

Adults and Children Mental Capacity Act 2005

Multi-Agency Best Interests Meetings Guidance

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PLEASE NOTE: The Best Interest Guidance builds on an assumption of a general understanding of the Mental Capacity Act. The Mental Capacity Act and Code of Practice should still be referenced as required. Most organisations will also have access to Mental Capacity Practice Guidance through internal online support mechanisms which will provide additional direction if required.

In Devon: www.devon.gov.uk/text/mca-practice-guidance

In Torbay: http://icare/Operations/mental_capacity_act/Pages/default.aspx

The Best Interest Meeting guidance can only be used if the person lacks capacity to make the relevant decision themselves. Specific advice will be given in this guidance regarding Best Interest meetings where there is a registered Lasting Power of Attorney.

This guidance cannot be used when a person has capacity to make an informed decision but which professionals view as unwise.

1. Context – Why best interests decision-making is required.

- 1.1 A failure to engage correctly and effectively with people who do not have the mental capacity to make specific decisions for themselves, may have serious implications for the Person, their family, informal carers and Health and Social Care providers (both Statutory and independent).
- 1.2 A Best Interest decision should be made where a Person (16+) lacks mental capacity to make a decision for themselves and needs others to make those decisions on their behalf.
- 1.3 The Mental Capacity Act Code of Practice should always be referred to in the first instance. This guidance builds on the Code, the Devon and Torbay 'Mental Capacity Policy' and the Mental Capacity Act Practice Guidance. <http://webarchive.nationalarchives.gov.uk/+http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf>
- 1.4 **The statutory '5 Key Principles' set out in section 1 of the Mental Capacity Act 2005 must be applied in all circumstances. These are:**
 - Any person, aged 16+, must be assumed to have the capacity to make his/her own decisions unless it is established otherwise.
 - All practicable steps must first be taken to assist people to make such decisions.
 - Any person who has capacity has the right to make an unwise decision.
 - Any actions done or decisions made for a person who lacks capacity must be done in that person's best interests.
 - Any action that needs to be done or decision that needs to be made must have due regard as to whether it can be effectively achieved in a way that does not restrict the person's rights and freedom of action.

A failure to make decisions that are in the best interests of the person may have serious implications, and could lead to legal challenge.

- 1.5 We recognise that establishing a positive relationship with the person is crucial in gaining their trust. A person with mental capacity can disagree with the views of the professionals involved in their care. The Person may take a contrary view to professional opinion and this should be supported if they have Mental Capacity to make the decision. All staff accept the right of the Person to make lifestyle choices and to refuse services provided they are doing so with Mental Capacity and from an informed position. (Principle 3 Unwise decision making)

2. What is a best interests meeting

- 2.1 A formal best interests meeting may be required to plan the decisions needed where the issues facing the Person are very complex or life changing. There may be a range of options and issues that require the considered input of a number of different staff as well as those with a personal and/or legal interest in the needs of the person lacking mental

capacity. Making sense of these issues and options may only be properly covered and addressed through holding such a meeting, and formally recording the discussions.

2.2 A best interests meeting should mean that the decision-making process is transparent, clearly recorded, and can stand up to subsequent scrutiny. In addition a best interests meeting should ensure that the Person is empowered and protected from overtly controlling or unsound decision-making.

2.3 Making a decision in a person's best interests requires evidence of the following:

- The Act's statutory principles and best interests checklist are properly considered;
- The Person, even though lacking mental capacity, remains central to the decision or decisions needing to be made and they are involved in the decision-making process where possible.
- That relevant professional and informal networks are properly consulted and if the Statutory criteria is met, an Independent Mental Capacity Advocate is instructed.
- A clear structure to the meeting, promoting partnership and collaborative working, the sharing of relevant information, the positive expression of different views, and an analysis of the risks and benefits attached to different options.
- Taking into consideration all relevant circumstances, including the person's beliefs and values, past and present wishes, and any written statements the person made when he/she had capacity. This may include an Advance Decision to refuse treatment or an Advance Statement of preferences.
- Deciding whether the decision can be delayed until the person regains capacity to make the decision for him/herself, if this is a possibility.
- Considering other factors which might have influenced the person's decision such as altruistic motives, consideration for others and duties and obligations towards future beneficiaries and/or dependents
- Consulting with others such as partners, carers, family members, and other relevant people where it is practicable to do so.
- Not being motivated by a desire to bring about the person's death when the decision relates to life-sustaining treatment

2.4 Where a decision cannot be made, for whatever reason, the best interests meeting will also have decided what further actions may be required to expedite future decision-making, by whom and in what timescale. Throughout, the Person's wellbeing and ongoing safety should remain central and decisions should be reached and recorded about how to maximize this during any delays that might occur.

