

## BEST INTEREST DECISIONS

### Case studies

All these case scenarios have been reproduced from the Mental Capacity Act 2005 Code of Practice and Making Decisions – A guide for people who work in health and social care.

#### **Scenario 1: Pedro (involvement in best interests decision-making)**

Pedro, a young man with a severe learning disability, lives in a care home. He has dental problems which cause him a lot of pain, but refuses to open his mouth for his teeth to be cleaned.

The staff suggest that it would be a good idea to give Pedro an occasional general anaesthetic so that a dentist can clean his teeth and fill any cavities. His mother is worried about the effects of an anaesthetic, but she hates to see him distressed and suggests instead that he should be given strong painkillers when needed.

While the views of Pedro's mother and carers are important in working out what course of action would be in his best interests, the decision must not be based on what would be less stressful for them. Instead, it must focus on Pedro's best interests.

Having talked to others, the dentist tries to find ways of involving Pedro in the decision, with the help of his key worker and an advocate, to try to find out the cause and location of the problem and to explain to him that they are trying to stop the pain. The dentist tries to find out if any other forms of dental care would be better, such as a mouthwash or dental gum.

The dentist concludes that it would be in Pedro's best interests for:

- A proper investigation to be carried out under anaesthetic so that immediate treatment can be provided
- Options for his future dental care to be reviewed by the care team, involving Pedro as far as possible.

#### **Scenario 2: Jack (involvement in best interests decision making)**

Jack, a young man with a brain injury, lacks capacity to agree to a rehabilitation programme designed to improve his condition. But the healthcare and social care staff who are looking after him believe that he clearly needs the programme, and have obtained the necessary funding from the Primary Care Trust.

However, Jack's family want to take him home from hospital as they believe they can provide better care for him at home.

A 'best interests' case conference is held, involving Jack, his parents and other family members and the relevant professionals, in order to decide what course of action would be in the Jack's best interests.

A plan is developed to enable Jack to live at home, but attend the day hospital every weekday. Jack seems happy with the proposals and both the family carers and the healthcare and social care staff are satisfied that the plan is in his best interests.

### **Scenario 3: Martina (following the best interests checklist and getting all the relevant information)**

Martina, an elderly woman with dementia, is beginning to neglect her appearance and personal hygiene and has several times been found wandering in the street unable to find her way home. Her care workers are concerned that Martina no longer has capacity to make appropriate decisions relating to her daily care. Her daughter is her personal welfare attorney and believes the time has come to act under the Lasting Power of Attorney (LPA).

She assumes it would be best for Martina to move into a care home, since the staff would be able to help her wash and dress smartly and prevent her from wandering.

However, it cannot be assumed *simply on the basis of her age, condition, appearance or behaviour* either that Martina lacks capacity to make such a decision or that such a move would be in her best interests.

Instead, steps must be taken to assess her capacity. If it is then agreed that Martina lacks the capacity to make this decision, all the relevant factors in the best interests' checklist must be considered to try to work out what her best interests would be.

Her daughter must therefore consider:

- Martina's past and present wishes and feelings
- The views of the people involved in her care
- Any alternative ways of meeting her care needs effectively which might be less restrictive of Martina's rights and freedoms, such as increased provision of home care or attendance at a day centre.

By following this process, Martina's daughter can then take decisions on behalf of her mother and in her best interests, when her mother lacks the capacity to make them herself, on any matters that fall under the authority of the LPA.

#### **Scenario 4: Andre (past and present wishes and feelings)**

Andre, a young man with severe learning disabilities who does not use any formal system of communication, cuts his leg while outdoors. There is some earth in the wound. A doctor wants to give him a tetanus jab, but Andre appears scared of the needle and pushes it away. Assessments have shown that he is unable to understand the risk of infection following his injury, or the consequences of rejecting the injection.

The doctor decides that it is in the Andre's best interests to give the vaccination. She asks a nurse to comfort Andre, and if necessary, restrain him while she gives the injection. She has objective reasons for believing she is acting in Andre's best interests, and for believing that Andre lacks capacity to make the decision for himself.

#### **Scenario 5: Anita (beliefs and values)**

Anita, a young woman, suffers serious brain damage during a car accident. The court appoints her father as deputy to invest the compensation she received. As the decision-maker he must think about her wishes, beliefs and values before deciding how to invest the money.

Anita had worked for an overseas charity. Her father talks to her former colleagues. They tell him how Anita's political beliefs shaped her work and personal beliefs, so he decides not to invest in the bonds that a financial adviser had recommended, because they are from companies Anita would not have approved of. Instead, he employs an ethical investment adviser to choose appropriate companies in line with her beliefs.

#### **Scenario 6: Amy (involving the person)**

The parents of Amy, a young woman with learning difficulties, are going through a divorce and are arguing about who should continue to care for their daughter. Though she cannot understand what is happening, attempts are made to see if Amy can give some indication of where she would prefer to live.

