

## Planning care in advance

### 3: Best interests

Intermediate level

<p><b>Produced by</b> <b>St. Oswald's Hospice</b> Regent Avenue Gosforth Newcastle-upon-Tyne NE3 1EE</p> <p>Tel: 0191 285 0063 Fax: 0191 284 8004</p> <p>This version written and edited by:</p> <p><b>Claud Regnard</b> Honorary consultant in Palliative Care Medicine, St. Oswald's Hospice</p> <p><b>Tricia Wilson</b> Social Worker, St. Oswald's Hospice</p>	<p><b>Aim of this worksheet</b> To consider how decisions are made in a person's best interests when they have lost the capacity to make those decisions.</p> <p><b>How to use this worksheet</b></p> <ul style="list-style-type: none"><li>• You can work through this worksheet by yourself, or with a tutor.</li><li>• Read the case study below, and then turn to the Work page overleaf.</li><li>• Work any way you want. You can start with the exercises on the Work page using your own knowledge. The answers are on the Information page - this is not cheating since you learn as you find the information. Alternatively you may prefer to start by reading the Information page before moving to the exercises on the Work page.</li><li>• This CLiP worksheet should take about 15 minutes to complete, but will take longer if you are working with colleagues or in a group. If anything is unclear, discuss it with a colleague..</li><li>• If you think any information is wrong or out of date let us know.</li><li>• Take this learning into your workplace using the activity on the back page.</li></ul> <p><b>Case study</b> <b>Bill is a 54 year old man with epilepsy who developed weight loss and intermittent diarrhoea. Investigations showed a carcinoma of the colon for which he consented to surgery. Unfortunately investigations showed liver metastases and surgery was not possible. He returned home and has been managing well until now, including going to work.</b></p> <p><b>He is now developing a bowel obstruction, which may need surgery in the next few days. However, he is drowsy and confused, and has been assessed as not having the capacity to consent to surgery.</b></p>
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**Best interests**

Best interests is not solely the opinions of health professionals. Having to decide an individual's best interests means that person currently does not have the capacity to make the decision that is needed because, if they had capacity, you would be asking the patient for consent. The Mental Capacity Act (2005) requires all carers to follow certain steps to decide the best interests of any individual aged 16yrs and above who has lost capacity for that decision.  
*Answer: the last statement is correct.*

**Who should be involved in deciding Bill's best interests?**

This could include

- The health professional responsible for the Bill and representations from the clinical team;
- Other health professionals with a special expertise (eg. palliative care specialist);
- Bill's partner and close relative;
- An Independent Mental Capacity Advocate if Bill has no-one to represent him (see CLiP worksheet on *Involving an IMCA*).
- A Personal Welfare Lasting Power of Attorney (also known as a Health & welfare LPA) appointed by Bill when he had capacity (this is often a relative)
- Consideration should be given to Bill being involved, but only if he is well enough to do so, willing to do so, and is able to express an opinion even though he does not have capacity to make the decision required.

The 'decision-maker' is the carer most involved with the patient at the time. However, when a medical treatment is the decision to be made, the decision-maker is usually the consultant responsible for the treatment.

**Finding out Bill's previous wishes, beliefs, values and preferences**

There are several ways of doing this:

- Asking Bill's partner, relatives or friends if he ever expressed a view of what he would want in these circumstances (note that this is not asking the partner, relatives or friends for *their* opinions);
- Taking into account an Advance Statement written by Bill when he had the capacity to do so;
- Following the instructions in a legally valid and applicable Advance Refusal of Treatment (ADRT). See CLiP worksheet on *Advance Decisions to Refuse Treatment (ADRT)*;
- Following the decision of a Personal Welfare Lasting Power of Attorney (also known as a Health & welfare LPA) with the authority to decide on life-sustaining treatments, legally appointed by Bill when he had the capacity to do so (NB. a Property and Financial LPA has no authority to make such decisions).

**True or False answers**

1. **F** Although Bill has lost the capacity to consent, surgery can be done if it is considered to be in his best interests. In this case NHS Consent Form 4 is completed. There is the option for a second professional to sign, and for partner or relative to sign to show that they have understood why the treatment is necessary.
2. **T** But only if Bill is well enough to do so, willing to do so, and is able to express an opinion.
3. **F** The terms living wills and advance directives no longer exist under the Mental Capacity Act. However, such documents would count at least as an Advance Statement and as an ADRT if they fulfilled specific criteria,
4. **F** When Bill had capacity, he may have appointed a Lasting Power of Attorney to decide about this surgery, but the LPA must be a Personal Welfare (Health & welfare) LPA, with the authority to make life-sustaining treatment decisions. In the absence of these conditions, the LPA does not have the authority to make this decision. If the LPA has the power to make this decision, they must still act under the principles of best interests.
5. **T** He may have a delirium with a reversible cause such as dehydration. If the decision can be delayed then wait for capacity to return and obtain consent. However if surgery is urgent the decision should not be delayed.

