



## **Best Interests Decisions;**

### **The Balance Sheet approach; supporting assessors with the process**

**This guidance is for all members of staff working with customers who have been assessed to lack mental capacity - including Children and Young People Services.**

**Members of staff are reminded that this guidance is not a substitute for reading the Code of Practice to which a link is included here;**

- <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>

The Mental Capacity Act clarifies within the 4th statutory principle; that any decision made, or any act performed on behalf of a person lacking the mental capacity to consent to the arrangements must be undertaken in that person's "best interests.

Given the wide range of potential decisions covered by the Act, the term "best interests" is not defined in the legislation. However, the Code of Practice provides in Chapter 5 guidance on how to determine the best interests of a person who has been assessed to lack mental capacity to make the decision themselves.

Using the "best interests checklist" as provided in Chapter 5 of The Code; the following factors need to be taken into account in determining the best interests of a person lacking capacity:

- Do not make assumptions about someone's best interests merely on the basis of the person's age or appearance, condition or an aspect of their behaviour.
- Try to identify the issues and circumstances relating to the decision that are most relevant to the person lacking capacity and throughout make decisions which are as least restrictive and within the person's best interests.
- Consider whether the person is likely to regain mental capacity and if so can the decision wait until such time that they can make it themselves?
- Do whatever is possible to enable and encourage the person to participate as fully as possible in making the decision.
- Try to find out the views of the person by reference to their past and present wishes and feelings, particularly any relevant written statements made when the person had capacity. Consideration should also be given to any beliefs and values (faith based, cultural or moral) that would be likely to influence the decision.
- Consult other people where it is practicable and appropriate in the light of the person's right to confidentiality. In particular try to consult with anyone previously named by the person as someone to be consulted. In addition unpaid carers, close relatives and friends who take an interest in the person's welfare including anyone holding Enduring or Lasting Power of Attorney or any Deputy appointed by the Court of Protection should be consulted.

## **Determining what is in a person's best interests**

Section 1(5) of the Act confirms that the best interest principle applies to any decision made, on behalf of someone where there is reasonable belief that the person lacks capacity under the Act. This includes informal day-to-day decisions and actions as well as decisions that are made by the courts. It is therefore important that members of staff record why they think a specific decision is in the person's best interests. This is particularly important if the decision that is made is contrary to the views of somebody who has been consulted while working out the person's best interests.

In many situations the best interests decision will be able to be made reasonably informally. However; where the risks are great, the decision that is required to be made is complex, there are many people involved or where significant disagreement is anticipated, then it may be more appropriate for the decision to be made within the framework of a best interests meeting.

Within more complex situations the adoption of a "balance sheet" approach for recording the context of best interests decisions is highly recommended as it provides a coherent format for considering the available options within a framework which is both robust and transparent.

### **The Balance Sheet approach to making best interests decisions.**

The Balance Sheet approach enables the wishes or preferences of the person, and the views of family and carers to be considered and to decide what is, on balance, considered to be the decision that the incapacitated person would themselves have chosen from the available options. Where reaching a decision, regard must be had to any restriction that exists and the less restrictive option must always be considered.

This process is the approach that is considered and adopted by the judiciary when making decisions in the Courts and was first described in details by Lord Justice Thorpe in the early inherent jurisdiction case of *Re A* [2000]. The following extract describes the approach:

***"The benefits of the procedure should be entered, and then the disbenefits should be entered. The possible gains and losses should be considered, and the likelihood of them occurring. At the end of this process it should be possible to 'strike a balance between the sum of the certain and possible gains against the sum of the certain and possible losses. Only if the account is in relatively significant credit will the judge conclude that the application is likely to advance the best interests of the claimant.'***

***This makes clear that best interests decisions must be on the basis of weighing up the possible benefits against the possible disadvantages. Medical, emotional, social and welfare benefits and disadvantages should be considered and it is only if the benefits outweigh the disadvantages that the proposed action should be taken."***

Following this judgment and post implementation of the Act, the courts frequently refer to adopting such an approach to decision-making. Locally members of staff are recommended to adopt this approach when setting out their reasoning when making best interests decisions, to demonstrate they have incorporated the "best interests checklist" as identified in Chapter 5 of the MCA Code.

