Purpose: The primary purpose of this guidance is to provide chairs of best interests meetings with additional guidance on the process, content and structures of best interests meetings.

Please note: This Best Interests Guidance builds on an assumption of a general understanding of the Mental Capacity Act. The Mental Capacity Act 2005 and MCA Code of Practice should still be referenced as required. This guidance will form an appendix to the multi-agency MCA Policy, Procedure & Guidance. Section 10 ‘Further information’ provides more detailed information on best interests meetings including the British Psychology Society guidance on determining best interests. This is useful both for those chairing best interests meetings and those participating in such meetings. It also includes many helpful examples.
Acknowledgement: Gloucestershire MCA Governance Group would like to acknowledge the excellent work of Devon County Council and Torbay Care Trust on which this practice guidance is based.

1.1 A failure to engage correctly and effectively with people who do not have the mental capacity to make specific decisions for themselves, may have serious implications for care agencies, particularly for Health Trusts and Local Social Services Authorities (LSSAs). We are required to work within the statutory principles set out in Section 1 of the Mental Capacity Act 2005 and more particularly to apply Section 4 of the Act to our actions for people who cannot make decisions for themselves.

1.2 A best interests meeting may be needed where an adult (16+) lacks mental capacity to make significant decisions for themselves and needs others to make those decisions on their behalf. It is particularly helpful where there are issues that are needing resolution regarding either the issue of capacity or Best Interests and this has not been able to be resolved.

1.3 This guidance forms an appendix to the multi-agency Mental Capacity Act Policy, Procedure and Guidance and builds on Section 7 ‘Assessment and Best Interests Decisions’. The MCA Code of Practice should also be referred to as necessary.

The statutory principles laid out in Section 1 of the Mental Capacity Act must be applied:

1) A person must be assumed to have capacity UNLESS it is proved otherwise.

2) Until all practical steps have been taken to help someone make a decision without success they cannot be treated as lacking capacity.

3) An unwise decision does NOT in itself indicate a lack of capacity.

4) Any act or decision made must be in the person's best interests.

5) Any act or decision should aim to be the least restrictive option to the person in terms of their rights and freedom of action.

A failure to make decisions that are in the best interests of the person may have serious implications, and could lead to legal challenge.

1.4 We recognise that establishing a positive relationship with the Service User/Patient is crucial in gaining their trust. A person with mental capacity can disagree with the views of the professionals involved in their care. Service User/Patients may take a contrary view to professional opinion and this should be respected if they have mental capacity to make the decision. Service User/Patients have the right to make lifestyle choices and to refuse
services provided they are doing so from an informed and capacitated position.

2. What is a Best Interests Meeting

2.1 A formal best interests meeting may be required to plan the decisions needed where the issues facing the Service User/Patient are complex and cannot be easily made by the decision-maker and immediate colleagues. There may be a range of options and issues that require the considered input of a number of different staff as well as those with a personal and/or legal interest in the needs of the person lacking mental capacity. Making sense of these issues and options may only be properly covered and addressed through holding such a meeting, and clearly recording the discussions.

2.2 A best interests meeting should mean that the decision-making process is transparent, clearly recorded, and can stand up to subsequent scrutiny. In addition a best interests meeting should ensure that Service User/Patients are empowered and protected from random or unsound decision-making. However, it should be understood that a best interests meeting has no legal authority, other than demonstrating agreement of those within the meeting. Significant disagreements may still need to be taken to the Court of Protection for legal resolution.

2.3 Making a decision in a person’ best interests requires that:

- The Act’s statutory principles and best interests checklist are properly considered.

- The Service User/Patient, even though lacking mental capacity, remains central to the decision or decisions needing to be made and should be involved in the decision-making process whenever possible.

- Relevant professional and informal networks are properly consulted.

- There is a clear structure to the meeting, promoting partnership working, the sharing of relevant information, the positive expression of different views, and an analysis of the risks and benefits attached to different options.

- All relevant circumstances are taken into consideration including the person’s beliefs and values, past and present wishes, and any written statements the person made when he/she had capacity. This may include an Advance Decision to refuse treatment or an Advance Statement of preferences/wishes.

