# Mental Capacity Act 2005 – Best Interests Practice Guide

# This practice guidance is to be used in conjunction with the Mental Capacity Act 2005, Code of Practice. Justification for yours and others’ views and the eventual decision needs to be recorded and evidenced.

# Ensure that you have completed a full Mental Capacity Act Assessment following the legislation as outlined in the Mental Capacity Act 2005, and the guidance in the Code of Practice. The mental capacity assessment should clearly demonstrate, with supporting evidence, that the person lacks the mental capacity for the specific decision you are looking at in this person’s best interest. If not STOP now as you will have no legal right to violate the individuals rights and freedom of action.

1. Make sure you consider the provisions of Section 5 of the Mental Capacity Act 2005 and reference the statutory best interests checklist that follows.
2. Everything should be recorded and supported by evidence.
3. You must consider best interests from the incapacitated person’s point of view and evidence that you have done this.
4. Ensure that you are clear what the specific decision is and who the decision maker is.
5. All relevant people need to be consulted and their input needs to be recorded. If someone can not be consulted ensure you record why not.
6. Could any care or treatment be provided in a way that is less restrictive to their rights and freedom of action? What options have been tried or considered? Make it clear what else has been explored and why these options have been ruled out. What is the justification and rationale for your decision making. Where is your evidence to support this?

**Statutory Checklist**

Remember that this is not exhaustive and is a minimum. Please bear in mind that you are looking at best interests in a holistic way from the person’s point of view. Consider all aspects including emotional, practical and psychological wellbeing as well as health related matters. Record all input from those consulted and ensure any disagreements are noted and evidence that you have considered all of this in the process.

**Encourage participation**

* Do whatever is possible to enable and encourage the individual to take part, or improve their ability to take part within the decision making process (including reasonable adjustments)

**Identify all relevant circumstances**

* Try to identify everything that the individual lacking capacity would take into account if they were making the decision, or acting for themselves

**Find out the person’s views**

* Try to find out about the individual’s past/current wishes or views surrounding the decision/topic. Can they express their views now? If not, is there anything in their past that can help? Their views might have been expressed verbally, in writing or through behaviour or habits.
* Has the individual any beliefs or values (e.g. religious, cultural, moral or political) that might influence the decision in question?
* Has the individual made an advanced statement?
* Has the individual talked to family or friends about this topic?
* Are there any other factors the person themselves would be likely to consider if they were making the decision or acting for themselves?

**Avoid any form of discrimination**

* Do not make assumptions about someone’s best interests merely on the individual’s age, appearance, gender, sexual orientation, ethnicity, religion, condition or behaviour

**Assess whether the individual is likely to regain capacity**

* Consider whether the individual is likely to regain capacity – If **YES**, can the decision wait until then?

**Consult others**

**Try to consult**

* Anyone previously named by the person as someone to be consulted on either the decision in question or something similar.
* All close relatives or friends and anyone engaged in caring for the person.
* Anyone who knows the person e.g. family, carer, and friends and may have a viewpoint on what the individual would have wanted.
* Is there a Lasting Power of Attorney? – if **YES** they must be contacted and consulted.
* Is there a Deputy appointed by the Court of Protection? – if **YES** they must be contacted and consulted.
* If there is no one who can speak on behalf of the individual – consult an Independent Mental Capacity Advocate (IMCA)

Consider only the information relevant to the decision making. Be mindful of privacy, dignity and confidentiality and only share information on a need to know basis. Demonstrate that you have carefully assessed any conflicting evidence. Do not make assumptions about the person’s quality of life.

**Avoid restricting the individual’s rights**

* Consider whether there is a less restrictive option

**Making the best decision**

* Weigh up all of the factors listed above in order to determine what is in the individual’s best interests.
* If the decision relates to safeguarding, refer to Dudley’s Safeguarding procedures:

<http://safeguarding.dudley.gov.uk/safeguarding/adults/>