

## Decision making and mental capacity

**NICE** National Institute for  
Health and Care Excellence

Consultation on draft guideline – deadline for comments 5pm on Monday 5 February 2018 email: [mentalcapacity@nice.org.uk](mailto:mentalcapacity@nice.org.uk)

	<p>Please read the checklist for submitting comments at the end of this form. We cannot accept forms that are not filled in correctly.</p> <p>We would like to hear your views on the draft recommendations presented in the short version and any comments you may have on the evidence presented in the full version. We would also welcome views on the Equality Impact Assessment.</p> <p>We would like to hear your views on these questions:</p> <ol style="list-style-type: none"><li>1. Which areas will have the biggest impact on practice and be challenging to implement? Please say for whom and why.</li><li>2. Would implementation of any of the draft recommendations have significant cost implications?</li><li>3. What would help users overcome any challenges? (For example, existing practical resources or national initiatives, or examples of good practice.)</li><li>4. [Insert any specific questions about the recommendations from the Developer, or delete if not needed]</li></ol> <p>See section 3.9 of <a href="#">Developing NICE guidance: how to get involved</a> for suggestions of general points to think about when commenting.</p>
<p><b>Organisation name – Stakeholder or respondent</b> (if you are responding as an individual rather than a registered stakeholder please leave blank):</p>	<p>[Age UK]</p>

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<b>Disclosure</b> Please disclose any past or current, direct or indirect links to, or funding from, the tobacco industry.		<b>[Insert disclosure here]</b>		
<b>Name of commentator person completing form:</b>		<b>[Joel Lewis]</b>		
<b>Type</b>		<b>[office use only]</b>		
<b>Comment number</b>	<b>Document</b> (full version, short version or the appendices)	<b>Page number</b> Or <b>'general'</b> for comments on the whole document	<b>Line number</b> Or <b>'general'</b> for comments on the whole document	<b>Comments</b>  Insert each comment in a new row. Do not paste other tables into this table, because your comments could get lost – type directly into this table.
Example 1	Full	16	45	We are concerned that this recommendation may imply that .....
Example 2	Full	16	45	Question 1: This recommendation will be a challenging change in practice because .....
Example 3	Full	16	45	Question 3: Our trust has had experience of implementing this approach and would be willing to submit its experiences to the NICE shared learning database. Contact.....
1	Full	General	General	There is some uncertainty as to the audience the guidelines were being produced for, how they would be implemented and how they would be communicated to health and social care professionals.

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	Full	7	168 – 173	Recommendation for all health and social care organisations to develop local policies, guidance and tools about which interventions, tools and approaches will be used to support decision-making and to assess the mental capacity of the people they are working with. Development of local toolkits, rather than national guidance could lead to local variation and therefore a lack of clarity around legal compliance.
2	Full	10	272 - 278	The recommendation calls for practitioners to ‘involve significant and trusted people’ in supported decision making and then goes on to say that their ‘wishes and preferences’ should be free ‘from coercion or undue influences’. There is a lack of clarity for professionals as to what they should do were they to suspect coercion or undue influence on a person’s decision-making.
3	Full	11	270 – 285	The recommendations call for practitioners to ‘talk to the person and their carer, family and friends, as appropriate, about the potential consequences of supported decision-making’. As in the previous comment, there is a lack of substantive guidance for professionals in how they should deal with cases where they suspect coercion.
4	Full	18	497 - 501	This recommendation has a lack of clarity and assumptions are made about the decision making of those with a traumatic brain injury.
5	Full	22	597- 599	The recommendation for health and social care organisations to ‘provide toolkits to support staff to carry out and record best interest’s decisions’. As in the earlier comment, development of local toolkits, rather than national guidance could lead to local variation and therefore a lack of clarity around legal compliance.
6	Full	23	640 – 643	The recommendation to ‘record best interests decisions in a way that is proportionate to its complexity, for example in a best interest’s toolkit or individual care record’. Similarly to the previous comments, the development of local toolkits, rather than national guidance could lead to local variation and therefore a lack of clarity around legal compliance.

Insert extra rows as needed

### Checklist for submitting comments

- Use this comment form and submit it as a **Word document (not a PDF)**.
- Complete the disclosure about links with, or funding from, the tobacco industry.
- Include **page and line number (not section number)** of the text each comment is about.
- Combine all comments from your organisation into 1 response. **We cannot accept more than 1 response from each organisation.**
- **Do not paste other tables into this table** – type directly into the table.
- Underline and highlight any confidential information or other material that you do not wish to be made public.
- Do not include medical information about yourself or another person from which you or the person could be identified.
- Spell out any abbreviations you use

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- For copyright reasons, comment forms **do not include attachments** such as research articles, letters or leaflets (for copyright reasons). We return comments forms that have attachments without reading them. The stakeholder may resubmit the form without attachments, but it must be received by the deadline.

You can see any guidance that we have produced on topics related to this guideline by checking [NICE Pathways](#).

**Note:** We reserve the right to summarise and edit comments received during consultations, or not to publish them at all, if we consider the comments are too long, or publication would be unlawful or otherwise inappropriate.

Comments received during our consultations are published in the interests of openness and transparency, and to promote understanding of how recommendations are developed. The comments are published as a record of the comments we received, and are not endorsed by NICE, its officers or advisory Committees.

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