- Consideration is given to whether the decision can be delayed until the person regains capacity to make the decision for him/herself, if this is a possibility.
• Consideration is given to other factors which might have influenced the person’s decision such as altruistic intentions, consideration for others and duties and obligations towards future beneficiaries and/or dependents.

• Consultation is carried out with others such as partners, carers, family members, and other relevant people where it is practicable to do so.

• The decision is not motivated by a desire to bring about the person’s death when the decision relates to life-sustaining treatment.

2.4 Where a decision cannot be made, for whatever reason, the best interests meeting will also have to decide what further actions may be required to expedite future decision-making, by whom and in what timescale. This may ultimately include referral to the Court of Protection.

**Urgent situations**

2.5.1 If the situation is very urgent however, a meeting may not be possible and decisions will have to be made based on the information available - including the availability of people for consultation. The ‘doctrine of necessity’ may be invoked in an emergency situation. Actions in the person’s best interests can be made providing the professional ‘reasonably believes’ a person lacks capacity and that the proposed treatment/action is necessary to save their life or to prevent a significant deterioration in their condition without formal documentation of the capacity assessment and best interests decision.

2.5.2 The MCA does not give any clear indication as to how long it would be acceptable for decisions to be made under the doctrine of necessity. It is sensible to assume that as soon as someone’s capacity can be formally assessed and their best interests decided, then this is what should happen. If the proposed treatment is not clearly ‘necessary’ then MCA processes should always be followed.

**3. When is a Best Interests Meeting Required?**

3.1 Where assessments of mental capacity relate to day-to-day decisions and caring actions (such as what clothes to wear or what to eat) the multi-agency Policy Procedure and Guidance advises that an MCA1 can be used or other flexible approaches such as the insertion of a capacity assessment within care planning/support plans etc. The Act provides protection from liability for actions taken as long as those actions can be understood to have been in a person’s best interests. Evidence of the consideration of capacity and if necessary where a person lacks capacity, evidence of the best interests consideration will provide robust documentation should the need arise. As the seriousness of the decision and/or the action increases then the need for a clear documented record increases.

3.2 A best interests meeting may be needed following a formal recorded assessment of mental capacity in relation to the following sorts of decisions:
• where to live, if a significant change is envisaged;

• what care services support to receive at home;

• whether to report a criminal or abusive act;

• where there is a dispute with the person, the family and/or the care team as to the capacity or views of a person;

• where the capacity of a person could be open to a legal challenge, such as in relation to a claim for personal injury;

• where the person concerned is repeatedly making decisions that place him/herself at risk or could result in preventable suffering or damage;

• having serious medical treatment – whilst noting that permission for some serious medical treatments, such as sterilisation, can only be granted by the Court of Protection.

3.3 These examples are not exhaustive and each situation needs to be judged on its merits, using professional judgment. Clarity is provided in the Mental Capacity Act Code of Practice where it gives guidance, on pages 59 - 60 on where professionals should be formally involved.

3.4 Where there is, or is likely to be, a dispute as to how to serve the best interests of the person who lacks mental capacity, there is recourse in law to the Court of Protection. The Court will however expect to see evidence of professional decision-making and best interests recording having already taken place, and this is another reason why holding a best interests meeting will be useful in ensuring that the decisions needing to be made are clearly understood.

3.5 A best interests meeting should be held and formally recorded where:

• the decision that needs to be made is complicated or has serious consequences for the person;

• an assessor concludes a person lacks capacity, and the person, family members, carers and/or professionals disagree with the assessment about a person’s capacity e.g. home based support as opposed to a residential placement;

• the person being assessed is expressing different views to different people, anticipating what they think they want to hear;

• somebody wants to challenge the person’s capacity to make the decision – either at the time of the decision or later (for example, a family member challenging a will after a person has died);
• somebody has been accused of abusing a vulnerable adult who may lack capacity to make decisions that protect them;

• a person is repeatedly making decisions that put them at risk or could result in suffering or damage.

