Mental Capacity Assessment Best Interests Decision Making Guidance

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Mental Capacity Act 2005

Guidance for health and social care staff: Mental Capacity Assessment and Best Interests Decision-Making

1. Introduction

The purpose of this Guidance is to support staff to make evidence-informed, defensible mental capacity determinations and best interests decisions on behalf of service users who have been assessed as lacking mental capacity to make the decision in question. Best Interests decisions can only be made for people who lack mental capacity to make the decision themselves. If a service user has mental capacity to make the decision, however unwise their decision might appear to be, it is their decision to make.

The principles of the Mental Capacity Act (MCA) are set out below and are fundamental for health and social care professionals in their daily practice. Everyone working with, living with or caring for someone who may lack capacity must follow the Mental Capacity Act (MCA) and the Code of Practice. Professionals need to record their decisions formally, but informal carers, especially those with legal authority to make decisions on the person's behalf, also need to abide by the principles and procedures of the MCA.

1. A person must be assumed to have capacity unless it is established that s/he lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because s/he makes an unwise decision
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done or made, in his/her best interest.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The five Principles of the Mental Capacity Act (MCA) are part of the legislation, so it is a legal obligation to respect these Principles whenever MCA is used.

The MCA applies to everyone over the age of 16 who may lack capacity to make a particular decision at a particular time. There are some specific sections that only apply to people over 18 (such as the ability to make an advance decision to refuse

treatment or the Deprivation of Liberty Safeguards), but most of the legislation applies to everyone over 16.

The MCA applies to any possible loss of capacity, whether temporary or permanent, but, if temporary, any decision that needs to be made should be delayed if possible until the person has regained mental capacity to make it. If a decision needs to be made the question is about someone's ability to make that decision at that point in time.

The MCA can be used to make nearly all decisions for someone who lacks capacity. Everything, from what to have for lunch, to where to live, to what medical treatment to have or how to spend a person's money, can be decided under MCA.

This places considerable responsibility on people making these decisions, but the MCA does not give more power. Decisions have always been made for people who can't make them for themselves: the MCA provides a legal framework for ensuring the decisions are made and recorded in a consistent and transparent way.

The MCA applies to nearly all decisions. If someone doesn't have capacity to make their own decisions the MCA processes must be used and recorded, even if the person is able to co-operate and is happy to go along with what is proposed.

There are some decisions which are excluded from MCA – decisions which cannot be made under the best interests process. These are listed in MCA s27and Code of Practice 1.10. They include consenting to sexual relations, voting, consenting to the adoption of a child or making other decisions about a child, consenting to marriage or civil partnership, consenting to divorce on the grounds of two years separation or any actions connected to assisted suicide, manslaughter or murder

The Principles of MCA should always be followed. However in an emergency it may not be possible to assess capacity or to find out necessary information. The law regarding emergency treatment remains unchanged by MCA; the common law doctrine of necessity is still valid, allowing emergency treatment and care to be given.

2. Mental Capacity Assessment

The MCA defines a lack of capacity as:

'a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'

Capacity relates to a particular decision at a particular time. In the past, someone's 'capacity' was assessed in an overarching way and a general statement was made that 'Mrs X lacks capacity' – and then all decisions were made for Mrs X. The MCA makes this practice unlawful.

The MCA introduces a two step process of assessing someone's capacity.

Step 1: The diagnostic test

The first step is known as the diagnostic test. This means looking for evidence that the person is suffering from; 'an impairment of, or a disturbance in, the functioning of the mind or brain.' This is a very wide gateway which would include any form of:

- learning disability
- mental illness, including dementia
- brain injury, including stroke damage
- neurological damage,
- intoxication from substances, whether intentional or not
- temporary confusional state caused by infection, illness, tiredness or pain

Many people at some time will be covered by this diagnostic test and some people will always come within it. This doesn't necessarily mean that they lack capacity to make a particular decision at a particular point in time.

Step 2: The decision-specific functional test

This test considers whether the person can make this decision at this time. This is because people need different understanding to make different decisions. For instance, someone may not have capacity to manage their money, but may be able to make a decision about their medical treatment; they may not be able to make a decision about where they live but may be able to decide how they spend their time.

The first step of the functional test is to be clear what the decision is that needs to be made. If there is a complex situation there may need to be several capacity assessments concerning different decisions.

The assessor then needs to establish if the person can:

- understand the information relevant to the decision
- retain information relevant to the decision
- use or weigh the information as part of the process of making the decision
- communicate their decision.

If the person is unable to do any one of these four things, they lack capacity to make this decision at this time.

The assessor should make sure that the person has access to all the relevant information about the decision and is helped to consider all the subtleties of the decision they need to make.

The person only needs to be able to retain information long enough to use it to make the decision – there isn't a requirement for longer term memory. In order to be able to use or weigh the information, someone needs to be able to consider conflicting information: for example: 'I've always wanted to stay in my own home, but if I fall I might be on the floor all night before anyone finds me'. They have to be able to understand the risks and consider the consequences of their decision.

The ability to communicate the decision is by any means – sign language or body language would be acceptable.

If there is a possibility of someone recovering their capacity to make the decision – if they lack capacity because of an infection causing confusion – then the decision should wait, if it is safe to do so. Some decisions can't wait; for example a decision about the medical treatment which might enable someone to regain their capacity. However, if at all possible, decisions should be delayed until the person has the best chance of making their own decision.

Following Principle 2, it is the assessor's responsibility to do everything possible to give a person the best chance of being able to make their own decision.

The assessor should ensure that s/he;

- is clear about the decision that needs to be made
- is clear about the information the person needs to understand and consider – someone making a decision about living independently would need information about the care package they might receive, how long between visits, how extensive their support would be, the risks of living independently, the options for living in care and so on
- is able to communicate this information in a way most likely to enable the person to understand
- has thought about how the person is best able to communicate – is an interpreter, help from audiology department, a speech and language therapist or other specialist needed to facilitate communication?
- considers the best time of day to do the assessment and the best location
- have thought about whether the person should have someone with them – a family member, trusted carers or advocate may help them to feel more comfortable or may inhibit what they say
- repeats the information if necessary or visit the person more than once.

3. The Decision-Maker

The MCA does not lay down professional roles or require certain qualifications to undertake assessments. The capacity assessment should be done by the person who is proposing to undertake an action or make a decision. This person is the decision-maker. Sometimes, there are people who are automatically decision-makers: these will be donees of lasting powers of attorney or court-appointed deputies for health and welfare or finance and affairs, who have authority to make decisions as if they were the person him/herself. The only exceptions to this might be for decisions around life-sustaining medical treatment (unless the decision-maker has been given specific authority to make such a decision), consent for a deprivation of the person's liberty and the other decisions described in S27 of the MCA.

Family members and informal carers will be decision-makers for actions that they undertake. A care assistant will be the decision-maker if the decision is, for instance, about what clothes to put on that morning. They would not be expected to complete a formal capacity assessment, but to have a 'reasonable belief' that the person lacks capacity for these kinds of day-to-day decisions.

Professionals are the decision-makers for actions they are responsible for. A doctor or other health professional will be the decision-maker about someone's capacity for the treatment they are prescribing, or initiating a care pathway. A nurse will be the decision-maker about the treatment or care that they are delivering or administering. A social care professional will be the decision-maker about a move into residential care or commissioning a package of care.

This may mean that the decision-maker is not the person who knows the individual best. Determining who the decision-maker is depends on the decision and the context, and not on the circumstances of the individual. If someone lacks capacity to make a decision for themselves, any professional will need to involve family, friends, supporters, and an Independent Mental Capacity Advocate if appropriate, in the decision. The professional needs to have a genuinely open mind about the outcome of a decision.

A decision-maker must seek information from other people. For instance, a social worker making a decision about someone's capacity to decide about their care needs on discharge from hospital will seek information from family and friends, an IMCA (if appointed), ward staff, people who cared for the person in the community and anyone with knowledge of the person.

Any decision-maker can seek advice from anyone else. It may be appropriate to consult a psychiatrist or psychologist, speech and language therapist or other specialist.

Anyone making an assessment should seek information about how the person is best able to communicate and how their understanding can best be enhanced. Family and friends are likely to be able to give this information.

If there is no one who can be consulted about the decision who is not paid to provide care, and no family or friends, the person is described as 'unbefriended'. For significant decisions, defined as a change in accommodation, serious medical treatment or an extended stay in hospital or residential care the person should be referred for a report from an Independent Mental Capacity Advocate (IMCA). The IMCA will provide a report about the person's situation and views: they will not make the decision and the decision-maker retains their responsibility. If the criteria for IMCA are not met, but the person would still benefit from independent professional advocacy to support them, whether or not they have mental capacity to make the decision, the decision-maker should make a referral to the appropriate advocacy service.

