

Serious Medical Treatment Decisions

**BEST PRACTICE GUIDANCE FOR IMCA<sub>s</sub>**

**ECT FACTSHEET**



## ECT Factsheet

### What is ECT?

Electroconvulsive Therapy (ECT) is a treatment prescribed for someone that has a severe mental illness. The National Institute for Clinical Excellence (NICE) advises it should only be given to someone with severe depression, severe mania or catatonia. It is generally used when all other treatments have been unsuccessful or it has proven beneficial for that person in the past.

The process of ECT involves passing an electric current across the person's brain from an ECT machine, to induce seizures; these are carefully managed so that the person does not suffer any physical injuries. An anaesthetic and muscle relaxant are given and the treatment is provided in what's known as the ECT suite, usually a set of rooms that are only ever used for the purpose of ECT. Usually a person is prescribed 6- 12 sessions.

### What legislation exists in relation to ECT?

The Mental Health Act 1983 (MHA) was previously the only legislation used when ECT was proposed. When the Mental Capacity Act 2005 (MCA) came into effect in 2007 it also made provision for ECT (viewed as a serious medical treatment under the MCA) to be provided under this Act. The purpose of this was to ensure there was a safeguard for someone that lacked capacity to consent to ECT who was not detained under the MHA.

If a person is not detained and has capacity to give their consent to have ECT and they agree to ECT then it can be provided. However it cannot be provided if a person refuses, whether they are detained or not (unless it is emergency treatment in which case S58a does not apply, see below for further information).

### What was section 58 (s58) of the MHA 1983?

ECT used to be provided under s58 of the MHA and meant that if a person had capacity and they consented to treatment then it could be provided. If a person lacked capacity they could be given it if it was certified that "having regard to the

likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given".

### **What has changed within the MHA with respect to ECT?**

In April 2009 the MHA was amended to provide further safeguards for a detained patient where ECT is being proposed. The treatment is now given under S58a of the MHA.

### **What is section 58a (s58a)?**

This means that the person must consent to this treatment. The clinician in charge or Second Opinion Authorised Doctor (SOAD) must have certified the person's capacity to consent before treatment is given.

### **Treatment for children and patients under 18**

For children and young people under 18 a SOAD certificate is not sufficient to authorise the treatment unless the patient is detained. Clinicians must also have the patient's own consent or other legal authority.

There is nothing in the MHA that prevents a person with parental responsibility to consent to ECT on behalf of a young person (under 16) who lacks capacity to consent and is not detained. However The MHA Code of Practice states that where a person is under 16, court authorisation should be sought when ECT is proposed. Where the person is aged 16/17 and an informal patient but unable to consent to ECT then section 5 of the MCA has to be used.

Where the person is under 18 and being considered for ECT they are eligible for the support of an IMHA (whether they are detained under the MHA 1983 or not).

### **Person lacks capacity to consent**

Where the person is detained but lacks capacity to consent to ECT they cannot be given the treatment unless a SOAD certifies that the patient lacks capacity to consent AND:

- The treatment is appropriate

- There is no valid and applicable advance decision been made by the patient under the MCA refusing the treatment
- There is no suitable authorised attorney or deputy that objects to the treatment on the patient's behalf
- The treatment would not conflict with a decision of the Court of Protection which prevents the treatment being given
- Before issuing the certificate the SOAD must consult with 2 people that have been professionally concerned with the patients treatment. One must be a nurse and the other must not be either a nurse, doctor or the patients Responsible Clinician (RC) or Approved Clinician (AC)
- In all cases the SOAD must stipulate on the certificate the maximum number of administrations of ECT they are approving

### Written information

People of all ages that are to be treated with ECT should be given written information before their treatment starts which helps them to understand and remember, both during and after the course of ECT, the advice given about the nature, purpose and likely effects.

### ECT provision under the MHA in an emergency

Where ECT is immediately required a certificate is not necessary. This only applies if the treatment in question is immediately necessary to:

- Save the patients life
- Prevent a serious deterioration of the patient's condition and the treatment does not have unfavourable physical or psychological consequences, which cannot be reversed.

### ECT and the Mental Capacity Act 2005

Where a person is not detained under the MHA but ECT is proposed and the person lacks capacity to consent to the treatment, section 5 of the MCA can be used to provide the treatment instead. This is the part of the Act that covers health and treatment decisions. Where a patient that lacks capacity to consent objects to certain treatments, it may still be provided under s5 if it is deemed to be in their best interests but force and/or restraint cannot be used. Where any treatment is deemed

to be in the best interests of the person and there is a need for a proportionate response with regards the use of force and/or restraint then professionals must be familiar with the full guidance that is within the Mental Capacity Act on this matter, as well as any specific guidance from relevant professional bodies plus the common law duty of care imposed on health and social care staff. A Deprivation of Liberty authorisation may be applied for to treat a person's physical health but cannot be used to treat a person for their mental disorder and this includes ECT.

Where treatment is for mental disorder and the person objects then consideration needs to be given as to whether the person should be assessed under the MHA.

ECT provision via the MCA is a serious medical treatment decision and as such a best interests decision will need to be made as to whether ECT is appropriate and in that person's best interests. The Act does not provide a definition of best interests, as these are specific to the individual about whom the decision is made. However, section 4 of the MCA provides a 'checklist' of factors that must be taken into account and evidenced before any decision is made, these include:

- The person's views, wishes, preferences, feelings and values both past and present
- The person should be included within the decision making process
- The views of others including family, friends, carers and professionals involved with the care of someone
- Consideration of the least restrictive process
- Take account of all circumstances
- Appointment of an IMCA where there is no-one appropriate (family or friends) to consult with

### Further guidance & resources

#### **Royal College of Psychiatrists**

A patient information leaflet on ECT

<http://www.rcpsych.ac.uk/mentalhealthinfoforall/treatments/ect.aspx>

[www.rcpsych.ac.uk](http://www.rcpsych.ac.uk)

**National Institute for Clinical Excellence**

Guidance as to the use of ECT:

<http://www.nice.org.uk/TA059>

[www.nice.org.uk](http://www.nice.org.uk)

**Mental Capacity Act 2005 Code of Practice**

<http://www.publicguardian.gov.uk/docs/mca-code-practice-0509.pdf>

**Deprivation of Liberty Safeguards Code of Practice**

[http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_087309.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087309.pdf)

## **Best practice guidance range**

The IMCA Support Project has produced a range of guidance on the involvement of IMCAs in SMT decisions that can be accessed on the Action for Advocacy website under IMCA Support Project, articles and resources.

### **The involvement of Independent Mental Capacity Advocates in Serious Medical Treatment Decisions**

Best Practice Guidance for Healthcare Professionals and IMCAs. Includes case examples, example policies and useful forms.

### **Serious Medical Treatment - Specific Decision Guidance for IMCAs**

The guides cover some common SMT decisions IMCAs may be involved in.

Do Not Attempt Resuscitation (DNAR)

PEG Feeds

Chemotherapy

End of Life Care

Dentistry

ECT Factsheet

### **Serious Medical Treatment Checklist (for the involvement of IMCAs)**

A useful A4 chart, which gives information, aimed at health professionals about when to instruct IMCA.

### **IMCA involvement in SMT decisions leaflet**

A leaflet aimed at healthcare professionals which gives information on the IMCA role and when and how to instruct IMCA.

[www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk)

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