Multi-Agency Emergency Department Practice Guidance

Mental Capacity and Mental Health Act interface

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Approved By:	AMHP Governance Group	**Approved Date:**	Agreed in principle
Effective From:	September 2024	**Version No.**	2.2
Next Review:	September 2025		

Version Control

Version no.	Date issued	Author	Change Reference	Issued to
0.6	03.03.21	Natalie Oatham and Beatrice Tinkler.	Reviewed contents and updated version.	0.6
0.7	11.02.21	MCA Working Group	Updated version following comments from group.	0.7
0.8	15.03.21	Natalie Oatham and Beatrice Tinkler.	Reviewed contents and updated version.	0.8
0.9	24.03.21	Emergency Duty Team , Natalie Oatham and Beatrice Tinkler.	Reviewed contents and updated version.	0.9
0.10	12.04.21	Natalie Oatham	Amendments following feedback from Local Authority representatives.	0.10
0.11	13.04.21	MCA Working Group	Updated version following comments from group.	0.11
0.12	13.05.21	MCA Working Group	Updated version following comments from group.	0.12
0.13	19.05.21	Local Authorities	Amendments	0.13
0.14	01.06.21	Local Authorities	Amendments	0.14
0.15	22.06.21	Bedford Hospitals	Added in comments about changes to Appendix including Capacity Assessment Tool	0.15
2.1	November 2023	Caroline Tate Natalie Oatham	Review / formatting	NO
2.2	September 2024	Caroline Tate Natalie Oatham	Update to include RCRP statement Inclusion of VoiceAbility for IMCA support Working draft for upload	ASC Policy Hub

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It is the responsibility of every individual to ensure that they are working to the most current version of this document.

Document Owner Signatories

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Right Care, Right Person Statement:

Right Care, Right Person (RCRP) (DoH, July 2023) sets out a collective national commitment from the Home Office, Department of Health & Social Care, the National Police Chiefs' Council, Association of Police and Crime Commissioners, and NHS England to work to end the inappropriate and avoidable involvement of police in responding to incidents involving people.

EDT and the AMHP Service will signpost and respond to contact's taking into consideration the RCRP principles. Meaning, where possible the right person with the rights skills, training and expertise will respond. Staff will use the escalation process in place if they feel this is required. The police have a legal duty to Keep the Kings peace, respond to imminent threat to life and respond where a crime has been committed. All documents will be reviewed and updated in 2025 to include specific details relating to RCRP.

Contents

1. Introduction

1.1 This multi-agency Practice Guidance has been written for organisations across the system to support people presenting with mental disorders in Emergency Departments (ED) in Bedfordshire, including:

- Bedfordshire Police
- East London Foundation Trust (ELFT)
- East of England Ambulance Service (EEAST)
- Central Bedfordshire Council (CBC), who host the Emergency Duty Team (EDT)
- Bedford Borough Council (BBC)
- Luton Borough Council (LBC)
- Bedfordshire Hospitals NHS Foundation
- Emergency Duty Team (County Wide)

1.2 When a person presents to the ED they are triaged and concerns may be raised in the following areas:

a) risk,
b) possibility of leaving the department without appropriate treatment, or
c) ongoing consent and mental capacity of the person regarding care and treatment.

1.3 An early senior review of the person to form a view of mental capacity in respect of a specific decision, risks, and willingness to engage with treatment will be completed to decide the best course of action to treat and support the person.

1.4 There are two scenarios to be considered when a person presents to the ED, which are detailed in the following sections. It is important to note both scenarios may be applicable due to changes in presentation throughout the person's time in the ED.

2. People requiring urgent physical health investigation.

2.1 A person may be objecting to treatment or wanting to leave prior to urgent investigations or treatment.

2.2 A Mental Capacity Act (MCA) assessment will be completed with senior professional input as soon as possible. For further guidance please see flow chart and principles of the MCA.

2.3 If the person lacks mental capacity in respect of the relevant matter, a best interests decision needs to be completed (for further guidance please see best interests principles).

2.4 If the actions of the person are driven by a desire to end life and/or due to symptoms of a mental illness this may indicate a need for a mental health assessment and/or MCA assessment. An assessment from psychiatry liaison service (PLS) should be requested urgently.

