..... 4

4. Policy Outcomes..... 6

5. Policy Implementation Plan 8

6. Monitoring of Compliance..... 9

7. References 9

8. Appendices 10

9. Endorsed By:..... 11

10. Record of Changes 12

Document Statement

This policy sets the Trusts commitment to promoting equality, valuing diversity and working inclusively across all our planning and operations. The Trust uphold these principles in everything that we do and helps to define our actions, behaviours and practices as an employer, healthcare and service provider.

The visible and less visible diversity that exists between individuals and groups can unintentionally create a landscape of inequality, discrimination and social exclusion. Some forms of disadvantage and discrimination are widely experienced by particular groups.

Liverpool Heart and Chest Hospital (LHCH) staff work with some of the most deprived communities in the UK and therefore are working with some of the most vulnerable, marginalised and socially excluded individual patients and their families. We recognise our role in helping those most at risk of health inequalities and poorer outcomes improve their access to and take up of care, their experience of care intervention and better health outcomes over time.

In addition, the Trust will ensure that we take account of all the Protected Characteristics, set out in the Equality Act 2010 to help focus our attention and resources appropriately. These are:

- age
- disability
- gender
- gender reassignment/Transgender
- race
- religion and belief
- sexual orientation
- pregnancy and maternity
- marriage and civil partnership

These Protected Characteristics help provide a strong foundation for LHCH's work to promote equality, manage diversity and work to create inclusion for all groups in effective and efficient ways that can be monitored, measured and reported on.

Our commitment to promoting equality, valuing diversity and working inclusively is explicit in our strategic objectives, our mission and values and is expressed in our 3 year Equality and Inclusion Strategy. The Trust takes our legal, ethical and moral duties and obligations around equality, inclusion and human rights seriously and the strategy has been aligned with The NHS Public Sector Duty and the requirements set out within the Workforce Race and Disability Equality Standard.

1. Roles and Responsibilities

1.1 Director of Workforce and Service Improvement

The Director of Workforce and Service Improvement is responsible for the development and implementation of this policy.

1.2 People Committee

The People Committee will monitor performance against this policy.

1.3 Workforce Development Group

Version No 4.3	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 3 of 12
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This group will be responsible for the ratification and review of the policy through delegated responsibility from the People Committee. The group will ensure appropriate management and staff side consultation when reviewing the policy and will monitor its applications and outcomes.

1.4 **Managers and Employees**

All managers and staff are expected to observe the requirements of this policy in their behaviour towards other staff members and members of the public. In particular, they shall:

- support and implement the principles of the Equality and Inclusion Policy
- report any incident or behaviour which contravenes this policy and not indirectly support unfair treatment by ignoring what is happening around them;
- treat all staff, managers, patients, visitors and members of the public with dignity and respect.

2. **Controlled Document Standards**

- 2.1 This policy applies to All LHCH staff, volunteers, patients, families, other service users, suppliers and partners
- 2.2 LHCH recognises the legal, ethical and moral duties and obligations placed on the Trust as a public sector service provider and employer to advance equality of opportunities eliminate discrimination harassment and victimisation and foster good relations between different groups.

3. **Procedure**

- 3.1 This policy helps LHCH to meet its duties, obligations and aspirations as an employer and healthcare provider by:
- promoting the highest standards of practice and legal compliance with both Equalities and Human Rights legislation
 - defining our approach to promoting and building equality in respect of age, disability, gender, gender reassignment/transgender, race, religion and belief , sexual orientation, pregnancy and maternity, marriage and civil partnership
 - evidencing our commitment to providing equality of opportunities, fairness in recruitment and a safeguard against unconscious bias in our selection, so that we are better able to promote ourselves as an employer of choice to the broadest range of talented professionals and committed volunteers
 - maintaining an inclusive approach to implementing our Team LHCH People Strategy, so that we can sustain high levels of motivation, morale, satisfaction and productivity amongst our diverse staff teams and ensuring we invest resources to advance equal opportunities and positive action in our talent management, succession planning where required to address workforce under- represented and increase workforce diversity
 - reducing absence and improving workforce satisfaction levels, by ensuring that staff and volunteers can benefit from a workplace free from prejudice, fear, harassment, victimisation and other forms of discrimination
 - avoiding or reducing the costs (not all of which are financial) associated with discriminatory action by promoting non-discriminatory practice throughout the Trust, in accordance with our policies and practice guidance
 - promoting equality and managing diversity effectively and efficiently, by ensuring that we monitor and report on our overall performance and progress regularly and that we specifically monitor and profile our workforce, patient and service user group (eg through audits, reviews and equality analysis) to help assess levels of diversity, under representation, as well

as any gaps in service provision to one or more groups.

- taking account of the diverse communities we serve and therefore developing accessible and inclusive services to meet emerging and/or unmet needs, while ensuring that our services remain relevant and accessible to existing patients and service users
- helping to build a positive image of LHCH to a broad range of audiences including patients and other service users, employees, volunteers, partners, supporters, donors and commissioners
- providing enhanced quality assurance and evidence of added value to our commissioners, regulators and inspectors

3.2 Liverpool Heart and Chest Hospital (LHCH) oppose all forms of prejudice, discrimination and intolerance that may present themselves in our workplaces, healthcare and service delivery settings. We take a zero tolerance approach to manifestations of discrimination, bullying, harassment and victimisation. Such behaviours and actions are considered disciplinary offences and will be dealt with through our disciplinary procedures for staff and our complaints procedure for patients, families and other service users.

3.3 We work proactively to identify, remove or reduce any barriers and inequalities that are identified in respect to access to our employment opportunities, including volunteering; and that of our service provision/healthcare. We identify and address these risks, in part through consultation with stakeholders, the use of the NHS friends and family tests and patient, family and carer complaints and staff surveys. Additionally we undertake equality analysis and equality and diversity monitoring to help us produce reports and take forward necessary action planning to support practice and performance improvement.

3.4 We value diversity and believe that having a workforce with a broad and rich mix of backgrounds, knowledge, skills and talents, enhances our ability to:

- Deliver high quality accessible and inclusive healthcare and services to the broadest range of patients and families living in diverse communities
- Build and maintain an inclusive workplace culture, which provides a healthy environment for all staff and volunteers
- Make a positive impact on promoting and achieving health equalities and improving outcomes for those who are deemed most vulnerable and at risk of experiencing health inequalities and poorer outcomes
- Ensure our healthcare settings are inclusive, accessible, welcoming and safe for our patients, families, staff, volunteers and other users/visitors
- Maintain a workplace culture that is inclusive, safe and healthy for all staff and volunteers
- Ensure that our staff and volunteers who work across departments and in the community, more closely reflect the diversity that exists in the communities they work within
- Ensure that our staff and volunteers demonstrate patient centred care that takes account of the diverse needs, requirements and expectations of our patients, families and other service users.

3.5 We promote an inclusive organisational culture, built on fairness, respect and dignity for all patients, families, staff and volunteers and our wider stakeholder group. We do this by:

- Promoting awareness, understanding and respect for the diversity that exists within our workforce and the communities we serve through participation in activities and events that service to celebrate diversity

- Providing flexible working practices and spaces that enable staff and volunteers to undertake religious and cultural observance in their workplaces
- Ensuring staff and volunteers have a high regard and awareness for any religious and cultural practices of our patients and families that may have an impact on their care experience and outcomes.
- Ensuring staff and volunteers have a high regard for the specific needs of disabled people who may need additional support and provision around language, communication, accessibility, translation and advocacy to ensure they have an equal opportunity to experience positive care and achieve positive outcomes.
- creating opportunities for a broad range of stakeholders to help shape and influence our strategies, policies and practices, through consultation, participation, feedback, community engagement and partnership working
- ensuring staff have a high regard for our values and behaviours and are supported to demonstrate these in their day to day practices and dealings with others
- This policy informs and underpins our Trust-wide equality and diversity strategy, our overarching Trust and departmental strategies, plans and policies.

4. Policy Outcomes

- 4.1 This document outlines the expected outcomes that arise from the implementation of the Trust's Equality and Inclusion Policy. It is intended to provide flexibility for those who use the policy to find ways to achieve these outcomes by a variety of methods and approaches. In being able to evidence these outcomes have been achieved to a variety of stakeholders, LHCH will be able to demonstrate effective and effective practice beyond compliance with The Equality Act 2010 and the Human Rights Act 1998.

4.2 Organisational Arrangements

- 4.2.1 LHCH has appropriate organisational arrangements to implement this policy and ensures that there is strong leadership accountability for taking the policy forward across all areas of planning and operations.
- 4.2.2 LHCH ensures that its governing bodies and sub committees are made up of diverse participants and proportionately representative of the communities it works in line with local demographics.
- 4.2.3 The Trust has a fair and transparent process in the recruitment of its non-executive board members that promotes equality of opportunity and positive action where necessary to address under-representation and increase diversity.
- 4.2.4 Training and guidance is provided to enable staff, volunteers, non-executive directors and its members to fulfil their responsibilities in respect to equality, inclusion and human rights and the requirements of this policy.
- 4.2.5 LHCH's Equality and Inclusion Steering Group ensures the Trust can provide clear evidence of effective and efficient practice in advancing equality of opportunity, eliminating discrimination harassment and victimisation and fostering good relations between different groups.
- 4.2.6 LHCH ensures that all its suppliers, contractors and consultants demonstrate a clear commitment to and alignment with the Trusts values, principles and practice in respect to

equality, diversity, inclusion and human rights

- 4.2.7 Performance and progress in respect to meeting and exceeding legal and regulatory requirements in respect to equality, inclusion and human rights is monitored, clearly evidenced and reported on regularly to the governing body and included within the annual Quality Report.

