



**Durham  
Safeguarding Adults  
Partnership**



**The Mental Capacity Act  
and safeguarding adults:  
what good looks like.**

**Preferred communication  
and all practicable steps**



**All about the  
Mental Capacity  
Act 2005 (MCA)  
and safeguarding  
adults in a bitesize  
series: more  
coming soon.**

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go straight there.**

## Why this topic?

When considering a person's capacity, and before and during all capacity assessments the second principle in section 1 of the Mental Capacity Act 2005 must be adhered to.



**“A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success”**

Once a person is found to lack capacity for a specific decision, the person determining the Best Interests decision...



**“must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him”.**

Mental Capacity Act section 4.

### A National Analysis of 231 Safeguarding Adult Reviews

Safeguarding Adult Reviews (SARs) take place where an adult has died or been seriously harmed, and there has been abuse or neglect, in order to learn about good practice, practice improvements and working better together.



**A finding in nearly all SARs is that the Mental Capacity Act (MCA) was not used, or not used properly. The national analysis also found that when the MCA was used well, there were nuanced layers of assessments, and for example Best Interests decision making for big issues combined with support for the person to make day to day decisions.**



[Analysis of SARs April 2017 - March 2019 | Local Government Association](#)

### The Learning from Lives and Deaths - People with a learning disability and autistic people Annual Reports or LeDeR Annual Reports

Many LeDeR Annual Reports highlight little communication by professionals with people with learning disabilities. This included professionals not understanding that behaviour can be a means of communication. For example a person banging their head may be frustration at being unable to communicate; or it may be expressing pain, such as a toothache.

The national Annual Report 2021 is available as a full written report, an infographic, a video summary, and in easy read.



[Learning from Lives and Deaths People with a Learning Disability and autistic people \(LeDeR\) \(kcl.ac.uk\)](#)

The County Durham and Tees Valley LeDeR Annual Report 2021 is available as a full written report and in easy read.



<https://nenc-teesvalley.icb.nhs.uk/our-work/>


## Out of Sight, Out of Mind


Care Quality Commission (CQC) reports and updates for Out of Sight, Out of Mind highlight that in many identified instances of wrongful seclusion and restraint, people did not have their communication needs met, with a risk of their human rights being breached. For instance the first CQC report found that some people's picture mats were taken away from them, leaving them with no meaningful way of communicating.

 [Out of sight – who cares?: Restraint, segregation and seclusion review - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk)

## Accessible Information Standard 2016

All organisations that provide NHS care and publicly funded adult social care are legally required to follow the Accessible Information Standard, to meet the information and communication support needs of patients, service users, carers and parents with a disability, impairment, or sensory loss.

 For a step-by-step overview in an animated video with subtitles and BSL interpretation [NHS Accessible Information Standard animated video - Youtube](#)

 And a short [summary document](#) about the Standard for patients, service users, carers, and parents in a range of formats, including Easy Read and British Sign Language (BSL)

 Visit <https://www.england.nhs.uk/ourwork/accessibleinfo/>

### “J is for JUMP”



“The Reason I Jump: one boy's voice from the silence of autism, is a book written by Naoki Higashida and a reminder about what lengths we should be aiming for when working with people who have difficulty with verbal communication”.

 [The Reason I Jump - Waterstones](#)

From [The A to Z of the Mental Capacity Act \(scie.org.uk\)](https://www.scie.org.uk)

## Communication and safeguarding adults concerns

People are left at risk of abuse and neglect if they are not understood and no one is able to communicate with them, or if they are isolated and dependent on others who act as gatekeepers of information or access to services.

- Ensuring that people can communicate and that they are understood goes a long way to preventing abuse and neglect from taking place.
- When abuse and neglect does occur, safeguarding involves working with the adult and making what they want to happen to resolve it central.
- So, communication, including understanding through observation, is essential.



In 2022 the Care Quality Commission (CQC) fined an NHS Foundation Trust over failures to obtain consent, carry out and record capacity assessments, and record how the best interests decisions were arrived at.



