



Support sheet – Best Interests Decisions

Description

A Best Interests decision is a decision made by applying the Best Interest principle, as set out in the Mental Capacity Act 2005. A Best Interests decision is a decision made for and on behalf of a person who lacks capacity to make their own decision.

Key elements

The person(s) making the decision for someone who lacks capacity should:

- Determine that the person does lack the capacity to make a decision
- The starting position is that a person actually does have capacity unless it has been established through an assessment that they lack capacity
- Encourage participation
- Do whatever is possible to encourage a person to take part in the decisions
- Identify all relevant circumstances
- Try to identify anything the person may have taken into account if they were able to make the decision for themselves
- Find out a person's views
- A person's preferences and wishes may have been expressed previously, verbally or in writing. Religion or culture may have a likely influence
- Avoid discrimination
- Do not make assumptions based upon someone's age, appearance, condition
- Assess whether the person might regain capacity
- Consider if capacity may be regained e.g. after medical treatment
- Do not make an assumption about the person's quality of life
- Nor be motivated in any way by a desire to bring about a person's death
- Consult with others for their views about the person's best interests
- This may be someone involved in caring, a close relative, someone previously named by the person, someone appointed under a Lasting Power of Attorney or a deputy appointed by the Court of Protection
- Avoid restricting a person's rights
- Consider if any other options which may be less restrictive of the person's rights
- After carefully considering all of the above it is good practice to clearly document what the decision under discussion was, who was consulted, what the outcome of the discussion was and the action taken

Associated links/documents

Best Interests decision making for adults who lack capacity, a toolkit:

<https://www.bma.org.uk/media/1850/bma-best-interests-toolkit-2019.pdf>