4.3 Staff and Volunteers

- 4.3.1 LHCH maintains a workplace culture that is inclusive for all groups regardless of background or identity and is an equal opportunities employer that maintains diversity and proportionate representation at all levels across its workforce.
- 4.3.2 The Trust has a fair and transparent recruitment and selection process and demonstrates the highest standards of practice in promoting equal opportunities and taking positive action to attract diversity to its paid and volunteering roles.
- 4.3.3 LHCH has a highly skilled workforce, who can demonstrate and evidence effective and efficient practice in recognising and responding to issues of equality, inclusion and human rights in the context of their work and dealings with diverse groups of patients, families, colleagues and other groups.
- 4.3.4 The Trust clearly defines the leadership and managerial competencies required to successfully demonstrate inclusive practices when managing staff and volunteers and delivering patient care and services to diverse groups.
- 4.3.5 Staff and volunteers are engaged, guided and supported to take a zero tolerance approach to prejudice, intolerance, discrimination, harassment, bullying and victimisation on the grounds of age, race, disability, gender, gender identity, religion, belief, sexual orientation, or because someone is pregnant, married or in a civil partnership.
- 4.3.6 The Trust has a Bullying and Harassment and a policy that clearly defines the acceptable actions and behaviours expected of all staff and volunteers in line with Trust values and principles. Victims and perpetrators will be dealt with constructively, sensitively and robustly through formal channels.
- 4.3.7 There are suitable spaces across the Trust that provide staff and volunteers opportunities to practice quiet contemplation, religious observance and prayer.
- 4.3.8 The Trust promotes awareness of cultural diversity to all staff and volunteers and takes account of specific requirements and needs of staff and volunteers during specific religious and cultural events across the year that may impact on work attendance, productivity and service delivery to patients

4.4 Service Development and Provision

- 4.4.1 LHCH delivers accessible and inclusive services and maximises opportunities to have a positive impact in local communities by reducing health inequalities and improving health outcomes for individuals and groups.
- 4.4.1 The Trust's customer care and complaints policy embeds the principles and values of equality, inclusion and human rights, within its procedure, practice and guidance.
- 4.4.2 LHCH using learning from equality analysis to design and deliver accessible and inclusive services and patient centred care and improve targeted actions to address the needs and expectations of specific groups.

- 4.4.5 Patient monitoring information is utilised to track outcomes and experiences of all patients and make changes and improvements to policy, practice and provision where necessary to improve outcomes and experiences for one or more groups.

4.5 Safeguarding

- 4.5.1 LHCH upholds the protection, safety and wellbeing of young people and patients with additional care needs in its care.
- 4.5.2 LHCH promotes positive, well informed, needs and evidence-based assessments and interventions underpinned by robust equality, inclusion and human rights staff training and guidance.
- 4.5.3 The Trust promotes empowering self-advocacy with all patients and works with a range of professionals and groups to enable and facilitate this.
- 4.5.4 LHCH pays particular attention to the risk of inequality or social exclusion because of issues of race, ethnicity, age, disability, sexual orientation, gender, gender identity that. Information is collected and utilised to make objective determinations on safeguarding, assessment and intervention.

4.6 Participation, engagement & stakeholder involvement

- 4.6.1 The Trust has clear pathways of inclusion for its patients, families, staff, volunteers, members and other stakeholder groups that evidence transparency, accountability, fairness, respect and equality for all.
- 4.6.2 That a process for completing Equality Impact Assessment (EQIA) is embedded to ensure that the Trust is meeting its legal obligation and the assessments help the Trust to deliver their business objectives and achieve equal outcomes for staff, the local community and service users. More importantly, in line with good practice, they will help the Trust identify and prevent diversity issues through a more pro-active approach.
- 4.6.3 LHCH uses learning from equality analysis to ensure stakeholder consultation, involvement and participation promote and facilitate the full and active contribution of the diverse communities in which it works.
- 4.6.4 The Trust utilises effective and efficient approaches to engaging with and involving identified vulnerable, under-represented, minority groups and marginalised groups.
- 4.5.5 Equality Analysis is used to ensure information and communications are accessible and inclusive for diverse audiences
- 4.5.6 The Stakeholder participation, consultation and engagement policy embeds the principles and values of equality, inclusion and human rights, within its procedure, practice and guidance. Staff and volunteers are trained, guided and supported to challenge the expression of discriminatory and derogatory views expressed by participants sensitively and constructively.

5. Policy Implementation Plan

- 5.1 The Director of Strategy & Organisational Development will be responsible for implementation of this policy.
- 5.2 This Policy has been consulted widely throughout the Trust with Managers and staff side partners.

- 5.3 The policy will be implemented on a Trust wide basis. The policy will be made available on the intranet and disseminated to all wards / departments.
- 5.4 Managers have a responsibility to ensure staff have read and understood this policy and procedure. New staff will be informed of the policy as part of their Trust induction.
- 5.5 Staff and management awareness will be provided via divisional and corporate structures. Staff awareness will be raised via Team Brief and Corporate Communications.

6. Monitoring of Compliance

The effective implementation of this policy will be monitored by the Workforce Development Committee with delegated responsibility from the People Committee.

7. References

<https://www.gov.uk/guidance/equality-act-2010-guidance>

8. Appendices

9. Endorsed By:

Name of Lead Clinician / Manager or Committee Chair	Position of Endorser or Name of Endorsing Committee	Date

10. Record of Changes

Section No	Version No	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason

Learning Disability and Complex Care Needs

Policy

For completion by Author			
Author(s) Name and Title:	Christina Kenny, Matron Patient Experience		
Scope:	Trust Wide	Classification:	Clinical
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Replaces:	1.0		
To be read in conjunction with the following documents:	Mental Capacity Act, Privacy and Dignity Policy, Consent to Treatment or Examination Policy, Safeguarding Adults Policy, Safeguarding Children and Young Adults Policy, Enhanced Levels of Observational Care Policy, Chaperone Policy		
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Executive Lead	Sue Pemberton		

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Contents

Policy Statement.....	3
1. Roles and Responsibilities.....	7
2 Guidelines	9
3. Policy Implementation Plan	15
4. Training and Awareness	16
5. Monitoring of Compliance	16
6. References	16
7. Appendices.....	17

Policy Statement

People with learning disabilities and complex care needs may need extra support to ensure they receive care and treatment which meets their specific needs and maintains their safety. Preparation and planning help ensure examinations, investigations and treatment are more successful and can help reduce stress and anxiety.

'Learning disabilities' is an umbrella term for people who have varying degrees of impairment of intellectual and social functioning.

People with learning disabilities have a right to the same level of health care as that provided to the general population. This care should be flexible and responsive, and any diagnosis or treatment must take account of specific needs associated with the person's learning disability, (*Health Care for All, 2008*).

NHS Standards

NHS England (2018) Provided NHS Trusts with a set of four standards, (three are applicable to this trust) that trusts need to meet; doing so identifies them as delivering high quality services for people with learning disabilities, autism or both.

These standards are supplemented by improvement measures or actions that trusts are expected to take to make sure they meet the standards and deliver the outcomes that people with learning disabilities, autism or both and their families expect and deserve.

NHS Improvement will look at performance against these standards to target support at those trusts that need to improve.

Unwarranted variation in care and the poorer outcomes sometimes experienced by people with learning disabilities, autism or both mean trusts need to sustainably improve many of their services. These standards provide a benchmark against which all trusts, be they universal or specialist healthcare providers, can measure their performance in delivering services to people with learning disabilities, autism or both, so driving quality improvement.

Standard 1: Respecting and protecting rights

All trusts must ensure that they meet their Equality Act Duties to people with learning disabilities, autism or both, and that the wider human rights of these people are respected and protected, as required by the Human Rights Act.

Improvement measures:

Trusts must demonstrate they have made reasonable adjustments to care pathways to ensure people with learning disabilities, autism or both can access highly personalised care and achieve equality of outcomes.

Trusts must have mechanisms to identify and flag patients with learning disabilities, autism or both from the point of admission through to discharge; and where appropriate, share this information as people move through departments and between services.

Trusts must have processes to investigate the death of a person with learning disabilities, autism or both while using their services, and to learn lessons from the findings of these investigations.

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 3 of 27
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Trusts must demonstrate that they vigilantly monitor any restrictions or deprivations of liberty associated with the delivery of care and treatment to people with learning disabilities, autism or both.

Trusts must have measures to promote anti-discriminatory practice in relation to people with learning disabilities, autism or both.

Standard 2: Inclusion and engagement

Every trust must ensure all people with learning disabilities, autism or both and their families and carers are empowered to be partners in the care they receive.

Improvement measures:

Trusts must demonstrate processes that ensure they work and engage with people receiving care, their families and carers, as set out in the NHS Constitution

Trusts must demonstrate that their services are 'values-led'; for example, in service design/improvement, handling of complaints, investigations, training and development, and recruitment.

Trusts must demonstrate that they co-design relevant services with people with learning disabilities, autism or both and their families and carers.

Trusts must demonstrate that they learn from complaints, investigations and mortality reviews, and that they engage with and involve people, families and carers throughout these processes.

Trusts must be able to demonstrate they empower people with learning disabilities, autism or both and their families and carers to exercise their rights.

Standard 3: Workforce

All trusts must have the skills and capacity to meet the needs of people with learning disabilities, autism or both by providing safe and sustainable staffing, with effective leadership at all levels.

Improvement measures:

Based on analysis of the needs of the local population, trusts must ensure staff have the specialist knowledge and skills to meet the unique needs of people with learning disabilities, autism or both who access and use their services, as well as those who support them.

Staff must be trained and then routinely updated in how to deliver care to people with learning disabilities, autism or both who use their services, in a way that takes account of their rights, unique needs and health vulnerabilities; adjustments to how services are delivered are tailored to each person's individual needs.

Trusts must have workforce plans that manage and mitigate the impact of the growing, cross-system shortage of qualified practitioners with a professional specialism in learning disabilities. Trusts must demonstrate clinical and practice leadership and consideration of the needs of people with learning disabilities, autism or both, within local strategies to ensure safe and sustainable staffing.

A 'complex care need' is when the patient requires additional support due to hearing, visual, speech, physical or mental impairment, long term health condition or due to domestic or social isolation.

The main purpose of this policy is to ensure that people with learning disabilities and complex care needs are able to access high quality health care when attending Liverpool Heart and Chest NHS Trust (LHCH). This includes equality of access to services within the Trust, easy to understand

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 4 of 27
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information, best interest decision making and what reasonable adjustments need to be considered, (The Equality Act, 2010). This policy aims to enable staff to develop a better understanding of people with learning disabilities and complex care needs and equip them to deal more effectively with the particular needs of each individual.

Background

The Equality Act became law in October 2010; it replaced and aimed to improve previous equalities legislation, including the Disability Discrimination Act 1995. The Equality Act covers all of the groups that were protected by previous equality legislation, known as Protected Characteristics, one of which is disability. It introduced several changes in the law that relates to people with disabilities and uses a broader definition of disability, which means more people are protected than with previous legislation.

A person is defined as being disabled under the Equality Act if:

- They have a physical or mental impairment.
- The impairment has a substantial and long term adverse effect on their ability to carry out normal daily activity.

For an impairment to have a 'substantial effect' it must have more than a minor or trivial effect on a person's ability to do everyday tasks such as washing, dressing and preparing food.

The Equality Act places a legal duty on all service providers to make "reasonable adjustments" in order to avoid putting a disabled person at a substantial disadvantage when compared to a person who is not disabled. In addition, the Care Act, 2014 details specific duties for local authorities with regards to the provision of advice and information, this includes the requirement that, "information and advice provided under this section must be accessible to, and proportionate to the needs of, those for whom it is being provided."

