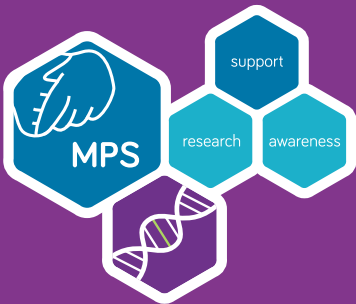


INFORMATION & RESOURCES FROM THE MPS SOCIETY

# Best Interests

*Mental Capacity Act 2005*



Society for Mucopolysaccharide Diseases  
[mpssociety.org.uk](http://mpssociety.org.uk)

## Best Interests

The Mental Capacity Act 2005 Section 1 (5) introduces the principle of “Best Interests” as a safeguarding principle to protect those without capacity.

The MCA Code of Practice states that any act that is done or any decision made for a person that lacks capacity must be considered to be in the person’s “best interests”. This is regardless of who is making the decision and irrespective of the nature of the decision required.

## Making Decisions

As long as the person/people making the decision can justify their decision they will be protected from liability. Decision-makers must follow and evidence the principles as stated within the MCA Code of Practice, which can be found at: [bit.ly/MCA-CodeOfPractice](http://bit.ly/MCA-CodeOfPractice)

It is important to understand that if an advance decision has been made by an individual at a time when they had the capacity to make decisions, their wishes must be adhered to. It is also necessary to consider the individual's past and current wishes, as well as likely beliefs and values and any other factors that may influence a decision. Examples can include religion, culture and political values.

**It is necessary for those making decisions to show their workings and to document any decisions made. Decisions can be short or long term and can be reviewed according to need or changes in circumstance.**

## Decision Makers

Many different people can be decision-makers under the Mental Capacity Act and this will vary according to the various decisions that are to be made.

Decisions will be required for tasks of daily living: in this instance, those caring for the individual are likely to be the decision-makers. Where more complex decisions are required, it is necessary to seek a decision-maker with appropriate experience and qualifications.



All those involved in the care or welfare of an individual should be consulted about any decisions required. Such people include family members, friends, social care workers and health professionals.



## Managing Conflict

As with any decision where people are required to make an opinion there is a risk of contention. It is usually possible to settle these disputes informally through discussion and a weighing up of possible options. However, when there is no resolution found and interested parties wish to contest a decision there are several options available:

- Involve an advocate to act on behalf of the person who lacks the capacity to make the decision
  - Get a second opinion
  - Hold a formal or informal “best interests” case conference.
  - Attempt some form of mediation
- Pursue a complaint through the organisation’s formal procedures.

If all else fails the decision can be made through the Court of Protection.

## What Happens in an Emergency?

Sometimes those who lack capacity will require urgent medical care. Unless advance decisions have been made it is likely to be considered reasonable for medical professionals to give urgent treatment without delay.

For more information visit:

[www.gov.uk](http://www.gov.uk)

# For more information

please contact the MPS Advocacy team:

[advocacy@mpsociety.org.uk](mailto:advocacy@mpsociety.org.uk) | 0345 389 9901



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MPSSocietyUK

MPS House | Repton Place | White Lion Road  
Amersham | Buckinghamshire HP7 9LP

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