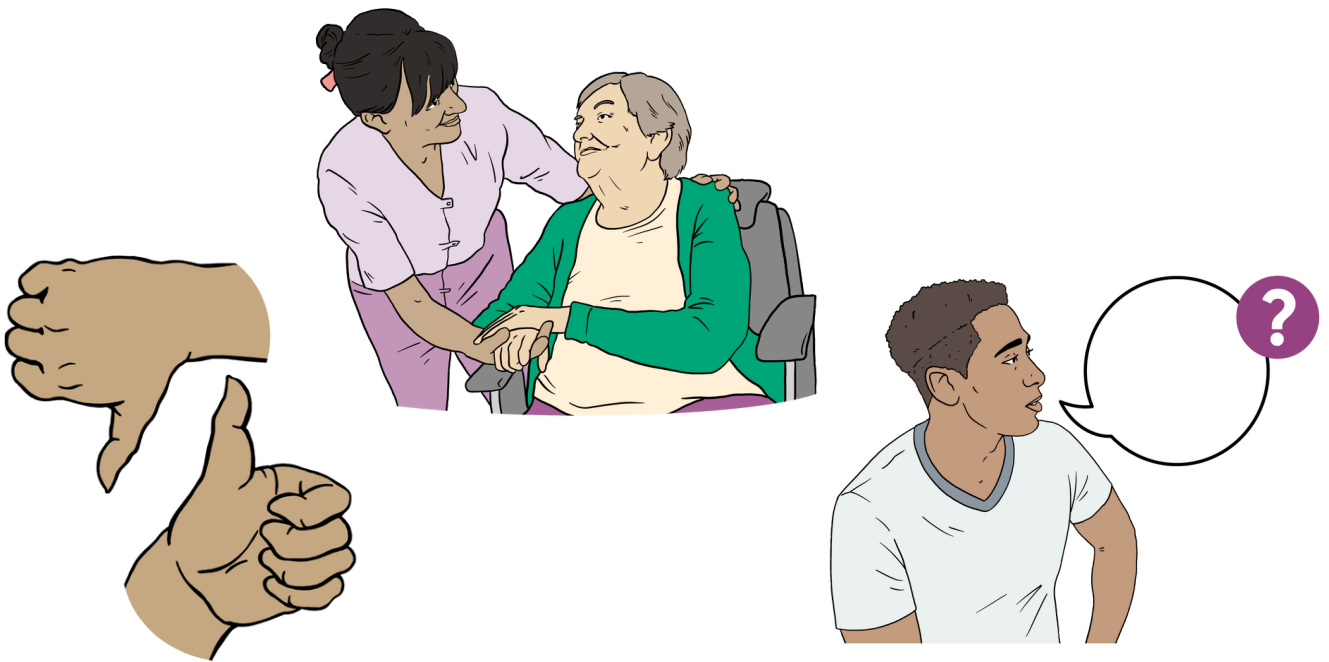


Best Interest Decisions



This leaflet has been produced by The Advonet Group to assist care staff and other professionals to know about what Best Interest Decisions are and how they work.

What are Best Interest Decisions?

A Best Interest Decision is a decision made on behalf of a person who cannot make a decision for themselves because they lack capacity to do so. As the name suggests, the decision is made in the best interests of the person, not anyone else involved.

Who can make a Best Interests Decision?

Decisions for someone else could be made by a family member, paid carer, Lasting Power of Attorney (LPA), Deputy, healthcare professional.

Advocates do not make Best Interests Decisions.

When should a Best Interests Decision be made?

A decision should ONLY be made for someone else when they lack capacity to make it for themselves at the time when it is necessary to make the decision.

- Some people may have capacity for some decisions but not others – for instance, they can choose what to wear, but not where they should live
- Others might be able to make decisions at some times, but not at others – for instance, someone might be alert to decide something in the afternoon but not in the morning

A person must be assumed to have capacity unless it is established that they lack capacity. Every effort should be made to help someone to make their own decisions, such as explaining things in simple terms or using communication aids.

If someone makes what others think is an unwise choice, this is not by itself a reason to think that they don't have capacity to make the decision.

How do I know if someone lacks capacity to make a decision for themselves?

In order to work out if someone lacks capacity, the Mental Capacity Act Code of Practice sets out the following two stages:

1. Does the person have an impairment or disturbance of the mind or the brain?

2. Does the impairment or disturbance mean that, after giving the person support, they are still unable to make the decision at the time when it needs to be made because:
- a. They cannot understand the relevant information about the decision.
 - b. They cannot retain the information long enough to make the decision.
 - c. They cannot use or weigh up the information.
 - d. They cannot communicate their decision, even with support such as sign language, gestures etc.

The Capacity Assessment should be recorded so that it can be seen that all the right steps have been taken.

How do I make a Best Interests Decision for someone?

The Mental Capacity Act Code of Practice sets out a checklist for decision making:

- Encourage the person to take part as much as possible
- Identify all the things that the person would take into account if they were making the decision themselves
- Find out their wishes and feelings – this could be expressed in their behaviour, or things they have said in the past, any religious, political, moral or cultural values, or any other relevant factors
- Avoid discrimination – don't make assumptions about someone due to their age, appearance, condition or behaviour
- If the decision is about life-sustaining treatment – do not be motivated by a desire to bring about a person's death. Assumptions should not be made about someone's quality of life
- Assess whether the person might regain capacity and if so whether the decision can be made later
- Consult others who know the person or if they meet the criteria to instruct an IMCA (see the back page of this leaflet)
- Avoid restricting people's rights
- Take all of this into account to come to a conclusion about the course of action

When to involve an IMCA (Independent Mental Capacity Advocate)

An IMCA is required for a decision for someone who:

- Lacks capacity
- Does not have anyone appropriate to represent them in the decision making process

And where the decision is about:

- Serious Medical Treatment – a medical decision that will have serious consequences for that person
- Change of Accommodation

An IMCA supports the decision making process by:

- Representing the person's views, wishes and feelings
- Help them communicate what is important to them
- Making sure the rights of the person are upheld

A Care Act Advocate can support someone going through a social care process when they have substantial difficulty in taking part. See our IMCA/Care Act Grab Sheet for more details.

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