A public authority (local authority or health care trust) may have to make a decision which goes against a family view. The public authority must be able to show that any care they deliver is better for the person than the care the family want.

Many decisions will be multi-disciplinary in practice, but the decision-maker will be the person ultimately responsible for making and recording the decision.

4. The Best Interests Decision-Making Process

If a decision-maker determines that someone lacks capacity to make a specific decision, the decision-maker must then go on to make that decision – this is called a best interests decision. A best interests decision can only be made after it has been determined that the person lacks capacity.

Principle 4 requires that all decisions are made in the best interests of the person who lacks capacity. The focus must be on this person and their best interests and not that of others, such as family, other patients or residents, or the general public.

The Mental Capacity Act (MCA) cannot set out a process for making decisions, as the scope for decision making is so wide. It does lay out what needs to be taken into consideration in a best interest checklist.

The best interests checklist

1. The decision must not be made on the basis of the person's age or appearance.
2. The person's behaviour should not lead to assumptions about what might be in their best interests.

3. All relevant circumstances need to be considered.
4. Is the person likely to regain capacity? Can the decision wait?
5. Involve the person in the decision-making as much as possible. Even though they lack capacity to make this decision, their views need to be considered and the process needs to include them as far as possible.
6. If the decision concerns life-sustaining treatment, the decision must not be based on a desire to bring about death – the MCA can't be used for the purposes of euthanasia.
7. The decision-maker must consider the person's past and present wishes, beliefs and values which would influence their decision-making if they had capacity, and other factors they would take into consideration if making their own decision.
8. The decision-maker must take into account the views of anyone caring for the person or interested in their welfare – this includes paid and informal carers. If possible, the decision-maker must consult anyone who has a Lasting Power of Attorney or is a deputy appointed by the Court of Protection.

Using the best interests checklist

- The decision-maker is responsible for the decision.
- The decision-maker must consult and involve others as much as possible. Consultation should ensure that the decision is not restricting the rights of the person lacking capacity.
- If the person has no family or friends who can be consulted about a decision they are considered to be 'unbefriended'. If someone lacks capacity to make a significant decision (a change of accommodation or serious medical treatment) and is unbefriended, an Independent Mental Capacity Advocate (IMCA) must be used to provide a report about the person's situation and views.
- The decision-maker does not have to follow the views of anyone else, but would need good, reasoned arguments for ignoring the views of others.
- The decision-maker should not avoid discussion with people who may disagree with them. Involving people who might disagree with the decision can often reassure them about the process and allow them to accept the final decision.
- There is no prescribed method of consultation. The decision-maker could see family members with the person being assessed if appropriate – but this may not be helpful.
- There is no hierarchy of whose views should carry more weight. The concept of next of kin does not mean anything under MCA.
- A best interests decision must be based on a holistic understanding of the individual within the context of their life, views and wishes. What would be clinically indicated might not be in the person's best interests when their past views or possible effects of the treatment are considered. For instance someone's care needs may be better met by moving to a different care home, but the stress of a move or the distance from family contact need to be considered.

- Under the Deprivation of Liberty Safeguards (DoLS) there is a specialist role of Best Interests Assessor. This can be confusing, but this role only relates to decisions taken under DoLS and doesn't apply to best interests decisions made under MCA.

A best interests decision can be made and recorded by the decision-maker. It is often not necessary to hold a Best Interests Meeting to formalise the decision making, but it is always necessary to record the best interests decision and provide a rationale. A Best Interests balance sheet is a useful tool that sets out the various options, with all of the benefits and risks/disadvantages to the different options and then an appraisal of which option is in the person's best interests.

The MCA gives the responsibility to make a decision to the decision-maker.

Families often assume that they can make decisions (although, sometimes, they can because they are Attorneys or Deputies, but their status will need to be checked)) and may be upset and angry if their views are not followed. It's important to make sure that people understand how and why decisions are made. The decision-maker may need to explain the law and their role to any family or friends.

