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Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

4

An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.

3

A person is not to be treated as unable to make a decision merely because he makes an unwise decision.

2

A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been undertaken without success.

1

A person must be assumed to have capacity unless it is established that they lack capacity.

Hampshire Mental Capacity Toolkit

Part E – Best Interests Meeting Agenda

Best Interests Consultation Meeting Agenda

Attendees should be sent a written invitation explaining the purpose of the meeting. A template letter (for HCC use only) is available in the Adults Health & Care - Social Care Practice Manual

(please read out all sections contained in the boxes below)

1. Confidentiality and respect. (read)

This meeting is subject to equal opportunities and anti-discriminatory guidance. Matters discussed at this meeting will remain confidential and only be shared on a need to know basis.

Principles of courtesy and respect should be observed throughout the meeting.

There will not be a verbatim record of the meeting but there will be a summary of the information presented and discussed. Amendments will therefore only be circulated where the information recorded is factually incorrect or where the meaning of what was actually said is substantially altered by the way it is recorded.

2. Decision and decision maker

2.1 (read)

This is a meeting, held in respect of: <person's name>

Address: <person's address>

This meeting will be held in line with the principles and provisions of the Mental Capacity Act 2005, to assist the decision maker to consider all relevant factors required to make a decision in <name>'s best interests and to consult with interested parties.

The relevant decision(s) that we are consulting interested parties on is (are)...

<refer to decision given in the accompanying 'assessment of capacity' >

2.2 Who is present

Where possible the person (P) should be invited to attend the meeting. Where this is not possible please record the reason in your meeting notes and inform those present.

All interested parties to introduce themselves and state their relationship to P and to the specific decision (not their views or opinions at this stage)

Identify which participants are 'significant' - whose agreement is required to implement a best interests decision without applying to the Court of Protection.

2.3 Determine the identity of the decision maker (the person doing the act or offering the service)

Identify if there are any Attorneys, court appointed deputies or advance decisions to refuse treatment in place and if they are relevant to this decision. If there is someone appointed with the legal authority to make this specific decision, a best interests decision is not appropriate.

3. Assessment of Capacity

3.1 (read)

Principle 1 of the Mental Capacity Act presumes that a person has capacity unless demonstrated not to.

Principle 2 requires us to give a person all reasonable assistance to make the decision for themselves.

Principle 3 allows a person to make unwise decisions and not to be deemed to lack capacity just because they make an unwise decision.

We are having a best interests meeting because <name> has been assessed as lacking the mental capacity to make the relevant decision(s) for themselves.

3.2 Assessment report from the decision maker

- Include what steps have been taken to help P make the decision.
- Discussion, seek views of those present.
- Record any agreement or dispute about the state of mental capacity for this decision.

If there is a dispute

3.3 Action plan to resolve this dispute

- Consider jointly assessing P, second opinion assessments etc.
- Attendees should be sent a letter highlighting what issues are disputed and what action needs to be taken. A template letter (for HCC use only) is available in the Social Care Practice Manual

4. Best Interests

4.1 (read)

Our aim is to apply the best interests checklist from the Mental Capacity Act and to adhere to principles 4 and 5 of the Act.

Principle 4 - and decision made or act done on behalf of a person who lacks capacity to decide for themselves will be done in their best interests

Principle 5 - Before making a decision in a person's best interests, less restrictive options that may achieve the required purpose will be considered.

4.2 Options

Outline all options that could be considered to be solutions to P's relevant decision, whether you consider them to be suitable or not.

4.3 Consider:

- P's past and present views, beliefs and values
 - from P themselves - identify how P has been involved in this decision making process
 - from friends and family
 - from advocate
 - from any other source
- Views of anyone named by P as someone to involve in the decision making
- Views of non-professional interested parties
- Views of any LPAs/deputies
- Views from professionals with an interest in P's care
- Assessments of need, health, risk or other specialist assessments

4.4 Review of options

Consider which option from 4.2 appears to be the least restrictive of P's right and freedom of action, and most in keeping with P's own views.

Can the options identified in 4.2 be achieved?

Record views and evidence for this

- Can the purpose be met by each option?
- What is the outcome of the positive risk assessment
- Have the risks of harm and potential benefits of the options been considered and weighed?
- What actions can be taken to reduce or manage any identified potential harms?

4.5 Any other contributions

(ask all participants if they have anything further to add)

4.6 Outcome

Thank attendees for their contributions and outline what happens next:

- All viewpoints will be considered
- A decision will be reached outside of the meeting within <number of> days.
- All parties will be informed of the outcome in writing
- In the meantime any further enquiries/concerns should be directed to <decision maker>

Following the meeting attendees should be sent a letter informing them of the decision. A template letter (for HCC use only) is available in the Social Care Practice Manual.