4. The Best Interests Meeting – Who Should Attend?

4.1 This needs to be considered by the person who is identified in the Mental Capacity Act Code of Practice as the ‘decision-maker’. The decision-maker is whoever is responsible for deciding what is in the best interests of the person who lacks capacity. It is desirable to aim for consensus, but ultimately there is only one decision-maker. See Section 7.8 of the multi-agency Policy Procedure and Guidance. Discussion with whoever is chairing the meeting is also advisable.

4.2 Anyone who attends a best interests meeting must be clear about their role and the contribution they can make in the meeting. They should also come prepared with relevant information, and be prepared to contribute this to the discussion. Agreement should be reached about how to include the contribution of any person who is unable to attend, so that the meeting can still serve its purpose, rather than be unduly delayed.

4.3 Careful consideration should be given so as not to exclude people who may have an interest. Those people may include:

• the person assessed as lacking mental capacity;

• family members, parents, carers and other people interested in the welfare of the person, if this is practical and appropriate;

• any person who holds an Enduring Power of Attorney (pre-October 2007) or one or both of the two Lasting Powers of Attorney (from October 2007) made by the person now lacking capacity;

• Any advocate who is involved including the statutory Independent Mental Capacity Advocate (IMCA) Service. (Refer to Chapter 10 of the MCA Code of Practice for further information about the role of the IMCA or the Gloucestershire multi-agency IMCA Policy, Procedure and Guidance;

• Any Deputy appointed by the Court of Protection who can make decisions on behalf of the person lacking mental capacity.

• Any professional person who can contribute to the outcome of the best interests meeting.

5. The Best Interests Meeting - Preparing for the Meeting and Supporting Attendees.
5.1 For some, being invited to a best interests meeting can lead to that person experiencing feelings of increased anxiety and uncertainty about what may be expected of them during it.

5.2 It is important that the person who is convening the meeting communicates clearly with those who have been invited at the earliest possible opportunity. This is particularly relevant when the person deemed to lack capacity is attending and for any family members, people appointed with Power of Attorney and Carers etc.

5.3 The person who convened the meeting should also ensure that the following information is sent out to attendees prior to the meeting taking place:

- The contact details of a person who will be able to answer any questions relating to the meeting.
- Information on how to access the Mental Capacity Act 2005 Code of Practice.
- An information booklet (appropriate to their need). The Gloucestershire MCA public information leaflet can be downloaded from [www.gloucestershire.gov.uk/mca](http://www.gloucestershire.gov.uk/mca)
- An Agenda – Appendix 1 provides an agenda template.
- A list of people who have been invited and their roles.
- Special consideration should be given to the venue chosen for the meeting for e.g. wheelchair access/lifts/accessible parking, easy access to toilets, provision of refreshments etc. It may be appropriate for the meeting to take place at the relevant person’s home or day care setting to maximise their ability to attend for some or all of the meeting, if it has been assessed as appropriate for the person to attend and the person wants to.

6. The Best Interests Meeting – Who Chairs?

6.1 It is generally best practice that the person who chairs or co-ordinates the best interests meeting is not the person who is the decision-maker. This avoids any possible conflict of interest. The decision-maker must attend the meeting.

6.2 It would usually be expected that a team or service manager will chair the best interests meeting or a registered and experienced health or social care professional (Agenda for Change Band 6 or above) at the discretion of their line manager. At the very least it needs to be someone who is able to chair a meeting at which competing views and opinions may be expressed. The chair of the meeting may be required to provide some mediation and negotiation so that the best interests of the person lacking mental capacity are not
overlooked. The chair will also need to be able to summarise the discussion and confirm the way forward, and actions to be taken.

6.3 To support clients, their family members and/or their representatives in feeling as comfortable as possible on the day of the meeting, it is good practice for the chair to arrange to meet, (with those identified above) at the venue approximately 20 minutes before the meeting is due to commence. This allows attendee’s to have an opportunity to meet face to face and express any concerns or fears they may have about the process. It also allows time for the chair to orientate the attendees to the environment e.g. where the toilets are situated etc, explain the best interests decision making process, outline the meeting agenda, identify who will be attending and allow people to settle in the room before the other attendees arrive.

