

## **Holding Best Interests Meetings**

When holding a best interest decision the following factors should be considered.

### **Purpose**

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.

There are some decisions that we are not entitled to take on behalf of someone else (known as excluded decisions). If the meeting has been called to discuss someone's Best Interests in relation to any of these decisions, then it should not proceed.

### **Chairing the meeting**

The person who has to implement the decision may be the person who calls the meeting. They may not, however, be the most appropriate person to Chair it as they may be required to contribute a lot of information to the meeting.

It is likely to be more helpful if the person who Chairs the meeting has both skills and experience in doing this. This is especially important, given that those attending the meeting may not have met together before, or may not be experienced in attending meetings (especially if family members are to attend).

### **Timing of the meeting**

The meeting needs to be held at the time the decision needs to be made, while still allowing sufficient time for the decision to be acted upon. This means it should not be so far in advance that circumstances might have changed by the time the decision needs to be acted upon. If the decision can be delayed until the person has or regained capacity then that should happen.

### **General principles**

- Invite participants in good time and ensure they know who to contact if they are delayed cannot attend etc.
- Ensure that all relevant parties are invited including relatives and people involved in the informal care of the person, anyone with powers of attorney or a deputy, other professionals and the IMCA if appointed.
- Distribute the agenda (including 'decision to be made') in advance of the meeting.
- Prepare the room in advance: pay attention to lighting in the room, seating arrangements, ventilation, availability of refreshments and water
- Start the meeting appropriately (including being on time)
- Appoint someone to take notes

## **Meeting Agenda**

### **Introductions, apologies, clarification**

The Chair needs to clarify at the start the decisions and purpose of the meeting. All present should say who they are and their relationship to the person. It might be useful to lay out some 'ground rules', such as listening to each other, treating other people's views with respect.

It is probably better not to ask people for their views as to what decision should be made at the start of the meeting, as they may then feel they have to justify and defend it. The Chair should explain the process of the meeting, in particular the requirement of the Section 4 of the Mental Capacity Act that Best Interests decisions comply with the Best Interests checklist.

### **Decision to be made and outcome of capacity assessment**

The Chair should reconfirm the decision or decisions to be made. If more than one decision is required the each decision needs to comply with the check list in its own right.

The Chair should clarify the outcome of the capacity assessment, including a brief summary of the support provided to the person.

### **Gathering information**

Each of the participants will be able to bring information that will help in the decision-making. The Best Interest checklist can serve as a guide to structure this part of the meeting:

- The decision should not be made on the basis of the person's age or appearance, condition, behaviour etc
- Consider whether it is likely that the person will at some time have capacity in relation to the matter.
- Involve the person as fully as possible in any act done or decision made on his/her behalf.
- Where the decision relates to life sustaining treatment the decision maker must not be motivated by a desire to bring about the death of the patient.
- Consider person's past and present wishes and feelings (in particular any relevant written statement made when the person has capacity).
- Consider the beliefs and values and any other factors that would be likely to influence his or her decision if he had capacity.
- Take into account, if it is practicable and reasonable to consult them, the views of:
  - Anyone named by the person to be consulted.
  - Any engaged in caring for the person or interested in her welfare
  - Anyone with a lasting power of attorney granted by the person
  - Any deputy appointed for the person by the court.

The final element would also include the findings of the IMCA report if appointed.

## **Discussion**

All the information is brought together, and the benefits and disadvantages of each course of action are noted. The benefits and disadvantages should be considered in terms of likelihood and impact: a disadvantage may be certain to happen, but not have much impact on the person, whereas a particular benefit may only be likely to happen, but would have an important impact on the person. A Best Interests decision would seek to maximise the benefits identified and minimise the disadvantages.

It might be useful to write this down (possibly using a flip chart), or another form of contemporaneous record.

## **Summary and evaluation**

When all the information has been gathered, discussed and noted, it is useful if the Chair of the meeting summarises the various points and asks the participants to evaluate which is the best course of action and why. It is useful to ask each person individually what they think and to give their reasons.

## **Decision**

The participants in the meeting need to decide what, on the balance of probability, is the best decision for the person. There may be some disagreement, but the group should try and reach a consensus decision. It is not good practice to leave the decision in order for it to be made by an individual outside of the meeting. If there is not enough information to make the decision at the meeting, another meeting should be called and all the information should be made available to the participants then.

It is also important to remember that the meeting is not authorised to make the decision to carry out the intervention – that is the responsibility of the person who is actually going to be carrying it out.

## **Failure to agree**

The MCA Code of Practice (para 5.68) suggests several options. A second meeting may be held, or further information sought. All attempts should be made to agree the decision in the meeting. However, if disagreements remain with the course of action that the decision maker intends to take then a compliant could be made through the organisation's formal procedures. Ultimately the Court of protection might need to decide what is in the person's Best Interests.

The Chair will be responsible for sending out notes of the meeting, the decisions and their reasons to those attending. Professional staff will be responsible for ensuring that the final notes are entered into the person's records.

## **If the situation is urgent**

There may not always be time to hold a Best Interests meeting – sometimes urgent action is needed, and the decision-maker has to act. In this case, they should do so – although will still need to be able to justify that their actions are in the person's Best Interests.

### **Best Interests meetings: some points to consider**

Has an assessment of capacity shown that the person lacks capacity to make the decision or decisions for themselves?	YES	NO
Is the decision to be made one that is allowed to be made under the Mental Capacity Act (i.e. not an excluded decision)	YES	NO
Has someone been appointed to Chair the meeting?	YES	NO
Has someone been appointed to record the Best Interests meeting and the outcome?	YES	NO
Has the Chair ensured that all of those mentioned in the statutory checklist have either been consulted or invited to the meeting (Including IMCA)?	YES	NO
Has the room been booked and set up:	YES	NO
Has the Chair sent out an agenda including;		
Introductions	YES	NO
Purpose of the meeting (the decision or decisions)	YES	NO
Review of requirements of the statutory checklist	YES	NO
Giving information	YES	NO
Discussion	YES	NO
Summary of information and factors to be considered	YES	NO
Deciding on Best Interests	YES	NO
Outcome recorded and distributed?	YES	NO

# **BEST INTERESTS DECISION MEETING**

## **DATE & TIME (START & FINISH)**

## **LOCATION (ROOM & VENUE)**

## **A G E N D A**

- 1.0 Introductions
- 2.0 Apologies
- 3.0 Clarification of roles & explanation of process
- 4.0 Decision to be made and outcome of capacity assessment
- 5.0 Information gathering : Mental Capacity Act Best Interests Check List:
  1. Decision should not be based on assumptions
  2. Consider if person will regain capacity
  3. How has person been involved in the decision?
  4. Does the decision relate to life sustaining treatment?
  5. What is known of the wishes and feelings of the person?
  6. What is known of the beliefs and values of the person?
  7. The results of any consultations (including IMCA report).
- 6.0 Discussion & consideration of options
- 7.0 Summary of discussion
- 8.0 Best Interests Decision
- 9.0 Record responses to Best Interests decision
- 10.0 Further action