

'Best interests' | making decisions for other people



When a decision is made on behalf of someone who doesn't have the capacity to make that decision for themselves, their 'best interests' must always be considered.

Assessing 'best interests' is effectively a process that leads to the right decision for the individual concerned – which may not be the same as the family members or health and social care professionals anticipate and/or would prefer.

What is the Mental Capacity Act?

The Mental Capacity Act (MCA) is the law in England and Wales that protects and supports people who can't make complex decisions for themselves; it deals with the assessment of their capacity, and acts by their carers.

What is 'capacity'?

Capacity is the ability to make a decision for yourself about a particular matter. To have capacity a person must be able to:

- understand the information given to them about a particular decision
- retain that information long enough to be able to make the decision
- weigh up the available information to make the decision
- communicate their decision, whether by speech, sign language, or simple movements such as blinking or squeezing a hand

What are 'best interests'?

The MCA doesn't define 'best interests' explicitly, but it does provide a checklist to ensure that the principle is followed. Not all factors in the checklist will be relevant to every decision or action, but they must be considered every time a decision needs to be made.

The 'best interests' checklist

Avoid discrimination. Do not make assumptions about someone's best interests merely on the basis of their age, appearance, condition or an aspect their behaviour.

Identify and **consider all circumstances** relating to the decision in question which are most relevant to the individual. These will be unique to each individual, and to each decision.

Consider whether the decision will wait. If it is likely that a person might regain capacity (eg. after receiving medical treatment), consider whether the decision can wait until that time.

As far as possible, **allow and encourage the individual to take part** in the decision making process.

Take into account the person's past and present wishes, feelings, beliefs and values that might impact the decision, or the effects of a decision on other people eg. dependents.

Consult as widely as possible with other people for their views about the individual's best interests to determine if they have relevant information. As well as family, friends and carers, consultation should also extend to any attorney appointed under a Power of Attorney by the individual, or any deputy appointed by the Court of Protection to make decisions on their behalf.

Who determines ‘best interests’?

The MCA doesn't spell out who decides what is in a person's best interests because the decision maker depends on the type of decision to be made—whether in connection with financial, health or care matters—and the situation; it could therefore apply to family members making day-to-day decisions, carers, health professionals, attorneys or deputies.

The MCA expects that for most decisions about care and treatment will be taken by the professionals involved in delivering that care together with the person's family and carers.

If there is a disagreement about what may be in a person's best interests that can't be resolved by discussion, mediation or by following a complaints process, ultimately the Court of Protection might be called on to make the decision.

Are there any exceptions?

There are two exceptions to the best interests principle:

- if a person has previously made an advance directive to refuse medical treatment when they still had capacity to make that decision
- involvement in research

Life sustaining treatment

If a medical professional has to make a decision in respect of life-sustaining treatment in an emergency situation, they must still consider the patient's best interests, any previous statements and the view of their family and carers; the decision must not be motivated by a desire to bring about the person's death or be based on assumptions about their quality of life.

Are ‘best interests’ decisions final?

What is in a person's best interests could change over time. If similar decisions need to be taken in respect of care or treatment regularly, the person's best interests should be kept under review.

Taking note

The reasons for best interests decisions should be recorded by any staff involved in the care of someone who lacks capacity. Complex decisions often present several options and potential outcomes; how and why the final decision was reached and who was consulted should be clearly documented.

It might also be useful for family members and other carers to keep similar records for any major decisions they are required to make.

Further information / useful resources

Government website: [Mental Capacity Act](#) – Code of Practice and how to make decisions

[The Office of the Public Guardian](#) – making decisions on behalf of other people and making Lasting Powers of Attorney

[The Court of Protection](#) – making decisions on behalf of other people

This note is for information only and does not constitute legal advice.

The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk