



UNIVERSITY OF
LEICESTER

**University of Leicester Research Governance Office
Standard Operating Procedures**

SOP S-1034 UoL

**Inclusion of Incapacitated Adults in Research Studies
Sponsored by the University of Leicester**

Version 3.2, January 2024

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Effective Date: January 2024

This SOP will be implemented in line with this document's effective date for all UoL Sponsored research still in set up. For active clinical research that is already in the recruitment phase (or further) at the time of implementation, this SOP must be implemented within 3 months of the effective date.

Please note the appendices associated with this SOP may be subject to interim changes. Please ensure that appendices are downloaded from the RGO webpages prior to use to ensure the latest version of the document is being used. For active studies there is no requirement to update appendices to the latest version.

1.0 Introduction and Scope

This Standard Operating Procedure (SOP) defines the process required when including adults that lack capacity either temporarily or permanently, in Clinical Trials of Investigational Medicinal Products (CTIMPs) sponsored by the University of Leicester (UoL).

The EU Clinical Trial Directive 2001/20/EC sets out fundamental principles relating to the inclusion of adults lacking capacity to give informed consent in clinical trials and these were transposed into UK law via the Medicines for Human Use (Clinical Trials) Regulations 2004 (SI 2004/1031). Persons who are incapable of giving legal consent to participate in CTIMPs should be given special protection and such persons may not be included in CTIMPs if the same results can be obtained using persons capable of giving informed consent.

Investigational medicinal products may be administered to adults lacking capacity (such as persons with dementia or psychiatric patients) only when there are grounds for assuming that the direct benefit to the subject outweighs the risk. The details of how consent will be obtained and how subjects lacking capacity will be enrolled must be clearly stated in the protocol and the Combined Review application. The CTIMP must be reviewed and given a Favourable Opinion by an appropriate NHS Research Ethics Committee (REC) and Health Research Authority (HRA) in accordance with their SOPs.

The inclusion of adults that lack capacity in any research study and/or trial sponsored by the UoL must be referred to the UoL Insurance team in accordance with SOP S-1017 Application for Indemnity.

2.0 Definitions

2.1 Adult Lacking Capacity

The term used in the regulations to refer to an adult lacking capacity is 'an adult unable by virtue of physical or mental incapacity to give informed consent' (Part 1 (4a) of Schedule 1 to SI 2004/1031). An adult refers to a person aged 16 years or over. Beyond this, the regulations do not define capacity or incapacity to give consent and investigators and other team members involved in the enrolment of participants are responsible for assessing decision-making capacity in accordance with the law in the relevant part of the UK (i.e., England and Wales, Scotland, and Northern Ireland). An overview of how to do this is described in Section 5 below.

2.2 Personal Legal Representative

A person not connected with the conduct of the trial who is:

- suitable to act as the legal representative by virtue of their relationship with the adult;
- **and**
- available and willing to do so.

The personal representative does not have to be the next of kin and there is no hierarchy in which relatives or friends need to be approached. Responsibility lies with the investigating team to identify a suitable person after consulting the subject's usual care staff and health records. A Personal Legal Representative could include someone with a lasting power of attorney under the Mental Capacity Act 2005 in respect of welfare decisions. Professional and paid carers are excluded.

2.3 Professional Legal Representative

A person not connected with the conduct of the study who is:

- the doctor primarily responsible for the adult's medical treatment; **or**
- a person nominated by the healthcare provider/host organisation.

In all cases the legal representative must not be "a person connected with the conduct of the trial" defined as:

- the Sponsor of the study;
- a person employed or engaged by, or acting under arrangements with, the Sponsor and who undertakes activities connected with the management of the trial;
- an investigator for the study;
- a health care professional who is a member of an investigator's team for the purposes of the trial; or
- a person who provides health care under the direction or control of a person referred to above, whether in the course of the trial or otherwise.

The requirement for a study to have Legal Representative (Personal and/or Professional) will be discussed during the Sponsor review process and, where applicable, the risk assessment. Where possible, it is recommended that Professional Legal Representatives are identified in advance of the trial starting. The Professional Legal Representative Nomination Form (Appendix 2) should be used to document the identification, training and delegation of this responsibility to an individual.

3.0 Conditions and Principles

All the conditions and principles listed in Part 5 of Schedule 1 to SI 2004/1031, The Medicines for Human Use (Clinical Trials) Regulations 2004 must normally be satisfied if an incapacitated adult is to be included in a clinical trial.

Part 5 of Schedule 1 to SI 2004/1031 can be viewed here:

<https://www.legislation.gov.uk/ukksi/2004/1031/schedule/1/made>

The conditions require that adults lacking capacity receive information according to their capacity of understanding about the trial and its risks and benefits. Where subjects are capable of assessing information and forming an opinion, any explicit wish to refuse participation in the trial or be withdrawn at any time must be considered by the investigator. This also means that in addition to the legal consent required, it will be appropriate in some cases to explore whether the subject 'assents' or does not object to participating in the trial.

No incentives or financial inducements must be given to a subject lacking capacity (or to a legal representative), except for compensation in the event of injury or loss.

4.0 Responsibilities during the Conduct of a Clinical Trial

A Personal Legal Representative should be sought initially to give consent and only if a suitable Personal Legal Representative is not available or is unwilling to give consent should a Professional Legal Representative be approached.

The Chief Investigator/Principal Investigator or approved delegate must ensure that all legal representatives receive sufficient verbal and written information such that they are able to make an informed decision on behalf of the subject. Written information is typically provided in the form

of a version and date-controlled Participant Information Sheet (PIS), and consent for the inclusion of the incapacitated adult should be captured on an Informed Consent Form (ICF).

If consent has been given by a Professional Legal Representative and subsequently a Personal Legal Representative becomes available, this person should be approached to see whether they are willing to consent on behalf of the subject and asked to do so if they are.

Similarly, if a subject regains capacity when consent has been given by a Personal/Professional Legal Representative, the subject's consent must be sought.

5.0 Decision Making Capacity and the Mental Capacity Act

The provisions for approving research under the Mental Capacity Act do not apply to CTIMPs but the remainder of the Act does apply insofar as it is relevant to the conduct of a CTIMP.

Investigators should be aware in particular of the following:

- a person must be assumed to have capacity unless it is established that they lack capacity, and are not to be treated as unable to make a decision unless all practicable steps to help them do so have been taken without success;
- a person is considered to lack capacity where they are unable to make a decision for themselves in relation to a particular matter at the material time (that is when a particular decision needs to be made), due to an impairment of or disturbance in the functioning of the mind or brain. The impairment or disturbance could be temporary or permanent;
- a person is unable to make a decision for themselves if they are unable to understand the information relevant to the decision, retain the information, use or weigh up the information in making the decision, or communicate his decision (by any means).

6.0 Emergency Situations

Where, as part of a trial, the treatment needs to be administered urgently to an adult lacking capacity, time may not allow for written consent to be obtained first from a Personal or Professional Legal Representative. Adults lacking capacity are allowed to be entered into a trial prior to informed consent being obtained, provided that:

- having regard to the nature of the trial and the particular circumstances of the case, it is necessary to take action for the purpose of the study as a matter of urgency; but
- it is not reasonably practicable to obtain consent prior to entering the subject; and
- the action to be taken is in accordance with a procedure approved by the REC.

Where an incapacitated adult is recruited in an emergency situation without prior informed consent, steps must be taken to seek informed consent either from the subject (if capacity has been recovered) or from a Legal Representative as soon as possible after the initial emergency has passed. Where consent is withheld, the subject must be withdrawn from the study; samples and data collected up to this point may be retained with the consent of the subject or legal representative.

7.0 Loss of Capacity following initial decision

If a capable adult gives informed consent to take part in a study, but subsequently becomes unable to give informed consent by virtue of physical or mental incapacity, the consent previously given when capable remains legally valid.

If a capable adult refuses informed consent, and subsequently becomes unable to give informed consent, the refusal is legally binding. The individual cannot be entered into the study by seeking consent from a legal representative.

More information and guidance on clinical trials involving adults lacking capacity is available in an online toolkit on the HRA website.

8.0 Responsibilities

Responsibility	Undertaken by	Activity
Sponsor	Head of Research Governance or Delegate	Ensure that trials including adults lacking mental capacity are referred to the University's Insurance team in accordance with SOP S-1017 Application for Indemnity and that appropriate advice is given to the CI about any insurance implications.
CI	CI or delegate	Ensure that exact details of how consent will be obtained or how subjects lacking capacity will be enrolled is clearly stated in the protocol and IRAS application.
CI	CI or delegate	Ensure that the Personal or Professional Legal Representative receives both verbal and written trial-specific information to ensure they have adequate information to make an informed decision on behalf of the subject.
Sponsor	Head of Research Governance or Delegate	Ensure oversight of the nomination process for individuals to act in the capacity of Professional Legal Representatives.
CI	CI or delegate	Ensure that the process of nomination of an individual as a Professional Legal Representative has been completed and authorised by the Sponsor prior to any named Professional Legal Representative being asked to give consent on behalf of an incapacitated subject.
CI	CI or approved delegate	Ensure that this SOP is adhered to in that the most appropriate consent is in place in a timely manner for each subject recruited to the trial.
All staff involved in CTIMPs recruiting Incapacitated Adults	All staff involved in CTIMPs recruiting Incapacitated Adults	Ensure they are aware of the policies and guidelines relevant to entry of incapacitated subjects in clinical trials. Ensure that the interests of the subject always prevail over those of science and society.

9.0 Development and approval Record for this document

This table is used to track the development and approval of the document

Author	Job title	Reviewed by	Approved by	Date approved
Cat Taylor	Head of Research Governance	UoL Research Management and Operations Group (RSMOG)	Professor Nigel Brunskill 	19/01/2024

10.0 Review Record

This table is used to track the changes made on revised/reviewed versions.

Date	Issue Number	Reviewed By	Description Of Changes (If Any)
June 2015	1	Wendy Gamble	Updated to include changes of name in joint office and appendix numbering.
Nov 2016	2	Diane Delahooke	Change of logo and RGO address. Addition of HRA.
Sept 2021	2.1	Cat Taylor	Administrative changes
January 2024	2.2	Cat Taylor	Administrative changes Removal of Distribution Record Minor updates to wording to improve clarity Amendment to review schedule to every 4 years Removal of Appendix 1 Appendix 2 – Minor administrative changes