

Mental Capacity snapshot Cold Weather SWEP

Purpose of This Tool:

This tool is intended for use after completing the **Risk Assessment for SWEP refusal** when there is concern about a person's mental capacity regarding the specific decision not to take up an offer of accommodation during severe weather conditions. The risk assessment should provide essential context and supporting evidence, helping to determine whether a Mental Capacity Assessment (MCA) is necessary. This version of the MCA is for use on the night and can be filled in on a tablet/phone.

Understanding the Mental Capacity Assessment Process:

A mental capacity assessment is a thorough, interactive process. It involves presenting relevant information to the individual and then asking questions to evaluate their ability to understand, retain, use, weigh that information, and communicate their decision. Information may need to be presented more than once and in different formats. For example, if the person does not understand initially, rephrasing or using alternative methods may help. Given the complexity of self-neglect, the assessment may need to take place over several visits.

Informing the Individual of the Assessment:

It is essential to inform the individual of the purpose of the assessment. Explain why the assessment is being conducted and that the goal is to ensure they are making informed choices about their lifestyle or refusal of services.

Who Can Conduct the Assessment:

All staff may carry out capacity assessments, provided they adhere to legal requirements. If there is a reasonable belief that the individual lacks capacity, a Best Interests Decision will need to be made. **Best Interests usually undertaken by ASC or health professional but note on the night, outreach may be doing this re calling an ambulance.**

The five principles of the MCA (2005).

1. "A person must be assumed to have capacity unless it is established that they lack capacity." (presumption of capacity)
2. "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." (help the person to make the decision)
3. "A person is not to be treated as unable to make a decision merely because they make an unwise decision." (unwise decisions)
4. "An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, **in his best interests.**" (best interests)
5. "Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is **less restrictive** of the person's rights and freedom of action." (less restrictive option)

Mental Capacity Act (MCA) Assessment

Personal Details

Name (Inc title):	Date of birth:
Current Location:	First Language: (interpreter required? If yes, give details):

a) what has led to this Mental Capacity Act assessment taking place at this time?

(why capacity is being considered)

b) What is the decision to be made? (What is the decision that the person should be trying to make?) *Not taking up free SWEP accommodation to offer protection from the weather.*

c) What is/ are the proposed intervention(s) / action(s) to take to reduce the risk of harm?

Options could be:

- *Stay here as you are*
- *Stay out and move to a sheltered spot (with more clothes/ covers)*
- *Sleep inside tonight and come back here tomorrow (if you want to)*

Referring to section c - what are the reasonably foreseeable consequences for the client of deciding one way or another, or failing to make the decision? *The Risk assessment for SWEP refusal will help with this section.*

- *hypothermia / freezing*
- *Hospital admission*
- *Deteriorating physical health and death*

d) The following practicable steps have been taken to enable and support the person to participate in the decision-making process *(e.g. interpreter, easy read document for SWEP beds)*

PROMPTS TO CONSIDER

- What the risks of staying out in freezing weather tonight? How will you stay warm?
- Ask, "You'll be outside tonight, and it's freezing (mention current temp). It will get colder, with a low of _____. You might feel numb. What else could happen to your body in this cold?"
If no response, show images of symptoms. Then ask, "What do you have to keep warm?" (if needed gesture to your clothes, like pointing to your jumper).
- Being outside in freezing temperatures puts you at risk for hypothermia. You know when you shiver (demonstrate)? That's a sign. What can stop symptoms like shivering? (Offer a suggestion if no answer).
- Where will you go inside during the day to warm up (day centre, church, coffee shop etc)?
- What is the reason(s) you don't want to go inside tonight? What are the risks of sleeping inside tonight? Can the risks be mitigated (e.g. single room ensuite). Are there any benefits of sleeping inside?

These are guidelines - a snapshot assessment to show to wider systems. It is not legal advice.

- Ask what is needed for them to sleep inside tonight? Explain, we will help you get there, they are free to leave, and we will help them back here tomorrow. State "at (time) I (or whoever the person is) will come here or at agreed location. We will walk up to X. That will take 25 minutes. When we get to X you can... In the morning at (time), Y will meet you at X at (specify time) to bring you back here.
- If they refuse SWEP, leave warm items (coat, sleeping bag) and check later if they're using them. If not dressed properly or not using the items, it may show difficulty processing information. Clearly state what you're leaving: "I've left you a scarf, socks, gloves, and a hat to help protect your hands, neck, and feet from freezing in this weather."