“the trust had made no attempts to arrange a [British Sign Language] BSL interpreter for AB, involve his family members, or consult with his Lasting Power of Attorney”

<https://www.cqc.org.uk/press-release/university-hospitals-birmingham-nhs-foundation-trust-pays-fixed-penalties-ps8000>

# All practicable steps



“A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success”.

The Mental Capacity Act 2005

## What are all practicable steps?

Practicable steps means using the MCA lawfully by supporting a person to make the decision, take action, or give lawful consent such as for health and social care. Decisions include day to day decisions – what to wear, eat, choosing activities, and major decisions such as consent for medical treatment, personal care, and where to live.

Then if the person is unable to make the decision themselves at the time needed, because of an impairment of, or a disturbance in the functioning of, the mind or brain, that is they lack capacity, it means involve the person in the Best Interests decision making process as much as possible.



Support to decide is about more than the best way to communicate – it also means making a connection with the person and helping them to stay involved.

## Practicable steps will vary

Practicable steps to help the person will really depend on the individual person and situation. Find out for yourself – triangulate – around a person’s communication needs and support needs – check more than one source of information.

A person may lack capacity to make one decision while having capacity to make others.

- Do not carry out a single big assessment for several issues. Each decision to be made, action to be taken, or consent to be given requires its own capacity assessment.
- Clarify the specific decision to be made.
- All practical steps to support the person to make the decision must be provided, e.g. work with the person to help them understand the relevant information; consider if the issue needs to be broken down into smaller simpler decisions.

Steps a practitioner might take to offer all practicable support should be proportionate to the urgency, type, and importance of the decision. Considerations include:

- Use of specific types of communication equipment
- Types of languages such as Makaton
- Involving specialist services, such as a Speech and Language Therapist or a psychologist
- Ensuring the best environment to support people who are making what are often life-changing decisions
- Treating a medical condition that may affect the person’s capacity
- A structured programme to develop a person’s capacity to make the decision eg learn new skills
- That there is a written record of the practical support.

## Urgent emergency care

A medical practitioner may decide that it is not reasonable or practical to support the person to make their own decision if:

- the person cannot communicate and
- a delay is likely to cause severe harm or loss of life.

The capacity assessment and Best Interests decision making process would be followed – but written up after the event. Once the emergency is over, the person’s Best Interests may change in the future and so a review should be built in.

## Records

Record what practicable steps you have undertaken to support the person to:

- understand the choices available, or the risks that you are concerned about, and the longer-term implications;
- retain the information long enough;
- use or weigh and put it into practice.

Include the impact and nuance of cultural differences.



**As with all records made under public law, your notes and the case records may become evidence, be used in Court, or be used in a police investigation. Recording must be detailed, relevant, accurate, and completed as soon as possible or at the same time. See the guide, Assessment form and standards.**



[MCA 2005 What good looks like - Assessment form and standards](#)



“If it’s not written down it hasn’t happened”

CQC Inspector.

## Gaining capacity

In a judgement made in 2013 but published in 2021, the Court highlighted in



[\[2013\] EWHC 3230 \(Fam\):](#)

- the importance of using tangible resources, like drawings and pictures, to assess and **improve** the person’s level of understanding

Practicable steps might need to be over time. In some cases the Court of Protection has directed that work take place with a person to develop their potential to gain capacity in relation to the matter.

## Some approaches to take

### Equal access: getting it right for people with disabilities

One of the learning points from this Local Government and Social Care Ombudsman report is that local services should be proactive in asking every person who approaches the service whether they need any changes to be made in the way they are dealt with.

- Equal access is an anticipatory duty – services must think about people’s needs in advance.
- It may not be immediately apparent that people with hidden disabilities – often the people whose capacity is being assessed - need extra help.



<https://www.lgo.org.uk/information-centre/news/2022/may/equal-access-for-all-should-be-at-the-heart-of-services-ombudsman-says>

### “P is for Practicable steps”



“Practicable steps’ might involve referring to supporting agencies such as advocacy, interpreters, Speech and Language Therapy, and learning disability nurses - to work with the person to help them understand the relevant information.”

