All-Wales Policy - Future Care Plan documents for adults who do not have mental capacity (FCP-RBID)

# Purpose

The purpose of this policy is to ensure that Future Care Plans for people aged 18 and over, and who do not have mental capacity, help to facilitate what has been agreed to be in a person's best interests both **effectively** and **safely**. These types of plans have been called RBID (Record of Best Interests Decisions) in some regions, and will be referred to in this policy as FCP-RBID documents or forms.

# Background

When a clinical decision is made on behalf of an adult person who lacks mental capacity, due consideration must be given to all available sources of information which may guide that decision in determining what is in the person’s best interests (Mental Capacity Act 2005). In weighing up the available information, consideration will be made as to the provenance of that information. In some situations, a Future Care Plan may be the main or only source of such information, and this policy clarifies the steps the **author** of an FCP-RBID form should take, in order to ensure that the **reader/user** can be confident of the provenance. This policy and the associated All Wales RBID Form has undergone a formal, multidisciplinary legal review and agreed by the Advance & Future Care Planning Strategy Group for NHS Wales.

## Decision or not?

The Mental Capacity Act (MCA) states that a decision or act made or done on someone's behalf needs to be done in the person’s best interests. The MCA also determines what is required in order to make a decision in someone’s best interests. However, it is not entirely clear in law whether the process of writing an FCP-RBID form constitutes “making a decision” on someone’s behalf.

This policy is based on the premise that an FCP-RBID document which may in the future become the main source of information on which a healthcare professional makes a best interests decision, should follow the principles of best interests decision-making as defined in the Mental Capacity Act 2005. This will ensure that anyone using the FCP-RBID to formulate a best interests decision will have confidence in the process.

## Applying the Mental Capacity Act

The Code of Practice of the Mental Capacity Act does not specifically refer to best interests decisions made in advance, although this is currently under review.

This policy seeks to clarify the application of the MCA principles in the context of an FCP-RBID future care plan.

A best interests decision requires the decision-maker to obtain as much information as is practical in order to support the decision. The more time that is available, and the seriousness of the decision (e.g. is it about life-sustaining treatment) will dictate the level of consultation that is appropriate. In a clinical emergency, a decision may need to be made based on a brief conversation with one relative, and sometimes even that is not possible. In the case of a future care plan (which will often include decisions about life sustaining treatment), the widest level of consultation is indicated.

# Guidance to Author

* If there is a Lasting Power of Attorney with appropriate authority[[1]](#footnote-1) or Court Appointed Deputy, then they will be the decision-maker in this process.
* Otherwise, the widest level of consultation that is feasible should be undertaken when completing an FCP-RBID:
  + The views of ALL close family members, nominated next-of-kin, and significant carers should be considered when discussing a future care plan
  + In particular, where there a number of siblings or children, efforts should be made to seek the views of all of them.
  + It is not always practical for all to be present or to contribute directly. Conflicting views should be actively sought by asking if any of those involved knows of anyone who may disagree with the decisions under consideration.
  + If there is no one appropriate to consult, an Independent Mental Capacity Advocate (IMCA) should be appointed / consulted.
  + If a medical doctor is not leading the process, then a doctor must be one of those consulted. This will usually be a GP or consultant, but may be a non-consultant with suitable experience e.g. an SAS doctor or senior trainee in care of the elderly or palliative care.
  + If an “urgent” future care plan is required (e.g. anticipating deterioration over the next hours or days), and this wide consultation is not possible, then the FCP-RBID form should **not** be used (see below for Alternatives).
* A mental capacity assessment of the person should be made and recorded. All practical steps must be made to support the patient to demonstrate their capacity. Capacity is task-specific, therefore care should be taken by the overseeing clinician as to what decision(s) the patient is being asked to make. It is not appropriate to complete a future care plan if there is a reasonable possibility that mental capacity could improve. If improvement of mental capacity is considered to be a realistic possibility (e.g. soon after a stroke), then alternative methods of communicating short term plans should be used (see below for Alternatives).
* When developing a future care plan (FCP-RBID), this should take into consideration any previously expressed verbal or written wishes (Advance Care Plans) the person may have made.
  + Efforts should be made to enquire specifically if any of those involved in the process are aware of wishes previously expressed by the person
  + A future care plan (FCP-RBID) should normally be consistent with previously expressed wishes of the person; if not, the variation and reason should be clearly documented in the FCP-RBID.
* Agreement should be obtained from all those involved in the process that it is in the person’s best interests for the document stating the agreed decisions to be shared with healthcare professionals (including through electronic sources), and understanding that it may form the basis of important decisions made in the future, unless or until such time that the document is rescinded.
* The FCP-RBID should be signed and dated by a senior clinician, together with their GMC/NMC number.

If the overseeing clinician is not familiar with the process, they may wish to consult a suitably experienced clinician for support or guidance.

# Guidance to Readers / Users

The **reader** or **user** is a healthcare professional who attends a person with an FCP-RBID document.

If a person requires a clinical management decision to be made on their behalf because the person does not have mental capacity:

* A Future Care Plan (FCP-RBID) is only **one** source of information which should be taken into account, when making a best interests decision on behalf of the person.
* The presence of a FCP-RBID should not stop the usual principles of best interests decision-making at the time:
  + If it is practical/feasible, a family member, nominated next-of-kin and/or carer should be consulted.
  + Check the person’s mental capacity to make decisions for themselves.
  + Encourage the person to take part in any discussion about the decision being made, even when they may be deemed to lack mental capacity.
  + If there is a Lasting Power of Attorney or Court Appointed Deputy, they must be consulted if practical/feasible.

In the absence of any other available sources of information about what the person's wishes may have been, an FCP-RBID document may provide the main source of information to guide making a best interests decision. An FCP-RBID document which has been made following this policy (and recorded on an official NHS Wales form) may be used when necessary as the sole basis of a clinical decision.

# Fluctuating or Borderline Mental Capacity

If the person’s mental capacity:

1. is sufficient to make decisions about some of the issues addressed in the FCP-RBID but not others, or
2. fluctuates with time, or
3. cannot be agreed by those involved,

- then the FCP-RBID form should **not** be used (see below for Alternatives).

# Disagreement about what is in the person’s best interests

Sometimes there will be disagreement amongst those consulted as to what is in the person’s best interests. This may present a useful opportunity to help family members or carers consider the issues carefully and discuss them. However, if disagreement persists about what is in the person’s best interests amongst any of those consulted, then the FCP-RBID form should **not** be used (see below for Alternatives).

# Alternatives to an FCP-RBID document

There are a number of circumstances when an FCP-RBID document is not recommended because:

* Fluctuating or borderline mental capacity
* A realistic chance that mental capacity will return
* Insufficient time to allow wide consultation (including for example an IMCA)
* Disagreement persists about what is in the person’s best interests

Alternative methods of communicating information that may be helpful for future decision-making should be used e.g.:

* A Treatment Escalation Plan
* An entry in the patient’s usual clinical record
* “Special notes” to the out-of-hours service



1. There are two types of LPA, one for Health & Welfare, and the other for Property and Financial affairs. Only an appointed LPA for Health & Welfare has the authority to act on the patient’s behalf when it is clear that the patient lacks capacity to make a decision for themselves.   
   If the decisions being discussed relate to the giving or refusal of life sustaining treatment, then Section 5 of the LPA form must have been signed. [↑](#footnote-ref-1)