

## **Mental Capacity and Parole/Recall Reviews**

### **PPCS Process**

This document provides a brief overview of the process that PPCS has introduced for identifying and supporting prisoners who lack **mental capacity**, to access support and legal representation during their parole or recall review process. It outlines the requirement for prisons and probation:

- to identify where there are concerns about a prisoner’s mental capacity
- to contribute to a case discussion process which support HMPPS practitioners to navigate the mental capacity process
- to identify where **mental capacity** assessments should be commissioned

It is imperative that the process set out below is followed by HMPPS staff involved in the management of parole eligible and recalled prisoners to ensure that, where there are concerns about mental capacity, these prisoners are identified promptly and necessary action is taken. This will assist with putting in place arrangements to support them through the parole/recall process, with where necessary, an identified litigation friend (**LF**) or the Official Solicitor (**OS**) acting on their behalf and in their best interests.

It will also assist to ensure the timeliness of parole reviews by avoiding unnecessary delays and working proactively to ensure directions compliance.

### **Identification of prisoners that may lack mental capacity**

It is the responsibility of the Prison Offender Manager (POM)/Community Offender Manager (COM)<sup>1</sup> to ensure that the Public Protection Casework Section (PPCS) is informed as soon as possible and ideally, and where applicable, at the very beginning of the parole process. In recall cases, this should be flagged as soon as possible after the individual is returned to custody. **Early identification and notification** to PPCS is essential, as the assessment of mental capacity can take a considerable length of time.

**Mental Capacity** and/or related issues are usually ascertained by way of a Mental Capacity Assessment. These prisoners also often require a Social Care Needs Assessment. A formal mental capacity assessment (if required) should be completed by a suitably qualified and experienced specialist or health/social care professional.

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<sup>1</sup> In Pre Tariff cases under OMiC, it will be the responsibility of the POM to flag any concerns to PPCS. In on/post tariff cases under OMiC, it will be the responsibility of the COM to flag any concerns to PPCS. Any concerns from the POM/COM who are carrying out transactional tasks, should be flagged to the responsible practitioner.

Where these assessments are not available, there will need to be sufficient and corroborative evidence by way of other reports and assessments to confirm the position that the prisoner lacks mental capacity to engage with their parole or recall review. Consideration will also need to be given to how recent such evidence is, and whether there is a need for updated reports and/or further views. The latter being particularly important given that Mental Capacity can fluctuate. Prisoners with mental illness or other mental health issues **do not necessarily** lack mental capacity; this is an important distinction.

Please note: *in cases where a referral will be required to the Official Solicitor a Mental Capacity Assessment, completed by a suitably qualified individual, will be essential.*

### The Case Discussion

Once PPCS has been informed of the concerns about mental capacity, the prisoner's case will be referred to the PPCS Enhanced Case Management Team (ECMT). The ECMT will undertake a review and, where necessary, organise a **case discussion** to review the prisoner's circumstances and the various actions required. Typically, a case discussion will involve the ECMT, PPCS Case Manager, the POM and/or COM and Healthcare. In some cases, Psychology Services may be in attendance, where they are relevant to the case from a Psychology perspective and/or due to directions set by the Board. The discussion should help ensure everyone involved in progressing the case through the parole/recall process is clear on what action is required and by when.

Where a prisoner lacks mental capacity, some enquiries may be required to establish the prisoner's financial circumstances in order to help the litigation friend determine the prisoner's eligibility for legal aid. It is important that those responsible for gathering information on the financial circumstances and/or completing assessments on this matter, do so immediately, in the interest of timeliness and give due consideration to their financial circumstances in their entirety i.e. internal prison savings and external savings. A direction from the Parole Board is not required to facilitate this.

Please note: *Whilst the purpose of this work is specifically with regards to those within the parole window, needs of prisoners associated with their mental capacity are a matter for the prison and their Healthcare department to manage. Efforts should be made to ensure appropriate assessments are completed as soon as concerns become known in order to ensure that the prisoner has access to appropriate levels of care and support. If it is left until the Parole Review is due to consider the prisoner's case, delays to their review are likely and this should be avoided.*

### The role of a Litigation Friend (LF):

Where it is identified that a prisoner lacks mental capacity to engage in the parole process and make informed decisions (including instructing a legal representative), action will need to be taken to identify a **LF** who can act on the prisoner's behalf and in their best interests.