From [The A to Z of the Mental Capacity Act \(scie.org.uk\)](https://www.scie.org.uk)

Chapter 3 of the main MCA Code of Practice discusses in detail practicable steps to empower people to make their own decisions. Examples might include:

- Using the person's preferred communication or type of language e.g. Easy read, pictures, Makaton, simple language, real coins, interpreter, BSL...
- Communication equipment
- Photos, voice recorders or posters that can help people record and retain information
- Consider and check the environment - is it too hot, too cold, too light, too dark, too noisy?
- Are there distractions, or people wandering in and out?
- Consider the time of day and impact of any medication or treatment – choose the best time for the person.

Help with decision-making also means:

- Provide 'relevant information' but do not give more detail than required
- Clarify the consequences of making, or not making, the decision
- Provide information on options where there are any
- Be aware of impact of any cultural, ethnic, or religious factors
- Make the person feel at ease
- Support for the person: can anyone else help?
- Take it easy – one decision at a time
- Do not rush
- Be prepared to try more than once.

 [MCA Code of Practice](#)

## Create the best environment

For example giving a person sufficient time, privacy, and peace and quiet, or ensuring they have a family member or other trusted person to provide support during decision making if this is their wish. Where does the person prefer to sit in the room for the conversation?

 [NICE guideline on decision-making and mental capacity](#)

## Offer on-the-ground visits, trial runs

A person with a learning disability might comprehend that a new housing option is being proposed but have trouble imagining that information...such as what it would be like to live in that living situation. They may especially benefit from actual visits or even a trial-run in such accommodation, to support their decision-making.

 [Broad concepts and messy realities: optimising the application of mental capacity criteria \(bmj.com\)](#)

## Communication needs and formats

Ask or find out what someone's communication needs are, and what format they use. Under the Accessibility Standard, professionals and services should ask four questions about communication:

- 1 What is the best way to contact you?
- 2 What format do you need information in?
- 3 Do you need a communication professional for your appointments?
- 4 Are there any other ways we can support communication?

## Five steps services should take:



### Identify:

identify the information and communication needs of those who use your service



### Record:

record a person's information and communication needs clearly and consistently



### Flag:

have a consistent flagging system so it is immediately clear if a person has information or communication needs



### Share:

share a person's information and communication needs appropriately e.g. as part of a referral



### Meet:

meet the information and communication needs identified



[Accessible Information Standard - YouTube](#)



### Example options for communication needs:

Block letters on palm, British Sign Language (BSL) signer, Deafblind manual or finger spelling, Hands on signing, Large writing on paper, Lipreading, Makaton, Needs Interpreter, Speech, Verbal in meetings, Verbal by phone, Other – please specify



### Example communication formats:

Braille, British Sign Language (BSL) video, Do not send info, Moon, Not English or British Sign Language, Memory stick, Print in 16 point, Print in 18 point, Print in 20 point, Print in 24 point, Print in 36-point, Standard print, audio format (podcasts)...



### Tech enabled examples:

Many people with disabilities use electronic technology for assistance and to communicate. For example, people with visual impairments may use video magnifiers, text to speech scanners, smartphones, eBook readers, MP3 players and computers. Most smartphones and tablets have in-built accessible features such as magnification and screen reading facilities.

## Hard of Hearing

Where "deaf" with a small "d" is used, it is typically for people who consider they have a hearing problem and whose first language is verbal such as English. [See below for information about Deaf people whose first language is British Sign Language].

Many older people who are hard of hearing do not learn BSL and they experience their acquired hearing loss as a disability.

- Avoid jargon, speak slowly and clearly, gain a person's attention if they lip-read before speaking to them...
- Communicate using language and visual exercises to enable understanding.

## A person's behaviour may be communication about a need

Behaviour that challenges services may be the person communicating, or unable to communicate. In the Safeguarding Adult Reviews into the deaths of Joanna, "Jon" and Ben, key learning areas for practitioners included "understand the meaning behind a patient's behaviour".



