



# Best Interest Decision Meeting Guidance

Worcestershire Safeguarding Adults Board

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## 1.0 Purpose

The primary purpose of this guidance is to provide chairs, decision-makers and practitioners with additional guidance on the process, content and structures of best interests meetings.

This best interests guidance builds on an assumption of a general understanding of the Mental Capacity Act 2005. The Mental Capacity Act Policy and supporting Code of Practice should still be referenced as required.

## 2.0 Context – why best interests decision making is required

2.1. This guidance forms an appendix to the Worcestershire Safeguarding Adults Board Mental Capacity Act Guidance and Policy. The Mental Capacity Act and Code of Practice should also be referred to as necessary.

2.2. A failure to engage correctly and effectively with people who do not have the mental capacity to make specific decisions for themselves, may have serious implications for care agencies, particularly for health trusts and local social services authorities. We are required to work within the statutory principles set out in Section(s) 1 of the Mental Capacity Act 2005 and more particularly to apply s. 4 of the Act to our actions for people who cannot make decisions for themselves.

2.3. A best interests meeting may be needed where an adult (16+) lacks mental capacity to make significant decisions for themselves and needs others to make those decisions on their behalf. It is particularly important where there are a number of agencies working with the person, or where there are unresolved issues regarding either the person's capacity or what is in their best interests and a consensus has not been reached. Issues around a person's capacity should however ordinarily be resolved before a best interests meeting is convened.

2.4. A best interests decision cannot be made for a service user if they have been assessed as having capacity to make the decision or (where there is doubt about capacity) a capacity assessment has not been undertaken to confirm that they lack capacity.

2.5. It is important to note that ss.27–29 and 62 of the Act set out the specific decisions which can never be made or actions which can never be carried out in a services user's best interests under the Act, whether by family members, carers, professionals, attorneys or the Court of Protection. This is because they are either so personal to the individual concerned, or governed by other legislation. It does not preclude the Court of Protection however from making a declaration under s.15 of the MCA 2005 with regard to the person's capacity to consent to the matters set out in 1.5.1. The decisions this relates to are summarised below.

2.5.1. Decisions concerning family relationships (s. 27). Nothing in the Act permits a decision to be made on someone else's behalf on any of the following matters:

- consenting to marriage or a civil partnership,
- consenting to have sexual relations,
- consenting to a decree of divorce on the basis of two years' separation,
- consenting to the dissolution of a civil partnership,
- consenting to a child being placed for adoption or the making of an adoption order,
- discharging parental responsibility for a child in matters not relating to the child's property, or
- giving consent under the Human Fertilisation and Embryology Act 1990.

### 2.5.2. Mental Health Act matters (s.28)

Where a person who lacks capacity to consent is currently detained and being treated under Part 4 of the Mental Health Act 1983, nothing in the Act authorises anyone to:

- give the person medical treatment for mental disorder, or
- consent to the person being given medical treatment for mental disorder. Further guidance is given in chapter 13 of the Code.

### 2.5.3. Voting rights (s.29)

Nothing in the Act permits a decision on voting, at an election for any public office or at a referendum, to be made on behalf of a person who lacks capacity to vote.

### 2.5.4. Unlawful killing or assisting suicide (section 62)

For the avoidance of doubt, nothing in the Act is to be taken to affect the law relating to murder, manslaughter or assisting suicide.

2.6. Although the Act does not allow anyone to make a decision about these matters on behalf of someone who lacks capacity to make such a decision for themselves (for example, consenting to have sexual relations), this does not prevent action being taken to protect a vulnerable person from abuse or exploitation.

2.7. The statutory principles laid out in s.1 of the Mental Capacity Act must be applied:

- 1) A person must be assumed to have capacity unless it is proved otherwise.
- 2) Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity.
- 3) An unwise decision does not in itself indicate a lack of capacity.
- 4) Any act or decision made must be in the person's best interests.
- 5) Any act or decision should aim to be the least restrictive option to the person in terms of their rights and freedom of action.

2.8. We recognise that establishing a positive relationship with the service user is crucial in gaining their trust. A person with mental capacity can disagree with the views of the professionals involved in their care. Service users may take a contrary view to professional opinion and this should be respected if they have mental capacity to make the decision. Service users have the right to make lifestyle choices and to refuse services provided they are doing so from an informed and capacitated position. Where there are concerns that the service user may be acting under duress, or where there are concerns that the associated risks are significant, it is important to remember that there continues to be a duty of care and it may be appropriate to consider if the High Court's Inherent Jurisdiction should be utilised.