HMPPS staff may be aware of a relative or friend who is able, suitable, and willing to act as a **LF**. Some consideration will need to be given to the suitability of the individual, and this will need to be discussed with relevant Offender Managers, and PPCS.

If suitable, and this person is willing, the responsible Offender Manager should inform the PPCS Case Manager as soon as possible so that PPCS can put the request to the Parole Board. Only the Parole Board can confirm the appointment of a **LF** and they will need information about the proposed person in order to consider the request. Once agreed, arrangements can be made for the **LF** to secure a legal representative and to attend the oral hearing, if there is to be one. This can be discussed further at the PPCS **case discussion**. Where a **LF** is appointed, the prisoner will still need a legal representative to advise on parole matters. A 'Mental Capacity' Equip Map can be found at the end of this document and a role specification document for an **LF** can be found at Annex F.

#### The role of the Official Solicitor (OS):

Where options to identify a **LF** have been exhausted, the Parole Board can be asked to make a referral for the **OS** to be appointed to act as the **LF of last resort**. Where this step is required, staff should flag the case to the PPCS Case Manager who will liaise directly with the Parole Board, which is responsible for making the referral.

The **OS** will require evidence of the following in order to consider acting on behalf of the prisoner:

1. *That the prisoner concerned lacks capacity to conduct the proceedings.*
2. *That the OS is LF of last resort i.e. all other options have been exhausted.*
3. *That the financial circumstances of the prisoner are established i.e. whether the prisoner is eligible for legal aid or would require private funding*

As noted above, and in regards to point 1, where a referral to the OS is required, a **Mental Capacity Assessment is essential**, and therefore if one is not available, action to obtain one must be commenced immediately. Simply being concerned there may be some mental capacity issues will not be sufficient.

#### The role of the Parole Board:

Where required, and as noted above, it is for the Board to confirm the suitability and appointment of a **LF** and, where necessary make a referral to the **OS**. In addition, it is also for the Board to consider the way in which the review is progressed fairly in order to ensure the prisoner is able to engage to the best of their ability. Consideration will be given by the Board to both the timeliness and appropriateness of directing an oral hearing.

Key contacts:

Should you wish to bring to the attention of PPCS a prisoner who you believe lacks **Mental Capacity**, your first port of call within PPCS should be the allocated Case Manager.<sup>2</sup>

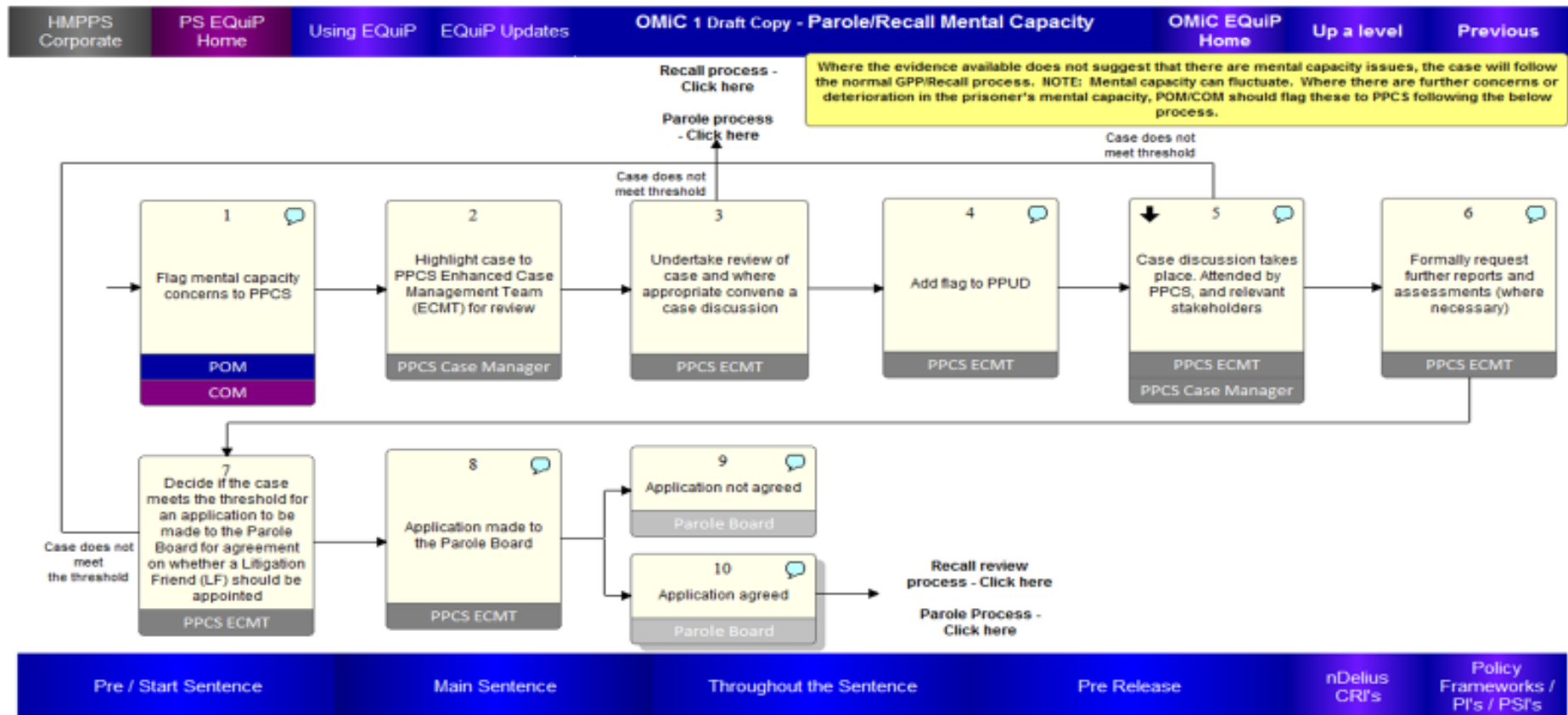
Please only raise with PPCS those prisoners that are within their parole window, are due to commence the parole process within the next 3 months, or are currently in custody following recall.

In addition, the ECMT within the PPCS is a useful point of contact should you require any advice or guidance with regards to a specific prisoner you are working with. The team can be contacted on: [ECMT2@justice.gov.uk](mailto:ECMT2@justice.gov.uk)

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<sup>2</sup> In recall cases, where there is no PPCS Case Manager allocated, notifications should be sent to [recallteam1@justice.gov.uk](mailto:recallteam1@justice.gov.uk) or [recallteam2@justice.gov.uk](mailto:recallteam2@justice.gov.uk) marked for the urgent attention of the Recall Team Leader.

## Parole\_Recall Mental Capacity - Level 1 Draft Copy



## Parole\_Recall Mental Capacity - Level 1.5 Draft Copy

HMPPS  
Corporate

PS EQuIP  
Home

Using EQuIP

EQuIP Updates

OMIC 1.5 Draft Copy - Case discussion takes place.  
Attended by PPCS, and relevant stakeholders

OMIC EQuIP  
Home

Up a level

Previous

Mental Capacity and/or related issues are usually determined by way of a Mental Capacity Assessment. These prisoners also often require a Social Care Assessment. Where these assessments are not available, there will need to be sufficient robust evidence by way of other reports and assessments to support the view that the prisoner lacks mental capacity to engage with their parole or recall review.

The case discussion will explore and assign responsibility for further actions to be taken forward, such as:

- what conclusions have been reached based on the prisoner's presentation to practitioners?
  - do we need additional reports/assessments?
- do we have enough evidence from the testimonials of practitioners that can support a referral to the PB without the need for formal assessments / can we use existing assessments?
  - do we know at this stage what the financial circumstances are? (in relation to their eligibility for legal aid)
    - are any family members or friends suitable to act as LF?
  - does the case meet the threshold for an application to be made to the Parole Board?
    - is this lack of mental capacity or something else?  
Please note that this list is not exhaustive.

It should also be noted that where it is decided that the case reaches the threshold for an application to be made to the Parole Board, and no suitable LF can be identified, the Parole Board can ask the Official Solicitor to act as LF for the prisoner.

Pre / Start Sentence

Main Sentence

Throughout the Sentence

Pre Release

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CRI's

Policy  
Frameworks /  
PI's / PSI's

# Parole\_Recall Mental Capacity - Level 1.10 Draft Copy