<https://www.norfolksafeguardingadultsboard.info/publications-info-resources/safeguarding-adults-reviews/joanna-jon-and-ben-published-september-2021/>



“Many people...find some parts of communicating hard. Some people may have little or no language. They might find it hard to:

- Understand what other people say
- Tell other people what they want or how they feel”

If a person cannot tell other people what they want (or don't want!), distress or frustration can be expressed in the way a person behaves. Making communication better can reduce this”.

[Challenging communication - Challenging Behaviour Foundation](#)

## Communication with people who are non-verbal



“An individual may not be able to communicate through language or they may have a condition that has meant they require intense support for their daily care. These facts in themselves, however, do not mean that they do not have meaningful experiences of the world or have a sense of what matters to them in their life. It may mean that they communicate these through their bodies, through subtle gestures, through interacting with their environment in a particular way, or by connecting with those whom they love”.

[Judging-Values-Final-Report.pdf \(mentalcapacitylawandpolicy.org.uk\)](#)

### Behaviour is communication

- Blinking, squeezing your hand, may be communication
- Observation of person's reactions and their behaviour is key

### Use simple words and sentences

- Only say what is vital to get across

### Repeat key words and questions

- Consider using recordings

### Wait [longer than you usually would] for a response

- Allow enough time – up to a minute or two for a yes nod or no shake of the head

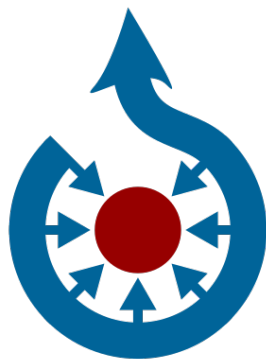
### Use images

- Such as Picture Exchange Communication System (PECS)  
Learn some basic signs / Makaton
























[5 Easy Ways to Communicate with Someone Who is Non-Verbal | by Katrina Roberts | Family Matters | Medium](#)

### Picture Exchange Communication System example:



**WIKIMEDIA  
COMMONS**

 I want	 I see	 Thankyou			
 Drink	 Biscuit	 Apple	 Cake	 Crisps	 Banana
 Book	 Sand	 Bricks	 Pens	 Farm	 Puzzle
 Shoe	 Junper	 Trousers	 Coat	 Sock	 Hat

[File:Picture Exchange Communication System example.jpg - Wikimedia Commons](#)



## Identifying pain in people who have complex communication needs

A learning disability nurse can develop a pain picture with the adult and their family to help identify future instances for when someone is in pain and when they are not. This is a useful article for those who subscribe to Nursing Times:

 <https://www.nursingtimes.net/roles/learning-disability-nurses/identifying-pain-in-people-who-have-complex-communication-needs-20-01-2020/>

## Advanced care planning

If you are aware that a person has a degenerative condition, what support can you give the person to think through their wishes and feelings about future care, treatment, or other issues? Have they been involved in advanced care planning?

- Support the person to create an advance decision or living will to refuse treatment, which is legally binding, if they wish to while they still can;
- Support the person to set out an advance statement about their preferences about care or other issues if they wish to while they still can. While not legally binding it would be considered in Best Interests decisions making.

 [The Mental Capacity Act and safeguarding adults: what good looks like. Next of kin, living wills](#)

General Medical Council end of life care guidance

 [Working with the principles and decision-making models part two of three - ethical guidance - GMC \(gmc-uk.org\)](#)

## Support from advocacy

Independent advocacy is provided for under the MCA 2005 sections 35 to 41.



“Advocacy is about providing people with a voice to help them have their views wishes, feelings and beliefs heard, when they struggle to do so. To help people seek and understand information which will allow them to be involved”.

Rethink

## Best Interests decision making and an Independent Mental Capacity Advocate

Once a person has been assessed as lacking capacity for a particular decision, they may be entitled to an Independent Mental Capacity Advocate (IMCA) to support them in the Best Interests decision making process.

- The IMCA “stands in the shoes of the person” and represents their voice but is not the decision maker in Best Interests decision making.
- If no one else is suitable to represent the person, e.g. no family are appropriate or willing, and only paid carers are involved, an IMCA **must** be appointed for major decisions such as serious medical treatment, or a long-term accommodation move, when care or accommodation is being arranged by the local authority or the NHS, or for a care review.
- An IMCA **may** be appointed where abuse or neglect is suspected, whether or not person has someone else to speak for them.
- An advocate must be appointed for safeguarding under the Care Act 2014 if someone will have substantial difficulty in being involved in decisions about their situation, regardless of their capacity.