Urgent situations

- 2.5 If the situation is very urgent however, a meeting may not be possible and decisions will have to be made based on the information available - including the availability of people for consultation. The doctrine of necessity may be invoked in an emergency situation. Actions in the person's best interest can be made providing the professional 'reasonably believes' a person lacks capacity and that the proposed treatment/action is necessary to save their life or to prevent a significant deterioration in their condition. Formal documentation of the capacity assessment and best interest decision should be completed as soon after the event as possible.
- 2.6 MCA does not give any clear indication as to how long it would be acceptable for decisions to be made under the doctrine of necessity. It is sensible to assume that as soon as someone's capacity can be formally assessed and their best interests decided, then this is what should happen. If the proposed treatment is not clearly 'necessary' then MCA processes should always be followed.

3. When is a Best Interest Meeting required?

- 3.1 The Act provides protection from liability for actions taken as long as those actions can be understood to have been in a person's best interests. As the seriousness of the decision and/or the action increases then the need for a clear documented record increases.
- 3.2 We would expect that a best interest meeting is held and formally recorded where the Person lacks capacity and:
- The decision that needs to be made is complicated or has serious consequences for the person;
 - The person being assessed is expressing different views to different people, anticipating what they think they want to hear;
 - The Person, family members, care providers or professionals are expressing opposing views and agreement can not be reached.
 - Where there are safeguarding adult concerns and the Best Interest decision making process has been directed by a Safeguarding Adult meeting.
 - A person is repeatedly making decisions that put them at risk or could result in suffering or damage.
- 3.3 These examples are not exhaustive and each situation needs to be judged on its merits, using professional judgment. Clarity is provided in the Mental Capacity Act Code of Practice where it gives guidance, on pages 59 -60, on where professionals should be formally involved.
- 3.4 Where there the options to be considered which involve a lot of complex information or is likely to be disputed, there is recourse in law to the Court of Protection. The Court will expect to see evidence of professional decision-making and best interests recording having already taken place, and this is another reason why holding a best interests meeting will be useful in ensuring that the decisions needing to be made are clearly understood.

4. The best interests meeting – who should attend?

- 4.1 This needs to be considered by the person who is chairing the meeting in consultation with the Decision maker and other relevant people.
- 4.2 Anyone who attends a best interests meeting must be clear about their role and the contribution they can make in the meeting. They should also come prepared with relevant information, and be prepared to contribute this to the discussion. Agreement should be reached about how to include the contribution of any person who is unable to attend, so that the meeting can still serve its purpose, rather than be unduly delayed.
- 4.3 Careful consideration should be given so as not to exclude people who may have an interest. Those people may include:
- The person assessed as lacking mental capacity;
 - family members, parents, carers and other people interested in the welfare, if this is practical and appropriate;
 - Any person who holds a registered Enduring Power of Attorney (pre-October 2007) or either a registered Lasting Power of Attorney for Property and finance or a registered Lasting Power of Attorney for Health and Welfare made by the person now lacking capacity;
 - Any advocate who is involved including the statutory Independent Mental Capacity Advocate (IMCA) Service. (*Refer to Chapter 10 of the MCA Code of Practice for further information about the role of the IMCA*)
 - Any Deputy appointed by the Court of Protection who has the relevant decision making authority on behalf of the person lacking mental capacity.
 - Any professionals involved and relevant to the decision that needs to be made

5. The Best Interest Meeting - Preparing for the meeting and supporting attendees.

- 5.1 For some, being invited to a Best Interest meeting can lead to that person experiencing feelings of increased anxiety and uncertainty about what may be expected of them during it.
- 5.2 It is important that the person who is chairing the meeting communicates clearly with those who have been invited at the earliest possible opportunity. This is particularly relevant when the person deemed to lack capacity is attending and for any family members, people appointed with Power of Attorney and Carers etc.