**2.9. A failure to make decisions that are in the best interests of the person may have serious implications and could lead to legal challenge. Protection from liability is afforded under the MCA where it can be evidenced that due process has been followed by the decision-maker.**

## 3. What is a best interests meeting?

3.1. A formal best interests meeting is likely to be required where the decisions facing the service user are complex and cannot be easily made by the decision-maker and immediate colleagues. There may be a range of options and issues that require the considered input of a number of different staff as well

as those with a personal and/or legal interest in the needs of the person lacking mental capacity. A best interest meeting will be needed if there are different opinions about what is in the service user's best interests and a consensus cannot be reached. Differing opinions may exist between professionals or other interested parties such as relatives. Making sense of these issues and options can only be properly covered and addressed through holding such a meeting, and clearly recording the discussions.

3.2. A best interests meeting should mean that the decision-making process is transparent, clearly recorded, and can stand up to subsequent scrutiny. In addition a best interests meeting should ensure that service users are empowered and protected from random or unsound decision-making. However, it should be understood that a best interests meeting has no legal authority, other than demonstrating agreement of those within the meeting. Whilst chapter 15 of the Code of Practice gives guidance on dispute resolution, disagreements will need to be taken to the Court of Protection for a legal resolution if a consensus cannot be reached. In the circumstances legal advice should always be sought.

3.3. Making a decision in a person's best interests requires that:

- The service user has been assessed as lacking capacity to make the decision under scrutiny.
- The decision under scrutiny is not one that is excluded by the legislation.
- The Act's statutory principles and best interests' checklist are properly considered.
- The service user, even though lacking mental capacity, remains central to the decision or decisions needing to be made and should be involved in the decision-making process whenever possible.
- Relevant professional and informal networks are properly consulted.
- There is a clear structure to the meeting, promoting partnership working, the sharing of relevant information and the positive expression of different views.
- A clear analysis of the risks and benefits attached to different options is undertaken and recorded.
- All relevant circumstances are taken into consideration including the person's beliefs and values, past and present wishes, and any written statements the person made when he/she had capacity. This may include an Advance Decision to refuse treatment or an Advance Statement of preferences/wishes.
- Consideration is given to whether the decision can be delayed until the person regains capacity to make the decision for him/herself, if this is a possibility.
- Consideration is given to other factors which might have influenced the person's decision such as altruistic intentions, consideration for others and duties and obligations towards future beneficiaries and/or dependents.
- Consultation is carried out with others such as partners, carers, family members, and other relevant people where it is practicable and appropriate to do so.
- The decision is not motivated by a desire to bring about the person's death when the decision relates to life-sustaining treatment.
- That clear and accurate minutes are recorded of the meeting.

3.4. Where a decision cannot be made, for whatever reason, the best interests meeting will also have to decide what further actions may be required to expedite future decision-making, by whom and in what timescale. This may ultimately include referral to the Court of Protection.

## **4. Urgent situations**

4.1. If the situation is very urgent however, a meeting may not be possible and decisions will have to be made based on the information available - including the availability of people for consultation. The 'doctrine of necessity' may be invoked in an emergency situation. Actions in the person's best interests

can be made providing the professional 'reasonably believes' a person lacks capacity and that the proposed treatment/action is necessary to save their life or to prevent a significant deterioration in their condition without formal documentation of the capacity assessment and best interests decision.

4.2. Clearly in an emergency, urgent decisions will have to be made and immediate action taken in the person's best interests. In these situations, it may not be practical or appropriate to delay the decision in order to consult with any known attorneys or deputies who cannot be immediately contacted. It is important to record any attempts to contact known attorneys or deputies that have been unsuccessful.

4.3. The MCA does not give any clear indication as to how long it would be acceptable for decisions to be made under the doctrine of necessity. It is sensible to assume that as soon as someone's capacity can be formally assessed and their best interests decided, then this is what should happen.

## **5. When is a best interests meeting required?**

5.1. Where assessments of mental capacity relate to day-to-day decisions and caring actions they can be recorded on the appropriate care plan and supporting documentation. The Act provides protection from liability for actions taken as long as those actions can be understood to have been in a person's best interests. Evidence of the assessments of capacity and of the best interests process should be recorded to provide robust and clear documentation that records the action that has been taken. As the seriousness of the decision and/or the action increases then the need for a clear documented record increases.