Rethink has the Durham County Council contract for IMCAs and advocacy under the Mental Health Act and the Care Act.

- If the person is within County Durham when the decision needs to be made, for example about medical treatment in a hospital in County Durham even if they are resident elsewhere, a Rethink IMCA would be appointed.
- If a person who lives in County Durham is entitled to advocacy in making a medical treatment decision and they are outside County Durham e.g. in a Darlington hospital, then an IMCA would be appointed from the area in which they are being treated.

### Relevant Person's Representative, Advocacy and DoLS

- Under the Deprivation of Liberty Safeguards (DoLS) an adult or their Representative is entitled to an IMCA when the care and treatment may amount to a deprivation of liberty, and also if the deprivation of liberty has been authorised for ongoing contact, representation, and support.
- DoLS IMCA referrals to Rethink are made by the DoLS team in Durham County Council.
- In these cases if the adult is placed by the Council outside of County Durham under the DoLS the Rethink IMCA will continue to represent them.

#### Contacts:



To contact Rethink

email [countydurham.advocacy@rethink.org](mailto:countydurham.advocacy@rethink.org)



Call 0300 7900 559

## Language and Culture

If a person does not have English as their first language, and is not fluent in English, interpreters including British Sign Language (BSL) interpreters must be used, who are quality vetted, suitably trained, and known to be impartial.

### Deaf awareness

Deafness is a broad spectrum. Individuals all have a variety of levels of D/deaf, deafblind and Hard-of-Hearing (HoH), and so asking the person how they prefer to communicate is essential. People have a range of terms they prefer to describe themselves, or that signifies their culture.



**“Deaf with a capital ‘D’ marks out people whose first or preferred language is a signed language such as British Sign Language (BSL)” \***

They define themselves as culturally Deaf, with their own language.

\*Social work with d/Deaf people: key issues in adult safeguarding

[Social work with d/Deaf people: key issues in adult safeguarding \(communitycare.co.uk\)](https://www.communitycare.co.uk)

<https://signhealth.org.uk/resources/learn-about-deafness/tips-for-communicating-with-deaf-patients/>

### British Sign Language

BSL is the fourth largest language used in the UK, after English, Welsh, and Scots Gaelic. When BSL is a first language, written English may not be accessible for Deaf people. Practicable steps may mean changing the way English is used and written, and how questions are designed.

Signing is often considered the "dynamic interpretation" of language, meaning it is used to convey thought-for-thought rather than word-for-word. It focuses on feelings and nouns, rather than conjunctions such as "for", "and" or "but". BSL is a visual language and BSL sentence structure is completely different to written English. For example:

### Did Gillian Guy appear on TV last week?

would be signed:

 **LAST WEEK...TV...GILLIAN GUY [finger spell both names letter by letter] ...ON**  
(The facial expression would indicate a question)

 <https://zakon.co.uk/admin/resources/downloads/best-practice-guide-bsl-users.pdf>

 <https://dwpdigital.blog.gov.uk/2016/07/14/designing-for-deaf-people-when-english-is-the-second-language/>

### Makaton

Makaton signs are based on the gestures used in British Sign Language (BSL). But unlike BSL, Makaton signs and symbols are used with speech at all times and in English grammatical word order.

 [Free resources \(makaton.org\)](http://makaton.org)

### Cultural competence

Cultural competence is based on a respectful recognition of and approach to diverse beliefs, faiths, practices, and linguistic and cultural needs.

- Adults who are Black, Asian, Gypsy or Traveller, from another ethnic minoritised group, or who are newly arrived in the UK may face additional barriers which may affect their response to a capacity assessment, such as: lack of English, few social support networks, adverse impact of hate speech or hate crime, experience of racism for the first time, fear of officials or authority, insecure accommodation, recent trauma, and a traumatic history.
- Any access to education a person has had may need to be considered.
- Being culturally sensitive means exploring the impact of a person's heritage, and the potential support or lack of support from social or faith networks.
- Recognise and address your own cultural bias that may impact your assessment.