- 5.3 The person who chairs the meeting should also ensure that the following information is sent out to attendees prior to the meeting taking place.
- The contact details of a person who will be able to answer any questions relating to the meeting.
 - Information on how to access the Mental Capacity Act 2005 Code of Practice
 - An information booklet (appropriate to their need) All information booklets can be accessed

In Devon:

<http://www.devon.gov.uk/mca-booklet02.pdf>

In Torbay:

http://icare/Operations/mental_capacity_act/Pages/default.aspx

- An Agenda
- A list of people who have been invited and their roles.
- Special consideration should be given to the venue chosen for the meeting for eg wheelchair access/lifts/accessible parking, easy access to toilets, provision of refreshments etc
- It may be appropriate for the meeting to take place at the relevant person's home or day care setting to maximise their ability to attend for some or all of the meeting, if they want to.

See Appendix 1 for a more detailed Checklist.

6. The best interests meeting – who chairs?

- 6.1 It is best practice that the person who chairs or co-ordinates the best interests meeting is not the person who is the decision-maker. This avoids any possible conflict of interest. The decision-maker will need to attend the meeting.
- 6.2 It would usually be expected that a team or service manager will chair the best interests meeting. At the very least it needs to be someone who is able to chair a meeting at which competing views and opinions may be expressed. The chair of the meeting may be required to provide some mediation and negotiation so that the best interests of the person lacking mental capacity are not overlooked. The chair will also need to be able to summarise the discussion and confirm the way forward, and actions to be taken.
- 6.3 To support the Person, their family members and/or their Representatives in feeling as comfortable as possible it is strongly recommended that the Chair meets prior to the Best Interest meeting to explain the best interest decision making process, outline the meeting agenda, identify who will be attending and ensure all parties have opportunity to explore: their understanding of the MCA process, voice concerns, hopes or fears and have any anxieties allayed about the content of the meeting.

- 6.4 On the day of the meeting, it is good practice for the chair to arrange to meet, with relevant individuals at the venue, 20 minutes before the meeting is due to commence. It also allows time for the chair to orientate the attendees to the environment eg where the toilets are situated etc, and allow people to settle in the room before the other attendees arrive.
- 6.5 The chair may also consider the value of staggering or holding the meeting in sections, with some people invited to attend at a specific time. This is a useful strategy to implement in situations where family members do not get on with one another but wish to attend. The Chair should also consider whether it would be too distressing for the Person, if certain people attend the meeting and make arrangements for their views and opinions to be identified and recorded prior to the meeting and ensure they are tabled as part of the process. Wherever possible the preferred option would be to have all relevant individuals in the meeting with each other so that the Person's Best Interests can be explored together. Separate meetings should always be considered as a last resort with cogent reasons recorded to indicate why this was not possible.
- 6.6 A person's needs and situation may fall within different legislative structures or other processes, such as under the Mental Health Act or adult safeguarding arrangements. It may be necessary and appropriate to include reference to these elements within the best interests meeting, and this is a matter on which the chairperson for the meeting needs to give some consideration.
- 6.7 A Mental Capacity Act best interests meeting is not a substitute for an Adult safeguarding strategy meeting, or any meeting under the Care Programme Approach or other care planning framework. The person chairing the best interests meeting should confirm at the start of the meeting the relationship of the meeting to any of these other elements, and whether they may need also to be addressed separately within a different formal or statutory process.

7. The Best Interest Meeting – how is it recorded?

- 7.1 The best interests meeting needs to be structured and recorded in such a way that it is clear who attended (and those who were unable to attend) what discussions took place, and what outcomes were agreed. Whilst the notes should record the issues and the discussion that took place, the emphasis needs to be on an analysis of the risks and benefits attached to the different options and the identification of those responsible for undertaking the agreed actions as well as the timescales within which those actions will be taken.
- 7.2 The notes should clearly identify the name of the person who has prepared the record together with the name of the organisation on whose behalf the notes have been prepared.
- 7.3 We want to ensure that appropriate communication is forwarded to the person concerned, so the notes of the meeting must be presented in a way that is accessible to all. (Minute template available at Appendix 3)

8. Dispute resolution

8.1 Where there is a disagreement within the Best Interest decision making process, dispute resolution has an important role to play. The following will apply:

- Summarise and record who has raised the objection and the nature of it.
- Explore all possible options to resolve the objection.
- Inform participants that the meeting will now be closed without a decision being made.
- Describe what advice and guidance will now be sought regarding how to progress the decision making process from this point. For example liaison with Line Management will be required.
- Agree with the meeting participants how the person will continue to be supported/treated whilst further advice/guidance is sought. The Person should not be disadvantaged and their health and well being should be maintained.
- Inform the meeting participants how attendee's will be kept informed of developments and agree timescales.
- Clearly identify any required actions.
- Provide information about the Complaints procedure.

8.2 Following consultation with Line Manager a Best Interest Case Conference may be required.

8.3 A Best Interest Case Conference should then be chaired by the original chair's Line Manager. Advice and support may be requested from the MCA Lead if the matter is complex.

8.4 Considering whether to request a chair for a Best Interest Case Conference should only be considered after a Best Interest meeting has been held. The criteria for holding a Best Interest Case Conference are;

- No consensus could be reached about what is in the person's Best Interest and the Decision-maker cannot decide.
- Parties cannot or refuse to abide by the decision reached by the meeting.
- Legal action is threatened
- The decision is contentious

- 8.5 If the dispute needs to be resolved urgently – because for example the Person lacking mental capacity is at risk of harm then immediate discussion with the Line Manager should occur. The Line Manager may wish to discuss options with the Safeguarding Team to explore calling an urgent Safeguarding Meeting or requesting a referral to the Court of Protection. If this is the case, it is imperative that staff contact the organisations Legal Services as soon as possible.

9. Dispute Resolution and Lasting Power of Attorney's or Court appointed Deputies

- 9.1 The Person, family, carers or any other person holding a relevant registered Lasting Power of Attorney authority are the prescribed Decision maker and are not bound to follow this guidance.
- 9.2 The LPA or Court Appointed Deputy may feel they want to bypass attending a Best Interest meeting or subsequent Case Conference meeting. If this occurs then escalation to Line Managers would be required to ascertain if the dispute can be resolved at a local level.
- 9.3 If attempts at mediation and conflict resolution are not successful then the LPA/Deputy or more likely the statutory body providing a support package or treatment may consider taking the matter forward to the Court of Protection. All attempts to facilitate mediation should be clearly documented.
- 9.4 Before proceeding towards a request for the Court of Protection arbitration of this matter Statutory Bodies are advised to discuss the matter with their Legal department. LPAs and Deputies should be advised to see their own independent legal advice.
- 9.5 MCA Code of Practice Chapter 15 offers further advice and direction. Appendix 4 offers a suggested format letter that can be used to invite LPAs/Deputies to a Best Interest Meeting.

10. Proceeding to Court

- 10.1 Reference should be made to the Court of Protection guidance available on the Mental Capacity Act web page.
- In Devon:
<https://new.devon.gov.uk/adultsocialcareandhealth/assessments-paying-for-care-and-legal-issues/managing-someone-elses-affairs/mental-capacity-act-the-process-for-professionals/court-of-protection-process/>
 - In Torbay:
http://icare/Operations/mental_capacity_act/Pages/default.aspx

11. Confidentiality

11.1 Attendance, and the subsequent sharing of information relating to the person lacking mental capacity, must always happen in line with the Data Protection Act 1998 requirements and should be provided on a need-to-know basis. It may be appropriate for some contributors to only attend part of the meeting, or provide information through earlier discussion or in writing.

Appendix 1 Planning a Best Interest Meeting Checklist

	1. Is the decision required clear and necessary?
	2. Is there an up to date, fully completed, dated and signed mental capacity act assessment that is specific to the identified decision? Is it robust?
	3. Is there anyone with legal authority to make the decision (EPA/LPA CAD)?
	4. Have you requested the official paperwork re EPA/LPA and checked that it is relevant/registered (LPA)?
	5. Is there a need to make an application to the Office of the Public Guardian for a 1 st Tier Search? (advice available on Office of the Public Guardian website)
	6. Is there an IMCA involved? Has a new criteria been met for IMCA?
	7. Is an IMCA instruction required? (referral forms available on MCA Icare page)
	8. Is there a need for an Independent Advocate (other than an IMCA) as good practice?
	9. Is the client attending? If not why not? Is it a valid reason?
	10. Has the client's views and opinions past and present, any Advance Statements/ Advance Decisions been identified.
	11. Are the professional reports /assessments completed inclusive of assessed need, risk, available options, and professional recommendations, in writing /signed?
	12. Is the venue appropriate to meet needs of attendees?
	13. Are there any dynamics that will require the meeting to be staggered (i.e. split meeting)?
	14. Have the client/patient/family/carer been sent relevant reports, Agenda , list of attendees, information (booklet 2 or easy read booklet 5)?
	15. Has the minute taker been given all the required information such as list of attendees/time and venue/agenda/ any reports to be sent out along with invite?
	16. Is there time to meet with client/family/Carer prior to BIM?
	17. Are you in a position to proceed with a Best Interest Meeting at this time? If not do you need to complete an Action Plan (below) as part of the planning process.