An advocate is appointed to work with Amy to help her understand the situation and to find out her likes and dislikes and matters which are important to her. With the advocate's help, Amy is able to participate in decisions about her future care.

#### **Scenario 7: Lucia (considering other people's views)**

Lucia, a young woman with severe brain damage, is cared for at home by her parents and attends a day centre a couple of days each week. The day centre staff would like to take some of the service users on holiday. They speak to Lucia's parents as part of the process of assessing whether the holiday would be in her best interests.

The parents think that the holiday would be good for her, but they are worried that Lucia gets very anxious if she is surrounded by strangers who don't know how to communicate with her. Having tried to seek Lucia's views and involve her in the decision, the staff and parents agree that a holiday would be in her best interests, as long as her care assistant can go with her to help with communication.

### **Scenario 8: Mrs Prior (demonstrating reasonable belief)**

Mrs Prior is mugged and knocked unconscious. She is brought to hospital without any means of identification. She has head injuries and a stab wound, and has lost a lot of blood. In casualty, a doctor arranges an urgent blood transfusion. Because this is necessary to save her life, the doctor believes this is in her best interests.

When her relatives are contacted, they say that Mrs Prior's beliefs meant that she would have refused all blood products. But since Mrs Prior's handbag had been stolen, the doctor had no idea who the woman was nor what her beliefs were. He needed to make an immediate decision and Mrs Prior lacked capacity to make the decision for herself. Therefore he had reasonable grounds for believing that his action was in his patient's best interests – and so was protected from liability.

Now that the doctor knows Mrs Prior's beliefs, he can take them into account in future decisions about her medical treatment if she lacks capacity to make them for herself. He can also consult her family, now that he knows where they are.

### **Scenario 9: Mr Graham (dealing with disagreement)**

Some time ago, Mr Graham made a Lasting Power of Attorney (LPA) appointing his son and daughter as joint attorneys to manage his finances and property. He now has Alzheimer's disease and has moved into private residential care. The son and daughter have to decide what to do with Mr Graham's house. His son thinks it is in their father's best interests to sell it and invest the money for Mr Graham's future care. But his daughter thinks it is in Mr Graham's best interests to keep the property, because he enjoys visiting and spending time in his old home.

After making every effort to get Mr Graham's views, the family meets to discuss all the issues involved. After hearing other family views, the attorneys agree that it would be in their father's best interests to keep the property for so long as he is able to enjoy visiting it.

### **Scenario 10: Robert (settling disagreements)**

Robert is 19 and has learning disabilities and autism. He is about to leave his residential special school. His parents want Robert to go to a specialist unit run by a charitable organisation, but he has been offered a place in a local supported living scheme. The parents don't think Robert will get appropriate care there. The school sets up a 'best interests' meeting. People who attend include Robert, his parents, teachers from his school and professionals involved in preparing Robert's care plan.

Robert's parents and teachers know him best. They set out their views and help Robert to communicate where he would like to live. Social care staff identify some different placements within the county. Robert visits these with his parents. After further discussion, everyone agrees that a community placement near his family home would be in Robert's best interests.

### **Scenario 11: (delaying a decision)**

Mr Fowler has suffered a stroke leaving him severely disabled and unable to speak. Within days, he has shown signs of improvement, so with intensive treatment there is hope he will recover over time. But at present both his wife and the hospital staff find it difficult to communicate with him and have been unable to find out his wishes. He has always looked after the family finances, so Mrs Fowler suddenly discovers she has no access to his personal bank account to provide the family with money to live on or pay the bills. Because the decision can't be put off while efforts are made to find effective means of communicating with Mr Fowler, an application is made to the Court of Protection for an order that allows Mrs Fowler to access Mr Fowler's money.

The decision about longer-term arrangements, on the other hand, can be delayed until alternative methods of communication have been tried and the extent of Mr Fowler's recovery is known.

### **Scenario 12: Mr Oliver (using the Mental Health Act)**

Mr Oliver has a learning disability. For the last four years, he has had depression from time to time, and has twice had treatment for it at a psychiatric hospital. He is now seriously depressed and his care workers are worried about him.

Mr Oliver's consultant has given him medication and is considering electro-convulsive therapy. The consultant thinks this care plan will only work if Mr Oliver is detained in hospital. This will allow close observation and Mr Oliver will be stopped if he tries to leave. The consultant thinks an application should be made under section 3 of the Mental Health Act (MHA).

The consultant also speaks to Mr Oliver's nearest relative, his mother. She asks why Mr Oliver needs to be detained when he has not needed to be in the past. But after she hears the consultant's reasons, she does not object to the application. An approved social worker makes the application and obtains a second medical recommendation. Mr Oliver is then detained and taken to hospital for his treatment for depression to begin.