Cultural competence: practitioner guidance awareness and advice in the context of safeguarding

 <https://proceduresonline.com/trixcms1/media/6240/cultural-competence-sept-2018.docx>

Culturally Appropriate Care guide and resource list

 [Culturally Appropriate Care \(skillsforcare.org.uk\)](http://skillsforcare.org.uk)

### Using interpreters

If a person's first language is not English you may need to use interpreters. Seek good practice guidance and / or training in using interpreters.

If a person has been fluent in English as a second or third language learnt in adulthood but develops a condition such as dementia, they may lose the use of English.

Many words and concepts may not translate:

- There may be a lack of words in a language – so practitioners need to explain and translate with phrases, e.g. in Lingala there is no concept of mental health, it translates as mad, so practitioners must explain for example what stress is.
- A shaking head and clicking tongue mean yes for Syrians.
- In other cultures people will nod while saying a negative – it does not mean yes.

## Newcastle upon Tyne Hospitals NHS Foundation Trust Good Practice Guidelines:



- [Working with a BSL interpreter](#)
- [Working with a face-to-face spoken language interpreter](#)
- [Working with a telephone interpreter](#)

Freedom from Torture training

 <https://www.freedomfromtorture.org/training>

Training on using English with non-native speakers, and working with interpreters

 <https://www.englishunlocked.co.uk/>

## Easy read and Plain or Clear English

### Easy read

Easy read is a way of producing information that is accessible for some people with a learning disability.


### How to write easy read material

These resources can help you in creating easy read material.

Creating documents in easy read - top tips and guides

 <https://www.st-andrews.ac.uk/hr/edi/disability/easyread/>

Tips on producing material (they also offer paid for training)

 <https://www.easyreaduk.co.uk/about-easy-read/>

How to and tips

 <https://www.photosymbols.com/pages/easy-read>

### Easy read compared to Plain or Clear English

Using Plain English or Clear English from the start can help in producing easy read, but there is a difference between easy read and Clear English or Plain English as shown in this example from the University of St Andrews' guide.

 <https://www.st-andrews.ac.uk/hr/edi/disability/plain/>

### An example of Plain or Clear English



“Thank you for your letter asking for permission to put up posters in the library. Before we can give you an answer we will need to see a copy of the posters to make sure they won't offend anyone”

### An example of easy read



“Thank you for your letter about your poster. We need to see the poster before we put it up. This is because it must not offend anyone. Offend means to upset people”

Plain or Clear English should be used for material written for the public. There are free guides including the A – Z of alternative words on the Plain English website.

 <http://www.plainenglish.co.uk/free-guides.html>


## Assess Right

Easy read guide to the MCA, assessment, and Best Interests to help explain the process.

 <https://www.assessright.co.uk>

# Communication skills, values, and power

The Judging Values and Participation in Mental Capacity Law Project looked at participation in Court of Protection cases, including the tools and training in soft skills that legal and other professionals might need, such as in working with people with learning disabilities, how to communicate, and building trust and rapport with the person.

 [Judging Values and Participation in Mental Capacity Law | Institute for Criminal Policy Research \(icpr.org.uk\)](https://www.icpr.org.uk)

The project report found that:



**“the quality of participation largely depends on the communication and interpersonal skills of practitioners and judges”**

[Judging-Values-Final-Report.pdf \(mentalcapacitylawandpolicy.org.uk\)](https://www.mentalcapacitylawandpolicy.org.uk)

This would also apply in health and social care settings.



One tool developed by the project: the film “Communication and Participation in the Court of Protection” is available on YouTube

<https://www.youtube.com/watch?v=WuEtw2rnqBw>

There is more information about the project on this link

<https://www.mentalcapacitylawandpolicy.org.uk/communication-and-participation-in-the-court-of-protection-new-training-video/>

There is always a power imbalance between practitioners and adult clients, notably if the person has needs for care and support, is unwell, or may lack capacity for the matter under discussion. Practitioners have personal information about the person and their life. The person may know that pleasing staff makes for a better day. Many people may say yes when face to face with professionals, especially medical professionals.

