Capacity assessment

The Speech and Language Therapist may be involved to ensure an assessment of the swallowing difficulty is completed and recommendations are communicated to all parties. Check reports and notes as this information may have been completed in a different setting.

One of the principles discussed in the Ethical Framework for Health and Social Care (2020) is that of respect. It is every individual's basic human right to be included in decisions about their care. There is a presumption that adults have capacity to make decisions about their care and treatment, unless there is proper reason to suggest the contrary. If there is such a reason, then a capacity assessment should be carried out. A decision should be made based on local legal frameworks within the respective nations. No further expansion detailing components of capacity assessments will be included in this document due to the respective regional variations.

As with all capacity assessments, the decision should be presented in an accessible format/language to make every attempt to support the individual to understand the issues involved in the decision-making process and be able to express their acknowledgement of the risks involved. This includes the principles of care set out in NICE guidelines NG108 (2018) 'Enabling the person to actively participate in their care'.

Where an individual lacks capacity to make a decision regarding their nutrition and/or hydration, a best interests multidisciplinary decision must be taken. It is essential that those engaged in caring for the person or those closest to them, or a designated advocate, are involved in determining whether the person had previously expressed wishes regarding eating and drinking decisions, and to help advocate for the individual's best interests.

If 'unbefriended', an independent mental capacity advocate should be involved to support decision-making on the person's behalf. If there is no agreement reached, the NHS body with responsibility for the person's care should present the case at court (further legal information is available in this guidance on serious medical treatment). All discussions should be documented in the case notes/care plan/reports and shared with the individual, relatives and professionals involved in their nutritional management and care, for the purposes of information handover and continuity of care.

The overall goal of this document is to support the decision-making process irrespective of the person having the capacity to accept the risks involved. As emphasised in the RCP guidance (2021), **a person with capacity can choose to make a decision which appears to others to be unwise. That could include a decision that they wish to receive nutrition in a way that heightens risk to their general health.** There may also be circumstances in which it is clear that an individual lacking capacity to make decisions wishes to receive nutrition in a specific fashion which appears to pose a risk to them. **If there is a proper consideration of whether this is in their best interests, then those who act upon that known**

wish will be protected from liability, again so long as they have acted with due care.

Professional colleagues should agree who will discuss the outcomes and management plan with all concerned. Information should be presented in an accessible way whereby service users and those closest to them, wherever possible, are provided with written information on eating and drinking with acknowledged risks, allowing time for reflection and questions (the General Medical Council has published some tips for handling difficult conversations and the Royal College of Physicians has published a framework on conversations for ethically complex care).

Royal College of Speech and Language Therapists: Eating and drinking with acknowledged risks: Multidisciplinary team guidance for the shared decision-making process (adults). September 2021.

Complete SLT contact form and send to sirona.SLTcarehomesadvice@nhs.net for advice if needed