5.2. A best interests meeting may be needed following a formal recorded assessment of mental capacity in relation to the following sorts of decisions:

- where to live, if a significant change is envisaged;
- what care services and support to receive at home;
- what care services and or support should the person receive away from the home (ie in a particular placement);
- the use of covert medication
- who the person should have contact with;
- whether to report a criminal or abusive act;
- having serious medical treatment – whilst noting that permission for some serious medical treatments, such as sterilisation, can only be granted by the Court of Protection.

5.3. These examples are not exhaustive and each situation needs to be judged on its merits, using professional judgment. Clarity is provided in the Mental Capacity Act Code of Practice.

5.4. If a Lasting Power of Attorney (or Enduring Power of Attorney) has been made and registered, or a deputy has been appointed under a court order, the attorney or deputy will be the decision-maker, for decisions within the scope of their authority. There may be situations where the local authority considers that it is appropriate to arrange and support a best interest meeting where there is lack of consensus with the decision-maker or third parties to attempt to reach an amicable resolution.

5.5. Where there is, or is likely to be, a dispute as to how to serve the best interests of the person who lacks mental capacity, there is recourse in law to the Court of Protection. The Court will however expect to see evidence of professional decision-making and best interests recording having already taken place, and this is another reason why holding a best interests meeting will be useful in ensuring that the decisions needing to be made are clearly understood.

5.6. It is important to remember that the minutes of the best interest meeting may be required by, and submitted to the Court of Protection. It is important to ensure that they accurately record proceedings and are fit for purpose and scrutiny.

## **6. The best interests meeting – who chairs?**

6.1. It is generally best practice that the person who chairs or co-ordinates the best interests' meeting is not the person who is the decision-maker. This avoids any possible conflict of interest. The decision-maker must attend the meeting.

6.2. It would usually be expected that a Principal Practitioner or General Manager will chair the best interests meeting or a registered and experienced health or social care professional. At the very least it needs to be someone who is able to chair a meeting at which competing views and opinions may be expressed. The chair of the meeting may be required to provide some mediation and negotiation so that the best interests of the person lacking mental capacity are not overlooked. The chair will also need to be able to summarise the discussion and confirm the way forward and actions to be taken.

6.3. To support service users, their family members and/or their representatives in feeling as comfortable as possible on the day of the meeting, it is good practice for the chair to arrange to meet, (with those identified above) at the venue approximately 20 minutes before the meeting is due to commence. This allows attendees to have an opportunity to meet face to face and express any concerns or fears they may have about the process. It also allows time for the chair to orientate the attendees to the environment, e.g. where the toilets are situated etc., explain the best interests decision making process, outline the meeting agenda, identify who will be attending and allow people to settle in the room before the other attendees arrive.

6.4. The Chair may also consider the value of staggering or holding the meeting in sections, with some people invited to attend at a specific time. This is a useful strategy to implement in situations where family members do not get on with one another, but wish to attend. If the service user is attending the meeting the Chair should also consider whether it would be too distressing for the service user if certain people attend. If this is the case, arrangements should be made for their views and opinions to be identified and recorded prior to the meeting and for these to be tabled as part of the process.

6.5. A person's needs and situation may fall within different legislative structures or other processes, such as under the Mental Health Act or adult safeguarding arrangements. It may be necessary and appropriate to include reference to these elements within the best interests meeting. This is a matter on which the chair for the meeting needs to give some consideration.

6.6. A Mental Capacity Act best interests meeting is not a substitute for an adult safeguarding strategy meeting, or any meeting under the Care Programme Approach or other care planning framework. The person chairing the best interests meeting should confirm at the start of the meeting the relationship of the meeting to any of these other elements, and whether they may need also to be addressed separately within a different formal or statutory process.

## **7. The best interests meeting – who should be the decision-maker?**

7.1. Under the Act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the decision is referred to in Chapter 5 and in other parts of the Code, as the 'decision-maker', and it is the decision-maker's responsibility to work out what would be in the best interests of the person who lacks capacity.



7.2. For most day-to-day actions or decisions, the decision-maker will be the carer most directly involved with the person at the time. Where the decision involves the provision of medical treatment, the doctor or other member of healthcare staff responsible for carrying out the particular treatment or procedure is the decision-maker. Where nursing or paid care is provided, the nurse or paid carer will be the decision-maker.

7.3. If there is a lack of consensus between interested parties with the lead agencies view it is advisable to ensure that the decision-maker is independent and holds neutral views. This will ensure transparency and equity in the decision-making process and it will ensure that there is no real or perceived conflict of interests.

7.4. The decision-maker must be satisfied that the assessment of the person's capacity that relates to the decision is sufficiently robust to demonstrate that they lack capacity to make the decision under scrutiny, and which the intention is that they make on the person's behalf.

7.5. The decision-maker must be clearly identified and responsible for deciding what is in the best interests of the person who lacks capacity. It is desirable to aim for consensus, but ultimately there is only one decision-maker. If a Lasting Power of Attorney (or Enduring Power of Attorney) has been made and registered, or a deputy has been appointed under a court order, the attorney or deputy will be the decision-maker, for decisions **within the scope of their authority**. There may be situations where the local authority considers that it is appropriate to arrange and support a best interest meeting where there is lack of consensus with the decision-maker or third parties to attempt to reach an amicable resolution.

7.6. No matter who is making the decision, the most important thing is that the decision-maker tries to work out what would be in the best interests of the person who lacks capacity.

## **8. The best interests meeting – who should attend?**

8.1. The Act places a duty on the decision-maker to consult others who are close to a service user who lacks capacity, where practical and appropriate, on decisions affecting the service user and what might be in their best interests. Careful consideration should be given so as not to exclude people who may have an interest. It is likely that it will be the key worker/main assessor worker who is responsible for this process and for ensuring that interested parties are invited to attend, or their views are made available to the decision-maker. Under section 4(7), the decision-maker has a duty to take into account the views of the following people, where it is practical and appropriate to do so:

- The person assessed as lacking mental capacity.
- Family members, parents, carers and other people interested in the welfare of the person, if this is practical and appropriate.
- Any person who holds an Enduring Power of Attorney or a Lasting Power of Attorney made by the person now lacking capacity.
- Any advocate who is involved including the statutory independent mental capacity advocate (IMCA) Service. (*Refer to Chapter 10 of the MCA Code of Practice for further information about the role of the IMCA*).
- Any deputy appointed by the Court of Protection who can make decisions on behalf of the person lacking mental capacity.
- Any professional person who can contribute to the outcome of the best interests meeting.

8.2. It will be the responsibility of the chair person and the decision-maker to ensure that the consultation process has been undertaken thoroughly and that the best interest meeting can proceed.

In the event that there is concern that the meeting will not represent the views of all those who should be consulted it may be necessary to adjourn the meeting until this is rectified.

8.3. Anyone who attends a best interests meeting must be clear about their role and the contribution they can make in the meeting. They should also come prepared with relevant information, and be prepared to contribute this to the discussion. Agreement should be reached about how to include the contribution of any person who is unable to attend, so that the meeting can still serve its purpose, rather than be unduly delayed.

## **9. The best interests meeting – preparing for the meeting and supporting attendees**

9.1. For some, being invited to a best interests meeting can lead to that person experiencing feelings of increased anxiety and uncertainty about what may be expected of them during it.

9.2. It is important that the person who is convening the meeting communicates clearly with those who have been invited at the earliest possible opportunity. This is particularly relevant when the person deemed to lack capacity is attending and for any family members, people appointed as power of attorney, deputy and carers etc.

9.3. The person who convened the meeting should also ensure that the following information is sent out to attendees prior to the meeting taking place:

- The contact details of a person who will be able to answer any questions relating to the meeting.
- Information on how to access the Mental Capacity Act 2005 Code of Practice.
- An Agenda –Appendix 1 provides an agenda template.
- A list of people who have been invited and their roles.
- Special consideration should be given to the venue chosen for the meeting for, e.g. wheelchair access/lifts/accessible parking, easy access to toilets, provision of refreshments etc. It may be appropriate for the meeting to take place at the relevant person's home or day care setting to maximise their ability to attend for some or all of the meeting, if it has been assessed as appropriate for the person to attend and the person wants to.

## **10. The best interests meeting – how is it recorded?**

10.1. It will be the responsibility of the chair person to ensure that the meeting is going to be accurately recorded. The minute taker should ensure that the minutes are an accurate record of the meeting and be aware that the minutes may need to be submitted to the Court of Protection. It is the responsibility of the chair person to ensure that the minutes recorded by the minute taker are factually correct and clearly represent the meeting.

10.2. The outcome of the best interests meeting and associated viewpoints should be recorded on the Best Interests Meeting template which can be found at Appendix 4. This provides a framework which incorporates the balance sheet approach. The best interests meeting needs to be structured and recorded in such a way that it is clear who attended (and those who were unable to attend) what discussions took place, and what outcomes were agreed. Whilst the minutes should record the issues and the discussion that took place, the emphasis needs to be on an analysis of the risks and benefits attached to the different options and the identification of those responsible for undertaking the agreed actions as well as the timescales within which those actions will be taken.

10.3. In line with the approach taken in the Court of Protection and widely accepted best practice a 'balance sheet' approach should be adopted to reach a best interests decision. Medical, emotional, social and welfare interests may be relevant and should be entered onto the 'balance sheet'. At the

end of the process it should be possible to 'strike a balance' between the sum of the certain and possible gains against the sum of the certain and possible losses. This approach includes:

- Identifying all the options,
- Entering all the actions and potential benefits, risks, advantages and disadvantages of each option including the likelihood or certainty they will happen,
- Underlining factors that are particularly important,
- Highlighting any one factor that has over-riding importance,
- Assessing which option is in the person's best interests.

10.4. The minutes should clearly identify the name of the person who has prepared the record together with the name of the organisation on whose behalf the minutes have been prepared.

10.5. The minutes should clearly identify who attended the meeting and what their relationship, whether person or professional is to the Service User.

10.6. In order to ensure that appropriate communication is forwarded to the person concerned, the minutes of the meeting must be presented in a way that is accessible to all. It should be apparent on the face of the minutes how the decision about the person's best interests was reached; what the reasons for reaching the decision were; who was consulted to help work out those best interests and what particular factors were taken into account.

## **11. Dispute resolution**

11.1. All efforts should be made to resolve differences of opinion about what is in a service user's best interests' through the best interest meeting process. In some instances this will not be possible. It may be that the best interests decision-making process has either become 'stuck' or has revealed an area of uncertainty, or there is dispute or difference of opinion between key agencies or a third party such as a family member, attorney or deputy. In these circumstances consideration should be given to whether an application should be made to the Court of Protection and legal advice sought.

11.2. In some situations where it becomes clear that a consensus cannot be reached the Court of Protection has made it clear that it expects local authorities to take the necessary action to bring the case before the Court. It is imperative that legal advice is sought without delay to ensure that the Service User is not further disadvantaged, the views of third parties are represented and that the reputation of the local authority is not potentially compromised. These situations may include situations where:

- No consensus could be reached about what is in the person's best interests
- The decision-maker cannot decide
- Parties cannot or refuse to abide by the decision reached by the meeting
- Legal action is threatened
- The decision is contentious
- The person is at risk of significant harm if the best interests decision is not followed.

11.3. If the dispute needs to be resolved urgently – because for example a service user lacking mental capacity is at risk of harm consider whether an urgent referral to the Court of Protection is needed. If this is the case, it is imperative that staff contact the organisations Legal Services as soon as possible. Remember that the Court of Protection is available out of hours in appropriate circumstances for emergencies.

11.4. Service Users, carers and any person holding a relevant lasting power of attorney authority, or court appointed deputy, are not bound to follow this guidance. However it is useful for the person to attend so that they can hear the views of all other interested parties. They may feel they want to bypass attending a best interest meeting, or they may not be happy with the outcome of a best interests decision meeting. In such cases the holder of a relevant lasting power of attorney may simply decide to proceed with their decision and/or take legal advice. If they decide to proceed with their decision, where there is some concern for the service user around the consequences of that decision the practitioner should take immediate legal advice from their organisations Legal Services. It may be that the matter will need to be referred to the court. In some instances an urgent application to the court may be required.

11.5. In the event that practitioners do not consider that the attorney or deputy is acting in the service user's best interests more generally (and not in relation to a particular incident) and are not discharging the duty of care they are required by the legislation to demonstrate this must be addressed if it is considered that it will have an adverse impact on the service user. The Office of the Public Guardian has a safeguarding function and will scrutinise the actions of an attorney or deputy and the Court of Protection has discretion to remove their authority. It is the responsibility of practitioner to bring any concerns to their manager and with support to immediately bring it to the attention of the Office of the Public Guardian who can be contacted on 0300 456 0300. In such instances the practitioner may need to contact their organisations Legal Services before making such a referral. Where the issue is around an immediate decision the process referred to 10.4 should be considered.

11.6. The MCA Code of Practice Chapter 15 offers further advice and direction.

## **12. Confidentiality**

1.1. Attendance, and the subsequent sharing of information relating to the person lacking mental capacity, must always happen in line with the Data Protection Act 1998 requirements and should be provided on a need-to-know basis. It may be appropriate for some contributors to only attend part of the meeting, or provide information through earlier discussion or in writing.

## **13. Further information**

- The British Psychological Society (BPS) 'Best Interests Guidance on determining the best interests of adults who lack the capacity to make a decision (or decisions) for themselves' (England and Wales) (2007). This is available on their website [www.bps.org.uk](http://www.bps.org.uk).
  - Using the MCA: A resource for families and friends of people with learning disabilities is available at [www.hft.org](http://www.hft.org). Section 6 has a chapter on best interests.
  - The online tool BRIDGETT allows you to check whether a best interests process has been followed. Completing it generates a printable report that indicates how closely the process used matches the guidance set out in the MCA Code of Practice [www.bestinterests.org.uk](http://www.bestinterests.org.uk).
- trust. A person with mental capacity can disagree with the views of the professionals involved in their care. Service users may take a contrary view to professional opinion and this should be respected if they have mental capacity to make the decision. Service users have the right to make lifestyle choices and to refuse services provided they are doing so from an informed and capacitated position. Where there are concerns that the service user may be acting under duress, or where there are concerns that the associated risks are significant, it is important to remember that there continues to be a duty of care and it may be appropriate to consider if the High Court's Inherent Jurisdiction should be utilised.

## **Appendix 1**

### **Mental Capacity Act 2005, Section 4, Best interests**

(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of –

(a) the person's age or appearance, or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

(3) He must consider –

(a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and

(b) if it appears likely that he will, when that is likely to be.

(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

(5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(6) He must consider, so far as is reasonably ascertainable –

(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so.

(7) He must take into account, if it is practicable and appropriate to consult them, the views of -

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(b) anyone engaged in caring for the person or interested in his welfare,

(c) any donee of a lasting power of attorney granted by the person, and

(d) any deputy appointed for the person by the court,

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

(8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which –

(a) are exercisable under a lasting power of attorney, or

(b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.

(9) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned.

(10) “Life-sustaining treatment” means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life.

(11) “Relevant circumstances” are those –

(a) of which the person making the determination is aware, and

(b) which it would be reasonable to regard as relevant.

Best Interest Meetings Guidance, v1.0 17 Checklist for Workers to be Completed Prior to Setting up a Best Interests Meeting

## Appendix 2

### Checklist for Workers to be Completed Prior to Setting up a Best Interests Meeting

Please ensure this form is completed fully, elaborating on your answers with further comments where appropriate or where indicated to do so.

**1. Are you clear about the decision that needs to be made, and are you satisfied that it is not an excluded decision under the MCA 2005?**

Yes

No

**Comments**

.....  
.....

**2. Have you got a thorough and complete assessment of needs?**

Yes

No

**Comments**

.....  
.....

**3. Have you explored fully the options that may be available to the service user, making sure that the options available to the person are not being limited by their age, disability, behaviour etc.?**

Yes

No

**Comments**

.....  
.....

**4. Have all efforts been made to enhance the person's capacity and to gain a view as to whether or not the person is likely to gain capacity in the future( for example would therapy or other input assist in the person regaining capacity?)**

Yes

No

**Comments**

.....  
.....

**5. Is there a capacity assessment in relation to each decision that we want to make?**

**Yes**

**No**

**Comments**

.....  
.....

**6. Have you any evidence (of the person's):**

- Past wishes and feelings;
- Present wishes and feelings;
- Any written statement made by the person when they had capacity;
- Beliefs and values;
- Any other factors that the person would be likely to consider if they were able to do so.

**Yes** (please provide details in the comments section below)

**No** (please provide a brief explanation in the comments section).

Failure to consider these issues may result in a flawed best interest decision.

**Comments**

.....  
.....  
.....

**7. Have you considered whose views you should seek and whether or not they should be invited to the Best Interests Meeting? Have you considered if an IMCA is necessary or desirable in this case?**

**Those who may need to be invited are as follows:**

- The person themselves;
- Family members;
- Anyone engaged in the care of the person, or interested in the person's welfare;
- Views from anyone named to be consulted;
- Any LPA/EPA or Deputy;
- Any relevant professional involved with the person;
- IMCA.

**Yes** (please give details below)

**No**

**Comments**

.....  
.....  
.....  
.....



**8. Where there is conflict between the family members should you consider whether the meeting should be split?**

Yes

No

**Comments**

.....  
.....  
.....

**9. Where a person cannot attend the meeting have you gained their views either orally or in writing? Please ensure that all such information is made available to the Chair before and at the meeting.**

Yes

No

**Comments**

.....  
.....  
.....

**10. Have you got all relevant information from any proposed providers of care including any proposed care plans?**

Yes

No

**Comments**

.....  
.....

**11. Have you conducted a risk assessment where appropriate?**

Yes

No

**Comments**

.....  
.....

**12. Have you sent all necessary information to be considered at the meeting to the participants in advance to allow sufficient time to consider it, and if necessary to seek their own professional/legal advice?**

Yes

No

**Comments**

.....  
.....

..... **Signed**

.....

**Name** .....

**Job Title** .....

**Date** .....

### Appendix 3 Best Interests Meeting Agenda

|    |   |
|----|---|
| 1. | <p><b>Introductions and Apologies</b></p> <ul style="list-style-type: none"> <li>• Housekeeping</li> <li>• Outline format of meeting – provide clarity that each person will have the opportunity to contribute</li> <li>• Information sharing and confidentiality</li> <li>• Statement of the legal framework</li> </ul>   |
| 2. | <p><b>Purpose of the Best Interest Meeting</b></p> <ul style="list-style-type: none"> <li>• Outline background facts</li> <li>• Clarification of decision(s) required</li> <li>• Outline mental capacity assessment. If there is no capacity assessment specific to the best interests decision(s), THE MEETING MUST STOP</li> <li>• 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?</li> </ul> |
| 3. | <p><b>View of the Relevant Person</b></p> <p>What is known about the person's:</p> <ul style="list-style-type: none"> <li>• Past wishes, feelings</li> <li>• Present wishes and feelings</li> <li>• Any relevant written statement made by the person when they had capacity</li> <li>• Beliefs and values and beliefs</li> <li>• Any other factors that the person would be likely to consider if they were able to do so</li> </ul>   |
| 4. | <p><b>Information from Relevant Parties</b></p> <ul style="list-style-type: none"> <li>• Views from anyone named to be consulted, any LPA, EPA or Deputy of the Court of Protection</li> <li>• Family members opinion</li> <li>• Professional opinion</li> <li>• IMCA (if involved)</li> <li>• Anyone engaged or caring for the person or interested in their welfare</li> </ul>  |
| 5. | <p><b>Discussion of Viewpoints</b></p> <ul style="list-style-type: none"> <li>• Identify and be clear about the options</li> <li>• Discuss benefits and advantages of each option</li> <li>• Assess likelihood of each option</li> </ul>  |
| 6. | <p><b>Summary and Evaluation of Options</b></p> <ul style="list-style-type: none"> <li>• Summary of the information gathered and discussion (consider having this available visually)</li> <li>• Recommendations highlighting and dealing with any counterbalancing factors</li> </ul>  |
| 7  | <p><b>Decision of the meeting about the person's best interests</b></p> <ul style="list-style-type: none"> <li>• Allow the opportunity for reaction and expression of feelings</li> <li>• Please note that the decision maker is not obliged to follow the decision of the meeting, but would need to give clear reasons why they did not do so</li> <li>• It may be that the decision-maker in particularly complex cases will need additional time away from the meeting to properly consider their decision. If this is the case the decision-</li> </ul>              |

|     |   |
|-----|---|
|     | maker should advise the meeting when the decision will be made available  |
| 8   | <p><b>Action plan</b></p> <ul style="list-style-type: none"> <li>• If the meeting cannot agree, decisions will need to be made about how to proceed, e.g. 2nd opinion, involvement of an IMCA, mediation, Court of Protection</li> <li>• Make sure the priority remains the welfare and safety of the person whose best interests are being assessed</li> </ul> |
| 9.  | <p><b>Communication Strategy</b></p> <ul style="list-style-type: none"> <li>• Service User and Carer Involvement and Feedback</li> </ul>  |
| 10. | <p><b>Any Other Business</b></p>  |

## Appendix 4

### Best Interests Meeting Minutes

#### Strictly Confidential

#### Information Sharing and Confidentiality

This Best Interests Meeting was convened under Worcestershire Safeguarding Board Mental Capacity Act Policy and Guidance. 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 requests 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. Best Interest Meetings

|  |                                     |                             |                |                      |
|--|-------------------------------------|-----------------------------|----------------|----------------------|
| <b>Date:</b>   |                                     | <b>Venue:</b>               |                |                      |
| <b>Name of Service User:</b>   |                                     | <b>Personal identifier:</b> |                |                      |
| <b>Address:</b>  |                                     |                             |                |                      |
| <b>Chair:</b>  |                                     | <b>Decision Maker:</b>      |                | <b>Minute Taker:</b> |
| <b>Name</b>  | <b>Relationship to Service User</b> | <b>Invited</b>              | <b>Present</b> | <b>Apologies</b>     |
|  |                                     | 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               |
| <b>Purpose of the Best Interest Meeting:</b>   |                                     |                             |                |                      |
| <b>Confirmation of Capacity Assessment:</b>  |                                     |                             |                |                      |
| <b>View of the relevant person:</b>  |                                     |                             |                |                      |
| <b>Information from relevant parties:</b>  |                                     |                             |                |                      |
| <b>Best interests decision – Balance sheet approach. Specify the different options that are being considered.</b>  |                                     |                             |                |                      |
| 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. Describe:</b>   |                                     |                             |                |                      |
| <b>Benefits for the person:</b>  |                                     |                             |                |                      |
| <b>Risks for the person:</b>   |                                     |                             |                |                      |

|   |                           |                |
|---|---------------------------|----------------|
| <b>Can this be achieved in a less restrictive way?</b>  |                           |                |
| <b>Option Two. Describe:</b>  |                           |                |
| Benefits for the person:  |                           |                |
| Risks for the person:   |                           |                |
| <b>Can this be achieved in a less restrictive way?</b>  |                           |                |
| <b>Option Three. Describe:</b>  |                           |                |
| Benefits for the person:  |                           |                |
| Risks for the person:   |                           |                |
| <b>Can this be achieved in a less restrictive way?</b>  |                           |                |
| <b>Option Four. Describe:</b>   |                           |                |
| Benefits for the person:  |                           |                |
| Risks for the person:   |                           |                |
| <b>Can this be achieved in a less restrictive way?</b>  |                           |                |
| <b>Discussion of viewpoints:</b>  |                           |                |
| <b>Additional information considered by the decision maker in making the best interests decision specified.</b>   |                           |                |
| Details:  |                           |                |
| <b>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.</b>  |                           |                |
| Details:  |                           |                |
| <b>Objections.</b>  |                           |                |
| 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:  |                           |                |
| <b>ACTION PLAN</b>  |                           |                |
| <b>Action</b>   | <b>Responsible Person</b> | <b>By when</b> |
|   |                           |                |
|   |                           |                |
|   |                           |                |
|   |                           |                |
| <b>Communication Strategy. Record here how interested parties will be advised of the decision.</b>  |                           |                |
| 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:                |                |

## **Appendix 5**

### **Best Interests Meeting Guidance For The Chair**

#### **Preparation**

- The Chair should request to see all previous best interests meeting minutes and case notes relevant to the case.
- Is the Chair 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 case conference**

- 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 to be used, who will be attending the meeting and why, and finally to offer the opportunity for any questions/concerns to be explored.
- As with best interests meetings, 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**

- 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 statutory 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 case conference.
- 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.

- **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).**
  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 (CAD) 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 Advocate?



16. Are there any other reports to be tabled?

17. Now that the family, EPA/LPA/CAD have heard all the relevant information, what are their views?

18. Outcome of decision. 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 medication. In the absence of agreement the matter will need to be referred to the legal department for advice and potential application to the court.

## Appendix 6

### Procedure for arranging a Best Interests Meeting

1. A decision has been made to convene a Best Interests meeting.
2. The key worker to agree a date, venue, available minute taker etc.
3. The key worker will arrange for invites to be sent to all staff involved along with details of what they need to provide in advance of the meeting, see below:.
4. The key worker is responsible, for ensuring there is administrative support for:
  - (a) recording apologies
  - (b) copying reports for all attendees
  - (c) the set-up of the meeting room
  - (d) informing the relevant reception areas
  - (e) records the outcome of the meeting
  - (f) place a copy of the minutes on the relevant system

5. Please see the agreed timescales below

#### Event

To convene the meeting

Reports/documents to be submitted to attendees.

Minute taker to produce the final set of minutes

The chair to authorise the minutes

Final approved set to be sent out to relevant people

#### Timescale

7 working days

At least 1 working day before the meeting but if possible 2 working days

Within 7 working days

Within 3 working days after receiving the minutes

Within 11 working days