



**UNIVERSITY OF LEICESTER, UNIVERSITY OF LOUGHBOROUGH  
&  
UNIVERSITY HOSPITALS OF LEICESTER NHS TRUST  
JOINT RESEARCH & DEVELOPMENT SUPPORT OFFICE  
STANDARD OPERATING PROCEDURES**

**University of Leicester (UoL) Research Governance Office  
SOP S-1034 UoL**

Version 3, November 2016

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

OFFICE BASE

Research Governance Office  
Research & Enterprise Division  
University of Leicester  
Fielding Johnson Building  
University Road  
Leicester  
LE1 7RH

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## **1. INTRODUCTION**

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 clinical trials should be given special protection and such persons may not be included in clinical trials 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 Integrated Research Application System (IRAS) documentation. The study must have been reviewed and given a Favourable Opinion by an appropriate NHS Research Ethics Committee (REC) and HRA in accordance with their SOPs.

## **2. SCOPE**

This SOP applies to all CTIMPs sponsored by UoL which include adults lacking capacity, either temporarily or permanently, in their target patient population.

## **3. DEFINITIONS**

### **3.1 Adult Lacking Capacity**

An adult lacking capacity is 'an adult unable by virtue of physical or mental incapacity to give informed consent.' An adult refers to a person aged 16 or over. Regulations do not define capacity or incapacity to give consent and investigators and other team members involved in enrolment of study subjects are responsible for assessing decision-making capacity-see Section 6.

### **3.2 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.

### **3.3 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.

## **4. 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. These are listed in [Appendix 1](#).

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.

## **5. NOMINATION OF PROFESSIONAL LEGAL REPRESENTATIVES PRIOR TO START OF A STUDY**

The requirement for a study to have Professional Legal Representative will be discussed during the Sponsor Risk assessment process and a suitable individual must have been identified prior to the start of recruitment. The UoL Research Governance Manager or delegate is responsible for the oversight of the nomination process for individuals to act in the capacity of Professional Legal Representatives and the process must be documented using the Professional Legal Representative Nomination Form ([Appendix 2](#)). It is the responsibility of the Sponsor to provide indemnity for Professional Legal Representatives.

## **6. 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 representative is not available or willing 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. They must also ensure that the Professional Legal Representative has read and understood this SOP.

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 legal representative the subject's consent must be sought.

## **7. 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 he lacks capacity, and is not to be treated as unable to make a decision unless all practicable steps to help him do so have been taken without success;
- a person is considered to lack capacity where he is unable to make a decision for himself 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 himself if he is 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).

## **8. EMERGENCY SITUATIONS**

Where, as part of a study, 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 legal representative. Adults lacking capacity are allowed to be entered into a study prior to informed consent being obtained, provided that, and having taken into account the nature and 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.

## 9. LOSS OF CAPACITY DURING A STUDY

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.**

## 10. RESPONSIBILITIES

	Responsibility	Undertaken by	Activity
1	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.
2	CI	CI or delegate	Ensure that the Personal or Professional Legal Representative receives both verbal and written study specific information to ensure they have adequate information to make an informed decision on behalf of the subject.
3	Research Governance Manager	Research Governance Manager or Delegate	Ensure oversight of the nomination process for individuals to act in the capacity of Professional Legal Representatives.
4	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 Research Governance Office prior to any named Professional Legal Representative being asked to give consent on behalf of an incapacitated subject.
5	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 study.
6	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.

This table is used to track the development and approval of the document and any changes made on revised / reviewed versions:

### Development and approval Record for this document

<b>Author/Lead Officer:</b>	Joanne Thompson
<b>Job Title:</b>	Medical Writer, Clear Clinical Research Ltd
<b>Reviewed by:</b>	Research Sponsorship Management and Operations Group
<b>Approved by:</b>	Professor Nigel Brunskill 

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### Review Record

<b>Date</b>	<b>Issue Number</b>	<b>Reviewed By</b>	<b>Description Of Changes (If Any)</b>
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.

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