What is a 'reasonable adjustment'?

The aim is to remove barriers that prevent disabled people from receiving an equal health service. Healthcare professionals are required to make reasonable adjustments to any of their provisions, criteria or practices that place a disabled person at a particular disadvantage compared to non-disabled persons. An example of making a reasonable adjustment would be giving the patient with a learning disability the first appointment in the clinic, because they may not understand the reasons for waiting if the clinic is running late or making sure that information on health services is accessible to people with learning disabilities, or providing them with a Hospital Passport.

What are the health needs of people with a learning disability?

People with learning disabilities have far greater healthcare needs. They are more likely to have mental illness, long-term health problems, epilepsy and physical and sensory disabilities (DH, 2001).

How can we support people with learning disabilities in an acute hospital?

- Enhance their communication skills; ask to see a patient's hospital passport.
- Make reasonable adjustments.
- Remember the person may need extra time and support when consenting to a procedure or

investigations.

- Support their care partner.
- Remember that children and adults with a learning disability can be vulnerable in hospital.
- Ensure a referral is made to the Matron for Patient Experience and /or Safeguarding Lead.
- Ensure a referral is made to the Discharge Planning team.
- Offer the opportunity to visit pre admission, or offer pictures of the environment in which they will be cared for.
- Offer information in different formats such as Easy Read or audio.

A flow chart outlining the core principles for the care of a patient with a Learning Disability/Complex care needs in Liverpool Heart and Chest NHS Trust is provided in Appendix 1.

This policy should be read in conjunction with the following Trust policies:

Mental Capacity Act

Privacy and Dignity Policy

Consent to treatment or Examination Policy

Safeguarding Adults Policy

Safeguarding Children and Young Adults Policy

Enhanced Levels of Observational Care Policy

Chaperone Policy

Definitions

- The term Learning disability (LD) is used to describe a person who has developmental delay or intellectual disabilities which are usually evident from birth or early childhood.
- There are three core criteria, which must be used for the term learning disability to apply:
- Significant impairment of intellectual function.
- Significant impairment of adaptive and or social function (ability to cope on a day to day basis with the demands of his/her environment and the expectations of age and culture).
- Age of onset before adulthood.

Learning Disability does not include:

- The development of intellectual, social or adaptive impairments after the age of 18.
- Brain injury acquired after the age of 18.
- Complex medical conditions that affect intellectual and social/adaptive functioning: e.g. dementias, Huntington's chorea.
- Specific learning difficulties, e.g. dyslexia, literacy or numeracy problems, or delayed speech and language development.

Complex Care Needs may result as a patient requiring additional care due to physical impairment, such as mobility issues, hearing or visual impairment, speech/communication difficulties, mental illness, dementia, or social isolation. This list is not exhaustive, and care should be individualised to the patient's needs.

1. Roles and Responsibilities

All staff who interacts with patients and their care partners must be familiar with the resources and responsibilities outlined in this policy.

1.1 Chief Executive

The Chief Executive and wider Trust Board have key roles and responsibilities to ensure the Trust meets requirements set out by statutory and regulatory authorities. The Trust's Chief Executive has overall responsibility to have processes in place to:

Ensure that clinical staff are aware of this policy and adhere to its requirements. Ensure that appropriate resources exist to meet the requirements of this policy.

1.2 Executive Directors

The Executive Directors are responsible for ensuring that all operational managers in their area are aware of this policy, understand its requirements and support its implementation.

1.3 Medical Director/Consultants

The Associate Medical Director and Consultants are responsible for ensuring legal frameworks and procedures detailed in this policy are understood and adhered to by medical staff.

1.4 Clinicians

All clinicians have a duty to ensure the correct assessment, diagnosis and treatments are instigated.

1.5 Heads of Nursing

Heads of Nursing have a responsibility to ensure this procedure is complied with and its effectiveness is monitored.

1.6 Ward Managers/ Heads of Department

Ward Managers/ Heads of Department have a responsibility to ensure this procedure is implemented and adhered to by all members of their team and any staff who are deployed to work in their areas. All nursing and healthcare providers, temporary or agency staff, will be expected to comply with the requirements of the content within this procedure.

1.7 Nursing teams

Teams of nurses will provide twenty-four hour individualised care to meet the requirements of people with learning disabilities and complex care needs and where appropriate make timely referrals to Discharge Planning team, Matron - Patient Experience.

Temporary staff

Temporary or agency staff, contractors, students or others will be expected to comply with the requirements of all Trust policies applicable to their area of operation.

1.8 Hospital co-ordinator

Hospital Co-ordinators will act as a point of contact for any patient either admitted or using outpatient facilities. This senior team will have received the appropriate training to take responsibility for co-ordinating and managing the care pathway for this group of patients and will communicate directly with the Matron - Patient and Family Experience and Safeguarding lead.

1.9 Discharge Team

The Discharge Team will have responsibility for co-ordinating the patient pathway throughout their stay and ensuring that appropriate communication and on-going referrals are made in a timely way which includes the wishes of the patient and their care partner.

1.10 Matron - Patient and Family Experience

The Matron- Patient and Family Experience will have responsibility to directly support patients with Learning Disabilities or Complex Care needs and their Care Partners by ensuring that their needs are met through:

- Monitoring the admission rates and care of patients with Learning Disabilities or Complex Care needs within the Trust.
- Undertaking partnership working with all relevant stakeholders when a patient with Learning Disabilities or Complex Care needs are admitted to hospital.
- Supporting and advising hospital staff with appropriate information to promote evidence based practice and effective service provision that ensures implementation of reasonable adjustments and person centered care.
- Facilitating additional meetings or case conferences as appropriate to address particular changes in patient care needs.
- Promoting the involvement of families and Care Partners in the treatment and care of patients with Learning Disabilities or Complex Care needs in the Trust.
- Providing and facilitating on-going awareness training for hospital staff.

It is the responsibility of all clinical/nursing staff to follow Trust policy and procedures for promoting the welfare of patients with Learning Disability or Complex Care needs within LHCH and know who to contact within the organisation to express concern about their welfare.

The admitting team must identify whether there is a need for reasonable adjustments to be made to accommodate the person in hospital. This is in line with the Equalities Act 2010.

Examples include:

- Providing communication aids (this might include an interpreter).
- Ensuring there is enough space around the bed for wheelchair users to move from their bed to their chair.
- making appropriate adjustments for carers.

It is the responsibility of all clinical/nursing staff to ensure that the relevant pathway (**See appendices 1-5**) is followed when they are caring for a patient with learning disabilities.

Pathways-

- Care of a Patient with a Learning Disability/Complex Care Need -Outpatients attendance.
- Care of a Patient with a Learning Disability/Complex Care Need- Elective admission.

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 8 of 27
----------------	---	--------------

- Care of a Patient with a Learning Disability/Complex Care Need- Theatre /Recovery admission.
- Care of a Patient with a Learning Disability/Complex Care Need- Emergency/Unplanned admission.

2 Guidelines

2.1 Communication (see appendix 6)

Many people with Learning Disabilities or Complex Care needs have difficulties with communication. This may include problems with expression, articulation, comprehension, and coping with social situations. People with learning disabilities have difficulties understanding complex sentences and abstract concepts with time being a particularly difficult concept to comprehend. This should be considered when discussing appointments or future treatments. They may also have difficulty understanding written communication and this should be taken into consideration when arranging appointments, particularly if pre- appointment instructions are included.

Remember to talk to the patient about all aspects of their care.

Remember that people can “assent” to treatment through their co-operation.

Include the patient and their care partner as far as possible in their care.

Give the patient dignity and respect.

For those patients with Learning Disabilities or Complex Care needs where communication is difficult, use alternative means of communications such as sign language, symbols, photos and objects of reference.

Some patients with a learning disability may bring their **Hospital Passport**, this is a document that provides clear and concise information in an easy to understand format regarding the person’s health and support needs.

The Hospital Passport belongs to the patient and should accompany them for all hospital appointments and admissions.

An individual’s capacity to understand may be affected by factors such as an unfamiliar environment, unfamiliar faces, or anxiety and pain. Each ward/department should have a ‘Communication Book’ with pictures of some basic procedures, food and drink choices, and parts of the body.

(Both the Hospital Passport and the Communication Book are available via the Safeguarding link on the Trust’s Intranet page)

2.2 Care Partner

The aim is to support Care Partners to be involved in the care of their relative, (with the consent of the patient). This provides support and reassurance for the patient and prepares the Care Partner for their supportive role when the patient is discharged home. Care Partners and families often know the patient’s likes, dislikes and routine, this can help us provide individualised care.

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 9 of 27
----------------	---	--------------

The Care Partner should be involved in decisions regarding care and invited to give feedback on perceptions of standards of care. It may be helpful for them to use a reflective diary. Care plans should be reviewed with the patient and their Care Partner on a daily basis or more frequently as agreed.

2.3 Mental Capacity

Where there are particular concerns regarding the capacity of a patient with Learning Disabilities or Complex Care needs to give informed consent, the nursing/medical team should refer to the Liverpool Heart and Chest policy for assessing mental capacity.

2.4 Consent

Some patients with Learning Disabilities or Complex Care needs do have the capacity to give informed consent – it should not be assumed that they cannot. It is, therefore, vital for health professionals to recognise that in most cases consent should be sought from the patient themselves. **It is not acceptable or legal for a parent or Care Partner to give consent on behalf of an adult with Learning Disabilities or Complex Care needs when they have the capacity.**

When attempting to obtain informed consent, the health professionals involved should consider carefully the patient's level of understanding and comprehension. The use of language and presentation of information should be appropriate to the patient and may require adaptation to complement the verbal and written information. This may also involve contacting people who have a detailed knowledge of the patient and could include a person with Lasting Power of Attorney (LAP) or a Court Appointed Deputy.

Where a patient does not have any of the previously mentioned, then an Independent Mental Capacity Advocate (IMCA) should be sought. If the patient is not competent to give consent, treatment is lawful providing that it is in their best interest.

The position regarding consent in an emergency situation is no different for a person with Learning Disabilities or Complex Care needs – ultimately the attending doctor makes the decision to proceed in the patient's best interest.

Specific legal advice must be sought wherever there is doubt about proposals for treatment and the necessity for obtaining consent in relation to such proposals.

Where there are particular concerns regarding the capacity of a patient with a learning disability to give informed consent, the nursing/medical team should refer to the Liverpool Heart and Chest Policy for Consent and Treatment and to the Safeguarding Policy for direction on assessment of capacity and best interest decision making.

2.5 Care Pathways

Follow patient Pathways – see Appendix 1-5

2.6 Principles of care

- Assess the patient's need for additional nursing resources, (refer to Enhanced Levels of

Observational Care Policy).

- Provide Care Partner information leaflets.
- Keep Care Partners informed of the patient's progress.
- Ensure the Care Partner's involvement at the level they desire and document in EPR Flow sheets.
- Involve the Matron for Patient and Family Experience and Discharge teams. If there are issues around mental capacity involve the Safeguarding Team.
- In EPR, flag that the patient has a Learning Disability or Complex Care need in the Patient Header under 'General precautions'.
- Ensure effective communication between all parties by using the patient's Hospital Passport Book and talk to the patient about their care (appendix 8).

2.6.1 Preparation for hospital visits

Reasonable adjustments to meet the patient's needs should be undertaken.

Many people with learning disabilities are anxious about medical treatment and hospital environments and this anxiety can sometimes be expressed in behaviour which can be challenging for staff to manage. Any form of behaviour is a form of communication and is often the only expression of anxiety available to an individual.

Prior to any planned hospital appointment or admission, the individual's parents/care partners or learning disability staff (with support from the community learning disability team, where involved) will ensure that the patient is offered the individual support required to facilitate the visit. This may on occasion include the use of sedation to manage anxiety but only under the guidance of a medical practitioner.

2.6.2 Out-patient Appointments – see Appendix 2, (Care of a Patient with Learning Disability or Complex Care needs – Outpatient Attendance).

The Consultants secretary receives the GP referral and sends out an outpatient appointment to the patient along with a request that the patient informs us if they have a learning disability or complex care need. If a need is identified, the secretary will notify the consultant, anesthetist and the Matron for Complex Care.

The Matron for Complex Care will then liaise with the Outpatient Department, theatres, Hospital coordinator's and if required, POCCU.

On arrival in the Outpatients Department, the patient and/or their care partner can give their Hospital Passport to their ANP/clinic nurse prior to consultation.

The ANP / clinic nurse should assist during the consultation and be available post consultation to provide extra information and direct the patient and their Care Partner to other hospital departments as required.

If transport is required for their next appointment this should be arranged by the clinic nurse (subject to clinical need).

Follow up appointments should be avoided (unless clinically essential), in cases where the patient presents with distress, extreme anxiety or challenging behaviour in hospital settings. If a follow up appointment is not offered, care arrangements should be discussed between the

clinic staff and the patient's GP.

Where it is ascertained that an appointment at the beginning or end of a clinic list would be most appropriate for the patient's needs, this should be documented in EPR in order that all subsequent appointments are made at this suitable time. If a patient is attending the Out-patient Department by ambulance, it may **not** be possible to guarantee the appointment time.

Where a patient is a regular attendee at the Out-patient Department the clinic nursing staff will liaise with the patient and their main care partner to discuss and identify any specific care requirements that the patient may have during attendance. The outcome of this discussion may include, where appropriate, scheduling the appointment to the most suitable slot on the clinic list based on any needs identified.

Following the out-patient consultation the nursing staff should see the patient and their main Care Partner to ensure that they have understood the information and/or instructions given to them during the consultation and to determine any further care requirements before they leave (appendix 7).

2.6.3 Patients attending for treatment as an out-patient which involve anaesthesia

When the decision is made treatment is required as an out-patient, the patient's ability to tolerate and co-operate with the procedure should be discussed in detail at the time that the treatment is booked. Where necessary, a patient may require sedation or general anaesthetic with the involvement of the medical team.

The main care partner should be made aware of the importance of considering the issue of tolerance and co-operation with the procedure. The care partner should be invited to accompany the patient to the anaesthetic room and also invited to be present in the recovery room shortly after the patient wakes from the anaesthetic.

2.6.4 Elective Admission - see Appendix 3, (Care of a Patient with Learning Disability or Complex Care needs – Elective Admission).

- The Matron for Patient Experience will liaise between the care partner and hospital staff to review all aspects of support needed within the hospital environment.
- An easy-read letter will be sent from the Trust (admissions department) via PAS to inform the patient of an admission.
- These letters can only be sent if there is an alert on the PAS system to highlight that the patient has Learning Disabilities/Complex Care needs, or if the referral letter from the GP mentions that the patient has Learning Disabilities/Complex Care needs, and, in addition, if any reasonable adjustments need to be made.
- The pre-assessment appointment is to be planned in advance of the admission date wherever possible, to ascertain the patient's care levels so this can be shared with wards and theatres prior to admission.
- Where information is available in advance, the nurse in charge of the respective ward/department should be informed in advance that a patient with a Learning Disability/Complex Care needs is to be admitted.
- Where possible, the admitting nurse should invite the patient and their main care partner to attend the ward, prior to the admission date, in order to undertake an assessment of the patient's care needs and to identify if any additional nursing resource is required prior to their admission.

- Provision should be made for a side room if the care partner is staying overnight, if possible.
- The main care partner should be invited to accompany the patient on the day of admission and to take part in the admission process (with the patient's consent). The admission process may be lengthy and a commitment in terms of time is required.
- Where a patient has attended without care partner support, the nurse, with the patient's consent, should make an appropriate person aware of the patient's admission such as the person's care partner or social services.
- At the point of admission, parents/ care partner and the Matron - Patient Experience should ensure that all relevant information regarding the support needs of the service user is handed over to the named nurse/nurse in charge.
- The degree and frequency of any additional support required should be discussed, and agreement reached, as to how this will be provided out of existing or additional resources (refer to Enhanced Levels of Care Policy).
- Consideration should be given to combine procedures, wherever possible, e.g. to undertake blood tests or other procedures to avoid any further distress to the patient.
- On admission, the patient should bring their Hospital Passport (where available) to assist with the assessment and provision of their care needs. This document remains the property of the patient and should accompany them on discharge/transfer. All relevant information, particularly information relating to specific needs for support, should be made available and accessible to all ward staff.
- Liaison between relevant disciplines, e.g. Occupational Therapy, Speech and Language Therapist and Physiotherapist will be established as needed and, if further support required, will be agreed, e.g. joint working between community and hospital therapy staff.
- Care partners and relatives should be involved in the planning of the care of the patient. Some care partners may wish to contribute to the care of the patient while they are in hospital and they should be supported to do so where appropriate. This is a voluntary action and there is no obligation for them to take part in the delivery of care for the patient.
- A full nursing assessment should be carried out on admission. The expertise/knowledge of the care partner should be used to facilitate a thorough assessment and should take account of the individual's physical, psychological, social and cultural needs. The patient's needs with regard to the protection of individuality and dignity must also be considered.
- Particular note should be made of the patient's medication regime, including the form of the preparation, times and methods of administration (which may be tailored very specifically to the individual patient).
- These details should be discussed with relevant medical staff and, if necessary, the ward pharmacist in order to ensure continuity of medication during hospitalization and following discharge, particularly when there are long term conditions, such as Parkinson's disease.
- Preparations for discharge planning and any predicted discharge needs should also be discussed during the visit and where other agencies are identified as required, referrals should be made.
- A care plan should be developed in EPR in the Complex Care flow sheets which identify any specific requirements relating to aspects of care such as positioning, sensory stimulation or feeding requirements. The care plan should be discussed with the care partner (with the patient's consent).
- Remember to always include the patient in conversations and consultations regardless of their level of verbal communication.

2.6.5 Care of Patients Attending Theatre and Recovery,

(See Appendix 4, Care of a patient with learning disability or complex care needs – Theatre

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 13 of 27
----------------	---	---------------

and Recovery).

2.6.5.1 Pre-operative Preparation

The following issues should be discussed during the pre-op visit between patient, nursing staff and main care partner:

- The patient's previous experience of anaesthesia and surgery.
- Behavioral patterns during recovery of anaesthesia.
- The patient's communication needs.
- Whether the care partner wishes to accompany the patient to the anaesthetic room and/or to be present in the recovery room shortly after the patient recovers from the anaesthetic.
- Whether a ward nurse needs to stay with the patient in the anaesthetic room until the patient is asleep to provide continuity of care and support.
- Nursing staff from the patient's ward should contact the appropriate theatre prior to surgery to inform them of any specific arrangements or patient needs which will be required during surgery, particularly with a patient who has complex needs.
- People with a learning disability often communicate pain differently. The theatre staff should inform the anaesthetist/medical team that there is a patient on the theatre list with a learning disability and request that a pre-operative visit is made by them to discuss pain assessment and management with the patient, their care partner and the ward nursing staff.

2.6.5.1 Attending Theatre and Recovery

- If possible, the care partner should be invited to accompany the patient to the theatre suite with the ward nurse.
- Where required, the ward nurse will remain with the patient until induction of anaesthesia is complete.
- The care partner may wish to accompany the patient to the anaesthetic room and/or be in attendance during recovery.
- Once the procedure is complete the recovery nursing staff should contact the ward to notify the care partner that the procedure is complete.
- Where possible, the patient should be escorted back to the ward by a ward nurse who is known to them.
- People with learning disability or complex care need may communicate pain differently. Patient centred pain assessment techniques should be implemented to ensure adequate pain management.

2.6.6 Emergency/Unplanned Admission

(See Appendix 5, Care of a patient with Learning Disability or Complex Care needs – Emergency/Unplanned Admission).

- During an emergency admission, it may be considered that a patient has Learning Disabilities/Complex Care needs due to their presentation or communication abilities. Where possible, meet with their care partner (if present) to establish if they have any additional needs. Where a learning disability or complex care need is confirmed, this must be documented within the patient's medical notes and flagged on EPR.
- If a patient with learning disability or complex care need is admitted unaccompanied, the nursing team should attempt to identify a care partner or relative and make contact with them as soon as possible. Where no other person can be identified, contact the Lead for Safeguarding and the IMCA service. To assist in obtaining information, the patient with learning disability or complex care need may have brought their Hospital Passport, ask for this and use the information it contains to support decision making.

Version No 2.0	Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 14 of 27
----------------	---	---------------

- For those patients with a learning disability or complex care need where communication is difficult, use alternative means of communications such as sign language, symbols, photos and objects of reference.
- Pay attention to the provision of privacy as some patients with learning disability or complex care needs have associated physical and personal care needs.