Every effort should be made to resolve disputes about decisions. If the dispute cannot be resolved the decision will need to be considered by the Court of Protection and a welfare determination made under s16 Mental Capacity Act. If professionals or family members disagree about a decision, the decision-maker makes the final decision. There will need to be appropriate discussion of the issues and a clear record of why the decision is made. A best interests meeting should take place and the procedures for resolving disputes should be followed; ultimately the decision might need to be made in the Court of Protection.

5. Complex or Life-changing Decisions

Some decisions are so controversial or complex that it is appropriate to hold a best interests meeting.

Best interests meetings can be formal or part of a multi-disciplinary meeting. The decision-maker will need to consider what sort of meeting is appropriate and what sort of involvement and support is necessary for making and recording each particular decision.

A formal meeting should normally be chaired by someone not directly involved in the person's case. This may be a Manager. The Best Interest Meeting agenda outlines the issues that will be discussed in the meeting.

If a best interests meeting does not successfully resolve the issues, the decision-maker may need to take legal advice with a view to an application to the Court of Protection.

A best interests meeting should include information from relevant professionals, family members and the person who lacks capacity. If these people don't attend the meeting their views must be represented. This is a requirement in the best interests checklist. (S4 MCA)

- The decision-maker will need to convene the meeting, including arranging who will chair the meeting. There should be a formal record of the meeting and the decision made.
- A best interests meeting may be included as part of a multi-disciplinary team meeting, but it must be clear when the meeting becomes a best interests meeting, how it is organised and who should attend.
- Where the person does not have someone who can advocate on their behalf, the IMCA service must be engaged to support them.
- If a decision is being disputed further advice must be sought at the earliest opportunity.

Before the meeting the chair should liaise with the decision-maker to:

- check there is an appropriate and valid capacity assessment
- clarify exactly what the decision is
- clarify what information is necessary to make the decision
- plan the detail of the meeting, including where it will be held, when it should happen, who should attend, who will represent the views of those who can't attend and who will take minutes
- organise any support needed by the person the decision is being made for, this may be support to understand the purpose of the meeting or to express their views
- organise any support needed by friends and family of the person
- prepare an agenda.

The agenda should cover:

- introductions
- a statement about the confidentiality of the meeting and any related documents
- the purpose of the meeting – what decision is being made?
- confirmation of the decision-specific capacity assessment
- a review of the Best Interests Checklist to make sure everyone is clear about their statutory responsibilities under MCA
- information from relevant parties. What does the person who lacks capacity want? What is known about their previous wishes, their values and beliefs? This includes the view of anyone named as to be consulted such as someone

with Lasting Power of Attorney, Enduring Power of Attorney or a deputy. Also include views from an Independent Mental Capacity Advocate (IMCA), views from family, friends or supporters and the views of professionals
- discussion – the chair will need to make sure that everyone can participate
- a summary from the chair, including a risk assessment.
- the decision that the meeting believes is in the person's best interests – the decision-maker is still responsible for making the decision and they are not obligated to follow the decision of the meeting, but will need a clear reason if they do not.
- the action plan – the meeting may ask for further assessments or reports and then reconvene. There may need to be interim decisions made about the person's safety or care. Other actions or decisions may become clear during the meeting
- making decisions about how to proceed if the meeting cannot agree.

After the meeting the chair should:

- make sure an accurate record of the meeting is prepared
- make sure this record is distributed to everyone who attends or who gave apologies
- make sure any agreed actions are completed.

The authority of a decision-maker

The MCA gives the power to make a decision to the decision-maker. If professionals disagree about a decision, the decision-maker makes the final decision. There would need to be appropriate discussion of the issues and a clear record made of reasons why the decision is made. The caveat to this is if the person objects or there is a dispute with family members or between professionals.

If a best interests decision is disputed

The process for resolving disputes should be followed and, ultimately, the decision might need to be made in the Court of Protection. The Court of Protection is a branch of the High Court, set up to protect people who lack capacity and it can make determinations concerning any decision (or, indeed, about a person's mental capacity to make a decision, if that is disputed). Referral to the Court of Protection should be a last resort. If legal action may be necessary, legal advice and representation will be needed by the agency responsible for making the decision.

The priority must remain the welfare and safety of the person whose best interests are being considered.