## Compliance is not legal consent.

The power imbalance has an impact in seeking informed consent, supporting the person to make a decision, assessing a person’s capacity, and in exploring their wishes, feelings, beliefs, and values in the Best Interests decision making process.

- Explore the person’s understanding with open-ended questions; don’t ask questions with a yes or no answer.
- Be aware of how your own ways of engaging and interacting with the person and interpreting what matters to them have an impact.



**“P-centricity understood in this subtle, attitudinal way shows the importance of professionals developing humility and empathy towards P’s different ways of perceiving, experiencing, and communicating with others”.**

[Judging-Values-Final-Report.pdf \(mentalcapacitylawandpolicy.org.uk\)](https://www.mentalcapacitylawandpolicy.org.uk)

## Consent for information sharing.

The Information Commissioner's Office code says:



“Most data sharing does not rely on consent as the lawful basis. If you cannot offer a genuine choice, consent is not appropriate. Public authorities, employers, and other organisations in a position of power over individuals should avoid relying on consent unless they are confident they can demonstrate it is freely given”.

[About this code | ICO](#)

## Case examples



In this SCIE film a key worker has developed a good communication method with Khurum although the social worker did not make use of it.

[Mental Capacity Act making 'best interests' decisions moving home - YouTube](#)



**A Court of Protection Order:** A young man developed communication using a mix of methods and delighted in it – gaining capacity for a range of decisions. But his family still maintained that he could not communicate.

[ZK \(Landau-Kleffner Syndrome : Best Interests\) \[2021\] EWCOP 12 \(27 January 2021\) \(bailii.org\)](#)



**A blog** about going through the process of making a service or activity accessible to deafened people.

[Improving communication with deaf climbers \(thebmc.co.uk\)](#)

The person at the centre of the case and his cousin wrote a blog about his case and proving capacity to refuse medical treatment



“I do not wish to make on the spot decisions about my care. The best way to enable me to make a decision is to provide the information and then give me time to think about the decision when I don't have the pressure of time restrictions”

[‘Vindicated!’ The experience of P in the Court of Protection – Promoting Open Justice in the Court of Protection \(openjusticecourtofprotection.org\)](#)

## Case studies – outstanding care

Case examples from the Skills for Care good and outstanding care toolkit.

### Meeting people's communication needs



**...using technology** to aid communication and feedback from people to continually improve outcomes. For example, a voice-controlled device had recently been purchased which informed people what was happening at the service each day. This was important because some people couldn't read written information.

**Assistive listening technology** called a 'hearing loop' was in use at the service to help people with hearing impairments engage in conversation. The loop worked by picking up on the spoken word whilst reducing other background noise.

**Computers** were available for people to use, and some people had been provided with tablet computers...Some people had received training to use the internet to help them connect with their friends and family.

### Finding ways to communicate emotion without distress



**When supporting** a person living with autism who found it difficult to express themselves at times, staff introduced a way of giving the person a tangible object when they were disappointed. This represented an emotion and helped them to resolve the disappointment without acute distress.

### Alternative ways to gather feedback



**To support** people living with dementia who were unable to complete the provider's survey, the registered manager considered alternate ways their voices could be heard. This involved using a 'photo-elicitation' technique where conversation and views are gained by using photographs.

**Using a photograph** to represent the area of the service they wanted people's views on enabled them to gain feedback. For example, 10 people were shown a photograph of a care worker and asked what this person meant to them.

Their comments included:

"They are the carers, and they are very good",

"They are really helpful," and

"[care worker] rings the doorbell before they come in". etc.

### Understanding the approaches people need to communicate



**Having been through the accreditation process with The National Autistic Society**, all our staff fully understand the different approaches people need to enable them to understand or to be understood.

**We've created a total communication environment** to meet the needs of all our young adults with autism and special needs. Information is presented in ways suitable for each individual, so they can communicate to the best of their abilities. We use tools and systems tailored to each person, including body language, eye contact, facial expressions, Makaton, hand gestures, symbols, activity boards, objects of reference, social stories, photographs, IT technologies, communication passports, intensive interaction, and other sensory materials.