**The Best Interests checklist (From the Mental Capacity Act 2005)**

- Q1. Have you consulted others? You must consult with at least one person who can speak for the individual
- Q2. Have you avoided making assumptions merely on the basis of the individual's age, appearance, condition or behaviour?
- Q3. 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?
- Q4. Have you done whatever is possible to permit and encourage the individual to take part in making the decision?
- Q5. If this is about life-sustaining treatment have you ensured that no-one
  - a) is solely motivated by a desire to bring about the individuals death?
  - b) has made assumptions about the individual's quality of life?
- Q6. Have you determined the individual's wishes and feelings, beliefs and values, including any statement made when they had capacity?
- Q7. Has consideration been given to the least restrictive option for the individual?
- Q8. Have you considered factors such as emotional bonds, family obligations that the person would be likely to consider if they were making the decision?
- Q9. What decision would the individual have made, or if they never had capacity what is in their best interests?

## Choose

What do you think is meant by 'best interests'?  
Underline any description that fits with your view:

- The present opinion of a patient with capacity
- The health professional's opinion of the patient's quality of life in deciding treatment
- The opinion of close family of what treatment is best for the patient
- A process of steps required by law for a patient who has lost capacity for a specific care decision, in order to arrive at a decision that the patient would have made if they had capacity

## Write

List all those people who you think should be involved in deciding Bill's best interests. **Ring** the person who has final responsibility for this decision.

## Reflect

How can you find out Bill's previous wishes, feelings, beliefs, and values?

True  
 or  
 false

- |  |      |       |
|--|------|-------|
| 1. Surgery is not possible as Bill cannot consent              | True | False |
| 2. Bill should be encouraged to take part                      | True | False |
| 3. Living wills and advance directives are part of the MCA     | True | False |
| 4. A Lasting Power of Attorney order is always legally binding | True | False |
| 5. Bill's capacity could return                                | True | False |

## But...

What are the main issues to consider when estimating best interests?  
 NB. The MCA has a minimum of nine!

## FURTHER ACTIVITY: Best interests

Think back to the last person who did not have capacity for treatment decisions. Did you observe the best interests process of the MCA being used?  
If yes, was it helpful? If no, do you think it could have helped?

## FURTHER READING: Best interests

### Key documentation

Mental Capacity Act Code of Practice: [www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf](http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf)

Anyone making decisions on behalf of a person without capacity is required by law to have regard to the MCA. Capacity, care planning and advance care planning in life limiting illness: a guide for health and social care staff.

NHS End of Life Care Programme, 2011: [www.endoflifecareforadults.nhs.uk/publications/pubacpguide](http://www.endoflifecareforadults.nhs.uk/publications/pubacpguide)

### References

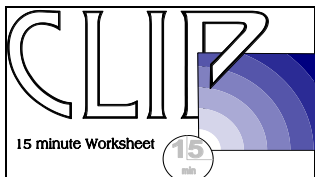
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### Further resources

e-lfh: e-Learning for Healthcare contains a range of online self-learning programmes, including several relating to end-of-life care (e-elca). Registration is required but is free. [www.e-lfh.org.uk/projects/e-elca/index.html](http://www.e-lfh.org.uk/projects/e-elca/index.html)

IMCA service: [www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet06.pdf](http://www.dca.gov.uk/legal-policy/mental-capacity/mibooklets/booklet06.pdf)

Deciding right initiative on [www.nescn.nhs.uk/deciding-right](http://www.nescn.nhs.uk/deciding-right)



**Current Learning in Palliative care**  
An accessible learning programme for health care professionals

### 15 minute worksheets are available on:

- An introduction to palliative care
- Helping the patient with pain
- Helping the patient with symptoms other than pain
- Moving the ill patient
- Psychological and spiritual needs
- Helping patients with reduced hydration and nutrition
- Procedures in palliative care
- Planning care in advance
- Understanding and helping the person with learning disabilities
- The last hours and days
- Bereavement

Available online on [www.clip.org.uk](http://www.clip.org.uk)