PATHWAY FOR CAPACITY ASSESSMENTS FOR PROTECTION BASED DECISIONS

WHAT IS THIS PATHWAY?

This pathway has been created by a multiagency group of Grampian based health and social care professionals who have expertise in the fields of Adults with Incapacity; Adult Support and Protection; Social Work; Primary Care Medicine; Psychiatry and Psychology. It is designed to clarify the process for seeking a capacity assessment where there are protection based decisions linked to concerns about mental incapacity.

This pathway has been reviewed and endorsed by:

- The NHS Grampian Public Protection Committee
- The GP Sub Committee
- PMAC (The Psychiatric Medical Advice Committee)
- GAAPAC (The Grampian Area Advisory Psychology Committee)
- NHSG AHP Leadership Team
- The NHS Grampian Senior Nursing and Midwifery Team
- Social Work Council Officer Groups/Forums in Aberdeen City/Aberdeenshire/Moray

Please note, this pathway is NOT for emergency situations where there is an immediate need for an assessment of capacity to intervene and safeguard an individual. Direct conversations with relevant professionals are expected to facilitate immediate assessments on safety grounds.

Any Adult Support and Protection reporting and immediate safeguarding actions MUST be implemented as soon as possible and not delayed awaiting any part of the capacity pathway process. REMEMBER – an assessment of capacity does not determine if an individual is an 'adult at risk'.

A video briefing is available to support this pathway – please click here to access.

FINAL and APPROVED 2.0 November 2025
Review Date: November 2028

DEFINITIONS

"Capacity Assessment": For the avoidance of doubt, assessing capacity is not a task reserved purely for medical practitioners. National Guidance is very clear that capacity can, and should, be assessed by other professionals where it is appropriate to do so. However, for the purposes of this pathway, it is assumed that social work/care professionals will have already undertaken such an initial assessment – and this has triggered a request for a more formal assessment of capacity from a healthcare professional.

Assessments of capacity are always **decision specific**, and will focus on the ability of the patient to **understand, communicate and retain** relevant information pertaining to the decision at hand.

Many different professionals will support assessing capacity for decision making. This pathway explicitly recognises this in its guidance and wording. It is therefore key that all of the professionals that work with and support an individual contribute to any assessment of capacity.

"Protection Based Decisions": For the purposes of this pathway, a "Protection Based Decision" is where the decision for which clarity on a patient's capacity is being sought has a **safety/risk** component to it. For example, professionals may want to know if an adult has capacity to refuse consent for social care staff to come into their home and provide care and support. This would be because of the **risk** of self-neglect and the impact to the person's **safety** that refusal of such services may generate. In many circumstances, such patients will be subject to the provisions of the Adult Support and Protection (Scotland) Act 2007, however not all will be. The important qualifier for use of **this** pathway is there are risk based concerns relating to the decision(s) for which capacity is being assessed.

WHO IS IT FOR?

This pathway is for the use of all professionals in Grampian who are involved in **requesting** a capacity assessment for protection based decisions (this could include Social Workers; Care Managers; Council Officers etc). It is also for the use of clinicians and clinical teams who **undertake** such assessments of capacity (this includes general practice; mental health teams (including old age psychiatry); learning disability teams; Substance Misuse Services (SMS)).

For the avoidance of doubt, this pathway applies (and is for the use of) both NHS Grampian staff and social work staff employed by the three Grampian local authorities that work within Health and Social Care Partnerships.

This pathway only applies to adults (16+). Staff must be aware that this pathway could be used for 'young people in transition' who are 16+ and older but still being supported by services whose primary focus is young people.

For clarity, this capacity pathway only applies where the adult is in a **community** setting (including care homes and group living settings).

WHEN SHOULD THE PATHWAY BE USED
This pathway is designed specifically to support assessments of capacity where "protection based decisions" apply, namely:

- There are active Adult Support and Protection (ASP) concerns – and assessment of the adult at risk's capacity is pertinent/relevant to ensuring the safety and support of the individual.