Filter by practical examples and case study: [Search \(skillsforcare.org.uk\)](https://www.skillsforcare.org.uk)

## About a Judge in Court involving P in making a Best Interests decision



**I think it's really valuable that they both see the whites of each other's eyes.** The really good conversations that I see between judges and P are when the judge says “Well, I've got to decide where you're going to live, and different people are telling me different things. It's my decision – not your social worker's, not your mum's, not yours. It's mine, and it's a very serious decision that I have to make on your behalf, so what would you like to tell me?”

I think that's very simple and empowering, and stripping it right back to what it is. I think that's very valuable. (LP26)

<https://onlinelibrary.wiley.com/doi/full/10.1111/jols.12398>

## A person needs the information often in order to retain it



**“If a person needs to be provided with the information often in order to retain it,** the following are examples of some of the steps that it may be practicable to take:

- Telephoning, emailing, or texting the person regularly to provide them with the information;
- Providing the information in a simple format (such as a poster or leaflet) that the person can understand with minimal support;
- Arranging for a carer, support worker, advocate, or other person to provide them with the information regularly”.

<https://www.proceduresonline.com/resources/mentalcapacity/>

## Practice Examples and Resources for Complex and Major Decisions



**Tri.x online** capacity resources include practical real-life examples of developing communication to support capacity assessment and Best Interests decisions:

- A social worker used photos of faces and sentences about personal attributes as parents think their son John is choosing friends solely on basis of attractive appearance
- A social worker designed tools to support financial capacity assessment

[Practice Examples and Resources for Complex and Major Decisions \(proceduresonline.com\)](https://www.proceduresonline.com)

## Taking steps to help people make decisions for themselves



- **“Mr Jackson is brought into hospital following a traffic accident.** He is conscious but in shock. He cannot speak and is clearly in distress, making noises and gestures.
- From his behaviour, hospital staff conclude that Mr Jackson currently lacks the capacity to make decisions about treatment for his injuries, and they give him urgent treatment. They hope that after he has recovered from the shock they can use an advocate to help explain things to him.
- However, one of the nurses thinks she recognises some of his gestures as sign language and tries signing to him. Mr Jackson immediately becomes calmer, and the doctors realise that he can communicate in sign language. He can also answer some written questions about his injuries.
- The hospital brings in a qualified sign-language interpreter and concludes that Mr Jackson has the capacity to make decisions about any further treatment”.

[MCA Code of Practice](#)



## Sarah needs to discuss where she might live



**Sarah needs to discuss her options in relation to accommodation.** Her case worker identifies that she is not good in the morning and can be drowsy as a result of medication taken to help her sleep at night. Sarah is encouraged and supported to make the decision in the afternoon, to ensure she has the best chance of deciding for herself.

## Mental Capacity Law and Policy podcasts




**A discussion about accessible information** and how making information accessible constitutes a practicable step to support decision-making under the MCA 2005.

[Accessible information and practicable steps to support decision-making – in conversation with Rosie Harding – Mental Capacity Law and Policy](#)

**A discussion about the work of the Include Choir**, the role of music in supporting those with communication impairments, and how people can be educated by stealth as to what constitutes practicable steps to support capacity.

[Communication, music and reframing support – in conversation with Alix Lewer – Mental Capacity Law and Policy](#)

 **The Mental Capacity Act and safeguarding adults, what good looks like. Practice guides in this series**

- 1. What is capacity, the MCA, who uses it? The Court of Protection**
- 2. Capacity assessment process**
- 3. Challenges in capacity assessment e.g. fluctuating capacity, reluctance to engage**
- 4. Preferred communication and all practicable steps (this one)**
- 5. Top tips, with a working example of safeguarding when capacity is a feature**
- 6. Assessment form sample and expected standards**
- 7. Next of Kin, Living Wills, Attorneys, and the Office of the Public Guardian**
- 8. Best Interests decision making process**

All hyperlinks accessed online 5 January 2023