	Action required	Responsible person	Timescale
1.			
2.			
3.			
4.			
5.			
6.			

Appendix 2

Letter to Person

Dear **Name**

There is a law for helping people make decisions about their lives, this is called the Mental Capacity Act.

The Mental Capacity Act says that everybody can make their own decisions AND that no one can make a decision for you.

The Mental Capacity Act says that people supporting you need to give you all the help you need to make decisions

If you have problems making a decision yourself other people may need to make the decision for you. Before this happens we have a meeting to talk about what is best for you. This called a Best Interest Meeting.

(Name of assessor) .has checked to see if you are able to make the decision about (INSERT SPECIFIC DECISION).....

(Name of Assessor) has told us that you have difficulties in:
Understanding/Retaining/Weighing/Communicating (delete as appropriate)
your decision regarding (INSERT SPECIFIC DECISION)

We want a Best Interest meeting to listen to what you want and to talk about different choices you have and what will best for you.

There will be some other people at the Best Interest Meeting. We will focus on what is important to you, and your wishes and feelings.

People at the meeting may have written reports. We will send you the reports to read before the meeting

If you have any questions about::

- The Mental Capacity Act,
- What to expect at your meeting, please call me before the meeting.

The Best Interest Meeting is on:

- Date
- Time
- Venue

We want a Best Interest meeting to:

- Listen to what you want and what is important to you
- To talk about the different choices you have

The choices you have are:

- 1
- 2
- 3
- 4
- 5

If you want add another choice please let me know before the meeting

We want (INSERT NAME OF ADVOCATE/IMCA/FAMILY/FRIEND/LPA/DEPUTY) someone who knows you well to come to the Best Interest Meeting. They can support you to tell us about your wishes and feelings.

The other people at the meeting will be:

- | | Name | Title |
|---|------|-------|
| • | 1. | |
| • | 2 | |
| • | 3 | |
| • | 4 | |
| • | 5 | |

If you do not want to come to the meeting you can:

- Write to me
- Telephone me
- You can ask someone else to attend on your behalf

If you would prefer, I will come and visit you to talk about any concerns you may have

I look forward to meeting you

Yours sincerely

Appendix 3

Easy read letter invite to Person

Making Decisions Easy Read Leaflet: Mental Capacity Act and Best Interest Meetings



There is a law for helping people make decisions about their lives. This is called the Mental Capacity Act 2005.



The Mental Capacity Act says that everybody can make their own decisions about things.



The Mental Capacity Act says that no one can make a decision for you. This is the law.



The Mental Capacity Act says that people supporting you need to give you all the help you need to make decisions.



The Mental Capacity Act says the people supporting you must check that you can make the decision yourself.



If you have problems making a decision for yourself we have a meeting to talk about what is best for you.

This is called a Best Interest meeting.



Sometimes it is important to have a Best Interest meeting before a decision is made for you.



There will be other people at the Best Interest meeting.



We will talk about the choices you have.

We will make sure we listen to what you tell us is important to you.



The people at the meeting may have written a report.



We will send you the reports to read before the meeting.



If you have questions about:



the Mental Capacity Act



what happens at a Best Interest meeting



please call me before your meeting. My number is 01392 xxxxxx.

Letter

Dear Name

Re: Service User DOB: 00/00/0000



Please come to a meeting to talk about.....(decision).



This is called a Best Interest meeting



The Best Interest Meeting is on:

Date:



Time:



Venue:



We want a Best Interest Meeting to:



listen to what you want.



talk about the different choices you have.



The choices you have are:

1.....

2.....

3.....

4.....

5.....



If you want to add another choice please tell me before the meeting.



We want (or someone who knows you well) to come to the Best Interest Meeting.



They can make sure that we listen to what is important to you.

The other people at the meeting will be:

Name

Title

- 1.
- 2.
- 3.
- 4.
- 5.





If you do not want to come to the meeting you can:



tell your advocate or another person about(decision)



Or write to us about (decision).



or telephone me about... (decision).



Or email me about.....(decision)



Or meet with me to talk about.....(decision)



Thank you,

Name

Appendix 4

Letter to Professionals

Dear **Name**

Re: Service User DOB: 00/00/0000

I would like to invite you to attend a Best Interest Meeting to be held on

Date:

Time:

Venue:

The Best Interest Meeting will ensure the legal framework set out within the Mental Capacity Act 2005 is complied with. The Mental Capacity Act provides a safeguard for individuals who lack capacity to make their own decisions. The Act directs everyone on what steps need to be followed before decisions can be made for a person who has been assessed as lacking the mental capacity to make a required decision for them self.