**Included below is an actual example from local practice of a completed Balance Sheet, demonstrating the type of options which may need to be considered when determining what may be in a person's best interests.**

## **BALANCE SHEET FOR THE BEST INTERESTS MEETING TO BE HELD IN RESPECT OF;**

- **Customer name (referred to within this guidance as John Smith)**

on

- **Date of the best interests Meeting**

at

- **Location of the Best Interests Meeting**

### **BACKGROUND**

Summary of the details leading up to this best interests meeting including;

- Details of the care provision
- Clarification of the mental capacity assessment including, when and whom this was undertaken by, the specific nature of the question that the assessment was intending to determine and the outcome of that assessment.
- The risks and concerns that exist within the current arrangements

### **John Smith's wishes and feelings**

Include a summary of the person's wishes and feelings that have been able to be identified by those involved in the situation relating to the specific decision being considered.

### **Points for Consideration**

Include any additional points which need to be considered that may have a bearing on the decision to be reached; for example this may include the availability of specific resources, the location and involvement of family members, safeguarding concerns etc.

List the available options that need to be considered; highlighting the positive elements and the negative elements in order to enable a decision to be reached.

**OPTION ONE: For John Smith to continue living in his own home, with domiciliary care visits during the day rather than a live in care package.**

POSITIVES	POTENTIAL RISKS
John would be able to remain living at home, which is in accordance with his wishes and feelings	This is not John's preferred option
John would receive regular carer visits throughout the day which may be less intense than the current live in care package and may reduce the risk of carer break down.	John is at significant risk of falls and may wait substantial amounts of time for assistance between carer visits
John would continue to live in a familiar environment meaning that there would be a lower risk of him becoming emotionally distressed.	John can become very anxious during the night. If he does not have overnight support then he may telephone his son and / or grandson for reassurance.
John feels part of the local community which he has given as a major reason that he does not want to move out of his current home.	John will be alone for substantial periods of time in between carer visits.
	John needs ongoing support with pressure care and needs regular prompting to ensure that he is not sitting in positions which increase his risk of pressure sores (for example, sitting on pillows rather than a pressure relieving cushion)
	John refuses most offers of support with personal care.
	John's weight appears to have decreased since he returned home and he is significantly underweight. John is eating limited amounts of food and is not taking the supplements prescribed by the GP
	John developed pressure sores since returning from respite care.
	John is socially isolated and is not able to access the majority of his home and is not able to access the local community without support.

**OPTION TWO: For John Smith to remain living at home with a live in care package either through a commissioned service or a direct payment.**

POSTITIVES	POTENTIAL RISKS
This is John's preferred option	Two care agencies have withdrawn support. There are very limited options if the current care package breaks down.
John would have support to manage his care needs during the day.	John has had a difficult relationship with some carers and three carer relationships have broken down since he returned from respite care.
John would receive immediate assistance if he had a fall	The current care package is the most expensive option and maybe unsustainable.
John would receive prompting to ensure that the risk of him developing further pressure sores is reduced	John will sometimes ask for support during the night which is not within the carer's role
John's anxiety during the night will be reduced.	John refuses most offers of support with personal care.
	John's weight appears to have decreased since he returned home. He is eating limited amounts of food and is not taking the supplements prescribed by the GP
	John developed pressure sores since returning from respite care.
	John is not able to access the majority of his home.
	John is socially isolated.
	Carers do not have access to a cooker and are unable to prepare fresh food, placing them under additional stress and increasing the risk of carer breakdown.

