**NHS no: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Patient ID: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Surname: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Forename: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  
**D.o.B**: \_\_\_ /\_\_\_ /\_\_\_

Best Interest Decision Record

(Mental Capacity Act 2005)

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| The decision maker completing this record must be satisfied that the person lacks the mental capacity to make the specific decision themselves and has not regained capacity since the capacity assessment was undertaken. The Trust ‘Assessment of Mental Capacity’ form must have been completed.  In determining Best Interests, the decision maker must have regard to chapter 5 in the MCA Code of Practice and should avoid assumptions based on the person’s age, appearance, condition or behaviour(s).  A referral to the **Independent Mental Capacity Advocate (IMCA)** service should be made whenever a person who lacks mental capacity has no family or friends who are appropriate to consult in making a decision about:   1. serious medical treatment 2. long term care and health moves (more than 28 days in hospital / 8 weeks in a care home) |

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| **What is the specific decision that needs to be made?** | | | | |
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| **Please describe the available options being considered:** | | | | |
| If the decision is complex it may be helpful to document and explore these options using a ‘balance sheet’ (available on the Trust Intranet). Consider what is least restrictive. If the decision is complex or finely balanced, consider holding a best interest meeting.  Option 1:  Option 2:  Option 3: | | | | |
| **If the decision is about medical treatment, has the person made an Advance Decision to refuse the treatment?** | | | **Yes** | **No** |
| If ‘yes’ please evidence this below. The Advance Decision must be valid and applicable. Note: there are specific provisions if the refusal relates to life sustaining treatment. Guidance can be found at the end of the form. | | | | |
| **Does anyone hold a valid Lasting Power of Attorney or Court Appointed Deputyship giving them authority to make this decision?** | | | **Yes** | **No** |
| If yes, the person(s) holding that LPA or deputyship is the decision-maker. A copy of the document must be viewed and stored in the patients file. Record name(s), legal role, and contact details below: | | | | |
| **Does this decision need to be taken now?** | | | **Yes** | **No** |
| If the person’s capacity is likely to improve, consider if the decision can be delayed until then. | | | | |
| **Detail the individual’s past and present feelings and wishes in relation to the decision. Document any relevant values and beliefs held by the individual and anything else you believe they would take into account if they were making the decision** | | | | |
| You must complete this section in full detail. | | | | |
| **Details of those consulted / involved in this decision making process:**  Please see guidance at end of form about who should be consulted, including when an IMCA is required. | | | | |
| **Name** | **Role/Relationship** | **Date consulted and how consulted** | | |
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| **Details of persons / organisations not consulted** | | | | |
| **Name** | **Role/Relationship** | **Reason not consulted / attempts made** | | |
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| **Summary of Best Interests decision-making** | | | | |
| Please document the risks and benefits of each option as viewed/shared by those consulted. Document any differing views about what is in the person’s best interest. | | | | |
| **Document what action or decision has been reached in the person’s Best Interests** | | | | |
| There should be consensus about the decision from all those consulted. If there is any disagreement or dispute about what is in the individuals best interest you must contact the Trust Mental Capacity Team or seek legal advice. | | | | |
| **Signature of lead decision maker:** | | **Date & Time:** | | |
| **Name and Job Title:** | | **Contact Details:** | | |

**Further notes to support completing this form.**

This guidance should be read in conjunction with the Mental capacity Act Code of Practice <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

**IMCA service**

A referral to the Independent Mental Capacity Advocate (IMCA) service should be made whenever a person who lacks mental capacity has no family or friends who are appropriate to consult in making a decision about:

1. Serious medical treatment
2. Long term care and health moves (more than 28 days in hospital / 8 weeks in a care home)

An IMCA has the same rights to challenge a decision as any other person caring for the patient or interested in their welfare. The right to challenge applies to both decisions about lack of capacity and a person’s best interest. The IMCA service for Somerset is provided by SWAN Advocacy <https://swanadvocacy.org.uk/refer/somerset/>

**Advance decisions**

If the adult now lacks capacity but has clearly refused particular treatment in advance of their loss of capacity within a valid and applicable Advanced Decision then you must abide by that refusal.

For an advanced decision in relation to life-sustaining treatment to be valid, it must be in writing stating specifically what situations and treatment it covers. It must also be signed and witnessed, and state clearly that it applies even where the person’s life is at risk.

If you have any concerns about an Advance Decision please contact the Trust Mental Capacity Team or seek legal advice.

**Consulting others**

The following people should be consulted, so far as is reasonable to do so, when determining Best Interests:

• anyone named by the person as someone to be consulted on the matter in question

• anyone engaged in caring for the person

• anyone with an interest in their welfare including close relatives

• anyone who has been given a Lasting Power of Attorney by the person

• any deputy appointed for the person by the Court of Protection

**Disagreement about best interests and the Court of Protection**

Court of Protection approval may be required where there is disagreement about the patient’s capacity or best interests. If there is unresolvable disagreement about either capacity or best interests you should contact the trust mental capacity team or seek legal advice.

Where treatment is complex and people close to the patient express doubts about the proposed treatment, a second opinion should be sought unless the urgency of the patient’s condition prevents this. Donation of regenerative tissue, non-therapeutic sterilisation, or treatment requiring significant levels of restraint must never be undertaken without prior discussion with the Trust’s Legal team and are likely to require approval from the Court of Protection.

**Lasting Powers of Attorney and Court Appointed Deputies**

If the patient lacks capacity a person with Deputyship or Lasting Power of Attorney (LPA) may have the authority to make the decision on the patient’s behalf acting in their best interests. You should always ask to see the original documentation or seek confirmation of authority from the Office of the Public Guardian via <https://www.gov.uk/government/publications/search-public-guardian-registers> or [View a lasting power of attorney - GOV.UK (www.gov.uk)](https://www.gov.uk/view-lasting-power-of-attorney)

Where there is an Advance Decision to Refuse Treatment and an LPA/Deputyship, the most recent instruction will apply.

An attorney has no power to consent to or refuse life-sustaining treatment unless the document expressly authorises this. A deputy never has the power to make life-sustaining treatment decisions.

If you have any concerns that an attorney or deputy may not be acting in the person’s best interest please contact the Trust Mental Capacity Team for advice