.....has been assessed as lacking the mental capacity to make the decision specifically in relation to.....

The purpose of the Best Interest Meeting is to allow all the people who have an interest in the welfare of the opportunity to sit down together to discuss and consider the benefits and burdens of all the possible options available.

Currently the potential options appear to be:

1.
2.
3.
4.

If you feel I have missed an option that should be considered please let me know so we can discuss its inclusion prior to the meeting.

The aim of the BI meeting is to ensure that all relevant information is considered and an informed best interest decision is made.

The other attendees at this meeting will be:

Name	Title
------	-------

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

You are required to provide a report, specific to the decision, which will be shared with

interested parties for discussion at the meeting. This report should be received no later than --/--/-- as it will be shared with relevant parties prior to the meeting. The report should be sent for the attention of and cover the following aspects:

- How long you have known the person and in what capacity
- Your professional views and opinion on the decision that needs to be made from the available options including all known risks and your rationale for that position.
- Your professional recommendation with regard to the decision that needs to be made.

Yours sincerely

Appendix 5

Letter to Family

Dear **Name**

Re: Service User DOB: 00/00/0000

I would like to invite you to attend a Best Interest Meeting to be held on

Date:

Time:

Venue:

The Best Interest Meeting will ensure the legal framework set out within the Mental Capacity Act 2005 is complied with. The Mental Capacity Act provides a safeguard for individuals who lack capacity to make their own decisions. The Act directs everyone on what steps need to be followed before decisions can be made for a person who has been assessed as lacking the mental capacity to make a required decision for them self.

.....has been assessed as lacking the mental capacity to make the decision specifically in relation to.....

The purpose of the Best Interest Meeting is to allow all the people who have an interest in the welfare of the opportunity to sit down together to discuss and consider the benefits and burdens of all the possible options available.

Currently the potential options appear to be:

- 1.....
- 2.....
- 3.....
- 4.....

If you feel I have missed an option that should be considered please let me know so we can discuss its inclusion prior to the meeting.

The aim of the BI meeting is to ensure that all relevant information is considered and an informed best interest decision is made.

The other attendees at this meeting will be:

Name	Title
------	-------

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

All reports submitted for consideration at the meeting, by any of the professionals mentioned above, will be forwarded to you prior to the meeting. It would be helpful if you can familiarise yourself with the content.

It is important that you feel supported to express your views and opinions but you may feel you do not wish to or are unable to attend the Best Interest Meeting. If this is the case please could I ask that you write your views and opinions in a letter to reach me no later than --/--/-- and I will ensure that the meeting representatives give

consideration to your opinion. Alternatively I can arrange for a telephone conversation or appointment to meet you to discuss your views.

Regardless of your intention to attend the Best Interest Meeting if you have any concerns or questions relating generally to the Mental Capacity Act or the Best Interest Meeting process I am happy to offer you support prior to the meeting if this would be helpful. Please call me on and arrangements can be made to facilitate this.

I look forward to hearing from you in the near future and to us working together in identifying the Best Interest Decision for

Yours sincerely

Appendix 6

Invitation to Lasting Power of Attorney

Dear [Insert Name]

As you are aware the Mental Capacity Act provides a safeguard for individuals who lack capacity to make their own decisions. The Act directs everyone on what steps need to be followed before decisions can be made for a person who has been assessed as lacking the mental capacity to make a required decision for them self.

.....has been assessed as lacking the mental capacity to make the decision specifically in relation to.....

We have seen documented evidence that has been verified with the Office of the Public Guardian and identifies you as having the legal authority for (Insert Person's name) as LPA/Deputy (delete as appropriate) to act in the role of decision maker relating to the following decision...(insert)

We believe that the decision that you need to make would benefit from the Local Authority/Health department (delete as appropriate) convening a Best Interest Meeting that will ensure the legal framework set out within the Mental Capacity Act 2005 is complied with.

The purpose of the Best Interest Meeting is to allow all the people who have an interest in the welfare of and you as the decision maker, the opportunity to sit down together to discuss and consider the benefits and burdens of all the possible options available.

Currently the potential options appear to be:

- 1.....
- 2.....
- 3.....
- 4.....

