Consent and Mental Capacity Policy

Supportive Bridge Ltd | Community Support and Healthcare Staffing | Bradford, England

POLICY AT A GLANCE

- **Ask every time.** Consent is not signed once at the start. Explain what you are about to do and check the person agrees, every shift, every task.
- **Assume capacity.** Every adult is assumed able to make their own decisions unless it is shown otherwise.
- **An unwise decision is not a lack of capacity.** People are allowed to make choices others think are wrong.
- **Capacity is decision-specific and can change.** Someone may be able to choose their lunch but not manage their money, and may be clearer later in the day.
- **No one can consent on behalf of an adult** unless they hold a Health and Welfare Lasting Power of Attorney or are a Court of Protection deputy. A relative alone cannot.
- **Never force support.** If someone says no, stop, record it, and tell the office.
- **Best interests, least restrictive:** where a person lacks capacity, decisions are made in their best interests and in the way that limits their rights and freedom least.

SERVICE DETAILS (fill in before issuing)

Registered Manager	
Nominated Individual	
Office phone	
Out-of-hours / on-call number	
Local advocacy / IMCA service (name and phone)	
Date issued	
Next review date	

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1. PURPOSE

1.1 This policy explains how Supportive Bridge Ltd ("Supportive Bridge", "we", "us") obtains and records consent, and what our workers must do where a person may not be able to make a particular decision for themselves.

1.2 It reflects Regulation 11 (Need for consent) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Mental Capacity Act 2005 and its Code of Practice, and the Human Rights Act 1998.

1.3 Consent is not a form. It is a continuing conversation, and it is the difference between supporting someone and doing things to them.

2. SCOPE

2.1 Supportive Bridge Ltd operates two arms, and this policy applies to both: our **healthcare staffing service**, supplying care and support workers to care homes, hospitals and other providers; and our **community support service**, where our own support workers visit adults and older people in their own homes, including council housing, on morning and evening shifts, to support them with daily living.

2.2 Supportive Bridge does **not** provide personal care. Personal care is a regulated activity under the Health and Social Care Act 2008 and we will provide it only if and when we are registered with the Care Quality Commission. Our support workers provide non-personal support such as companionship, meal preparation, shopping, domestic help, prompting, and support to get out and about. This policy is written to meet both local authority provider assurance requirements and the standards we will be assessed against at CQC registration.

2.3 This policy applies to everyone who works for us, and to every decision we are involved in: what support is given and how, entering someone's home, sharing information, taking a health reading, handling money, and anything else that affects the person.

2.4 It does not give our workers authority to make decisions for anyone. Where a significant decision is needed, it is made through the process in this policy, led by the Registered Manager, and usually with health or social care professionals.

2.5 Failure to follow this policy may lead to action under our Disciplinary Policy. Giving support without consent or lawful authority can amount to assault, and may be a safeguarding matter.

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3. THE FIVE PRINCIPLES OF THE MENTAL CAPACITY ACT

Principle	What it means in practice
1. Presume capacity	Assume every adult can make their own decisions, unless it is established that they cannot. Never assume someone lacks capacity because of their age, diagnosis, disability, appearance or because they disagree with you.
2. Support the person to decide	Take all practicable steps to help someone decide before concluding they cannot: plain language, one thing at a time, pictures, the right time of day, glasses and hearing aids in, a quiet room, or the person who knows them best present.
3. Unwise decisions	People have the right to make decisions others think are unwise, risky or eccentric. That alone is never evidence of lacking capacity.
4. Best interests	Anything done for a person who lacks capacity must be in their best interests, not what is easiest or what the family prefers.
5. Least restrictive	Before acting, consider whether there is a way that interferes less with the person's rights and freedom, and choose it.

4. WHAT VALID CONSENT MEANS

4.1 For consent to be valid it must be:

- **voluntary:** the person's own decision, free from pressure from staff, family or anyone else;
- **informed:** the person understands what is proposed, why, what it involves, and what the alternatives and risks are, including doing nothing;
- **given by someone with capacity** to make that particular decision.

4.2 Consent can be written, spoken, or shown by what the person does, for example holding out an arm for a blood pressure cuff. Spoken and demonstrated consent are just as valid as a signature. What matters is that the person genuinely agreed, and that we can show it.

4.3 Consent can be withdrawn at any time, including part way through a task. If a person says stop, or their body language says stop, the worker stops immediately, checks they are safe and comfortable, records it, and tells the office.

4.4 A signed agreement at the start of the service does not cover everything that happens afterwards. Workers explain and check before each piece of support, every time.

5. CONSENT IN EVERYDAY PRACTICE

5.1 Workers should:

- knock, announce themselves and wait to be invited in, even where there is a key safe;
- say what they are going to do before doing it, and check the person agrees;
- offer choices rather than presenting decisions as settled: "would you like a bath or a wash at the sink?" rather than "I'm going to do your washing now";
- give the person time to answer, and not take silence as agreement;
- respect a refusal, however inconvenient, and never argue, bargain or persuade repeatedly;
- record in the daily notes anything the person declined and what the worker did instead.

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5.2 Where a person's first language is not English, or they have a communication need, we arrange a professional interpreter or accessible information as set out in our Equality, Diversity, Dignity and Respect Policy. Consent obtained without the person understanding is not consent.

6. WHEN TO QUESTION CAPACITY

6.1 Capacity is only questioned when there is a real reason to, for example the person cannot seem to take in or remember the information, cannot weigh it up, or cannot communicate a decision, and this matters for a particular decision that has to be made.

6.2 Capacity is **decision-specific** and **time-specific**. A person may have capacity to decide what to eat but not whether to take out a loan, and may have capacity in the morning but not late at night, or when in pain or unwell. A diagnosis of dementia, a learning disability or a mental health condition never removes capacity by itself.

6.3 Our workers do not carry out formal capacity assessments. Where a worker has a concern, they record what they observed, factually, and tell the office the same day. The Registered Manager decides what happens next.

7. ASSESSING CAPACITY

7.1 Where a formal assessment is needed, it is carried out by the person best placed to do it for that decision: the Registered Manager for decisions about our support, or the relevant professional, for example the GP for a medical decision or a social worker for a decision about where someone lives.

7.2 The assessment has two stages:

Stage	The question
1. The diagnostic test	Is there an impairment of, or disturbance in the functioning of, the person's mind or brain? This may be permanent, such as dementia or a brain injury, or temporary, such as delirium, infection, intoxication or the effect of medication.
2. The functional test	Because of that, is the person unable to do any one of these four things: **understand** the information relevant to the decision; **retain** it long enough to make the decision; **use or weigh** it as part of deciding; or **communicate** the decision by any means?

7.3 If the answer to both is yes, the person lacks capacity for that decision at that time. The finding must be on the balance of probabilities, and must be recorded, with the reasons and the practicable steps taken to support the person first. A blanket statement that someone "lacks capacity" is never acceptable.

7.4 Where the decision is a temporary one and the person may regain capacity, for example while they have an infection, we wait where it is safe to do so.

8. BEST INTERESTS DECISIONS

8.1 Where a person lacks capacity for a decision, the decision must be made in their best interests. The person making it, normally the Registered Manager for decisions about our support, must:

- not make assumptions based on age, appearance, condition or behaviour;
- consider whether the decision can wait until the person regains capacity;
- involve the person as fully as possible, and encourage them to take part;
- consider the person's past and present wishes and feelings, any written statement, and their beliefs and values;

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- consult anyone named by the person, carers, family, friends, any attorney or deputy, and relevant professionals;
- consider all the options and choose the one that is least restrictive of the person's rights and freedom;
- record the decision, who was consulted, what was considered and why the decision was reached, using the Best Interests Record (Appendix A).

8.2 Where a decision is serious and the person has no family or friends to consult, we ask the local authority to instruct an **Independent Mental Capacity Advocate (IMCA)**. Under the Care Act 2014 an independent advocate may also be needed where a person has substantial difficulty being involved in an assessment or review.

8.3 Disagreements are worked through by talking with everyone involved, holding a best interests meeting, and, if needed, seeking advice from the local authority. Serious unresolved disputes go to the Court of Protection, and are for the local authority or family to bring, not our workers.

9. WHO CAN DECIDE FOR SOMEONE ELSE

Who	What they can decide
Lasting Power of Attorney: Health and Welfare	Can make health and care decisions once the person lacks capacity, if registered with the Office of the Public Guardian. Only covers life-sustaining treatment if the document says so.
Lasting Power of Attorney: Property and Financial Affairs	Money and property only. Cannot decide about care or support.
Court of Protection deputy	Decisions within the scope of the court order.
Advance Decision to Refuse Treatment	A legally binding refusal of specified treatment made while the person had capacity. Must be written, signed and witnessed to refuse life-sustaining treatment.
Family member with no legal authority	Can and should be consulted, and their view carries weight, but **cannot consent or refuse on the person's behalf**.

9.1 Where someone claims authority, we ask to see the registered document and keep a copy on file, and we record its scope in the support plan so workers know what that person can and cannot decide.

10. REFUSAL OF SUPPORT

10.1 A person with capacity may refuse support. Workers must never force, trick or pressure anyone. They should explain the possible consequences once, kindly, respect the decision, record it and tell the office.

10.2 Where refusal is repeated and puts the person at risk, the Registered Manager reviews it with the person, their family where agreed, and the GP or social worker, and considers whether a capacity assessment is needed, whether support should be offered differently or at a different time, or whether a safeguarding referral is required for self-neglect.

