

### Best Interest Decision Making Checklist

This form has been developed to support your compliance with the Mental Capacity Act 2005 (MCA). There is a statutory requirement for anyone making a best interest decision to have regard to the Code of Practice for the Mental Capacity Act which can be accessed via the [Legislation](#) section of the Adult Care Procedures Manual.

References given below refer to the relevant paragraphs of the MCA Code.

What is the 'best interests' principle and who does it apply to?

The 'best interests' principle underpins the Mental Capacity Act. It is set out in chapter 5 of the MCA Code and states that:

*"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 best interests."*

This principle covers all aspects of financial, personal welfare and healthcare decision-making and actions. Certain decisions are excluded because they are either so personal to the individual concerned, or governed by other legislation which include consenting to marriage and consenting to have sexual relations.

For full details see 1.8 to 1.11 of the MCA Code.

#### 2.1. Service user details

Name:

Date of birth:

Case/ref:

Present address/location:

Home address (if different):

#### 2.2. Person completing this form

Name:

Role:

Organisation:

Tel:

Email:

Address:

2.3. State the specific decision relevant to this best interest checklist  
(see 1.2 of Form 1 Mental Capacity Assessment)

2.4. The MCA Code 5.3 states

*"working out a person's best interests is only relevant when that person has been assessed as lacking, or is reasonably believed to lack, capacity to make the decision in question or give consent to an act being done."*

Confirm that a capacity assessment has established the person lacks capacity to make this decision. If the assessment has not established lack of capacity you cannot proceed with a best interests decision.

(see 1.9 of Form 1 Mental Capacity Assessment)

Yes

No

Date

Undertaken by:

Name:

Profession:

Relationship to person:

Tel:

Email:

Address:

2.5. Clearly identify who is the named decision-maker for this Best Interest Decision.  
(see 1.5 of Form 1 Mental Capacity Assessment)

Name:

Profession:

Tel:

Email:

Address:

Chapter 5 of the MCA Code details what you should take into account when working out someone's best interests.

As every case, and every decision, is different, that law can't set out all the factors you should consider, however, it sets out some common factors which must always be considered. These factors are summarised in a checklist which this form will now prompt you to work through.

2.6. Best interests consultation – record your consultation with the service user.  
(see 5.21-5.24 and 5.37-5.48 of the Code)

What are the issues that are most relevant to the person who lacks capacity?

Specify their past and present wishes, feelings and concerns in relation to this decision.

What are their values and beliefs (e.g. religious; cultural; moral) in relation to this decision?

Are there any other "relevant circumstances" that should be taken into account in this case?

Is there a relevant advanced statement?

A person may have previously recorded preferences for their future care. Such requests should be taken into account as strong indications of a person's wishes though they are not legally binding.

2.7. Use this section to record who is involved in the consultation.

You must include anyone named by the person lacking capacity as someone to be consulted, another professional, and, where appropriate, anyone engaged in caring for the person or interested in their welfare, e.g. any attorney, Court Appointed Deputy or other relevant person.

(see 5.49-5.55 of the Code)

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question?

Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question?

Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question?

Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

Name:

Relationship to person:

Date consultation was undertaken:

What do they consider to be in the person's best interests on the matter in question?

Do they have any information about the person's wishes, feelings, values or beliefs in relation to this matter?

2.8. Independent Mental Capacity Advocate (IMCA) involvement

Where the person lacking capacity has nobody that can be consulted other than paid carers and professionals, and faces a decision about serious medical treatment or a change of residence, the law requires you to ensure an IMCA is appointed. You also have discretion to refer the person for an IMCA if this decision relates to a safeguarding concern or a care review.

The role of the IMCA is to facilitate the decision making process, they are not the decision-maker.

(see chapter 10 of the MCA Code)

Referral to IMCA service made?

Yes                       No                       Date

Name of appointed IMCA:

Organisation:

Tel:

Email:

Address:

2.9. 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.

<b>Option one</b> Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

<b>Option two</b> Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

<b>Option three</b> Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

<b>Option four</b> Description:
Benefits for the person:
Risks for the person:
Can this be achieved in a less restrictive way?

2.10. Additional information considered by the decision-maker in making the best interests decision specified.

2.11. Final decision.

Give the reasons why this option has been selected and why other options have been rejected.

2.12. Objections.

Record here if anyone disagrees with the decision that has been made and how you intend to proceed.

(see 2.63-5.69 of the MCA Code)

2.13. Best interests decision – risk assessment.

If you have identified specific risks, consider if you need to complete a specialist risk assessment tool.

Specialist risk assessment tool completed?

Yes

No

Date Completed:

Completed by:

2.14. Deprivation of Liberty.

*Article 5 of the European Convention on Human Rights provides that everyone has the right to liberty and security of person.*

This section helps to highlight if the person might be being deprived of their liberty. On 19.3.14 the Supreme Court handed down a judgment in the case of P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council and Anor [2014] UKSC 19 (19th March 2014). The judgment is significant as it introduced a new acid test for deciding whether the living arrangements of a person lacking capacity to consent to them amounts to a deprivation of liberty.

If the person lacks capacity to consent to their living arrangements are they:

Under continuous supervision and control?

Yes

No

AND

Are they free to leave? (In this context this means not free to choose to live elsewhere).

Yes

No

If you have answered 'yes' to either of these questions and the person is in a care home or hospital, the Deprivation of Liberty Safeguards (DoLS) may apply and you must seek advice by contacting the Deprivation of Liberty Safeguards Team on 01522 554205.

If the person is living in the community and you are concerned that there may be a deprivation, this would need to be authorised by the Court of Protection and you should seek legal advice.

*Please note that the judgment made it clear that the person's compliance or lack of objection to the placement; the reason or purpose behind a placement and the relative normality of the placement is no longer relevant to the question of whether they are being deprived.*

Decision-maker:

Date: