

It is recognised that most significant decisions regarding someone who lacks capacity will be made in the context of a multidisciplinary discussion. However, the 'decision maker' is the person who is proposing to take action so in the case of medical treatment it is the doctor, if nursing care the nurse, if social care then social worker and so on.

Section 4 of the Mental Capacity Act sets out a checklist of factors to be considered by the decision maker whilst considering the best interests of the person. A brief summary is given below but reference should be made to the Mental Capacity Act Code of Practice.

Factors to be considered

- No decision is made solely on the basis of a persons age, appearance or other aspect of behaviour that might lead others to make unjustified assumptions.
- All relevant circumstances
- Likelihood of regaining capacity – could the decision be delayed?
- As far as possible encourage the person to participate.
- If life-sustaining treatment then the decision must not be motivated by a desire to bring about their death.
- Is it possible to ascertain the persons past and present wishes and feelings?
- Is it possible to ascertain their beliefs and values?
- The views of other people in particular anyone formerly named by the person to be consulted, those involved in caring for the person, those interested in their welfare, donees of a lasting power of attorney or any court deputy.
- Consultation with Independent Mental Capacity Advocate if one is required.

Decisions must be clearly recorded in the case notes.