2.5 Professionals should aim to assess mental capacity in every situation. S.5 of the MCA requires reasonable steps to be taken to establish whether a person lacks capacity in relation to the matter in question.

2.6 In the event that a medical practitioner considers there is a need to restrain an individual in connection with assessing and treating them, they are to discuss with the most senior clinician immediately available, consider their employers restraint policy and consider seeking urgent legal advice.

2.7 If there is restraint or restriction(s) of movement being used under the MCA and the patient is unlikely to regain capacity imminently then a DoLS application (urgent DoLS authorisation) should be considered in the following circumstances:

a) The patient requires admission to a ward for further investigation and /or treatment (DoLs application to be done by admitting team)

b) The 'degree or intensity' of the restriction, their duration and the impact it has on the person is significant.

2.8 There may need to be consideration of the Mental Health Act (MHA), however for a patient without mental capacity needing urgent medical treatment there should be consideration of the use of the MCA as well to avoid treatment being delayed.

3. People not requiring urgent physical health intervention but requiring assessment or treatment of a mental disorder.

3.1 A person may be objecting to a mental health assessment or wanting to leave when significant risks present.

3.2 A MCA assessment will be completed with senior professional input as soon as possible. For further guidance please see flow chart and principles for MCA.

3.3 Contact must be made with PLS as soon as possible to progress a mental health assessment.

3.4 If the person lacks mental capacity in the relevant matter, a best interests decision needs to be completed and for further guidance please see best interests principles.

3.5 If the actions to refuse care and/or leave are driven by a desire to end their life or symptoms of a mental illness early escalation with PLS is required.

3.6 If the person has capacity to make a decision in the relevant area but there is evidence of mental disorder with significant risk to their safety, their health or others then the MHA may still be applicable and should be discussed with PLS.

3.7 While assessments from PLS are pending, professionals should aim to assess mental capacity in every situation to ensure immediate risks are managed. S.5 of the MCA requires reasonable steps to establish whether a person lacks capacity in relation to the matter in question.

3.8 In the event that a medical practitioner considers there is a need to restrain an individual in connection with assessing and treating them, they are to discuss with the most senior clinician immediately available, consider their employers restraint policy and consider seeking urgent legal advice.

3.9 If the person has consented to and been admitted as an inpatient to the hospital then s.5.2 MHA could be considered, but this is not applicable in the ED.

4. People requiring a Mental Health Act Assessment.

4.1 For any person for whom it is felt there is significant risk alongside a mental disorder who is objecting to mental health treatment this should be referred via PLS to the Approved Mental Health Professional (AMHP) service or Emergency Duty Team (EDT) for a Mental Health Act Assessment (MHAA).

4.2 MHAA within the ED are deemed as urgent in nature and will be completed as soon as possible taking into account the presenting situation.

4.3 If someone who is not subject to the MHA requires mental health treatment, consideration should be given to whether the MCA can be used to administer the mental health treatment. Each case must be considered on an individual basis and legal advice should be sough when needed, in particular where someone is objecting to any treatment.

4.4 The MHAA will be undertaken by an AMHP from either the AMHP Service or EDT Service. The AMHP has an autonomous/independent role and has received specialist training to determine what actions will be required under the MHA and the AMHP will decide on what actions to take following a MHAA referral.

4.5 Whilst referrals received for people within the ED are urgent the AMHP is required to co-ordinate the assessment effectively, they will follow the MHA and CoP to ensure all steps taken are compliant with the law and in line with best practice. On occasions some delays may occur, however the AMHP will ensure all professionals involved in the assessment are kept updated.

4.6 On occasions the AMHP may be unable to progress the MHAA due to availability of the assessing team or other factors which will prevent the MHAA being undertaken, which could result in significant delays. The AMHP will ensure all professionals are kept updated and each organisation will follow its own escalation Practice Guidance to support the situation.

4.7 If there is any undue delay in the MHAA taking place this should be escalated with the AMHP Service or EDT for further consideration. The AMHP will be able to provide guidance on what the best course of action is to support the person.

4.8 If at any point there is significant risk to the person or others by behaviour that is not manageable the ED is a place where Police can consider using their powers under s.136 of MHA. The ED may seek support from Police as required.

4.9 In very limited circumstances where the following criteria from the MHA and CoP apply the AMHP may consider s.4 MHA:

a) an immediate and significant risk of mental or physical harm to the patient or to others,
b) danger of serious harm to property, or
c) a need for the use of restrictive interventions on a patient.

4.10 The AMHP should consider the s.4 MHA guidance within Chapter 14 of the CoP and s.4 should be used only in a genuine emergency where the person's need for urgent assessment outweighs the desirability of waiting for a second doctor.

4.11 AMHP's should not be routinely considering s.4 MHA and any issues relating to the availability of s.12 Doctors should be escalated to the AMHP Governance Group for further consideration as s.4 MHA should not be considered for administrative convenience.

5. Principles of Mental Capacity Act.

5.1 The principles of the MCA are set out in s.1 and are as follows;

a) Assume a person has the capacity to make a decision themselves, unless it's proved otherwise.

b) Wherever possible, help people to make their own decision(s).

c) Do not treat a person as lacking the capacity to make a decision just because they make an unwise decision.

d) If you make a decision for someone who doesn't have capacity, it must be in their best interests.

e) Treatment and care provided to someone who lacks capacity should be the least restrictive of their basic rights and freedoms.

6. Best Interest Steps (essential steps to consider and record when making best interest decisions).

6.1 **Equal consideration and non-discrimination** - the person determining best interests must not make assumptions about someone's best interests merely on the basis of their age or appearance, condition or an aspect of their behaviour.

6.2 **All relevant circumstance s**- Try to identify all the issues and circumstances relating to the decision in question which are most relevant to the person who lacks capacity to make that decision.

6.3 **Regaining capacity -** Consider whether the person is likely to regain capacity (e.g. after receiving medical treatment). If they are likely to regain capacity, can the decision wait until then?

6.4 **Permitting and encouraging participation** - Do whatever is reasonably practicable to permit and encourage the person to participate, or to improve their ability to participate, as fully as possible in any act done or any decision affecting them.

6.5 **The person's wishes, feelings, beliefs and values** - Try to find out the views of the person lacking capacity relating to the specific decision under consideration, including:

a) The person's past and present wishes and feelings – both current views and whether any relevant views have been expressed in the past, either verbally, in writing or through behaviour or habits.

b) Any beliefs and values (e.g. religious, cultural, moral or political) that would be likely to influence the decision in question.

c) Any other factors the person would be likely to consider if able to do so.

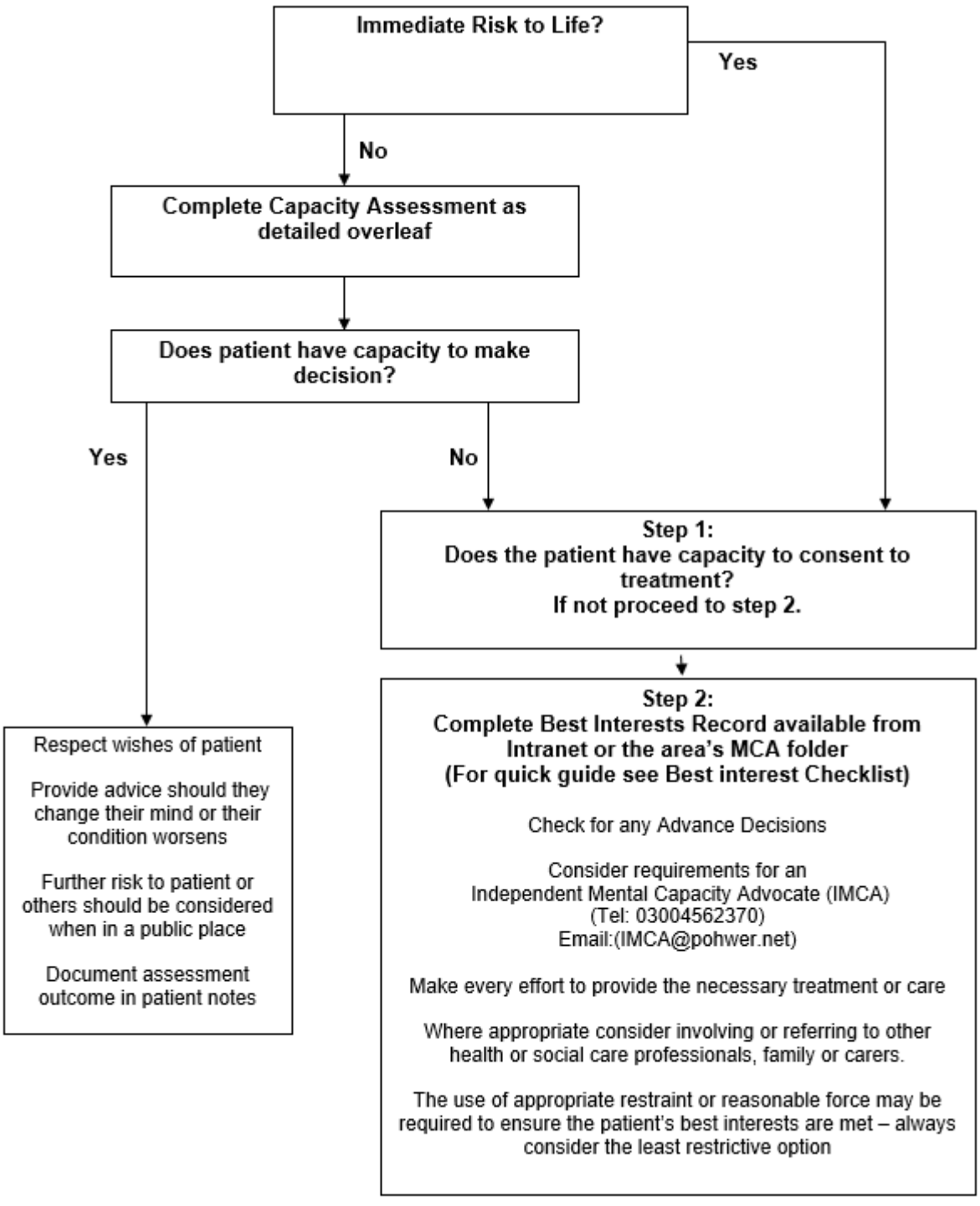
6.6 **The views of other people -** Consult other people, if it is practicable and appropriate to do so, for their views about the person's best interests and, in particular, to see if they have any relevant information about the person's wishes, feelings, beliefs or values. (But be aware of the person's right to confidentiality – not everyone needs to know everything). In particular, it is important to consult:

a) anyone previously named by the person as someone to be consulted on the decision in question or matters of a similar kind;
b) anyone engaged in caring for the person, or close relatives, friends or others who take an interest in the person's welfare;
c) any acting or lasting Power of Attorney made by the person (relating to specific decisions); and
d) any deputy appointed by the Court of Protection to make decisions for the person (relating to specific decisions).

6.7 **Life sustaining treatment -** where the decision concerns the provision or withdrawal of life-sustaining treatment (defined in s.4(10) of the MCA as being treatment which a person providing healthcare regards as necessary to sustain life), the person determining whether the treatment is in the best interests of someone who lacks capacity to consent must not be motivated by a desire to bring about the individual's death.

Information to support this section has been taken from 39 Essex Chambers: a brief guide to carrying out best interest assessments published 2019. The full guidance can be found at; https://www.39essex.com/updated-guide-to-best-interests/

7. Flow chart for assessing decision making (capacity).



ASSESSMENT of CAPACITY

Bedfordshire and Luton
MCA 02 For more complex decisions
Documentation for: The MENTAL CAPACITY ACT 2005

To be completed by: The person proposing the particular care or treatment and only when you doubt the person's ability to make a particular decision at the time it needs to be made.

Please Note: If more than one decision needs to be made a separate assessment form should be completed for each decision.

SERVICE USER/RELEVANT PERSON DETAILS	
Formal NAME of the Relevant Person	
Preferred NAME of the Relevant Person	
DATE OF BIRTH	
NHS ID Number	
ADDRESS of the Relevant Person	
MAIN CARER or NEXT OF KIN	
NAME OF DECISION MAKER/ASSESSOR **(Person completing this form)**	
POSITION HELD & Employer	
TEAM **Contact details** **Tel** **Email**	
NAMES, ROLES AND DETAILS OF OTHER PROFESSIONALS involved: (Include Advocates or Independent Visitors)	

DO ANY OF THE FOLLOWING APPLY?		DETAILS: including the date the document was drawn up, and when it was registered with the office of the public guardian (Both doc's need to be seen: e.g. LPA &Registration)
ENDURING POWER OF ATTORNEY (for property and affairs ONLY - created prior to the Mental Capacity Act, but still valid)	Yes/No	
LASTING POWER OF ATTORNEY (for property and affairs or personal welfare-replaced Enduring Power of Attorney following the implementation of the Mental Capacity Act)	Yes/No	
DEPUTY (someone appointed by the Court of Protection to make decisions on behalf of someone who lacks capacity to make the specific decision**.** Can be in relation to property and affairs, or personal welfare or both, must be stated on documentation.	Yes/No	.
ADVANCE DECISION TO REFUSE TREATMENT (ADRT) Details specific treatments that the person wishes to refuse – must be valid and applicable to the situation	Yes/No	
DATE ASSESSMENT STARTED:		

1. Decision

Every adult should be assumed to have the capacity to make an informed decision; unless it is proved that they lack capacity. An assumption about someone's capacity cannot be made on the basis of a person's age, appearance, condition, or aspect of their behaviour.

Response				Evidence/Comments and Source
Yes	**x**	**No**		

If you have answered NO to 1.2 above, the person is considered to have Mental Capacity and can make their own decision, within the meaning of the Mental Capacity Act. You must respect their decision.

You do not need to proceed any further.

Please sign and date to conclude and save this MCA assessment on the person's file.

Date Assessment Completed:	
Signature:	

If you have answered YES to 1.2 above, please proceed to STAGE TWO of the Assessment below:

STAGE TWO	ASSESSMENT OF CAPACITY

2. Assessment

Having determined that the person has an impairment, I have given consideration to the ease, location and timing of the Capacity Assessment; include dates/times attended	I have given consideration to the relevance of the information communicated; the communication method used; and other people's involvement in the Assessment	I have given consideration to the cultural influences, or social context that may affect the person's ability to make an informed choice?
What have you done? And when?	**What have you done or used? State others involved?**	**State the cultural influences or social context that this decision relates to and how it may impact when making this decision:**

2.1 What is the extent of the person's impairment? (Please tick or place a cross as appropriate)

Permanent		**Temporary**		**Fluctuation**	

2.2 Please complete the following questions in order to form an opinion as to whether the impairment is sufficient to suggest that the person lacks the capacity to make the particular decision at this moment in time.

Assessment of Capacity		Factual: Evidence/observations/comments/source/dates/times
1. Do you consider the person is able to understand the information relevant to the decision? And that this information has been provided in a way that the person is most likely able to understand?	Yes/No	
2. Do you consider the person is able to retain the information for long enough to be able to make the decision?	Yes/No	
3. Do you consider the person is able to use or weigh that information as part of the process of making the decision?	Yes/No	
4. Do you consider the person is able to communicate their decision?	Yes/No	

If you have answered YES to the questions above, then on the balance of probability, the person is likely to have capacity to make this particular decision at this time. **Conversely, if you have answered NO to any of the questions above then on the balance of probability the person is likely NOT to have capacity and you will be required to proceed.**

Please record a conclusion, sign and date this form and document the outcome within the person's file.

CONCLUSION	
State either: (delete as applicable)	
Document your evidence and give reasons for your conclusion:	
SIGNED	
DATE OF COMPLETED ASSESSMENT	

STAGE THREE	INDEPENDENT MENTAL CAPACITY ADVOCATE (IMCA)

Are there any relatives or friends to consult with?		Yes		No	
Name	**Address**	**Telephone**	**Email**		

Where there are **NO** relatives/friends to consult with, an Independent Mental Capacity Advocate (IMCA) **MUST** be instructed (by the decision maker) if the decision is about **Serious Medical Treatment**, a permanent **accommodation move** or you have identified that you are likely to be depriving the relevant person of their liberty. (**Deprivation of Liberty Safeguards** (DoLS).

For further advice call **POhWER**: **0300 456 2370** or **email referral to:** IMCA@pohwer.net

For Bedford & Central Bedfordshire:

Call **VoiceAbility 0300 3031660** or **email** helpine@voiceability.org

IMCA Referral Completed Date:			
Name of IMCA:	**Address**	**Telephone**	**Email**

STAGE FOUR	BEST INTERESTS

When it has been established that the person does not have the capacity to make this decision at this time, this decision must be taken in their best interests.

If the IMCA has been involved you must wait for their report and you must give consideration to the IMCA's findings, before making your final Best Interest Decision. It is your responsibility as the decision maker to inform the IMCA of the final Best Interests decision as soon as it is made.

Best Interest Process (please tick or place a cross)					
Meeting(s)		Series of Separate Discussions		Combination of both	

Can the decision be put off until the person regains Mental Capacity?	Yes		No	
If No, why not?				
What is the likelihood of the person regaining Mental Capacity? Please explain?				

What is the person's Preferences/Wishes? (These should be given priority)

State each option available and indicate the benefits and risks that you have identified for the person for each Option (including the option not to provide the intervention)	
Option 1:	
Benefits: 1. 2. 3. 4. 5.	Risks: 1. 2. 3. 4. 5.
Option 2:	
Benefits: 1. 2. 3. 4. 5.	Risks: 1. 2. 3. 4. 5.
Use a separate balance sheet to record further options if required and attach	

Notes of any Discussion/Meetings (Specify any disagreements): Attach or reference any meeting minutes/notes to this capacity assessment.

Outcome: Final Decision made is:	
REMINDER IF IMCA INVOLVED: It is your responsibility as the decision maker to inform the IMCA of the final Best Interests decision as soon as it is made. Call POhWER: 0300 456 2370 or email: IMCA@pohwer.net **For Bedford & Central Bedfordshire:** Call **VoiceAbility 0300 3031660** or **email** helpine@voiceability.org	
Will the decision be reviewed?	**If so, When and by whom?**

Declarations of the Decision Maker	
I confirm that the following decision has been made **without assumption** as to the age, appearance, condition, behaviour or quality of life of the person.	
I confirm that where the decision relates to **life sustaining treatment**, I am satisfied that the decision made has not been motivated in any way, by a desire to bring about the person's death. I understand that this formal decision may need to be taken to The Court of Protection and will seek the relevant legal advice before proceeding further.	
I confirm that I have considered all relevant factors. I have taken reasonable steps to establish whether the person lacks capacity in this matter. I **reasonably believe** that the person does lack capacity in relation to this matter **because of the impairment or disturbance** in the functioning of their mind or brain, and that it will be in the person's best interests' for the decision to be made or act to be done.	
I confirm that where the decision or act is intended to **restrain**, I believe that the restraint used is necessary in order to prevent harm to the person and that it is a proportionate response to the likelihood and seriousness of that harm.	
Signature:	**Date:**
Print name:	**Time:**

REMINDER IF IMCA INVOLVED: It is your responsibility as the decision maker to inform the IMCA of the final Best Interests decision as soon as it is made.

Call POhWER: 0300 456 2370 or email: IMCA@pohwer.net

For Bedford & Central Bedfordshire:
Call **VoiceAbility 0300 3031660** or **email** helpine@voiceability.org

8. Disputes or Escalations.

8.1 Operating across a wide and complex system invariably presents challenges that partners have to navigate and manage in supporting people. It is acknowledged that on occasions, there may be issues identified that are cause for concern and that these issues need to be escalated in a timely way to support resolution.

8.2 Should professionals experience issues which require resolution the Multi-agency Escalation Practice Guidance should be utilised.

9. Relating Legislation, Policy and Practice Guidance.

- Mental Health Act and Codes of Practice.
- Mental Capacity Act and Codes of Practice.
- EDT and AMHP Protocol.
- Multi-agency Escalation Practice Guidance