2.6.7 Discharge Planning

- Discharge planning should be discussed with the patient and their care partner at the time of admission. The multi-disciplinary teams e.g. physiotherapy, occupational therapy, speech and language therapy could assist with this process.
- In the first instance, all patients with a learning disability or complex care need should be considered to have complex discharge planning needs. The Trust's Discharge Policy should be adhered to at all times.
- The Discharge Team and Matron for Patient Experience should be involved in discharge planning from the point of admission to ensure the arrangements are appropriate. Where cases are particularly complex they may also want to involve Social Services.
- On the day of discharge the care partner should be issued with a copy of the patients discharge plan detailing the patient's care needs on discharge and arrangements for support in the community.
- Where at all possible, transfer of a patient with a learning disability or complex care need (in order to accommodate other admissions, emergency or elective) should be avoided to ensure a consistent environment is maintained.

3. Policy Implementation Plan

This policy will be implemented through the directorate structures, governance meetings and the Safeguarding Steering group.

The Matron for Patient Experience with support of the Hospital Coordinators and Discharge Team will be responsible for monitoring and reviewing this policy through audit and incident reporting.

Trust managers have a responsibility to ensure staff know how to access this policy and staff have a responsibility to read the policy and to seek clarification of any issue they do not understand.

Managers are responsible for ensuring that all staff receive support and guidance to enable them to comply with the requirements of this policy and its associated procedures.

The Policy will be launched via the LHCH weekly communications bulletin and highlighted at Team Brief.

The Policy will be available to all external stakeholders via the Documents Library on the Intranet.

4. Training and Awareness

- Each ward/department will have a duty to ensure any new members of staff are trained in this policy. It is advised a local register of training should be kept by the ward/department manager.
- Training will be provided as part of local induction to raise staff awareness of the policy content and procedure.
- When support is required this should be escalated to the ward/department manager and/or Matron for Patient Experience.

5. Monitoring of Compliance

- The Trust is responsible for ensuring all staff receives Learning Disability or Complex Care needs training as part of Trust and Local induction.
- This policy will be ratified and monitored through the Safeguarding Steering Group.
- The first review of this policy will be at six months and thereafter will take place annually.
- Any revisions to this document must be agreed through the medicine, surgery and clinical services division committees, and support services, in addition to the Safeguarding Steering Group

6. References

Department of Health (2005) Mental Capacity Act. London, HMSO
Department of Health The Equality Act (2010)
Department of Health Care Act (2014),

Department of Health (2001) 'Valuing People: A New Strategy for Learning Disability for the 21st Century'

Department of Health (2008) Healthcare for All.

Disability Discrimination Act (2005)

Disability Rights Commission (2006) Equal Treatment: 'Closing the Gap' Mencap (2004) Treat me right! Better health care for people with a learning disability. London, Mencap.

NHS England (2018) Learning disability improvement standards for the NHS

7. Appendices

Appendix 1 - Core Principles.

Appendix 2 - Out-Patient Attendance

Appendix 3 - Elective Admission

Appendix 4 - Theatre and recovery

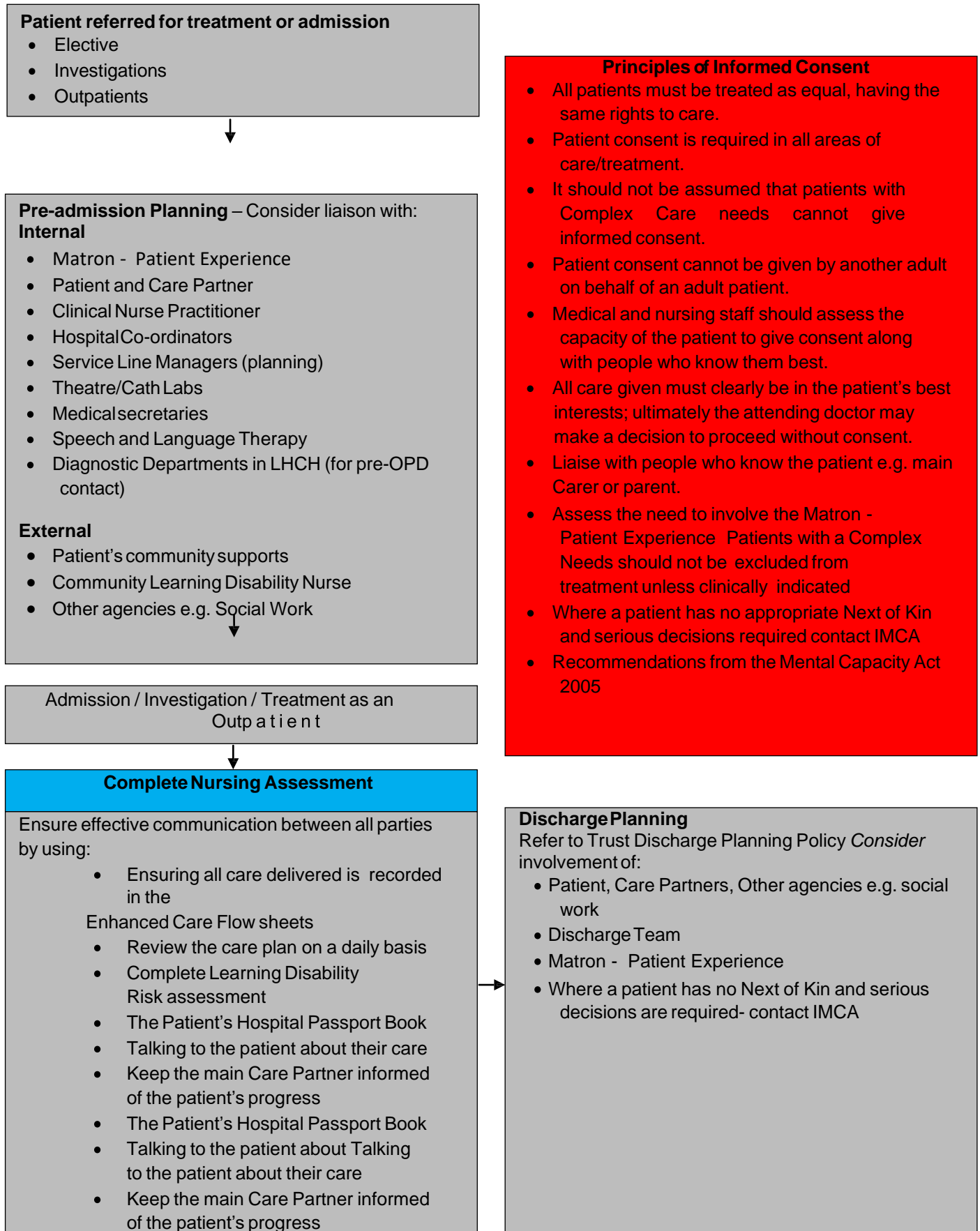
Appendix 5 - Emergency/Unplanned admission

Appendix 6 - Strategies for effective communication

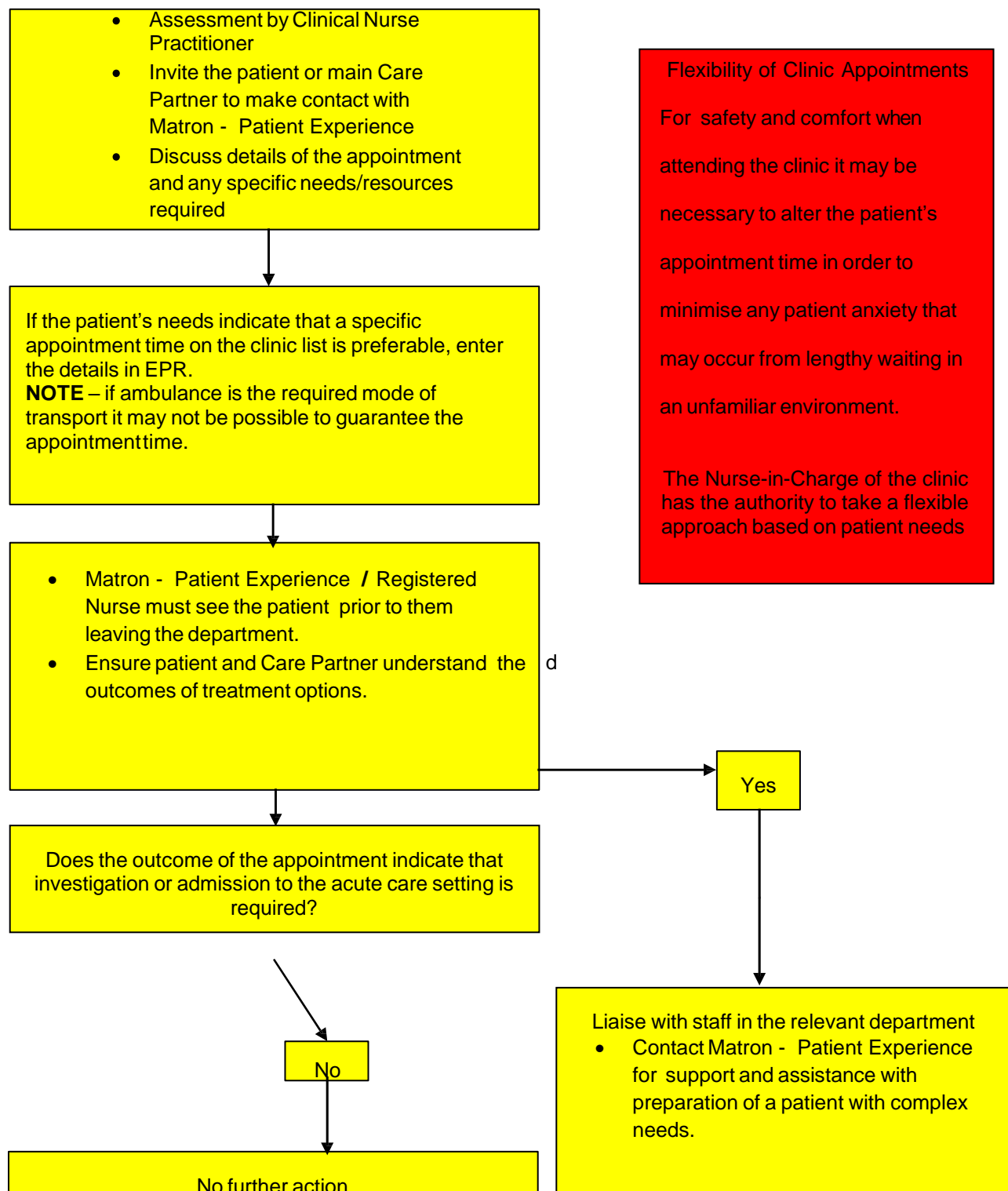
Appendix 7 - Good practice for appointments

Appendix 8 - How to use the Hospital passport.