How to record decisions

It is a legal requirement that evidence of assessments and best interest decisions is recorded. This can be in a care plan, a daily record or on the Mental Capacity

assessment form. There is no legal requirement to use any particular form or paperwork to record decisions. A decision-maker must always use the two step method of decision-specific assessment of capacity. The person arranging the treatment or care must know if someone has capacity to make the decision about this care, and to make this clear in any documentation. Every care plan concerning a person who may lack capacity must include details of how their capacity has been assessed, whether they lack capacity and, if they do, what the best interests decision is.

Resolving disputes

There is no formal appeals process under MCA. The MCA provides open, accessible decision-making and everyone who uses MCA is open to challenge. At times this can result in disputes. The decision-maker:

- has the authority to make a decision about someone's capacity and their best interests
- must follow the two step process to assess capacity
- must follow the best interests checklist to decide on someone's best interests – this includes consulting other people such as professionals, family and friends and an IMCA if appropriate.

If the decision-maker follows the correct steps, they have the authority to make the decision. Other professionals may disagree with a decision-maker's conclusion. It will be appropriate to discuss this openly, perhaps in a best interests meeting, to try to resolve any dispute, but the decision-maker has the final authority to make the decision. Other professionals do not have to agree with the decision-maker's conclusions, but they do need to understand and abide by the decision.

Family, friends or an IMCA may disagree with professional decisions, or there may be disputes in someone's circle of family and friends. It is best to try and solve disputes through communication. Involving people in the decision-making process may reassure them that their views are heard and that a proper legal process is being followed. A best interests meeting may offer a more formal way of involving family or friends in a decision and enable them to accept the decision.

Making a complaint

Anyone can make a formal complaint about any services received. Anyone who may lack capacity, or their family or friends, should be offered whatever support they need to make a formal complaint.

Court of Protection

If it is not possible to resolve a dispute, the Court of Protection can make a decision. A public authority should seek a Court determination if there is sustained dispute

about a decision, although anyone can apply to the Court of Protection. Application to the Court of Protection should be a last resort.

Appendix 1: Mental Capacity Assessment Tool

MENTAL CAPACITY ASSESSMENT

The **Mental Capacity Act 2005** (MCA) assumes that persons over 16 years can and will make decisions about their own lives and have the capacity to do so. Where there may be doubt consider whether there is **an impairment or disturbance in the functioning of the person's mind or brain.** If there is **no such impairment or disturbance** the person has capacity as defined by the Mental Capacity Act 2005.

Name	
Address	
Date of Birth	

Decision to be made:

Persons consulted/involved in discussions and date discussed

Name	**Role (e.g. relative, attorney – specify welfare and/or property**

What, if any, documentation did you look at and date seen

Document	**Date**

Where did the assessment of capacity take place, (e.g. at the person's own home, in a hospital ward):

When did the assessment take place? (date/time)

Persons present during the assessment:

1. **Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works?** (It doesn't matter whether the impairment or disturbance is temporary or permanent). Provide evidence of this below:

If the answer to the above question is NO then it should be assumed the person has capacity to make their own decisions.

If the answer to the above question is YES, please continue to the next stage of the assessment.

2. Does the impairment or disturbance mean that the person is unable to make the particular decision detailed above at this time

Yes ☐

MCA says a person is unable to make a particular decision if they cannot do one or more of the following four things (Please tick appropriate box)

Question	**Yes** ☐	**No** ☐
Does the individual understand the information relevant to the decision? (Explain and record evidence).		

Question	**Yes** ☐	**No** ☐
Can the individual retain the information for long enough to enable him/her to make the decision? (Record evidence)		

Question	**Yes** ☐	**No** ☐
Can the individual use or weigh up that information as part of the process of making the decision e.g. weigh up risks/ consequences of a particular decision? (Record the basis for your decision)		

Question	**Yes** ☐	**No** ☐
Can the individual communicate the decision effectively, e.g.		

did they get any extra help they may have needed to communicate? (Record how the decision was communicated)	

NB: Fluctuating capacity - Always consider whether the person has fluctuating capacity and whether the decision can wait until capacity returns.