The recording of the conclusion reached as to whether the person had capacity.

Is the person able to understand the information about the decision to be made?

Do they understand the nature of the decision? The reason why the decision is needed? The likely effects of deciding one way or another, or making no decision at all?

Yes, give details

No, give details

Is the person able to retain the information relevant to the decision?

"Retaining" should be cited only in relation to the ability to remember relevant information.

Yes, give details

No, give details

Is the person able to use or weigh up the relevant information as part of the decision-making process?

"To think through decisions non-impulsively", "to give coherent reasons" and use the information in practice

Yes, give details

No, give details

Is the person able to communicate their decision by any means?

Yes, give details

No, give details

Advice if a person is uncommunicative.

- Your lack of response to my questions, is leading me to be concerned for your welfare and believe you may need medical attention, so I'm considering calling an ambulance. Can I ask you the questions again?
- Leave sleeping bag/coat items next to them, document what happens – do they use them?

Is the person's inability to make the decision because of the identified impairment or disturbance in, the function of the mind or brain? Explain the rationale. *(The inability to make the decision is because of an impairment*

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<p>of, or a disturbance in, the functioning of the mind or brain (causative nexus)</p> <p>A formal diagnosis is not required, it can include medical conditions causing confusion, drowsiness, concussion, and the symptoms of drug or alcohol abuse.</p>	
Yes, give details	No, give details
<p>In my opinion the person HAS capacity to make this specific decision</p> <p><i>"I have a reasonable belief that this person has capacity at the moment to make this particular decision ...". (Remember that if there is evidence the person cannot do any one of these things then they must be found to lack capacity about that decision - for example, often a person may be able to understand but cannot retain or use the information).</i></p>	
Yes, give details - DO NOT PROCEED TO MAKE A BEST INTERESTS DECISION, and refer to the Risk Assessment for SWEP refusal to consider what needs to be put into place to minimise the risk	No, give details
<p>Assessor's name and role:</p> <p>Signed _____ Date: _____</p>	
<p style="text-align: center;">BEST INTERESTS DECISION</p> <p><i>Principle 4 of the MCA Code of Practice states: "An act done, or decision made, under this Act for or on behalf of someone who lacks capacity must be done, or made, in his best interests."</i></p>	
<p>There are many different outcomes that may arise out of a Best Interest Decision depending on the question, the options and what those who contribute to the decision think is best. However, if the outcome indicates that someone should be compelled off the street in times of severe weather, these are the only ways to do this:</p> <ol style="list-style-type: none"> Section 136 is the power that allows a police officer to detain someone whom they believe to be mentally disordered and in need of urgent care and control and take them to a place of safety for 24hrs. You will need to call the Police, stating you don't believe the person has capacity and request they use their powers to detain the person under a section 136. The police officers will call the NHS Hub (if practicable) to liaise with a nurse to review NHS databases and the presenting symptoms. The nurse will advise on the course of action and if medical treatment is indicated, will direct the team to a health-based place of safety for the person to be reviewed. Severe weather is not noted in s136 protocols as an aggravating factor. Mental Health Act Assessment (MHAA) - an assessment to decide whether they can be detained in hospital to make sure they receive care and medical treatment for a mental disorder. The MHAA would be undertaken by the Joint Homelessness Team for a Westminster rough sleeper – liaise with them further 020 7854 4206, jhtduty@nhs.net during working hours only An ambulance if there is a medical need. The ambulance would need to be satisfied the client lacks capacity for them to be able to force an admission to hospital. One may need to call the Police to help. This document could inform their decision making, along with accessing the client's Universal care plan. Once in hospital, staff could apply for a deprivation of liberty safeguards (DOLs) if it is necessary to keep the client in hospital for treatment. Hypothermia represents the most obvious and an ambulance should be called. Signs include: shivering, pale, cold and dry skin – their skin and lips may be blue, slurred speech, slow breathing, tiredness or confusion. But there may be other personal circumstances when an ambulance should be called. If so, list these: 	