

Adult Social Care Understanding Mental Capacity

What does best interests mean?



Coventry City Council

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○ What does Best Interests Mean?

If the Mental Capacity Assessment shows that the person lacks capacity to make the decision – then the Mental Capacity Act says that the decision can be made on their behalf, as long as it is made in their “best interests”

Working out what is in someone else’s best interests is not always easy so a number of steps must be taken to ensure that the person making the decision (the decision maker) makes a decision that is in the person’s best interests.

○ The Four Best Interests Guidance Questions

There are four questions that must always be considered by anyone who needs to decide what is in the best interests of a person who lacks capacity.

1. Can the decision wait until the person can make it for themselves?
2. Can the person be helped to make the decision for themselves?
3. What do other people who know the person think?
4. What is the least restrictive way of doing what needs to be done?

These questions are only a starting point and in many cases, lots of other things will also need to be considered

The decision maker must take into account all issues that are relevant to the decision, not just those that they think are important.



The decision maker must not act or make a decision based on what they would want to do if they were the person who lacked capacity, 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.

There may sometimes be disagreement about what is in a person's best interests.

So in order to work out whether the person has capacity it is important to:

- **follow the correct steps**
- **answer the four questions above**
- **follow the Best Interest Checklist**

This will make sure that everything that can reasonably be done has been done and the law has been followed to work out what the person's best interests are.

If agreement cannot be reached, the matter may be referred to the Court of Protection.

○ **The Decision to be Made**

People's mental capacity can be different from day to day – for instance someone with epilepsy may not be able to make a decision the day after a seizure – but may be able to do so a week after a seizure.

So a Best Interests decision can only be made for a specific decision at a specific time.

In order to be able to make a decision a person must be able to:

1. **Understand** information
2. **Remember** it for long enough to
3. **Weigh up** the pros and cons
4. **Communicate** their decision

It is important to be very clear about the decision that needs to be made and why it needs to be made.



0 Decision Makers and Decision Making

Who can be a decision maker?

The person making the decision is referred to as the 'decision maker' and it is their job to work out what would be in the best interests of the person who lacks capacity.

Day to Day Decisions - for most day to day actions or decisions, the decision maker will be the carer most directly involved with the person at the time.

Medical Treatment - where the decision involves medical treatment, the doctor or other member of healthcare staff responsible for the particular treatment or procedure is the decision maker.

Nursing Care - where nursing or paid care is provided, the nurse or paid carer will be the decision maker.

Social Care - where social care is provided, the social worker will be the decision maker

Lasting Power of Attorney - where the person who lacks mental capacity has a Lasting Power of Attorney (LPA), an Enduring Power of Attorney (EPA) or has a deputy appointed under a court order, they will be the decision maker for decisions which their position allows them to take.

So, this means that a number of different decision makers may be involved with a person who lacks capacity, to make different sorts of decisions at different times.

Group/Team Decisions - there are times when the decision needs to be made by a number of people. For example, when a care plan for a person who lacks capacity is being developed, different healthcare or social care staff might be involved in making decisions or recommendations about the care package. Sometimes these decisions will be made by a team of healthcare or social care staff.

At other times, the decision can be made by one person in the team. A different member of the team may then carry out that decision, based on what the team has worked out to be in the person's best interests.



○ Best Interests Checklist

Because every case and every decision is different, the Mental Capacity Act lists things that must be considered when trying to work out someone's best interests.

Decision makers must ensure that:

- **Working out what is in someone's best interests is not simply based on their age, appearance, health condition or behaviour;**
- **All relevant circumstances are considered when working out the person's best interests;**
- **Every effort is made to encourage and include the person who lacks capacity in making the decision;**
- **If there is a chance that the person may regain capacity to make a particular decision, that the decision is put off until later, if it is not urgent;**
- **Special considerations about decisions regarding life sustaining treatment are taken into account (see Leaflet 6 Life Sustaining Treatment);**
- **The person's past and present wishes and feelings, beliefs and values are taken into account;**
- **The views of other people who are close to the person are considered, as well as the views of an attorney or deputy.**

Not all the factors in the checklist will apply to all types of decisions or actions and in many cases lots of other factors will have to be considered too.

So, it is important not to take shortcuts in working out best interests. A proper assessment must be carried out each time.

There may not be time to examine all possible factors if the decision needs to be made urgently, but it is still important to show that the decision is being made in the person's best interests.

What is in a person's best interests may change over time. So even where similar actions need to be taken regularly to care for the person, their best interests should be regularly reviewed.



○ Limits to Best Interests

There are limits to what carers can do even if it is in the persons best interests.

Carers must not;

- **Use too much restraint – e.g. holding someone still for an injection that they do not want is restraint. Holding the arm of someone who is happy to have the injection is not restraint. If restraint is being considered then carers must think carefully about whether it is necessary to prevent harm to the person who lacks capacity and whether it is a proportionate response to the likelihood of the person suffering harm and the seriousness of the harm.**
- **Take away peoples freedom without proper approval – e.g. if a supported living provider needs to take control of where someone lives and the things that they are allowed to do – then they may need to ask for permission from the Court of Protection.**
- **Carers must not go against the wishes of someone who is legally allowed to make decisions on the persons behalf**
- **Carers must not go against an “advance decision” to refuse medical treatment**

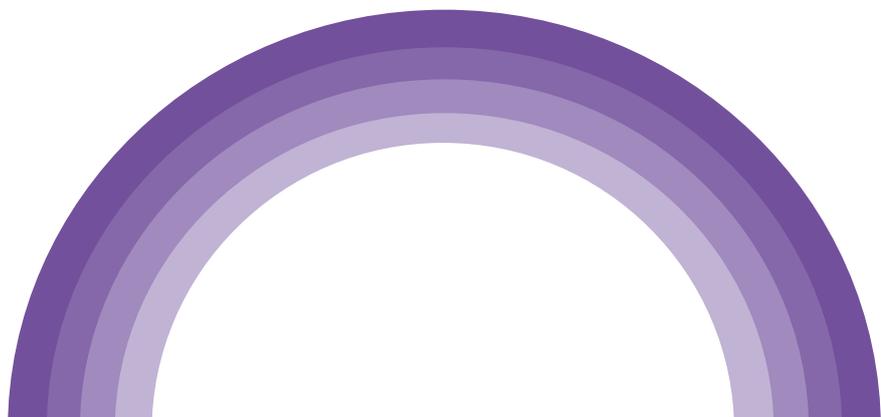
○ Recording

Anyone involved in the care of a person who lacks capacity should make sure they write down how they have worked out what is in the best interests of that person, including:

- **what the reasons for reaching the decision were;**
- **who was consulted to help work out best interests; and**
- **what particular factors were taken into account.**

○ Confidentiality

If confidential information needs to be discussed, for example about medical treatment or financial issues, the decision maker should only consult with those people whose views are relevant to the decision. It should not be discussed with others who are not involved in the decision making process.



○ Reasonable Belief about a Person's Best Interests

If someone acts or makes a decision because they reasonably believe that what they are doing is in the best interests of the person who lacks capacity and they follow the Best Interests Checklist, then this will make sure that they have followed the best interests principle.

What is important is that the decision maker can show why it was reasonable for them to think that the person lacked capacity and that they were acting in the person's best interests at the time they made their decision or took action.

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



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