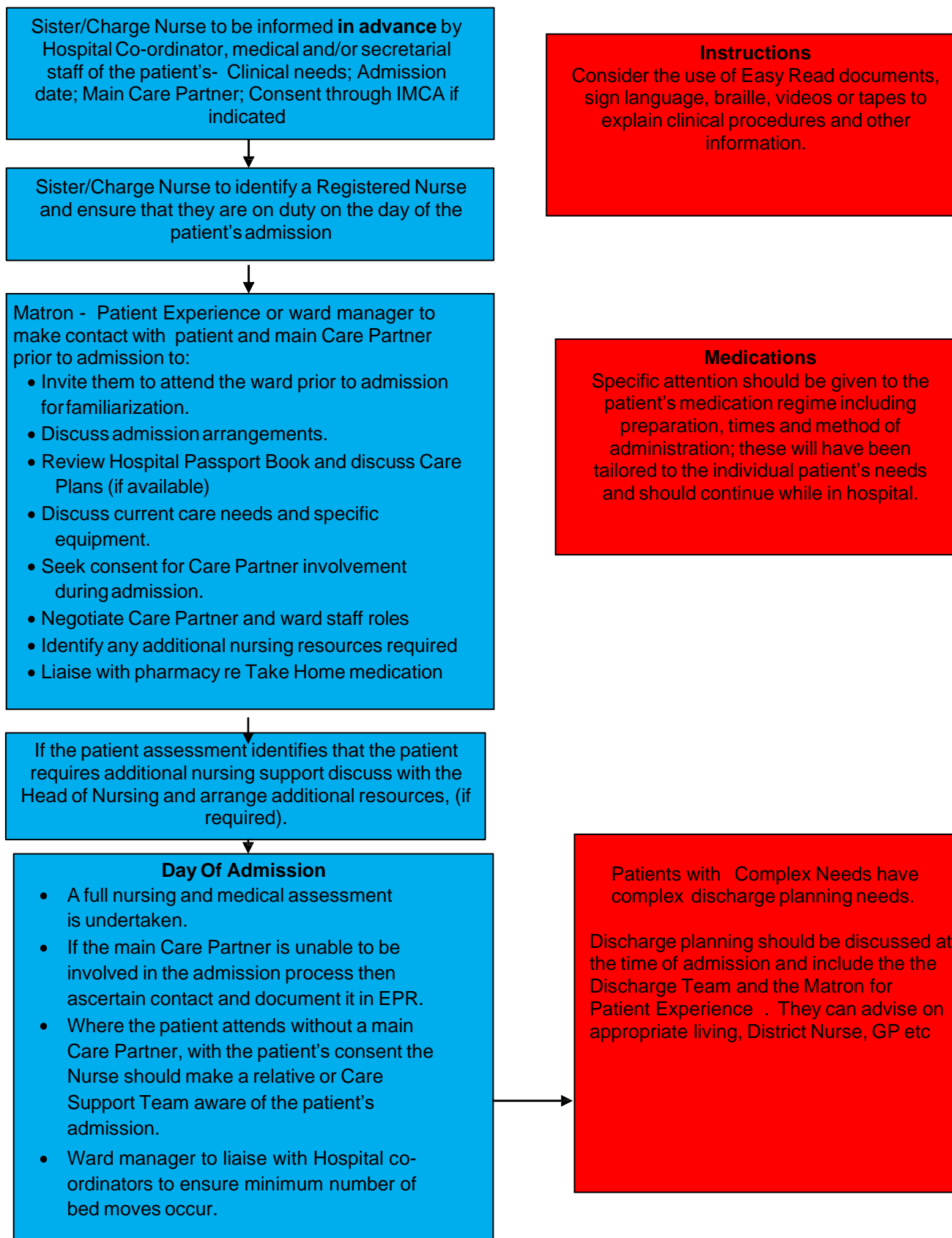
Appendix 1 - Care of a Patient with Learning Disabilities / Complex Needs Core Principles



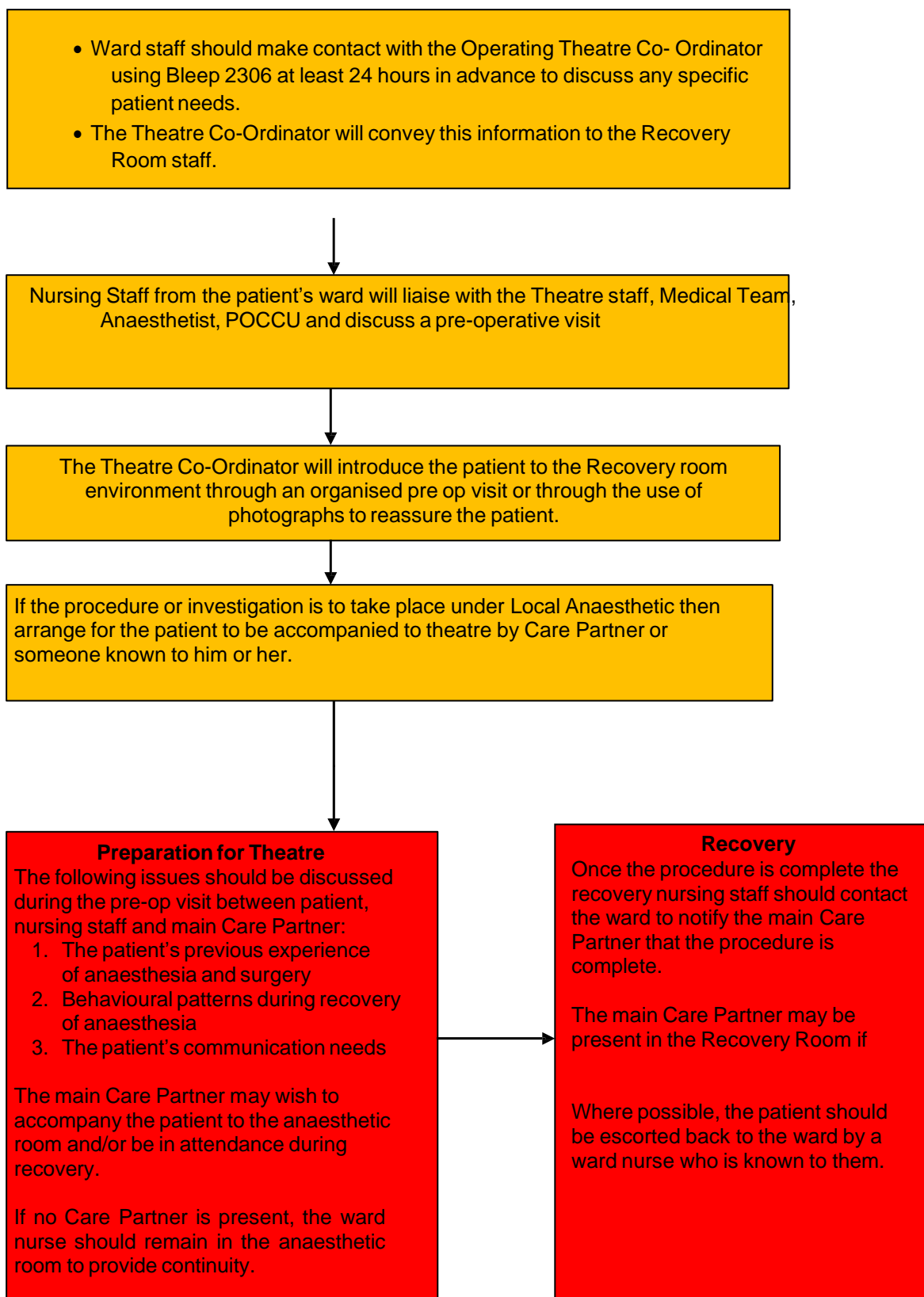
Appendix 2 - Care of a Patient with Learning Disabilities/Complex Needs Out-Patient Attendance



Appendix 3- Care of a Patient with Learning Disabilities/Complex Needs – Elective Admission

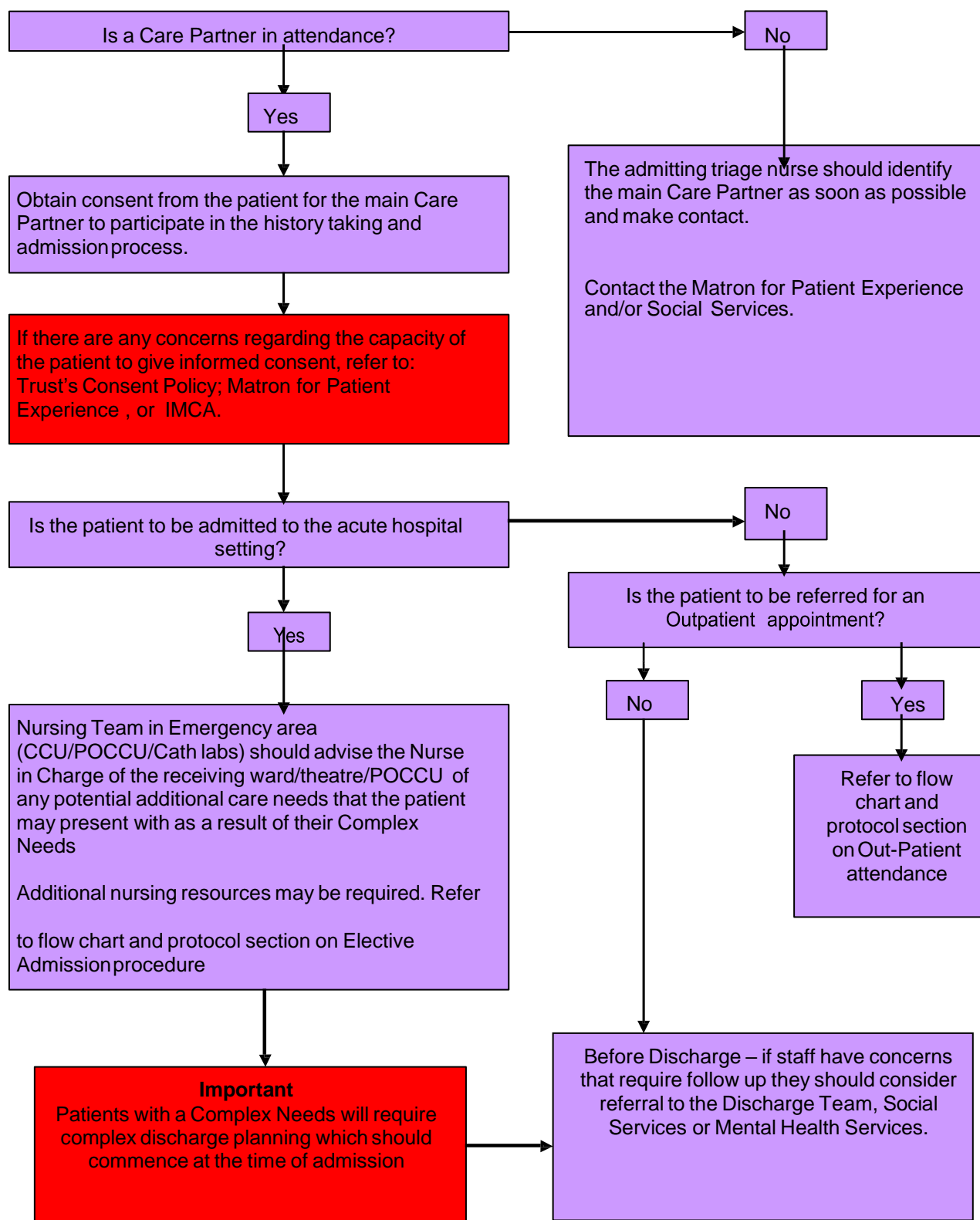


Appendix 4- Care of a Patient with Learning Disabilities/Complex Needs in Patients attending Theatre and Recovery