Outcome of the assessment, in relation to the decision above
On the balance of probabilities, there is a reasonable belief that:

Assessor:	
Assessor's Signature:	
Agency:	
Role in Agency:	
Date of Assessment	

Appendix 2: Best Interests Decision-Making Recording Tool

In reaching a decision on behalf of a mentally incapacitated person, the decision maker must demonstrate that they have done the following:

- Consider whether the person is **likely to regain capacity**.
- Where practicable, **encourage the person to participate in the decision**.
- Consider the person's **past and present wishes and feelings** (including any relevant written statement).
- Consider the **beliefs and values** that would be likely to influence his/her decision if s/he had capacity (e.g. cultural background, religious affiliation).
- The other factors that s/he would be likely to consider if s/he were able to do so (e.g. **emotional bonds, family obligations**).
- **Have consulted** with anyone named by the person to be consulted, anyone engaged in caring for the person or interested in his/her welfare, a donee of a Lasting Power of Attorney, a Deputy appointed by the Court of Protection
- Have identified and preferred the **least restrictive alternative** for the person's rights and freedom of action

Completing this tool fully will assist staff in demonstrating they have considered all 'relevant circumstances' have applied all element of the checklist and are taking action in the 'reasonable belief' that they are acting in the person's Best Interest.

If the outcome of a mental capacity assessment indicates that the person lacks capacity to make a particular decision at a particular time, consider the following before making a decision in the person's Best Interest:

1. Is there a reasonable possibility the person could **regain mental capacity** in the future and could the decision wait until then?		
Delete as applicable	**Yes**	**No**
If not, explain why		

2. Consider **the current views of the person** about the decision they face and their desired options. Even if the person lacks capacity they may have views on the decision and on what outcome would be preferred. Their involvement can help work out what would be in their best interests *(CoP 5.22)*
Describe the person's views

3. Describe measures taken **to encourage and enable the person to participate in the decision**
For example: dates of meetings / interviews, visits to care home addresses, special communication techniques, regard to sensory impairment issues, provision of written information, use of trusted intermediary, use of advocacy service

4. Are there any other **past wishes, past behaviour, beliefs and values** that should be considered in relation to the current decision?
NB remember a valid Advanced Decision to refuse treatment has the same legal status as decisions made by people with mental capacity at the time of treatment (see section 1 of this forms and CoP 9.47)
Attribute source of information, eg. record of past behaviour, interview with family member, carer or professional, or assessment document, care plan, written statement.

5. Consult other relevant people **for their views about the person's Best Interest**. If key figures in the person's support network have **not** been consulted, state the reason why.
Persons with an interest in the care of the person may include : relative, Attorney, professional, carers.

Name	Role
How were they consulted? Interview, meeting, telephone call etc.	
View	

Name	Role
How were they consulted? Interview, meeting, telephone call etc.	
View	

Name	Role
How were they consulted? Interview, meeting, telephone call etc.	
View	

Name	Role
How were they consulted? Interview, meeting, telephone call etc.	
View	

(Continue on another sheet if required)

6. Consider any outcomes that may be **less restrictive of the person's freedom and autonomy**, eg. outcome requested by service user, other alternatives identified by care manager. Identifying other alternatives, even if they are not ultimately suitable solutions, is good practice. Failing to identify and consider other alternatives is poor practice and may invalidate a Best Interest decision. *The 'Balance Sheet' exercise, section 5 may be a may of considering the pros and cons of different options*
Explain why these less restrictive alternatives were not preferred.

Alternative arrangement	Comments

(Continue on another sheet if required)

Please state below the **outcome of the 'best interest decision'** noting why this option was ultimately preferred. Please note any significant reservations or objections made by any of the person's supporters: family, friends or professionals. Please note that any lack of accord and agreement might indicate the need for further discussion, negotiation or mediation (CoP) A serious difference about the interpretation of 'best interest' in relation to a person's welfare might ultimately need to referred to the Court of Protection if no resolution is reached (CoP) Recording the stages by which an issue has been discussed can clarify the situation and this may assist mediation or might assist in presenting the case to the Court. It is good practice to review 'best interest' decisions, eg. new information available, new proposals about support, changes in circumstances.

(Continue on another sheet if required)

This part of form completed by (the decision maker): Date:	

5. Balance sheet exercise

It is sometimes recommended that issues in a Best Interest decision can be noted by using a simple 'balance sheet' listing factors to be considered in favour of a particular outcome for the individual as being positive, on one side, and factors to be considered as being negative for the individual, on the other. This tool could be used in a 'best interest' meeting involving the person's supporters and family members.

Consider all relevant social, medical, welfare factors and meeting the service user's expressed wishes.