6.4 The chair may also consider the value of staggering or holding the meeting in sections, with some people invited to attend at a specific time. This is a useful strategy to implement in situations where family members do not get on with one another, but wish to attend. The Chair should also consider whether it would be too distressing for the client/patient, if certain people attend the meeting and make arrangements for their views and opinions to be identified and recorded prior to the meeting and ensure they are tabled as part of the process.

6.5 A person’s needs and situation may fall within different legislative structures or other processes, such as under the Mental Health Act or adult safeguarding arrangements. It may be necessary and appropriate to include reference to these elements within the best interests meeting. This is a matter on which the chairperson for the meeting needs to give some consideration.

6.6 A Mental Capacity Act best interests meeting is not a substitute for an adult safeguarding strategy meeting, or any meeting under the Care Programme Approach or other care planning framework. The person chairing the best interests meeting should confirm at the start of the meeting the relationship of the meeting to any of these other elements, and whether they may need also to be addressed separately within a different formal or statutory process.

7. The Best Interests Meeting – How is it Recorded?

7.1 The outcome of the best interests meeting and associated viewpoints will need to be recorded on the MCA2 under ‘Best Interests Determination’. If it is also felt necessary and useful to make a separate report of the best interests meeting Appendix 2 offers a framework which incorporates the balance sheet approach. The best interests meeting needs to be structured and recorded in such a way that it is clear who attended (and those who were unable to attend) what discussions took place, and what outcomes were agreed. Whilst the notes should record the issues and the discussion that took place, the emphasis needs to be on an analysis of the risks and benefits attached to the different options and the identification of those responsible for
undertaking the agreed actions as well as the timescales within which those actions will be taken.

7.2 In line with the approach taken in the Court of Protection and widely accepted best practice a ‘balance sheet’ approach should be adopted to reaching a best interests decision. Medical, emotional, social and welfare interests may be relevant and should be entered onto the ‘balance sheet’. This approach includes:

7.2.1 Identifying all the options
7.2.2 Entering all the actions and potential benefits, risks, advantages and disadvantages of each option including the likelihood or certainty they will happen
7.2.3 Underlining factors that are particularly important
7.2.4 Highlighting any one factor that has over-riding importance
7.2.5 Assessing which option is in the person’s best interests.

At the end of the process it should be possible to ‘strike a balance’ between the sum of the certain and possible gains against the sum of the certain and possible losses.

7.3 The notes should clearly identify the name of the person who has prepared the record together with the name of the organisation on whose behalf the notes have been prepared.

7.4 In order to ensure that appropriate communication is forwarded to the person concerned, the notes of the meeting must be presented in a way that is accessible to all.

8. Dispute resolution

8.1 Dispute resolution is not a new concept. Occasionally and it is only occasionally, complex multi-agency decision making proves challenging in terms of ownership of the specific decisions needed to support Service User/Patients who lack mental capacity. Sometimes finding an agreed way forward is unclear and tensions and disputes arise. This may particularly be the case when more than one agency has responsibility for the work needed to achieve a best interests decision. This is not helpful either for the Service User/Patient or for ongoing working relationships between agencies. Whilst recognising that this list is not exhaustive, examples of where disputes are emerging in relation to Mental Capacity Act decisions include the following scenarios:

- Hospital discharge planning and adult safeguarding;
- Peg feeding;
- Family disputes blocking change for the Service User/Patient;
• Concerns over the mental capacity or mental health of others, such as family members, who have an interest in the care and/or treatment of the person lacking capacity;

• A premature decision to challenge a decision via the Court of Protection is being considered.

8.2 Where the best interests decision-making process has either become ‘stuck’ or has revealed an area of uncertainty, or there is dispute or difference between key agencies, then dispute resolution has an important role to play. The suggested way forward is to contact the Adult Safeguarding Service for advice. Following consultation it may be suggested that calling a Best Interests Case Conference would be beneficial. This meeting should then be chaired by a manager or senior clinician who has not been part of the decision making to-date. Appendix 3 provides guidance for the chair of a Best Interests Case Conference. It may be possible to offer support from one of the Safeguarding Practitioners who are also Best Interest Assessors. This meeting will attempt to negotiate and clarify the areas of uncertainty, to explore learning and then to agree the next steps needed. The outcomes of such meetings should be a clear agreed plan of action.