Appendix 5 - Care of a Patient with Learning Disabilities/Complex Needs

Emergency/Unplanned Admission



Appendix 6 Good practice guidance

Strategies for Effective Communication

- Speak slowly and clearly and avoid complex language.
- Chunk information into smaller sentences, containing 1-2 key words.
- Use gestures, body language and facial expression to supplement words but be aware that these may have different meanings across cultures.
- Avoid the use of technical words, jargon and abbreviations.
- Avoid the use of words which can have a literal meaning e.g. Wait a minute, take a seat.
- Avoid the use of complex instructions and spatial directions e.g. turn right at the end of the corridor and take the third door on the left.
- Be prepared for pauses and silences. People with learning disabilities may have difficulty processing information and formulating a response.
- Reduce distractions as far as possible.
- Supplement verbal information by the use of written instructions, symbols, pictures and objects.
- Use environmental and contextual cues where appropriate.
- Gather information from family members or Care Partners as appropriate, but seek permission from the patient and continue to include them in the dialogue.
- Check if the person has a Hospital Passport or Communication book.
- Check the person's hearing status if possible, e.g. do they have a hearing aid?

Appointments:

- Change appointment times to facilitate care partners if necessary.
- Allow enough room in corridors and waiting areas for wheelchairs.
- Allow people to wait in different areas from other patients if it helps them.
- Long waiting times and rushed appointments can make people with learning disabilities or complex care needs anxious.
- Try to hold appointments at the beginning or end of the day and routinely offer double slots. Wherever possible try to 'fast track' the patient.
- Tell people in person when it is their turn for their appointment.
- Make sure a person with learning disabilities or complex care needs has access to the appropriate transport when they are offered an appointment.
- Make sure the patient has access to the disabled toilets.
- Try to make sure the person sees the same or one of two doctors or health professional where possible.
- Check PAS for learning disabilities or complex care needs alert and add if it is not already there.

When in hospital:

- Make sure you know what people's needs are – diet, physical and personal care etc
- Make sure they know about the Patient Passport and have access to it.
- Check PAS for a learning disabilities or complex care needs alert and add if it is not already there.
- Let people familiarise themselves with hospitals before they come in.
- Make sure you have the right equipment for the patient's needs.
- Care Partners will need a break and facilities if they are staying with someone.
- Do not assume a Care Partner can stay for long periods.

Passing on information:

- Ask people what would help them and have a simple, consistent, clear system which holds this information so that people do not have to keep repeating it.
- Make sure that when someone is referred to another service or department that you tell them about the patient's specific needs.
- Make sure that you include relevant information about someone's communication, physical access and sensory needs.
- Ask how the patient wants to get their test or screening results, for example; face to face, phone call.

The person:

- Always check someone's ability to provide and understand information first.
- Discuss care plans and ensure agreement before implementation.
- Make sure people know how to make a complaint if they want to.
- Never assume that the patient has a Care Partner or someone at home to help, if they do not have a Care Partner with them.
- Talk about relaxation techniques if someone is very anxious about some services, for example; blood tests, injections.

Appendix 7

How to use the Hospital Passport

<http://nww.staffintranet.lhch.nhs.uk/Library/Corporate/Safeguarding Documents/HOSPITAL%20PASSPORT%20JUNE%202010%20word%20version.doc>

- The passport is **not** a substitute for a care partner, who knows the person with a learning disability well, accompanying him/her to medical appointments and in emergency situations.
- A person who knows the patient well will be more likely to be able to reassure, him/her and will be another source, from whom, to obtain medical history. However the Passport could remind the patient and his/her care partner of the important medical points.
- On the rare occasions when the patient has to be accompanied by a new or unfamiliar care partner, the Passport could act as a vital tool to the care partner and medical staff.
- The passport should be completed well in advance of appointments, checking it again before the visit to hospital. Documents can get lost in hospital therefore it is a good idea to make a copy and scan into EPR if you can and keep the original with the patient or in a safe place.
- The passport should be regularly reviewed, at least once per year and after each medical change or appointment.
- The passport can be completed by the individual alone or with help from care partners, family members, a community nurse or the Liaison Nurse.

7. Endorsed By:

Name of Lead Clinician / Manager or Committee Chair	Position of Endorser or Name of Endorsing Committee	Date

8. Record of Changes

Section No	Version No	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason
Page 3	2.0	11/12/2018 A McKenna			Learning disability standards – NHS England 2018	More recent information added
Page 17	2.0	11/12/2018 A McKenna			Updated references list to include the above.	Further knowledge
Page 17	2.0	11/12/2018 A McKenna		Deleted Care support team reference		No longer exists
Page 9	2.1	12/05/21 C Kenny		Deleted Care support team reference		No longer exists

Mental Capacity Act

Policy

For completion by Author			
Author(s) Name and Title:	Joanne Shaw HON Clinical Services and Safeguarding Updated – Angela McKenna – Operational Nurse Lead Safeguarding Adults & Children		
Scope:	Trust wide	Classification:	Clinical
Version Number:	7.0	Review Date:	17/03/2024
Replaces:	6.0		
To be read in conjunction with the following documents:	Safeguarding Adults Policy, Deprivation of Liberty Safeguards Policy		
Document for public display:	Yes		
Executive Lead	DON Susan Pemberton		

For completion by Approving Committee			
Equality Impact Analysis Completed:		Yes	
Endorsement Completed:	Yes	Record of Changes	Yes
Authorised by:	Safeguarding Steering Group	Authorisation date:	17/03/2021

For completion by Document Control					
Unique ID No:	TR26(09)	Issue Status:	Approved	Issue Date:	27/09/2021
After this document is withdrawn from use it must be kept in archive for the lifetime of the Trust, plus 6 years.					
Archive:	Document Control		Date Added to Archive:		
Officer responsible for Archive:	IG and Document Control Facilitator				

Contents

Policy Statement.....	3
1. Roles and Responsibilities.....	3
2. Procedure	4
3. Policy Implementation Plan.....	8
4. Monitoring of Compliance	9
5. Endorsed By:-.....	10
6. Record of Changes	11

Policy Statement

The Mental capacity Act [MCA] provides a statutory framework for assessing whether a person has mental capacity to make certain decisions. It also defines how others can make decisions on behalf of someone who lacks mental capacity.

1.1 The MCA applies to adults aged 16 years and over

1.2. Within the MCA there are 5 principles that underpin the entire Act and provide safeguards for people whose mental capacity is called into question:

- **Presumption of Capacity:** A person must be assumed to have capacity unless it is proved otherwise
- **Maximising decision-making:** Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity
- **Unwise decisions:** An unwise decision does not in itself indicate a lack of capacity
- **Best interests:** Any act done or decision for someone lacking capacity must be made in their best interests
- **Less restrictive option:** When a person lacks capacity any act or decision should aim to be the less restrictive option to the person in terms of their right and freedom of action

1.3. The MCA does not allow permissive decisions to be made in the best interests of a person lacking capacity in relation to the following:

- Marriage or civil partnership
- Sexual relations
- Divorce or dissolution of civil partnerships
- Placement of a child for adoption or making of an adoption order
- Discharge of parental responsibilities not relating to a child's property
- Consenting under the Human Fertilisation and Embryology Act
- Voting in any election or referendum
- Writing a Will

1.4. The Deprivation of Liberty Safeguards 2007 [DoLS] exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's own best interests. The DoLS apply to adults aged 18 years and over. For further information and guidance please refer to the Liverpool Heart and Chest Hospital [LHCH] Deprivation of Liberty Safeguards Policy

1.5. This version supersedes any previous versions of this document.

1.6. This policy will underpin the implementation of the MCA within LHCH. It will outline the procedures to assess mental capacity, make decisions in the best interests of patients including patients who appear to have no family or friends to consult, use restraint, and follow valid and applicable advanced decisions

1.7. All clinical staff working in LHCH must hold a formal duty of regard to the Mental Capacity Act and the related Codes of practice. They will need to take active responsibility for equipping themselves to practice within the law.

1. Roles and Responsibilities

1.1 Chief Executive

The Chief Executive and wider Trust Board have key roles and responsibilities to ensure the Trust meets requirements set out by statutory and regulatory authorities such as the Department of Health,

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 3 of 11
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Commissioners and the Care Quality Commission. The Trust's Chief Executive has overall responsibility to have processes in place to:

- Ensure that clinical staff are aware of this policy and adhere to its requirements
- Ensure that appropriate resources exist to meet the requirements of this policy

1.2 Executive Directors

The Executive Directors are responsible for ensuring that all operational managers in their area are aware of this policy, understand its requirements and support its implementation.

1.3 Medical Director/Consultants

The Associate Medical Director and Consultants are responsible for ensuring legal frameworks and procedures detailed in this policy are understood and adhered to by medical staff.

1.4 Ward Managers / Heads of Nursing

Ward/Unit Managers are responsible for implementing the policy and ensuring that relevant assessment tools are readily available to allow staff to carry out the duties prescribed in this policy.

1.5 Operational Nurse Lead safeguarding Adults & Children

Has a responsibility to ensure mental capacity assessments are completed on patients where applicable and documented appropriately

To provide training and guidance when required

To ensure Mental capacity is audited within the trust

1.6 Members of Clinical Teams

Clinical team members have responsibility to comply with the requirements of this and associated policies and have a legal duty to adhere to the Act and Code when working with, or caring for, adults who may lack capacity to make decisions for themselves.

