

3. Best interests (if a person lacks capacity)

Best interests is not simply what the professional or family think is in the person's best interests.

Best interests requires the following to be considered *as a minimum*:

1. **Have you consulted others?** You must consult with all those who can speak for the individual (eg. partner, parents, legal guardian, relatives, carer, health/social care, professional, health & welfare LPA, court appointee). If time allows and there is no relative, legal guardian or court appointee for anyone 16yrs or over, you must instruct an Independent Mental Capacity Advocate (IMCA)
2. **Have you avoided making assumptions merely on the basis of the individual's age, appearance, condition or behaviour?**
3. **Have you considered if the individual is likely to have capacity at some date in the future and if the decision can be delayed until that time?**
4. **Have you done whatever is possible to permit and encourage the individual to take part in making the decision?**
5. **If this is about life-sustaining treatment have you ensured that no-one**
 - a) is solely motivated by a desire to bring about the individual's death?
 - b) has made assumptions about the individual's quality of life?
6. **Have you determined the individual's wishes and feelings, beliefs and values, including any statement made when they had capacity?**
7. **Has consideration been given to the least restrictive option for the individual?**
8. **Have you considered factors such as emotional bonds, family obligations that the person would be likely to consider if they were making the decision?**
9. **Having considered all the relevant circumstances, what is the decision/action to be taken in the best interests of the individual?**

All the above must be documented in the health record

2005 Mental Capacity Act

Capacity and Best Interests

Think capacity & Follow best interests

3 doorstep principles

1. Think capacity
2. Capacity is specific to the decision being made at that time
3. Best interests is a process required by law

3 practice principles

1. If there is no evidence of an impairment or disturbance of mind or brain and a decision is needed
= obtain consent
2. If you suspect an impairment or disturbance of mind or brain and a decision is required
= test capacity
(see sections 1 & 2)
3. Capacity lacking for this decision
= best interests
(See section 3)

1. Capacity and your patient

Is your patient feeling muddled, confused, disorientated, forgetful, withdrawn, or do they have altered consciousness?

Ask yourself:

Do you suspect an impairment or disturbance of mind or brain?

If the answer is YES and there is a key decision to be made

Formally assess AND document capacity (see opposite).

This is everyone's responsibility

Examples of important decisions that may require assessment of capacity

- Admission to hospital and/or ICU
- Decisions about CPR; withdrawal of treatment
- Procedures such as CT, MRI, catheterisation, paracentesis, surgery
- Conflicting views regarding decision
- Discharge planning
- Drugs with risk of serious adverse reaction (eg. antibiotics, strong opioids)

Examples of decisions for which verbal consent is often sufficient

- Basic hygiene (eg. washing, shaving); Dressing assistance
- Blood and sputum samples
- Compliance with prescribed drugs; Drugs with little risk of reaction (eg. antacids)

But take note, compliance is not the same as consent or best interests so, if in doubt, follow the process opposite.

2. Assessing capacity

- Capacity should be assumed, but if you suspect an impairment or disturbance of mind or brain
- capacity must be assessed for each decision.
- It is the duty of the healthcare professional responsible for the decision that should assess capacity, eg. surgeon for surgery, nurse for catheterisation, social worker for care arrangements.

The responsible healthcare professional needs to consider the following questions:

1. Is the individual able to **communicate their decision in any way**?
NB. Every effort should have been made to enable this
2. Can the individual **understand all the relevant information** about the decision?
NB. The information must be provided in a way that enables the individual to understand
3. Do you consider the individual able to **retain the information** long enough to use it to make a choice or an effective decision?
4. Do you consider the individual able to **use or weigh that information** as part of the process of making the decision?

If the answer is YES to all questions, the individual has capacity and their decision takes precedence, even if others believe that decision to be unwise.

If the answer was NO to any of the questions, the individual does not have capacity and the individual's best interests must now be estimated (see overleaf).

The above must be recorded in the health record.