- The person is not currently the subject of active Adult Support and Protection (ASP) concerns, BUT there are specific and identifiable safety risks – and assessment of the adult at risk's capacity is pertinent/relevant to ensuring the safety and support of the individual.

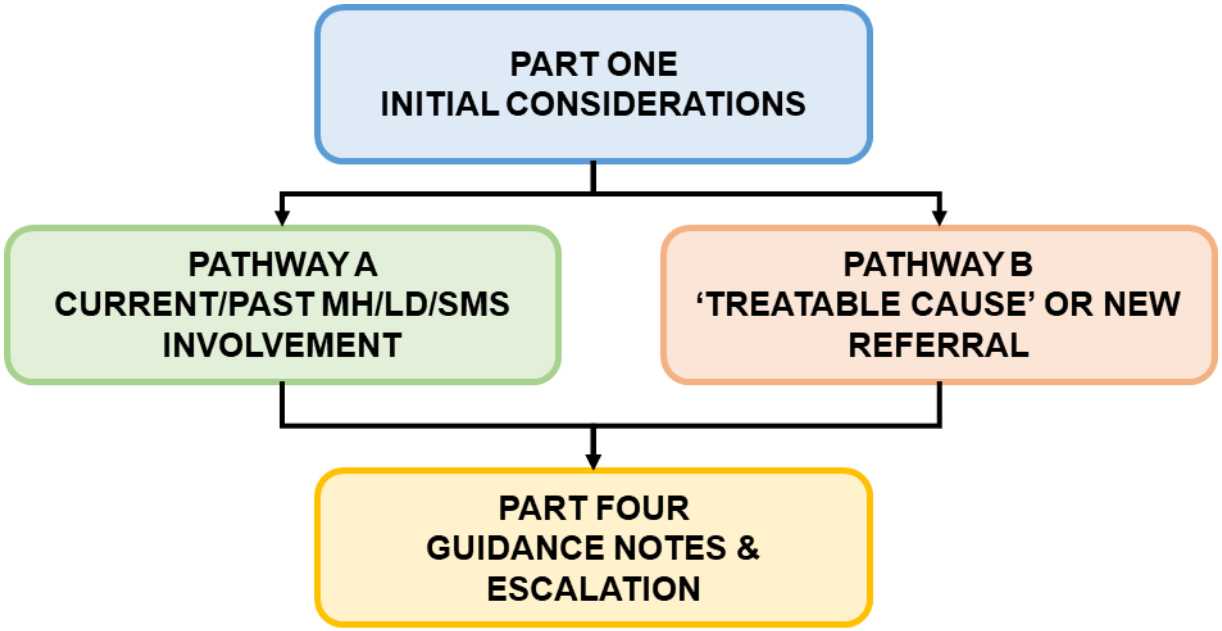
WHAT THE PATHWAY SHOULD NOT BE USED FOR
This pathway is NOT to be used in all circumstances where an assessment of an individual's capacity is required.

- **Assessments of Capacity where an individual is in hospital** - There are already well established clinical pathways for acute/general hospital in-patients to have their mental capacity assessed via colleagues in Liaison Psychiatry. Patients in mental health hospital settings will have any capacity assessment requirements met by their own hospital team. As a result, this pathway does **not** apply to hospital in-patients.

- **Assessments of Capacity where there are NOT specific and identifiable safety risks** - There are many circumstances where an adult will need an assessment of their capacity – but it is not related to supporting the management of the individual safety and risk factors. Examples include authorising planned admissions to care settings; supporting proactive/future care planning and financial management etc. Whilst these are important, they do not support "protection based decisions" and this pathway should not be used.

- **Assessing Capacity due to Functional Communication Issues** - This pathway also does not apply to those patients who can understand and retain information well but who have no means of functional communication and are unable to express their needs. These patients must be referred to speech and language therapy for an assessment of their communication and means found to enable them to communicate and have their needs known and met.