8.3 Considering whether to convene a Best Interests Case Conference should only be considered after a best interests meeting has been held. The criteria for holding a Best Interests Case Conference are;

• No consensus could be reached about what is in the person’s best interests and the decision-maker cannot decide

• Parties cannot or refuse to abide by the decision reached by the meeting

• Legal action is threatened

• The decision is contentious

• The person is at risk of significant harm if the best interests decision is not followed.

8.4 If the dispute needs to be resolved urgently – because for example a Service User/Patient lacking mental capacity is at risk of harm consider whether an urgent referral to the Court of Protection is needed. If this is the case, it is imperative that staff contact the organisations Legal and Democratic Services as soon as possible. A Case Conference meeting can then be organised later. See Good Practice Guide on ‘Accessing the Court of Protection’ (2012), a future further appendix to the multi-agency MCA Policy, Procedure and Guidance.

8.5 Service User/Patients, carers and any person holding a relevant Lasting Power of Attorney authority are not bound to follow this guidance. They may
feel they want to bypass attending a Case Conference meeting if they are not happy with the outcome of a best interests decision meeting. In such cases they can of course take the matter forward to the Court of Protection. If that is what they decide to do, then they should be advised to seek independent legal advice and/or to contact the Court of Protection’s information and advice line on telephone 0300 456 4600 or by e-mail on: courtofprotectionenquiries@hmcourts-service.gsi.gov.uk

8.6 The MCA Code of Practice Chapter 15 offers further advice and direction.

9. Confidentiality

9.1 Attendance, and the subsequent sharing of information relating to the person lacking mental capacity, must always happen in line with the Data Protection Act 1998 requirements and should be provided on a need-to-know basis. It may be appropriate for some contributors to only attend part of the meeting, or provide information through earlier discussion or in writing.

10. Further Information

- The British Psychological Society (BPS) ‘Best Interests Guidance on determining the best interests of adults who lack the capacity to make a decision (or decisions) for themselves' (England and Wales) (2007) http://www.bps.org.uk
- Using the MCA: A resource for families and friends of people with learning disabilities. Section 6 has a chapter on best interests. www.hft.org.uk/family_carer_support/mca_resource_guide
- ‘Making Welfare Decisions Under the Mental Capacity Act 2005’ (March 2012). This DVD has a section on ‘understanding best interests’ which includes use of the ‘balance sheet’ approach which has been incorporated within this guidance. The DVD is available from the Senior Practitioner DoLS in the GSAS.
- 2gether NHS ‘best interest pathway’ flow chart shows how the best interests process should work if an assessment has shown someone lacks capacity to make a decision. It sets out the role of the decision-maker, who should be included in a best interests meeting, what to do if there is a dispute and how a decision to take action should be evidenced. www.2gether.nhs.uk/mca-best-interest-pathway
- The online tool BRIDGETT allows you to check whether a best interests process has been followed. Completing it generates a printable report that indicates how closely the process used matches the guidance set out in the MCA Code of Practice www.bestinterests.org.uk/
- Cornwall County Council have also produced a free on line decision making tool, but the emphasis is on working through an assessment rather than audit as with BRIDGETT http://ehealthtracker.org/B1.htm
# BEST INTERESTS MEETING
## AGENDA

1. **Introductions and Apologies**
   - Housekeeping
   - Outline format of meeting – provide clarity that each person will have the opportunity to contribute
   - Information sharing and confidentiality
   - Statement of the legal framework

2. **Purpose of the Best Interest Meeting**
   - Outline background facts
   - Clarification of decision/s required
   - Outline mental capacity assessment. If there is no capacity assessment specific to the best interests decision/s, THE MEETING MUST STOP.

3. **Review of Requirements of the Best Interests Checklist**
   Please see the reverse side of the agenda for the checklist.

4. **View of the Relevant Person**
   - What is known about their previous wishes, feelings, their values and beliefs (sustain this focus)?