Complete one balance sheet for each option considered:

Positive for the individual	Negative for the individual

The Chair;

- should request to see all previous best interests meeting minutes and case notes relevant to the case.

- be satisfied that all appropriate documentation has been sent to the invitees in advance of the meeting to allow the participants to prepare for the meeting and to seek any necessary advice and guidance

- understand any disputes or known challenges, which will help in making decisions about how to best organise and facilitate the case conference.

- consider whether to request a legal adviser to be present.

- understand who the essential attendees are and why any other people are considered relevant to consult in the decision.

- consider how to manage any issues relating to confidentiality and data protection within the meeting.

- understand what information and guidance has already been provided to the attendees.

The day of the meeting

- The Chair should meet in a quiet area with the person and any family members, LPA/EPA/CoP Deputy prior to the meeting commencing to explain the purpose of the meeting, the legislation, who will be attending the meeting and why, and finally to offer the opportunity for any questions/concerns to be explored.

- The Chair should consider whether this should take place immediately before the meeting, or to consider whether it would be more appropriate to offer the opportunity to meet with the person/family at an earlier stage. Where there are known tensions, open and timely communication between the Chair and the person/family etc. can help to reduce any building tensions and help both parties to plan how to achieve a more relaxed meeting process. This process is especially important in situations where there is dispute.

- The Chair must remain mindful that, at this stage, they should not engage in any level of discussion about the decision to be made, but to remain solely focused on supporting attendees to understand the process and be as comfortable as possible throughout.

Opening the best interest meeting

- The Chair should open the meeting by reminding the attendees that the best interest meeting is being held under the principles and provisions as set out in the Mental Capacity Act 2005. The meeting will be paying particular regard to the best interests checklist, and lastly remind all of the need to pay regard to confidentiality. Ask each person to say who they are and why they are attending the meeting.

- The minute taker may find it useful to use the questions set out below as mini headings to capture and clearly record the content of the meeting.

- The Chair should inform everyone that the meeting will focus on the decision(s) that is required to be made and no other.

- The following questions should be covered in the meeting and generally in this chronological order:

1. What *is* the specific decision(s) to be made? (The meeting must agree as this will be the focus of the meeting from this point onwards).

2. Why is it being proposed?

3. What steps have been taken to help the person attend the conference today and be involved in the decision making process?

4. What steps have been taken to support the person in making the decision themselves? Why have these attempts failed?

5. Is there an up to date Mental Capacity Assessment to evidence the person lacks the capacity to make the decision required? If not, the meeting must stop and re-convene when this has been carried out and the person has been assessed as lacking mental capacity to make the decision.

6. Is it possible to delay the decision until the person regains capacity and will be able to make the decision themselves. Are there any risks to the person in delaying the decision?

7. Who is the decision-maker? Is an EPA or appropriate LPA/court appointed deputy in place who has the relevant authority to make the required decision?

8. Is there a valid and applicable advance decision, or advance statement that is relevant to the decision?

9. What do we already know about the person's values, wants and wishes?

10. What are the available/possible options to be considered? What are the positive and negative aspects of each, keeping the person's views and opinions central and taking into consideration all assessed and known risk?

11. How will the options impact on the following: Any medical aspects
Any welfare aspects (how they live their lives) Any social aspects (relationships)
Any emotional aspects (how they may feel or react).

12. What health and social care staff/professionals have been consulted? What are their views and opinions?

13. Is there a report from an Independent Mental Capacity Advocate (IMCA)? If the person reaches the qualifying criteria for an IMCA instruction, it becomes a statutory requirement.

14. If the person has reached the qualifying criteria and an IMCA has not been instructed;
why is this case?

15. Is there any feedback from an Independent Professional Advocate?

16. Are there any other reports to be tabled?

17. Now that the family, EPA/LPA/Deputy have heard all the relevant information, what is their view?

18. Outcome of Meeting. The identified decision maker to make the final decision once all reports etc. have been tabled. If in complex cases, the decision-maker may decide that he or she requires additional time to reach his or her decision, this should be communicated to the Chair and the Chair should advise the meeting when the decision will be made and how it will be communicated.

19. Has the decision-maker chosen the least restrictive option? If not, what is the rationale for the decision made?

20. Identify any actions, who has responsibility for each action and the timescale within which each must be completed.

21. If there is continued dispute or challenge at this stage, Chair to provide information on how to progress the matter. It may include an attempt at mediation. In the absence of agreement, the matter will need to be referred for legal advice and potential application to the Court.