10.3 Where a person lacks capacity and refuses, workers still do not use force. They stop, keep the person safe, and tell the office. Any agreed approach for that person, such as trying again later or a particular way of offering, is written in the support plan, following our Positive and Safe Support Policy.

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11. RESTRICTIONS AND DEPRIVATION OF LIBERTY

11.1 Any restriction on a person's freedom must be lawful, necessary, proportionate, recorded and reviewed, as set out in our Positive and Safe Support Policy.

11.2 A person may be deprived of their liberty if they lack capacity to consent to their arrangements, are under continuous supervision and control, and are not free to leave. In a person's own home this can only be authorised by the Court of Protection, and the application is normally made by the council. Where the Registered Manager believes this may apply, they raise it with the person's social worker promptly and record it.

12. CONSENT TO SHARE INFORMATION

12.1 Consent to share information is separate from consent to support. We ask the person who they are happy for us to speak to, and record it in the support plan and on the Consent to Share form.

12.2 We share without consent where the law requires or permits it, in particular where there is a safeguarding concern or a risk to life. Our Data Protection and Confidentiality Policy explains this in full.

13. RECORDING

13.1 Consent, capacity assessments and best interests decisions are recorded in the support plan and the person's record. Records must show what decision was in question, what steps were taken to support the person, what was found and why, who was consulted, and the review date.

13.2 Capacity findings are reviewed whenever the person's condition changes, at each support review, and at least every six months. A finding of lack of capacity is never treated as permanent without review.

14. TRAINING

14.1 All workers complete Mental Capacity Act and consent training at induction, before working alone, and refresh it at least every three years. Training covers the five principles, consent in everyday practice, spotting and reporting concerns about capacity, and what workers must not do.

14.2 The Registered Manager receives additional training in capacity assessment and best interests decision making.

14.3 Understanding is checked in supervision and during spot checks, where supervisors observe whether workers actually ask and explain, rather than simply getting on with tasks.

15. MONITORING AND REVIEW

15.1 The Registered Manager audits support records for evidence of consent, and checks that any capacity assessment or best interests decision is properly recorded and reviewed. The Nominated Individual reviews a summary at least quarterly.

15.2 This policy is reviewed every year, or sooner if the law changes, including any replacement of the Deprivation of Liberty Safeguards, or if a case shows it needs to change.

16. LEGISLATION AND GUIDANCE

- Mental Capacity Act 2005 and its Code of Practice
- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, especially Regulation 11 (need for consent), Regulation 9, Regulation 10 and Regulation 13

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- Care Act 2014 and the Care and Support Statutory Guidance, including independent advocacy
- Human Rights Act 1998, especially Articles 5 and 8
- Equality Act 2010
- UK General Data Protection Regulation and Data Protection Act 2018
- Office of the Public Guardian guidance on Lasting Powers of Attorney and deputies
- NICE guideline NG108: Decision-making and mental capacity
- CQC guidance on Regulation 11

17. RELATED POLICIES AND FORMS

Related policies: Person-Centred Care and Active Support; Positive and Safe Support (Reducing Restrictive Practice); Safeguarding Adults; Equality, Diversity, Dignity and Respect; Data Protection and Confidentiality; Support Records and Record Keeping; Medication; Complaints, Concerns and Compliments; Staff Training and Competency.

Forms: Consent to Support; Consent to Share Information; Mental Capacity Assessment Record; Best Interests Record (Appendix A); Support Plan; Daily Notes.

18. DOCUMENT CONTROL

Version	Date	Approved by	Role	Reason
1.0			Nominated Individual	New policy for local authority assurance and CQC registration

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APPENDIX A: CAPACITY ASSESSMENT AND BEST INTERESTS RECORD

One record per decision. Never complete this for "all decisions" or "general care".

Person's name / date / who is assessing	
What is the specific decision to be made?	
Can the decision wait until the person may regain capacity?	
What practicable steps were taken to help the person decide? (time of day, plain language, aids, familiar person, pictures)	
Stage 1: Is there an impairment or disturbance of mind or brain? What is the evidence?	
Stage 2: Can the person UNDERSTAND the information?	
Can they RETAIN it long enough to decide?	
Can they USE OR WEIGH it?	
Can they COMMUNICATE their decision, by any means?	
Conclusion: does the person have capacity for this decision?	

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IF THE PERSON LACKS CAPACITY FOR THIS DECISION

The person's past and present wishes, feelings, beliefs and values	
Who was consulted? (person, family, friends, attorney or deputy, professionals, advocate)	
Is there an attorney, deputy or advance decision? Document seen?	
Options considered, including doing nothing	
Decision made, and why it is in the person's best interests	
Why this is the least restrictive option	
Who disagreed, and how it was resolved	
Review date	
Signed (decision maker) and date	

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