1.7 Safeguarding DoLS Facilitator

The Safeguarding Team are responsible for informing the Care Quality Commission (CQC) of all DoLS applications and outcomes. This is a statutory requirement.

2. Procedure

Mental Capacity Act Standards and Practice

The decision maker

2.1 The MCA does not lay down professional roles or require certain qualifications to undertake capacity assessments. The capacity assessment should be undertaken by the person who is proposing to undertake an action or make a decision. This person is termed the decision maker.

2.2 Professionals are the decision makers for actions for which they are responsible. This means that a doctor will be the decision maker about someone's capacity for the treatment they are prescribing. A nurse will be the decision maker about the treatment or care that they are delivering. A care assistant will be the decision maker for activities of daily living such as washing and dressing.

2.3 This may mean that the decision maker is not the person who knows the individual best. Determining who the decision maker is is dependent on the decision and not on the circumstances of the individual.

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 4 of 11
----------------	---	--------------

Provision of information

2.4 All practical and appropriate steps must be taken to help people to make a decision for themselves. Information must be tailored to an individual's needs and abilities. It must also be in the easiest and most appropriate form of communication for the person concerned. Use simple language and pause to check understanding. Where appropriate, use pictures, objects or illustrations to demonstrate ideas. (Hospital Communication Book)

Mental Capacity assessment

2.5 The MCA states 'A person lacks capacity in relation to a matter if at the **material time** he is unable to make a decision for himself **in relation to the matter** because of an **impairment** of, or **disturbance** in the functioning of, the mind or brain.'

2.6 A mental capacity assessment must be decision and time specific. A blanket statement with regards to a patient's capacity or lack of capacity is not lawful.

2.7 There are two stages in the test of a patient's capacity:

2.7.1 The first is the diagnostic test:

Is there an impairment of, or disturbance in, the functioning of the person's mind or brain?

If so:

- The second is the functional test

Does the disturbance affect the persons decision making?

2.8.2. This two-stage test must be used, and you must be able to show it has been used. If the patient does not have an impairment or disturbance in their mind or brain they cannot be assessed as lacking capacity within the MCA although case law suggests that incapacity due to another cause (i.e. duress) can be considered by a court of law.

The 4 part functional test

2.9 A person must be able to:

- **Understand** the nature of the decision, the purpose for which it is needed and the consequences, risks or outcomes of making the decision. The Act states *every effort* should be made to provide information in a way that is most appropriate to help the person understand. In determining risks the person only needs to consider the reasonably foreseeable risks. It is acceptable for the information to be understood in broad terms, case law indicates the level of understanding does not need to be of a particularly high standard
- **Retain** the information for long enough to make the decision, the information could be forgotten an hour later and the decision would remain valid
- **Weigh** or use the information, taking into account any risks and consequences when making their decision
- **Communicate** their decision using any method recognised by those undertaking the assessment i.e. hand signals, gestures, writing etc.

2.10 If the patient is unable to do any one of the 4 parts of the functional test then they lack capacity to make the decision.

2.11 When undertaking a capacity assessment it is sufficient that the person making the assessment holds a **reasonable belief** that the person may lack capacity with regard to the particular decision otherwise an assessment should not be commenced.

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 5 of 11
----------------	--	--------------

2.12 Some people may have an illness or condition, which at times, affects their decision making ability. If a person has fluctuating or temporary loss of capacity, where possible, the decision should be delayed until the person has recovered and regained their capacity.

2.13 LHCH identifies three levels of MCA decision making:

Level 1: Day to day decisions

- Activities of daily living, observations and simple diagnostic tests

Level 2: More complex decisions

- Invasive procedures, complex diagnostic tests, treatments, self discharge

Level 3: Significant/life altering decisions

- Serious medical treatment, long term accommodation changes

2.14 Level 1/2/3 Mental capacity assessments should be documented in the person's EPR. The assessor must demonstrate that they have applied the principles of the Mental Capacity Act and followed the Code of Practice.

2.15 Having decided on and documented that the person lacks capacity to make the specific decision, they must ascertain if there is an Advance decision, Attorney or Court Appointed Deputy. If any of these are present, guidance should be sought from them. If there is no Advance decision, Attorney or Court Appointed Deputy a decision must be made in the person's best interest. This will be then documented on the best interest form on the patients EPR.

Advanced Decisions to refuse Medical Treatment

2.16 An advance decision enables someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack the capacity to consent to or refuse that treatment. The person can cancel their decision, or part of it, at any time while they have capacity to do so.

2.17 If the advance decision refuses life-sustaining treatment, it must:

- Be in writing (it can be written by a someone else or recorded in the patients EPR)
- Be signed and witnessed and
- State clearly that the decision applies even if life is at risk.

2.18 Healthcare professionals will be protected from liability if they:

- Stop or withhold treatment because they reasonably believe that an advance decision exists, and that it is valid and applicable.
- Treat a person because, having taken all practical and appropriate steps to find out if the person has made an advance decision to refuse treatment, they do not know or are not satisfied that a valid and applicable advance decision exists.

2.19 Advance decisions to refuse treatment for mental disorder may not apply if the person who made the advance decision is or is liable to be detained.

Lasting Power of Attorney [LPoA]

2.20 A Lasting Power of Attorney lets an individual appoint someone to make decisions on their behalf. There are two types:

- Health and welfare
- Property and financial affairs

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 6 of 11
----------------	--	--------------

The individual can choose to make one type of Lasting Power of Attorney or both. Where an attorney has been authorised to make health and welfare decisions the following applies:

- The attorney, only, has authority to make decisions if the person lacks capacity
- If the person has an advanced decision made prior to the appointment of an attorney the attorney can decide whether to override the advance decision. If the advance decision was made after the appointment of the attorney it must stand
- Not all attorneys will have been given the power to decide on life-sustaining treatment. The lasting power of attorney form must clearly state this authority

Making a decision in the person's best interests

2.21 A person's best interests may be different to what is in the best clinical interest of the person. Making a best interest decision can mean deciding to give, withhold or stop treatment or care for a person who lacks capacity.

2.22 It is the decision maker's responsibility to work out what would be in the best interests of the person who lacks capacity.

2.23 The decision maker must do whatever is possible to permit and encourage the person to take part, or to improve their ability to take part, in making the decision.

2.24 The MCA places an obligation on the decision maker to consult with others, if practicable and appropriate to do so. Any number of people can be consulted if they have an interest in the welfare of the person, this should include relatives, friends or unpaid carers.

2.25 An Independent Mental Capacity Advocate (IMCA) must be instructed and then consulted, for people lacking capacity who have no-one else to support them, other than paid staff, whenever:

- An NHS body is proposing to provide or withhold 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 person will stay in hospital longer than 28 days, or
- They will stay in the care home for more than eight weeks

Young people, aged 16 and 17 must be referred to the IMCA service if they:

- Have no family member, friend or existing advocate who can support them in making a decision in their best interests
- Lack capacity in relation to a decision
- May be facing major or life changing decisions as defined in the IMCA guidance in this policy.

2.26 All Health and Social Care staff must be aware that IMCAs have statutory right of access to records which the record holder considers may be relevant to the advocates' role. Clinicians and practitioners should be prepared to give such access to files and notes. Those responsible for patient records should ensure that third party information and other sensitive information not relevant to the decision at hand remains confidential.

2.27 The decision maker has an obligation to consult and take into the account the views of other people. The objective of consultation is to try and establish the views, wishes, beliefs and values of the person. There is no duty to follow what is said by those consulted if, in the decision maker's opinion, their views are not in the person's best interests.

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 7 of 11
----------------	---	--------------

2.28 Any staff involved in the care of a person who lacks capacity should make sure a record is kept of the process of working out the best interests of that person for each relevant decision, setting out:

- How the decision about the person's best interests was reached
- What the reasons for reaching the decision were
- Who was consulted to help work out best interests, and
- What particular factors were taken into account
- This record should be filed in the person's EPR.

2.29 Best interest meetings should be held, wherever practicable, when deciding on complex medical treatment or long term accommodation moves.

2.30 A Best Interest Meeting Checklist and Record is recommended for documenting the meeting in the EPR. If the Best Interest Meeting Checklist and Record is not utilised the chair must ensure contemporaneous records are maintained and filed in the person's notes in the EDMS section.

Disputes Process

2.31 A challenge to the assessment could come from the patient, their family or from others involved in their care. If the challenge comes from the patient they may need support from others to assist in their challenge.

2.32 In some situations it may be helpful to obtain a second opinion from another professional who has not been involved in the patient's care. Where there is still disagreement then the decision maker should contact the LHCH legal team.

2.33 If a disagreement cannot be resolved, the Court of Protection can rule on whether a person has capacity to make the decision covered by the assessment.

3. Policy Implementation Plan

Training

3.1 The Trust is responsible for ensuring all staff be given Mental Capacity training that supports their role and responsibilities with regard to the Act. There are different levels of Mental Capacity training required for LHCH employees.

3.2 Level 1 training – all frontline staff receive an education booklet each year as part of mandatory training which they are required to read.

3.3 Level 2 training – all frontline staff must complete the in house 1 hour session as a mandatory requirement on one occasion or the online version

3.4 Staff must participate in any further safeguarding adult mandatory training provided by the Trust as and when required.

Implementation

3.5 This policy is to be implemented and disseminated through the organisation immediately following ratification and will be published on the organisation's intranet site document library. Access to this document is open to all.

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 8 of 11
----------------	---	--------------

3.6 The Policy will be launched via the LHCH weekly communications bulletin.

3.7 The Policy will be available to all external stakeholders via the Documents Library on the Intranet.

3.8 This policy document will be held in the public section of the Documents Library with unrestricted access, replacing the previous version.

3.9 Provision of mandatory safeguarding adults training, including the Mental Capacity Act, will be delivered by the safeguarding lead / deputy.

4. Monitoring of Compliance

4.1 Auditing of the implementation of the Mental Capacity Act and the use of the Independent Mental Capacity Advocacy across clinical areas will be undertaken to monitor the effectiveness and usage of this policy.

4.2 Note: The monitoring of compliance with this policy will be overseen by the LHCH Safeguarding Group.

Version No 7.0	Mental Capacity Act Current version is held on the Intranet Check with Intranet that this printed copy is the latest issue	Page 9 of 11
----------------	---	--------------

5. Endorsed By:-

Name of Lead Clinician/ Manager or Committee Chair	Position of Endorser or Name of Endorsing Committee	Date

6. Record of Changes

Section Number	Version Number	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason
Page 1	7.0	12/01/2021	Safeguarding action group changed to Safeguarding steering group			Group changed
Page 4	7.0	12/01/2021			Inserted section Operational nurse lead	New role since policy last updated.