HOW DOES IT WORK?
The pathway document is split into four parts:



Part One "Initial Considerations" – Sets out the initial considerations for anyone **requesting** a capacity assessment. This includes the use of the **Grampian Decision Specific Capacity Screening Tool**; considerations of a **treatable** cause for the capacity concern; and initial research relating to whether the patient/service user has (or has had) involvement from secondary care SMS/Mental Health/Learning Disability services.

Based on the preliminary work done by referrers as part of **Part One,** the request for a capacity assessment will progress down one of two routes, "**Pathway A**" or "**Pathway B**".

"Pathway A" – This sets out the pathway that should be pursued if the patient has already had the involvement of secondary care for the condition potentially impairing their capacity. This is an expedited pathway allowing a direct request for a capacity assessment from the relevant secondary care team.

"Pathway B" – This sets out the pathway that should be pursued if the condition potentially impairing capacity may have a treatable cause **OR** the individual has never had the involvement of a secondary care team relating to the condition. This pathway requires the referrer to initially request the capacity assessment from the patient's GP. The GP will firstly assess if there is any reversible or physical reason for the potential mental incapacity. Following this, the GP will make the clinical determination as to whether they can treat the condition and/or assess capacity themselves. If the GP cannot treat the condition or it is not within their clinical competence to assess the patient's capacity, they will refer on appropriately to secondary care.

Part Four "Guidance Notes and Escalation" – The section provides points of guidance and clarification, aligned to the pathways. There is also information on escalation if the pathway is not operating in the manner it should be.

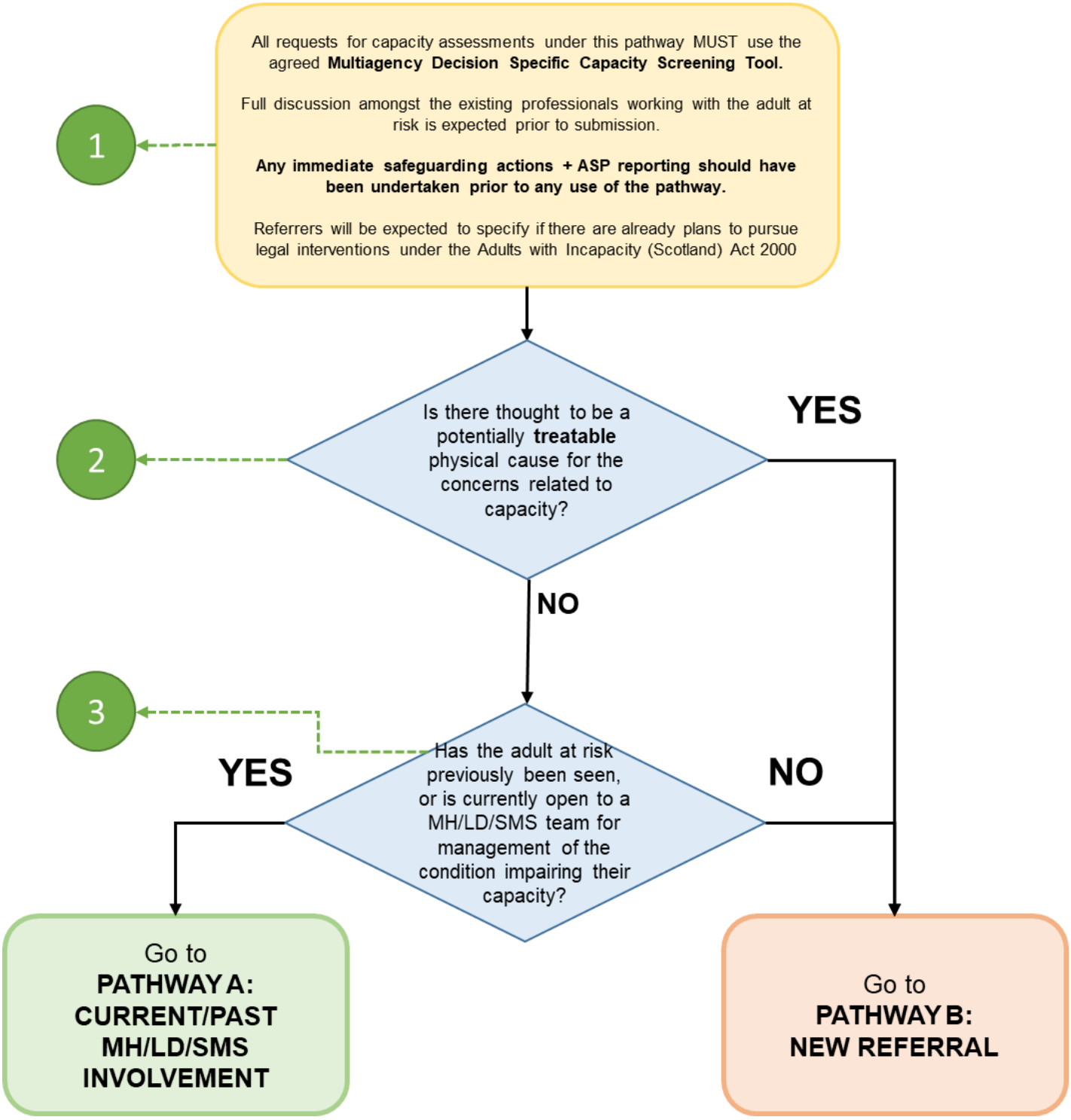
Additionally, regardless of any actions or activity under this pathway – referrers **must** follow the appropriate **Adult Support and Protection** processes.

