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# Best Interest Decision

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## Best interest decision

Best Interest decision making is only undertaken if it has been established that the person lacks capacity to make the decision themselves.

*“An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.” s1(5) MCA 2005*

Best Interest decisions are made standing in the shoes of the person who lacks capacity, and so can only choose from options that would have been available to him if he had capacity to decide for himself. “Best interests” is not a “blank cheque” and does not “trump” prior resource allocation.

Some kinds of decision, typically about personal or family relationships, cannot be made using best interests.

Before making a best interest’s decision, think about whether P is likely to regain capacity to make the decision for him before the decision needs to be made.

The person must be included in the best interest decision making process as much as possible. Their wishes, beliefs and values – both at the moment, despite their lack of capacity for this decision now, and previously, if there was a time when they would have had capacity for this decision – are treated by the Courts as enormously influential in coming to a “best interests” decision. (The current Law Commission proposals to reform the law on deprivation of liberty go further, and argue that the MCA should be amended to make it a presumption as a starting point that the person’s wishes should determine their best interests).

Consult with relevant people. This includes anyone “engaged with caring for the person, or interested in their welfare” (i.e. not just family or “next of kin”, but also carers, neighbours and friends, where appropriate); anyone previously named by the person to be consulted, and any deputy or power of attorney.

As with assessment of capacity, the level of formality of a best interest’s decision should reflect the complexity and significance of the decision. For some, but not all, decisions, a formal meeting and careful documentation may be appropriate, noting the decision maker, process, those consulted, factors weighed, and decision made. Documentation should record the decision making, and not just the decision.

For very controversial or significant decisions the approval of the court is appropriate, and some decisions, such as serious medical treatment, can only be made by the Court.