I am writing to invite you to consider attending a Best Interest Meeting on [Insert Date / Day], to be held in [Insert Venue] at [Insert time] for this purpose. To ensure the best decision is made for (insert person's name) we believe this meeting is essential to ensure that you have access to all relevant information. Your attendance will be very much appreciated but if you feel unable to attend then the minutes of this meeting will be forwarded to you, to inform your final decision.

The Mental Capacity Act Code of Practice chapter 5, 7 & 8 (link below) will help you to understand how to work out the best interests of a person who lacks capacity to make a decision at the time it needs to be made.

http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@disabled/documents/digitalasset/dg_186484.pdf

The other attendees at this meeting will be:

Name	Title
------	-------

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

All reports submitted for consideration at the meeting, by any of the professionals mention above, will be forwarded to you prior to the meeting. It would be helpful if you can familiarise yourself with the content.

If you have any concerns or questions relating generally to the Mental Capacity Act or the Best Interest Meeting process I am happy to offer you support prior to the meeting if this would be helpful. Please call me on and arrangements can be made to facilitate this.

It is envisaged through the dialogue at this meeting an appropriate course of action will be agreed upon which will be in (Insert Name.....) best interests. Where there is a dispute as to how to serve the best interests of the person who lacks mental capacity, there is recourse in law to the Court of Protection. The Court will however expect to see evidence of professional decision-making and best interests recording having already taken place, and this is another reason why holding a best interests meeting will be useful in ensuring that the decisions needing to be made are clearly understood.

I look forward to hearing from you in the near future and to us working together in identifying the Best Interest Decision for

Yours sincerely

Appendix 7

BEST INTEREST MEETING GUIDANCE FOR THE CHAIR

Preparation

The Chair should request to see all previous Best Interest meeting minutes.

Understand any arising disputes or known challenge, which will help them in making decisions about how to best organise and facilitate the case conference.

Consider whether to request a legal adviser to be present.

Understand who the essential attendees are and why any other people are considered relevant to consult in the decision.

Consider how to manage any issues relating to confidentiality and Data protection within the meeting.

Understand what information and guidance has already been provided to the attendees.

The day of the case conference.

The chair should meet in a quiet area with the person and any family members, LPA/EPA/CoD prior to the meeting commencing to explain the purpose of the meeting, the legislation to be used, who will be attending the meeting and why, and finally to offer the opportunity for any questions / concerns to be explored.

The Chair should consider whether this should take place immediately before the meeting, or to consider whether it would be more appropriate to offer the opportunity to meet with the person/family at an earlier stage. Where there are known tensions, open and timely communication between the Chair and the person/family etc. can help to reduce any building tensions and help both parties to plan how to achieve a more relaxed meeting process. This process is especially important in situations where there is dispute.

The Chair must remain mindful that at this stage they should not engage in any level of discussion about the decision to be made, but to remain solely focused on supporting attendees to understand the process and be as comfortable as possible throughout.

Opening the case conference

Open the meeting by reminding the attendees that the case conference is being held under the principles and provisions as set out in the Mental Capacity Act 2005. The meeting will be paying particular regard to the Statutory Best Interest Checklist, and lastly remind all of the need to pay regard to confidentiality.

The minutes template in Appendix 7 will helpfully provide the Chair with a list of matters that must be addressed through the discussions held within the Best Interest meeting. The template will also provide the minute taker headings to capture and clearly record the content of the meeting.

Ensure each person is offered the opportunity to introduce themselves and why they are attending the case conference. Inform everyone that the meeting will focus on the decision that is required to be made and no other.

Appendix 8

Best Interest Meeting Agenda

1.	<p>Introductions & Apologies</p> <p>Introductions Apologies Housekeeping</p>
2	<p>Purpose of the Best Interest Meeting</p> <p>What is the decision that needs to be made? Why is it being proposed? What steps have been taken to enable the person to make the decision themselves? Is there a documented relevant Mental Capacity assessment? What steps have been taken to enable the person to attend today and be involved in the Best Interest decision process? Is it possible to delay the decision making until the person regains capacity Are there any risks? Who is the decision maker</p>
3	<p>Views and Opinions of the relevant person</p> <p>Is there an valid and applicable Advanced Decision. Is there an Advanced statement of wishes What is known of the Persons previous values, wants and wishes? What are the available options?</p>
4	<p>Information from relevant Parties</p> <p>What professionals have been consulted What are their views and opinions What reports are available Is an IMCA involved, what is their opinion? Is there an independent advocate involved? What are the Family member's opinions?</p>
5	<p>Discussion of viewpoints</p> <p>Benefits and Burdens of the relevant options</p>
6	<p>Summary & Risk assessment of the situation</p> <p>Include positive and negative risk factors Risk to Human Rights Is there safeguarding concerns. Are there restrictions or Deprivations of the person's liberty?</p>
7	<p>Decision of the meeting about the person's best interests</p> <p>What are the Decision maker's final thoughts? Is it the least Restrictive option? Rationale for this decision? Is there agreement?</p>
8	<p>Action plan</p>
9	<p>Communication Strategy</p> <p>Service User Involvement & Feedback</p>
10	<p>Any Other Business</p>