5. **Information from Relevant Parties**
   - Views from anyone named to be consulted, any LPA, EPA or Deputy of the Court of Protection
   - Family members opinion
   - Professional opinion
   - IMCA (if involved)
   - Decision-makers opinion

6. **Discussion of Viewpoints**
   - Identify and be clear about the options
   - Discuss benefits and advantages of each option
   - Assess likelihood of each option

7. **Summary and Evaluation of Options**
   - Summary of the information gathered and discussion (consider having this available visually)
   - Recommendations highlighting and dealing with any counterbalancing factors

8. **Decision of the meeting about the person's best interests**
   Allow the opportunity for reaction and expression of feelings
   Please note that the decision maker is not obliged to follow the decision of the meeting, but would need to give clear reasons why they did not do so.

9. **Action plan**
   If the meeting cannot agree, decisions will need to be made about how to proceed e.g. 2nd opinion, involvement of an IMCA, mediation, Best Interests Case Conference, Court of Protection
   Make sure the priority remains the welfare and safety of the person whose best interests are being assessed.

10. **Communication Strategy**
    Service User and Carer Involvement and Feedback

11. **Any Other Business**
Review of the Requirements of the Best Interests Checklist

To include:
■ confirmation that it is not an ‘excluded decision’ (e.g. marriage, civil partnership, sexual relations, divorce);

■ confirmation that an assessment of capacity has been carried out and that the person does lack capacity to make the decision;

■ confirmation that the options available to the person are not being limited by their age, disability, behaviour, etc;

■ confirmation that efforts have been made to enhance the person’s capacity, and to gain a view as to whether or not the person is likely to gain capacity in the future e.g. as a result of recovering from an illness, learning new skills;

■ confirmation that amongst those present there is someone who can give information on the nature of the intervention;

■ confirmation as to whether or not the decision involves life-sustaining treatment;

■ confirmation that amongst those present there is someone who can give information on the person’s wishes, feelings, beliefs, values or any other relevant information. If there is not, and it is a serious decision involving health or change of accommodation, then they must confirm whether an Independent Mental Capacity Advocate (IMCA) has been or will need to be instructed. Their views, following meeting and discussion with the person, should be available to the meeting.

This preliminary discussion of the requirements of the statutory checklist will also enable those present to clarify the factors that will be considered in making the decision.
Appendix 2

BEST INTERESTS MEETING MINUTES
STRICKLY CONFIDENTIAL

Information Sharing and Confidentiality

This Best Interests Meeting was convened under Gloucestershire’s multi-agency Mental Capacity Act Policy, Procedure and Guidance. These minutes are strictly confidential; they must not be photocopied and should be transferred and stored securely. Statutory agencies will store electronic copies on a secure database.

Access should only be on a legitimate need to know basis. Additional requests to show these minutes to other people will only be considered by the Chair of the meeting and permission given, if there is a legitimate reason to disclose the information. Minutes of the meeting will be circulated to all attendees and those who have given apologies.

Copies of these minutes may be requested and disclosed in the event of a Data Protection access to records request, subject to exemptions.

Amendments:

PLEASE NOTE: Requests for amendments to these minutes should be forwarded in writing to the Chair of the meeting, within seven days of the circulation date; otherwise they will be taken as an accurate record.

Mental Capacity Act (2005)

If a person has been assessed as lacking capacity, then any action taken, or any decision made for, or on behalf of that person, must be made in his/her best interests-Principle 4.

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Purpose of the Best Interest Meeting
**Confirmation of Capacity Assessment:**

**Review of the Best Interests Checklist (see rear of agenda):**
These points must be considered.

**View of the relevant person:**

**Information from relevant parties:**

**Discussion of viewpoints:**

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**Summary and Evaluation of Options:**

**Outcome of discussions and conclusion – ‘reasonable belief’ as to best interests:**
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### Communication Strategy

Where the court is not involved, carers, relatives and others can only be expected to have reasonable grounds for believing that what they are doing or deciding is in the best interests of the person concerned. They must be able to point to objective reasons to demonstrate why they believe they are acting in the person’s best interests. They must consider all relevant circumstances.

The undersigned believe this to be a fair representation of the discussions that took place. We have reasonable grounds for believing that what they are doing or deciding is in the best interests of the person concerned at this point in time.

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Appendix 3

BEST INTERESTS CASE CONFERENCE GUIDANCE FOR THE CHAIR

Preparation

- The Chair should request to see all previous best interests meeting minutes.
- Understand any disputes or known challenges, which will help in making decisions about how to best organise and facilitate the case conference.
- Consider whether to request a legal adviser to be present.
- Understand who the essential attendees are and why any other people are considered relevant to consult in the decision.
- Consider how to manage any issues relating to confidentiality and Data protection within the meeting.
- Understand what information and guidance has already been provided to the attendees.

The day of the case conference.

The chair should meet in a quiet area with the person and any family members, LPA/EPA/CoP Deputy prior to the meeting commencing to explain the purpose of the meeting, the legislation to be used, who will be attending the meeting and why, and finally to offer the opportunity for any questions / concerns to be explored.

As with best interests meetings, the Chair should consider whether this should take place immediately before the meeting, or to consider whether it would be more appropriate to offer the opportunity to meet with the person/family at an earlier stage. Where there are known tensions, open and timely communication between the Chair and the person/family etc. can help to reduce any building tensions and help both parties to plan how to achieve a more relaxed meeting process. This process is especially important in situations where there is dispute.

The Chair must remain mindful that at this stage they should not engage in any level of discussion about the decision to be made, but to remain solely focused on supporting attendees to understand the process and be as comfortable as possible throughout.

Opening the case conference
Open the meeting by reminding the attendees that the case conference is being held under the principles and provisions as set out in the Mental Capacity Act 2005. The meeting will be paying particular regard to the Statutory Best Interests Checklist, and lastly remind all of the need to pay regard to confidentiality. Ask each person to say who they are and why they are attending the case conference.

(The minute taker may find it useful to use the questions set out below as mini headings to capture and clearly record the content of the meeting).

Inform everyone that the meeting will focus on the decision/s that is required to be made and no other.

The following questions should be covered in the meeting and generally in this chronological order:

1. What is the specific decision/s to be made? (the meeting must agree as this will be the focus of the meeting from this point onwards).
2. Why is it being proposed?
3. What steps have been taken to help the person attend the conference today and be involved in the decision making process?
4. What steps have been taken to support the person in making the decision themselves? Why have these attempts failed?)
5. Is there an up to date Mental Capacity Assessment to evidence the person lacks the capacity to make the decision required? (if not the meeting must stop).
6. Is it possible to delay the decision until the person regains capacity and will be able to make the decision themselves. Are there any risks to the person in delaying the decision?
7. Who is the Decision Maker? Is an EPA or appropriate LPA/Court Appointed Deputy (CAD) in place who has the relevant authority to make the required decision?
8. Is there a valid and applicable Advance Decision, or Advance Statement that is relevant to the decision?
9. What do we already know about the person’s values, wants and wishes?
10. What are the available/possible options to be considered? What are the positive and negative aspects of each, keeping the person’s views and opinions central and taking into consideration all assessed and known risk.
11. How will the options impact on the following:
   - Any medical aspects
   - Any welfare aspects (how they live their lives)
   - Any social aspects (relationships)
   - Any emotional aspects (how they may feel or react).
12. What Health and Social Care staff/professionals have been consulted? What are their views and opinions?

13. Is there a report from an Independent Mental Capacity Advocate (IMCA)? If the person reaches the qualifying criteria for an IMCA instruction, it becomes a statutory requirement.
   If the person has reached the qualifying criteria and an IMCA has not been instructed why is this case?

14. Is there any feedback from an Independent Advocate?

15. Are there any other reports to be tabled?

16. Now that the family, EPA/LPA/CAD have heard all the relevant information, what are their views?

17. Outcome of decision. The identified decision maker to make the final decision once all reports etc. have been tabled.

18. Has the decision maker chosen the least restrictive option? If not what is the rationale for the decision made?

19. Identify any actions, who has responsibility for each action and the timescale within which each must be completed.

20. If there is continued dispute or challenge at this stage, Chair to provide information on how to make a complaint, consider whether it would be appropriate to offer independent mediation and advise that consultation will be sought immediately with the legal service for advice. Consideration will need to be given as to whether the decision should be taken to the Court of Protection.