FURTHER READING:

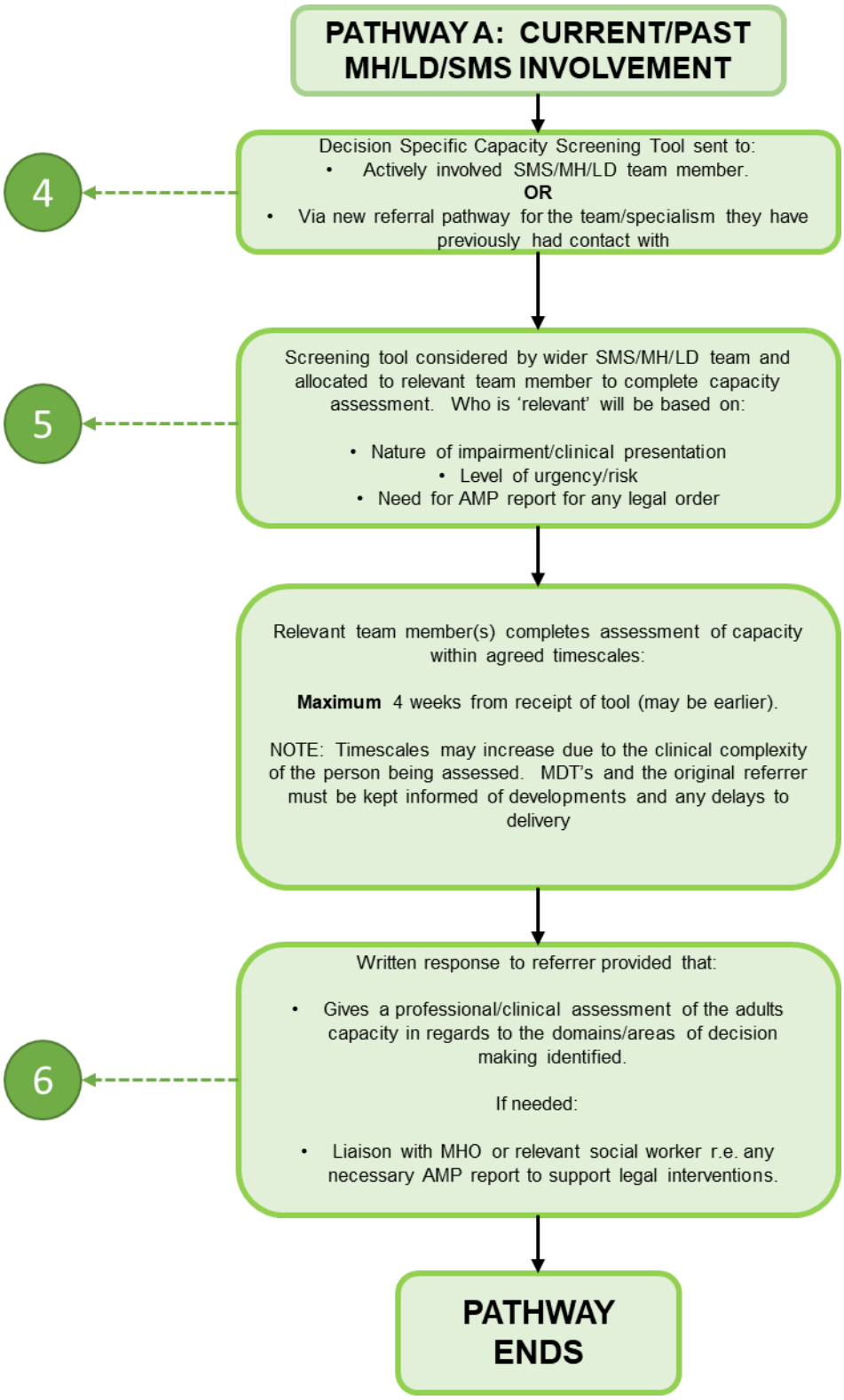
- **Adults with Incapacity (Scotland) Act 2000: Communication and Assessing Capacity: A guide for social work and health care staff**

