

Mental Capacity Act and Covid-19



Kingston Safeguarding Adults
Board

7 Minute Briefing

Introduction

The Coronavirus Act 2020 introduced emergency powers to limit the spread of the virus, such as social distancing and social isolation, to support the NHS, social care, schools and police to deliver essential services during the pandemic.

On 9th April 2020 the Department of Health and Social Care (DHSC) published their initial guidance on the MCA 2005 and Covid-19. On the 29th May 2020, the DHSC updated this guidance. This briefing will summarise the key points for:

- Testing for Covid-19 and mental capacity
- Deprivation of Liberty Safeguards (DoLS) and Covid-19



Testing for Covid-19 and Mental Capacity

If you have concerns about a person's capacity regarding testing, you must carry out a mental capacity assessment in accordance with the MCA 2005. This test should, be carried out by someone with relevant information regarding what the test is for, how it will be conducted, and what this could mean for the patient.

A 'blanket' approach to care and treatment decisions for people who lack capacity is unlawful i.e. a decision to be tested for Covid-19, or to have an antibody test, cannot be assumed for every patient. For people who lack the relevant mental capacity to decide on testing, decisions must be made in best interests.

Best Interest decision

Consider all the relevant circumstances for the person's situation – including the potential impact of Covid-19 for the person, the risk of infecting others, particularly those who are vulnerable or shielded. Ensure the person's wishes, values and beliefs and the view of family or close friends are taken into consideration

If the person would resist the test but it is required for the protection of others, then consideration should be given to apply to the Court of Protection for consent to the test or to invoking Public Health Powers

There is a need for clear consideration of mental capacity in all cases where a decision is to be made, particularly where person has disturbance of mind or brain. Determination of mental capacity is time and decision specific and needs to be considered for all decisions.

Recording

Where a decision is taken in best interests to test a person for Covid-19, staff must ensure they record that decision. This must include how the final decision was reached and who was consulted.

Be clear on what decision you are asking the person to make and consider whether the decision needs to be made now?

Ensure you evidence what support you have given to them.

Conducting the test

If you determine it's in the person's best interest to have a Covid-19 test you must ensure that it is carried out in as **less restrictive** a way as possible and taking into account the person's usual response to the activities involved in testing.

Supporting people who lack capacity and either test positive, or are not tested

If a test is not carried out or if the person tests positive, consideration must be given on supporting them and others to remain safe in the least restrictive way possible.

This should be documented in their care plan and it should be reviewed regularly.



Consent

Before any testing is done the person must give informed consent i.e. agree to the test with understanding of its benefits and limitations, the implications if the test is positive and how the test will be conducted. It is possible to gain consent for repeat tests however it should be time limited and subject to review.

Where a person has a disturbance of the brain or mind, consideration should be given to their capacity to consent to the test. Consent should be sought from anyone with a Lasting Power of Attorney for health and welfare.

Undertaking a COVID-19 test is not likely to be considered to be covered by the Coronavirus act 2020 as an emergency measure where consent is not needed.