Appendix 9
BEST INTEREST MEETING MINUTES
STRICTLY CONFIDENTIAL

Information Sharing & Confidentiality

This Best Interest Meeting was convened under Devon County Council & Torbay Care Trust Mental Capacity Act policy and procedures. These minutes are strictly confidential; they must not be photocopied and should be transferred and stored securely. Devon County Council & Torbay Care Trust will store electronic copies on a secure database.

Access should only be on a legitimate need to know basis. Additional requests to show these minutes to other people will only be considered by the Chair of the meeting and permission given, if there is a legitimate reason to disclose the information. Minutes of the meeting will be circulated to all attendees and those who have given apologies.

Copies of these minutes may be requested and disclosed in the event of a Data Protection access to records request, subject to exemptions.

Amendments:

PLEASE NOTE: Requests for amendments to these Minutes should be forwarded in writing to the Chair of the meeting, within seven days of the circulation date; otherwise they will be taken as an accurate record.

Mental Capacity Act (2005)

If a person has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that person, must be made in his/her best interests-Principle 4

Date:		Venue		
Name:		Paris No:		
Address:				
Chair:	Decision Maker:	Minute Taker:		
Name:	Designation/Location	Invited	Present	Apologies

1. What is the specific decision to be made? (The meeting must agree as this will be the focus of the meeting from this point onwards).

2. Why is it being proposed?

3. What steps have been taken to help the person attend the Best Interest Meeting today and be involved in the decision making process?

4. What steps have been taken to support the person in making the decision

themselves? (Why have these attempts failed).

5. Is there an up to date Mental Capacity Assessment to evidence the person lacks the capacity to make the decision required? (if not the meeting must stop)

6. Is it possible to delay the decision until the person regains capacity and will be able to make the decision themselves. Are there any risks to the person in delaying the decision?

7. Who is the Decision Maker? Is an EPA or appropriate LPA/Court Appointed Deputy in place who has the relevant authority to make the required decision?

8. Is there a valid and applicable Advance Decision, or Advance Statement that is relevant to the decision?

9. What do we already know about the person's values, wants and wishes?

10. What are the available/possible options to be considered? What are the positive and negative aspects of each, keeping the person's views and opinions central and taking into consideration all assessed and known risk.

11. What Health and Social staff/professionals have been consulted? What are their views and opinions?

**12. Is there a report from an Independent Mental Capacity Advocate (IMCA)?
If the person reaches the qualifying criteria for an IMCA instruction, it becomes a statutory requirement.
If the person has reached the qualifying criteria and an IMCA has not been instructed why is this case?**

13. Is there any feedback from an Independent Advocate?

14. Are there any other reports to be tabled?

15. Now that the family, EPA/LPA/CAD have heard all the relevant information, what are their views?

16. Discussion of viewpoints

- Benefits and Burdens
- All known risks identified
- Probability and severity considered
- Positive risks

Option 1 Benefits

Option 1 Burdens

Option 2 Benefits

Option 2 Burdens

Option 3 Benefits

Option 3 Burdens

17. Outcome of decision. The identified decision maker to make the final decision once all reports etc. have been tabled.

18. Has the decision maker chosen the least restrictive option? If not what is the rationale for the decision made.

19. Identify any actions, who has responsibility for each action and the timescale within which each must be completed.

20. If there is continued dispute or challenge at this stage, Chair to provide information on how to make a complaint, consider whether it would be appropriate to offer independent mediation and advise that consultation will be sought immediately with the legal service for advice.

ACTION PLAN

Action	Responsible Person	By when

Conclusion: What decision has been reached

If there is an objection who is objecting and what is the nature of the objection

What steps have been taken to resolve the objection

Communication Strategy

Any Other Business