- **Mental Welfare Commission Good Practice Guide: Supported Decision Making**

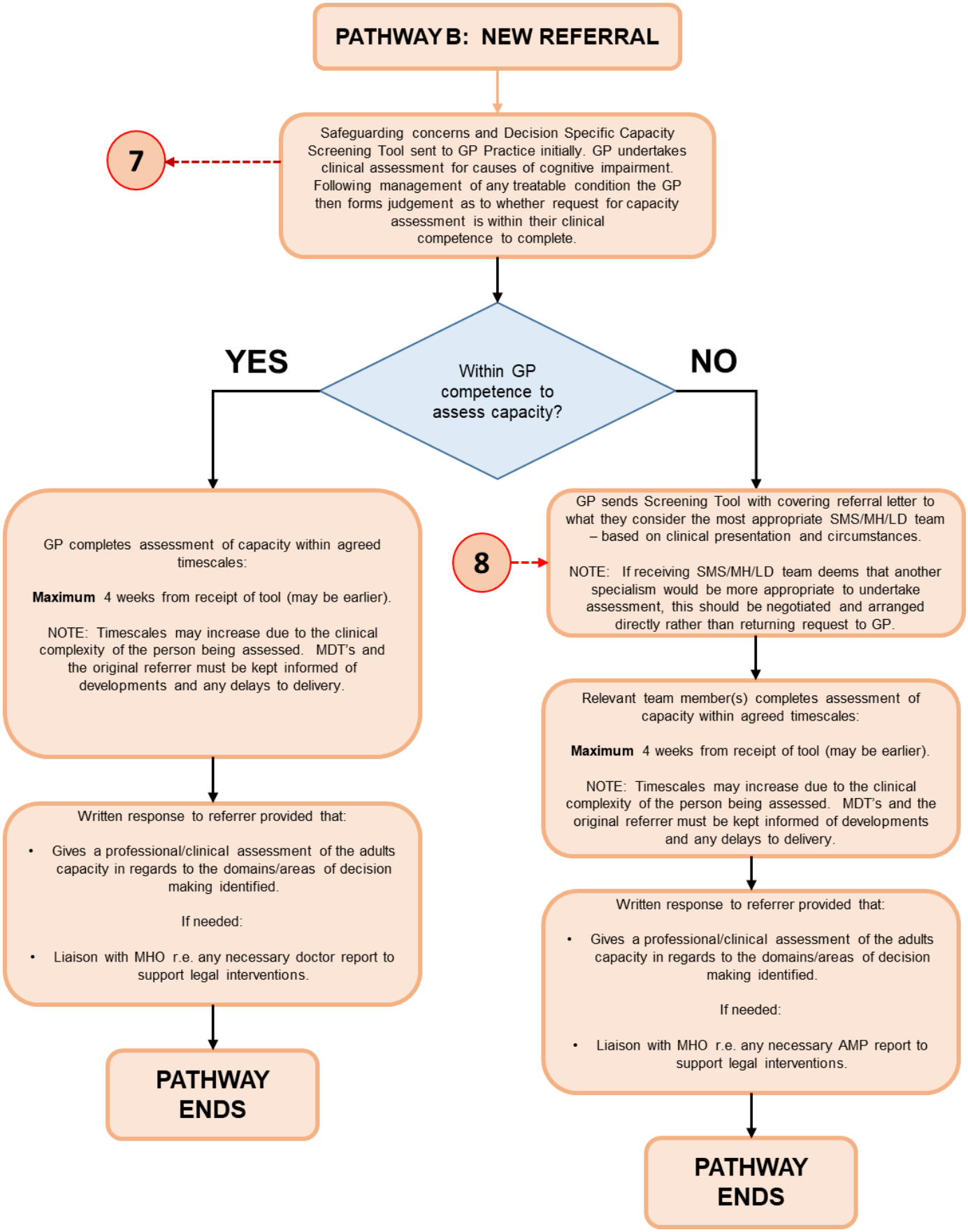
Multiagency Grampian Wide Capacity Pathway for Protection Decisions