Best Interests Meeting Agenda
Introductions and Apologies • Housekeeping • Outline format of meeting – provide clarity that each person will have the opportunity to contribute • Information sharing and confidentiality • Statement of the legal framework
Purpose of the Best Interest Meeting • Outline background facts • Clarification of decision(s) required • Outline mental capacity assessment. If there is no capacity assessment specific to the best interests decision(s), the meeting must stop • Consider whether the person may regain capacity at a future date, i.e. should the decision be delayed? Is there therapeutic or any other input that may impact on the person's capacity and ability to make the decision
View of the Relevant Person What is known about the person's: • Past wishes, feelings • Present wishes and feelings • Any relevant written statement made by the person when they had capacity • Beliefs and values and beliefs • Any other factors that the pardon would be likely to cosier if they were able to do so
Information from Relevant Parties • Views from anyone named to be consulted, any LPA, EPA or Deputy of the Court of Protection • Family members opinion • Professional opinion • IMCA (if involved) • Anyone engaged or caring for the person or interested in their welfare
Discussion of Viewpoints • Identify and be clear about the options • Discuss benefits and advantages of each option • Assess likelihood of each option

Best Interests Meeting Minutes Template
Strictly Confidential

Information Sharing and Confidentiality

This Best Interests Meeting has been convened under the provisions of the Mental Capacity Act 2005 and its Code of Practice. These minutes are strictly confidential; they must not be photocopied and should be transferred and stored securely. Statutory agencies will store electronic copies on a secure database.

Access should only be on a legitimate need to know basis. Additional reqests to show these minutes to other people will only be considered by the Chair of the meeting and permission given, if there is a legitimate reason to disclose the information. Minutes of the meeting will be circulated to all attendees and those who have given apologies.

Copies of these minutes may be requested and disclosed in the event of a Data Protection access to records request, subject to exemptions.

Amendments

Please Note: Requests for amendments to these minutes should be forwarded in writing to the Chair of the meeting, within seven days of the circulation date; otherwise they will be taken as an accurate record.

Mental Capacity Act (2005)

If a person has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that person, must be made in his/her best interests - Principle 4.

Date:		Venue:		
Name of Service User:		Personal identifier:		
Address:				
Chair:	Decision-Maker:	Minute Taker:		
Name	Relationship to Service User	Invited	Present	Apologies
		Yes/No	Yes/No	Yes/No
		Yes/No	Yes/No	Yes/No
		Yes/No	Yes/No	Yes/No
		Yes/No	Yes/No	Yes/No
		Yes/No	Yes/No	Yes/No
Purpose of the Best Interest Meeting:				
Confirmation of Capacity Assessment:				
View of the relevant person:				
Information from relevant parties:				
Best interests decision - Balance sheet approach. Specify the different options that are being considered. In deciding best interests you must explore if there is a less restrictive way to achieve what is in the person's best interests but you do not automatically have to take whatever is the least restrictive option overall. This is because the least restrictive option might not be the one that is in the person's best interests.				
Option One. Describe:				
Benefits for the person:				

Risks for the person:
Can this be achieved in a less restrictive way?
Option Two. Describe:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?
Option Three. Describe:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?
Option Four. Describe:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?
Discussion of viewpoints:
Additional information considered by the decision maker in making the best interests decision specified. Details:

Final Decision. Give the reasons why this option has been selected and why other options have been rejected. If a final decision is not being made on the day the Chair should inform the meeting as to when and how the decision will be communicated.

Details:

Objections

See 5.63 to 5.69 of the Code.
Record here if anyone disagrees with the decision that has been made and how you intend to proceed.

Details:

ACTION PLAN

Action	Responsible Person	By when

Communication Strategy. Record here how interested parties will be advised of the decision.

Where the Court of Protection is not involved, carers, relatives and others can only be expected to have reasonable grounds for believing that what they are doing or deciding is in the best interests of the person concerned. They must be able to point to objective reasons to demonstrate why they believe they are acting in the person's best interests. They must consider all relevant circumstances.

The Chair has read and approved these minutes and confirms that they are an accurate record of the meeting.

Name:	Designation:
Designation:	Signature:
Signature:	Signature: