

Adult Social Care Understanding Mental Capacity Involving the Adult



Coventry City Council



○ How should the person who lacks capacity be involved in working out their best interests?

It is vital that, wherever possible, the person who lacks capacity is involved because even if the person lacks capacity to make the decision, they may still have opinions that affect the decision, and on what they would want to happen. So, involving the person can help work out what would be in their best interests.

Time needs to be taken to explain to the person what is happening and why the decision needs to be made.

There are a number of practical steps which help.

These include:

- **Use simple language and / or pictures or photographs to help the person understand what the options are;**
- **Ask the person about the decision at a time and place where they feel most relaxed and comfortable;**
- **Break information down into a number of smaller points to make it easier for the person to understand;**
- **Use interpreters or people who can use sign language to communicate with the person.**



○ Example: Involving someone in working out their best interests

The parents of Amy, a young woman with learning difficulties, are going through a divorce and are arguing about who should continue to care for their daughter.

Though she cannot understand what is happening, they try to see if Amy can give some idea of where she would prefer to live.

An advocate is appointed to work with Amy to help her understand the situation to find out her likes and dislikes and things which are important to her. With the advocate's help, Amy is able to take part in the decisions about her future care.

○ How do the chances of someone regaining and developing capacity affect working out what is in their best interests?

Some decisions can be delayed if the person who lacks mental capacity may later become able to make the decision for themselves.

Some reasons which a person may get back mental capacity in the future include:

- **They may respond to treatment, either medication or some other form of treatment or therapy;**
- **Their ability to make decisions may increase over time (for example, the effects of medication or alcohol may wear off, or they may recover from a sudden shock);**
- **A person with learning disabilities may learn new skills or have new experiences which helps them to understand and make certain decisions;**
- **The person may have a condition which means their capacity may come and go from time to time (such as some types of mental illness). So, it may be possible to arrange for the decision to be made during a time when they do have capacity;**
- **A person who was previously unable to communicate may learn a new form of communication and so can let people know their views.**

A person may – over time and with the right support – be able to develop the skills to make decisions about what they want for their day to day care, for example. Although others may need to make the decision on the person's behalf to start with, all possible support should be given to them to help them to develop skills so that they can make the decision for themselves in the future.

○ Example: Taking a short-term decision for someone who may regain capacity

Mr Fowler has suffered a stroke leaving him severely disabled and unable to speak.

Within days, he has shown signs of improvement. There is hope he will recover over time. But at present both his wife and the hospital staff find it difficult to communicate with him and have been unable to find out his wishes.

Mr Fowler has always looked after the family finances, so Mrs Fowler has no access to his personal bank account to provide the family with money to live on or pay the bills.

Because the decision cannot be put off while efforts are made to find a way of communicating with Mr Fowler, an application is made to the Court of Protection for an order that allows Mrs Fowler to access Mr Fowler's money.

The decision about longer-term arrangements, on the other hand, can be delayed until alternative methods of communication have been tried and the extent of Mr Fowler's recovery is known.



The person's past and present wishes and feelings.

People who cannot express in words their current wishes and feelings may still be able to express these through their behaviour. Expressions of pleasure or distress are important in working out what is in their best interests.

It is also important to be sure that other people have not influenced the persons views.

An advocate could help the person make choices and express their views.

The person may have held strong views in the past which might affect the decision being made so all reasonable efforts must be made to find out whether the person has expressed views in the past that will have a bearing on the decision. This could have been in words, writing, behaviour or their habits, or recorded in any other way for example, home videos or audiotapes.

Any written statements the person might have made before losing their mental capacity could provide a lot of information about their wishes. This could include information about the type of medical treatment they wanted in the case of future illness, where they wanted to live or be cared for.

The decision maker should consider any written statements carefully. If their decision does not follow something a person has put in writing, they must record the reasons why. They should be able to justify their reasons if someone challenges their decision.

A doctor should take any written statements about medical treatment, which are made by a person before they lose capacity, as seriously as those made by people who have the mental capacity to make treatment decisions. But the doctor does not have to follow such a written request if they think that the treatment would be clinically unnecessary or not appropriate for the persons condition, and so not in their best interests.

○ Advance Decisions and Written Statements

There is an important difference between a written statement expressing treatment preferences and an advance decision to refuse treatment.

A written statement should be taken into account but the final decision rests with the decision maker.

An advance decision to refuse treatment, must be followed.

If there is no advance decision, treatment should be provided based on the person's best interests.

○ Everybody's values and beliefs influence the decisions they make.

These may include:

- **cultural background;**
- **religious beliefs;**
- **political convictions; or**
- **past behaviour or habits.**

Some people set out their values and beliefs in a written statement while they still have mental capacity.

Where people cannot make the decision, their wishes and feelings, beliefs and values should be taken fully into account – whether expressed in the past or now.

These wishes, feelings, beliefs and values will not necessarily be the deciding factor in working out their best interests but must be taken into account.

An assessment must consider past and current wishes and feelings, beliefs and values alongside all other factors, but the final decision must be based entirely on what is in the person's best interests.



○ Example: Considering beliefs and values

Anita, a young woman, suffers serious brain damage during a car accident.

The court appoints her father as deputy to invest the compensation she received. As the decision-maker he must think about her wishes, beliefs and values before deciding how to invest the money.

Anita had worked for an overseas charity.

Her father talks to her former colleagues. They tell him how important Anita's political beliefs were to her, so he decides not to invest in the bonds that a financial adviser had recommended, because they are from companies Anita would not have approved of.

Instead, he employs an ethical investment adviser to choose appropriate companies in line with Anita's beliefs.

The full set of Understanding Mental Capacity leaflets and further information is available at umccoventry.co.uk



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