

## Best Interests Meeting (Mental Capacity Act 2005)

Date of meeting:

Name of Person:

Chair\* of meeting:

Decision(s)\* to be made:

Decision Maker\*:

Issue	Aim	Who
1. Welcome & Introductions <ul style="list-style-type: none"> <li>each participant to state their relationship to P</li> </ul>	Information	Chair All
2. Apologies	Information	Chair
3. Statement of confidentiality & equal opportunities*	Agreement	All
4. Clarify purpose of meeting <ul style="list-style-type: none"> <li>Identify the decision(s) to be made: Does it need to be made today?*</li> <li>State Mental Capacity Act 2005 as statutory decision-making framework</li> <li>Emphasise decision(s) to be made on the basis of what is best for P, not what they think they would make for themselves</li> </ul>	Information Agreement	Chair All
5. Confirm determination of lack of capacity in relation to decision(s) <ul style="list-style-type: none"> <li>Share evidence</li> <li>Agree that all reasonable efforts made to enable P to make decision(s) for themselves</li> </ul>	Information	Person undertaking assessment of capacity
6. Advance Decision* and/or other decision making authority*	Information	All
7. Confirm name and role of decision maker	Agreement	All
8. Review of requirements of statutory checklist* <ul style="list-style-type: none"> <li>Refer to Form: <i>Capacity Assessment for Complex Decisions</i></li> </ul>	Discussion	All
9. Options and their potential outcomes <ul style="list-style-type: none"> <li>Discuss risks and benefits</li> </ul>	Discussion	All
10. Selection of least restrictive option <ul style="list-style-type: none"> <li>Document proposed treatment or actions</li> </ul>	Agreement	Decision maker +/- All
11. Risk identification & Management	Discussion & Agreement	All
12. Dispute resolution	Discussion & Agreement	Chair and All
13. Summary of decision and proposed actions	Information	Chair Decision Maker
14. Close of meeting	Information	Chair

\* See back page for guidance.

**This form should be used in conjunction with the *Capacity Assessment for Complex Decisions* Form, when it has been assessed that the Person lacks the capacity to make the named decision(s).**

If a situation is urgent and there is not time to hold a best interests meeting, the decision maker will still need to be able to justify that their actions are in the person (P)'s best interests. Where it may not be feasible to hold a formal best interests meeting, the decision maker will still need to undertake relevant consultation and meet the requirements of the statutory checklist.

Best interests decisions should be documented and become part of P's care plan. Care planning or review meetings are also useful as a means of consultation about what is in P's best interests.

### **Guidance notes**

#### **Preparation for the meeting**

The agenda needs to be sent out prior to the meeting, so that all those attending is clear about what the decision is that needs to be made and everyone is asked to bring along all relevant information they have which will assist in making the decision.

#### **Chair of meeting**

The decision maker may be the person who calls the meeting, but may not be the most appropriate person to chair it as they may be required to contribute a lot of information to the meetings. It is likely to be more helpful if the Chair has both skills and experience in doing this – given that those attending the meeting may not have met together before or may not be experienced in attending meetings (e.g. family members). It may also be helpful to consider an independent Chair where there is potential conflict of interests.

#### **Decision(s) to be made**

The meeting should be clear about the nature of the decision to be made. If the meeting is being called to make more than one decision, then each of the decisions should be clearly defined and the appropriate people for each decision should be at the meeting.

#### **Statement of Confidentiality**

The meeting is held taking due regard of the values and principles expressed in the Mental Capacity Act (2005) and its Code of Practice (2007).

Notes of the meeting are distributed in the strict understanding that they will be kept confidential and in a secure place. The matters discussed within this meeting are confidential to the members & the agencies they represent. The minutes will only be shared in the best interests of the person who lacks capacity.

It may be necessary to make the notes from this meeting available to the Court of Protection, the Criminal Courts and other professional staff involved in the welfare of the person who lacks capacity. Any such disclosure will be recorded.

#### **Statement of Equal Opportunities**

We recognise that certain people are the subject of discrimination and disadvantage. Best Interests meetings will seek to maintain the utmost respect for the individuals who lack mental capacity - any derogatory comments or comments that discriminate

against persons lacking capacity will be challenged by the Chair and other members of the meeting.

### **Does the decision need to be made today?**

The meeting needs to be held at the time the decision needs to be made, while still allowing time for the decision to be acted upon. It should not be so far in advance that circumstances might have changed by the time the decision needs to be acted upon. Consider whether the decision can be delayed until P has gained or developed capacity, but all those involved need to be clear that this would not place the person at any additional risk.

### **Advance Decisions**

Before a best interests decision meeting, the decision maker needs to check that P has not made any Advance Decisions in the past that are valid and applicable to the specific decision.

### **Other decision making authority**

When identifying the decision maker, checks must be made to identify any registered Lasting Power of Attorneys, Enduring Power of Attorney or Court Appointed Deputy with authority relevant to the specific decision(s). Where no such people exist, the decision maker becomes the person who is proposing the treatment/care/action.

### **Review of requirements of Statutory Checklist** (see checklist at the end)

- If a consultee is not able to attend, you must seek and record their views prior to the meeting.
- You must consider the instruction of an IMCA where appropriate, or the involvement of an advocate for the person lacking capacity.
- You must consider any previously expressed wishes that have not necessarily been written down.

### **Discussion and recording**

Ensure that all the views expressed within the meeting are recorded in the minutes; options when discussed must be recorded along with the pros and cons for those options (possibly using a flip chart). The reasoning behind the selection of the option chosen must be evident in the minutes.

### **Making the best interests decision**

- The final decision lies with the designated decision maker. They are not obliged to follow what the meeting decides, although they would need to be able to give good reasons as to why they thought their decision was more in the best interests of the person who lacked capacity than the decision made by the meeting.
- If there is a dispute about the decision or selection of options, the meeting must try to resolve the dispute. If this is not possible, the meeting could be adjourned and legal advice sought by the decision maker utilising their organisation's legal department with a view to applying for a Court of Protection judgement where agreement cannot be reached.
- In some cases, the decision reached may result in serious consequences for P or there may be adverse media interest - it is advisable to seek legal advice from the organisation's legal and communications teams before carrying out the action or treatment.

- At all times P's safety is paramount, therefore risks must be identified and managed proactively. All management strategies must be documented as should the person(s) identified as responsible for the management actions.

### **Statutory Best Interests Checklist** **(Mental Capacity Act 2005)**

4(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.

4(2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

4(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(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 decisions affecting him.

4(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.

4(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.

4(7) He must take into account, if it is practicable and appropriate to consult them, the views of:

- (a) anyone named by the person is 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 power of attorney granted by the person;
  - (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).

4(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.

4(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.

4(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.

4(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.