PART TWO: PATHWAY A – CURRENT/PAST MH/LD/SMS INVOLVEMENT



PART THREE: PATHWAY B – 'TREATABLE CAUSE' OR NEW REFERRAL



PART FOUR: GUIDANCE NOTES AND POINTS OF ESCALATION

1	All requests for capacity assessments must utilise the most up-to-date Decision Specific Capacity Screening Tool. Any immediate safeguarding activity and Adult Support and protection reporting must be initiated before using the pathway. Requests must also clearly state any planned interventions that may be dependent on the capacity assessment (such as requests for legal orders under AWI legislation).
2	If there is a potential medical or reversible cause that may be impacting the individual's capacity, the request for assessment must always go via **PATHWAY B**. This is the case, even if the individual has had current or past input from MH/LD/SMS services. This is so GP/Primary Care colleagues can initiate any necessary initial investigations related to the medical or reversible cause first.
3	If the individual has either a current active relationship with a MH/LD/SMS teams OR is known to have had past active contact with such a team for the management of the same condition currently impairing their capacity, **PATHWAY A** should be followed. There is no need to send the Capacity Screening Tool via the GP (though they should be kept informed of developments as key partners in the care of the individual). Instead –follow the directions/instructions for **PATHWAY A.** **NOTE: It is expected that professionals will exercise common sense and good judgement at this stage in the pathway. It is not possible to account for all possible scenarios and combinations of past professional involvement. The overriding principle is that the decision making regarding the capacity assessment should be directed to the most appropriate and relevant multidisciplinary team with the minimum of delay.**
4	When following **PATHWAY A**, if the individual for whom a capacity assessment is being sought has a named professional actively working with them within the SMS/MH/LD team, then the completed Decision Specific Capacity Screening Tool should be sent to **that** professional. As the representative of the team who knows the adult, that professional will then be expected to liaise with their wider team to progress the capacity assessment work as is clinically appropriate.