**OPTION THREE: For John Smith to live with his grandson David with additional support provided through a domiciliary care package.**

POSITIVES	POTENTIAL RISKS
John would be living near his family.	John has not stated that he would like to live with David. In the past he has stated that he does not want to live in Essex because he does not think it is “fair” on David’s family.
John would have support during the day and night.	There is a high risk of carer breakdown due to the amount of support that David needs during the day and night.
John has enjoyed staying with his grandson in the past.	David lives in a first floor flat with no access to a lift, meaning that John would have to be carried up and down the stairs.
	It is unclear whether John would have his own bedroom.
	John has a strong attachment to the local community and has been very resistant to the suggestion of moving out of the area.
	If David is unable to care for John, or there is a breakdown in the carer relationship, John’s son (Andrew) may need to provide additional support.
	It is highly likely that John may need to move again in the future, causing him distress.
	David has his own commitments which may impact on her ability to provide care for John.

**OPTION FOUR: For John Smith to be provided with alternative accommodation, within a very sheltered housing scheme with a domiciliary care package.**

POSITIVES	POTENTIAL RISKS
John would regain some of his independence within his own flat with emergency on call support.	John does not want to move from his home and has become very distressed when the idea has been discussed.
John would be able to access all areas of his flat and the accommodation would be accessible	It may take a significant amount of time for a suitable placement within a VSH scheme to become available.
John would be able to develop social relationships with other tenants	John's memory difficulties may mean that he needs a more specialised service than very sheltered schemes are able to provide.
John's current support package could be reduced.	John's support needs may increase, meaning that he could need more than VSH in the future. This may necessitate a second move at a time when John is experiencing greater memory difficulties than he is at the moment.
John may receive assistance quickly if he has a fall or there is a sudden decline in his physical health.	Due to the degree of resistance to move and the possibility that the placement in VSH could deprive John of his liberty, authorisation may be needed from the Court of Protection and John may require assistance from the police to move him against his will.
	John may still feel very anxious, particularly during the night. This may lead to him contacting on call workers and family members at unsociable times.
	John would need to move out of the local community to which he has a strong attachment.
	John may continue to neglect his personal care needs or refuse support from carers.
	John may not meet the criteria for very sheltered housing.

**OPTION FIVE: For John to move to a residential / nursing care home.**

POSITIVES	POSSIBLE RISKS
John's care needs would be met, reducing the risks to his physical health.	John does not want to move from his current home and has become very distressed when the idea has been discussed.
John adjusted very well during his respite care.	Authorisation may be needed by the Deprivation of Liberty Safeguards and John may require significant assistance / enable him to move.
Waking night staff would be available to support John to reduce his anxiety during the night.	Depending on availability of resources, John may need to move out of the local community to which he has a strong attachment.
John would be able to build social relationships with other residents.	It may take some time for John to settle within a residential setting which may be detrimental to his mental health.
John would have the opportunity to participate in social activities within the home.	
It is less likely that John will need to move again in the future, even if his care needs increase.	
All areas of the residential home will be accessible to John, including bathing / shower facilities.	
John's physical health and wellbeing is likely to improve.	
John's family would continue to visit him and would be able to enjoy increased quality time, as his support needs would be met.	



## **A note about recording:**

Where an assessment of a person's mental capacity has been completed and also where a decision has been reached, members of staff are required to record both the assessment and the best interest decision on Carefirst Six.

A **Recording Guide** has been produced to support members of staff with regard to the details which are required to be provided.

Further assistance is provided within the document; **MCA Guidance for All Staff** which is designed to support staff with applying the Act in practice.

In addition to supporting members of staff with regard to the statutory aspects of the Act, this guidance includes practical details which they will find helpful in relation to best interests decision meetings, including; a framework for the agenda, minutes and letter templates.

Both of these guides can be found on the MCA Page of the Suffolk MCA Website under the heading; Suffolk County Council Policies and Guidance to which a link is included here;

- <http://www.suffolk.gov.uk/care-and-support/adult-social-care/mental-capacity-and-mental-health/mental-capacity-act-2/>

## **A note about further guidance:**

The Suffolk Mental Capacity Act website is provided as a resource for all members of staff, customer, carers and providers regarding the Act. The website is updated regularly and includes policy documents, guidance, booklets and links to other associated sites.

In addition it provides an explanation of the Deprivation of Liberty Safeguards (DOLS) including the process for making an application and links to the appropriate forms.

A link to this site is included here [www.suffolk.gov.uk/mca](http://www.suffolk.gov.uk/mca)