	For the avoidance of doubt, social workers and care managers who are employed by local authorities but are identified members of the MDT in question can and will engage with the wider MDT regarding capacity assessment requests. If the individual for whom a capacity assessment is being sought does NOT have a named professional, the Decision Specific Capacity Screening Tool and covering letter should be directed to the relevant generic email account for the team in question. If there is uncertainty regarding the correct team email to use, contact gram.rchreferrals@nhs.scot to clarify. NOTE: For some patients with neurological conditions / acquired brain injury, opinion on capacity may be required from Clinical Neuropsychology, Rehabilitation Medicine or Liaison Psychiatry (e.g. where presentation is complex due to cognitive impairment associated with neurological condition or injury). In such circumstance, the MH/LD/SMS team that has received the Decision Specific Capacity Screening tool will undertake to seek specialist opinion or assessment from these services as clinically appropriate.
5	Which member of the MDT should undertake the capacity assessment will depend on several factors. These will include the nature and presentation of the condition; the type of decisions for which an opinion is being sought; the speed of assessment required; and whether an application for a legal intervention that requires an Authorised Medical Practitioner (AMP) report is under consideration. For clarity, professionals other than Psychiatrists can make assessments of capacity as long as it is clinically appropriate for them to do so.
6	The format of any written response back to the referrer is not prescribed within this pathway and can take various forms – including written letter, email, and other assessment tools if appropriate. For clarity, the written outcome of a capacity assessment is distinct (and separate) from any prescribed forms required to be completed by Approved Medical Practitioners (AMP's) to support Intervention Orders or Guardianship Orders under the Adult with Incapacity (Scotland) Act 2000. However, if an intervention order or Guardianship Order is being pursued, it is expected that whoever in the MH/LD/SMS team has undertaken the capacity assessment will fully support and facilitate the completion of such prescribed forms, (as appropriate to their role).

7	Review of patient is requested to assess for medical or reversible causes of cognitive impairment. (Examples - undiagnosed dementia, delirium, alcohol related brain injury, untreated/undiagnosed endocrine or biochemical abnormalities. This is not an exhaustive list.) If such medical or reversible causes are present - patient is investigated, treated and/or referred appropriately taking into account current safety and risk concerns and including the decision specific capacity assessment with any referral. Following the review of the patient for medical or reversible causes of incapacity, GP determines whether it is reasonable for them to make an assessment of the patient's capacity. If GP is happy to assess, they provide assessment and feedback as per the pathway. If they do not, referral onwards occurs (if not already done) to MH/LD/SMS secondary care services for assessment.
8	An important point of principle within this pathway is that there should not be significant 'back and forth' between secondary care and primary care. If the MH/LD/SMS team that receives the Decision Specific Capacity Screening Tool and associated GP referral under **Pathway B** does not feel it is the appropriate service to action the request, it is the responsibility of that team to manage any transfer of the patient to another appropriate speciality. Under no circumstances should the request be directed back to the original referrer to re-refer elsewhere. As already noted above, for some patients with neurological conditions / acquired brain injury, opinion on capacity may be required from Clinical Neuropsychology, Rehabilitation Medicine or Liaison Psychiatry (e.g. where presentation is complex due to cognitive impairment associated with neurological condition or injury). In such circumstances, the MH/LD/SMS team that has received the Decision Specific Capacity Screening tool will undertake to seek specialist opinion or assessment from these services as clinically appropriate.

ESCALATION ARRANGEMENTS

It is expected that professionals will make every effort to resolve disagreements or difficulties regarding the operation of this pathway in a collegiate and communicative matter. The following key principles should be considered where disagreements or issues arise:

- Professionals will always acknowledge that **the safety of the adult at risk is the paramount consideration** in any professional disagreement even in the most challenging situations. Keeping the adult at the centre is essential in getting it right.

- Practitioners and managers across the multiagency workforce should be mindful of the risks in considering escalation and try to resolve difficulties quickly and openly. Professional disagreement is often reduced by clarity about roles and responsibilities and networking which enable problems to be shared and resolved through collaboration.

- Haringey Council in their escalation policy (revised after the death of the child referred to as Baby P) suggest: “The best way of resolving difference is through discussion and where possible a face to face meeting between those concerned which will enable clear identification of the specific areas of difference and the desired outcomes for the child or young person. Email communication, whilst important, can be open to misinterpretation and should be avoided when making key decisions in challenging situations”.

- Disagreement should, in the first instance, be resolved at the lowest possible stage between the people who disagree.

However, even when taking into account and utilising the above principles, it is possible that there will still be occasional points of disagreement amongst professionals. If this does occur, and the disagreement cannot be resolved between the parties, a Multiagency Adult Protection Escalation Process has been agreed between the key public protection partners.

This process should be used to resolve any ongoing or unresolvable issues regarding this pathway.

Wherever possible, disagreements over which secondary care clinical team will undertake a capacity assessment should be resolved through local discussion. If this has failed to resolve the situation, or the case has been escalated to the NHS Grampian Adult Public Protection Lead, then senior clinical leadership for the relevant teams (usually the Clinical Directors for the services involved) will meet to agree who should accept the referral, if necessary facilitated by another Clinical Director or the Medical Director for that service. This should take place within a **maximum** of two weeks of the escalation process being initiated, taking into account the urgency and circumstances of the situation.

APPENDIX ONE – EXAMPLE EMAIL/LETTER TEXT FOR COLLEAGUES REQUESTING CAPACITY ASSESSMENTS VIA PATHWAY A

Dear Colleague,

[SPECIFY ADULT'S NAME; DOB; ADDRESS; CHI number if available]

I am writing to you to request an assessment of [adult]'s mental capacity. I am making this request as per the agreed and approved multiagency capacity pathway for protection decisions.

[Adult] is currently at potential risk for the following reasons:

[INSERT REASONS ADULT IS AT RISK]

I therefore feel that the capacity pathway for protection decisions applies in this case.

Both I and my colleagues are seeking specific clarity on [Adult's] capacity in relation to the following areas of decision making:

[Specify specific areas of decision making that require assessment]

I enclose a fully completed Decision Specific Capacity Screening Tool for your information and action.

Could you please keep me informed of your progress, and in particular if you decide to refer [ADULT] to another colleague to undertake the assessment.

Yours sincerely,

[Professionals Name]

APPENDIX TWO – EXAMPLE EMAIL/LETTER TEXT FOR COLLEAGUES REQUESTING CAPACITY ASSESSMENTS VIA PATHWAY B

Dear GP Colleague,

[SPECIFY ADULT'S NAME; DOB; ADDRESS; CHI number if available]

I am writing to you to request a review of the above patient. In particular, I am requesting the following:

- A review to determine if there is any treatable condition affecting the adult's mental capacity for decision making.
- Either a clinical assessment of the adult's mental capacity OR referral on by yourself to the appropriate secondary care team to undertake such a clinical assessment.

I am making this request as per the agreed and approved multiagency capacity pathway for protection decisions.

[Adult] is currently at potential risk for the following reasons:

[INSERT REASONS ADULT IS AT RISK]

I therefore feel that the capacity pathway for protection decisions applies in this case.

Both I and my colleagues are seeking specific clarity on [Adult's] capacity in relation to the following areas of decision making:

[Specify specific areas of decision making that require assessment]

I enclose a fully completed Decision Specific Capacity Screening Tool for your information and action.

Could you please keep me informed of your progress, and in particular if you have referred [ADULT] to another colleague to undertake the assessment.

Yours sincerely,
[Professionals Name]

APPENDIX THREE – POINTS OF CONTACT FOR ADVICE/SUPPORT REGARDING THE USE OF THE PATHWAY

If professionals have any difficulties or queries regarding HOW to use this pathway, they should:

- Discuss with their own line manager and/or professional/clinical supervisor; AND
- Review the 'on demand' video briefing about the pathway – click here to access.

Following this, if further advice or support is still required, the professional can send queries to the following points of contact for further advice and support within their organisation/area.

Organisation/Area	Point of Contact
NHS Grampian and Primary Care in Grampian	gram.publicprotection@nhs.scot
Aberdeen City Council (H&SCP) Social Work	APSW@aberdeencity.gov.uk
Aberdeenshire Council (H&SCP) Social Work	adultprotectionnetwork@aberdeenshire.gov.uk
Moray Council (H&SC Moray) Social Work	ProtectingPeople@moray.gov.uk