



Best Interests workshop

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Desert Island Discs

- Food Heaven..... Food hell
- A film you could watch again and again:
.....
- A favourite TV programme (or two!):
- Do you have any hobbies?
.....
- Do you have particular beliefs that are really important to you? (e.g. religious; around food/drink; particular values; politics etc) If so, choose one
- Do you enjoy shopping?
- How often do you have your hair done?
- What's your favourite type of holiday?.....

Desert Island Discs

Would you prefer to live in a large city, a small town or somewhere more rural?.....

When do you clean your teeth in the morning? when you get up / before you leave the house / other

Would you describe yourself as a sociable person?

What is the greatest risk you have ever taken?.....

Would you say how you look is: **very** important to you, **somewhat** important to you, **not at all** important to you

How do you relax?.....

Do you sing / play any instruments?

Do you wear a watch?On what wrist.....



Desert Island Discs

- Do you have a favourite season?.....
- Do you have any pet hates?.....
- Do you have / would you like any pets?
- Do you like gardening or spending time in a garden?.....
- Are you a creature of habit?
- On a scale of 1-10, how important is your family important to you? (0 = not at all, 10 = completely)
- Have you ever had a relationship that your friends or family disapproved of?
.....
.....
- Bath or shower?



Follow up questions!

You are coming to live with me next week, is there anything else I should know about you?

Follow up questions!

Would you feel differently if I was a care home manager, and you are moving to my care home?

Did I miss any really important topics off the questionnaire?

Follow up questions!

If you 'needed' support with personal care in the future, do you have any preferences?

Follow up questions!

Do you have strong opinions about receiving life sustaining treatment?

Best Interest Checklist

- around the room are the headlines from the best interests checklist
- the statute lays down no hierarchy between the various factors
- the weight to be attached to the various factors will, inevitably, differ depending upon the individual circumstances of the particular case. there may, in the particular case, be one or more features or factors which are of “**magnetic importance**” in influencing or even determining the outcome

Best Interests (from 39 Essex St guide)

- All practicable steps must be taken to support a person to take their own decisions before any question of best interests arise. The better the application of the MCA, the fewer best interests decisions will be required. In many respects, having to determine someone's best interests should be seen as a failure: a failure to enable the person to decide for themselves.
- the purpose of the process is to arrive at the decision that health and social professionals reasonably believe is the right decision for the person themselves, **as an individual human being** – not the decision that best fits with the *outcome* that the professionals desire

Best Interests (from 39 Essex St guide)

- the focus should be on **supporting** P to participate as a vitally important part of the process. The duty also extends to improving the person's ability to participate as well. In some situations, you may find that the very process of doing this leads you to reconsider whether the person has the capacity to make their own decision.
- we suggest that it is (at a minimum) good practice that where it is possible to identify a course of action that the person would have taken had they had capacity, then any departure from that course of action must be justified by the health and social professionals involved. The greater the departure, the more compelling must be the reason for so doing.

Balance Sheet approach

- Identify each of the options that are on the table
- take the steps necessary to identify (for instance) P's wishes and feelings
- draw up a balance-sheet of the benefits and risks or disadvantages to P of each of those options, so that the reader(s) can see the issues and compare the various options under consideration – BI meeting
- Don't forget to include practical implications for P as well as less tangible factors such as relationships with family members and care home staff.

Advantages or benefits	Disadvantages or burdens
Medical	Medical
Welfare	Welfare
Social	Social
Emotional	Emotional
Ethical	Ethical

Balance Sheet approach

- The risks and benefits to P;
- The likelihood of those risk and benefits occurring;
- The relative seriousness and/or importance of the risk and benefits to P.

It is important to show that you have considered what could be done to reduce these risks or disadvantages and set out detailed plans for dealing with them. This might include additional care or staff support for particular periods of time, or the provision of financial assistance to ensure that relationships can continue.

- Where there is the prospect that a proposed option may fail in the short or medium term, there must be thought given to what will happen in those circumstances, to minimise the chances that hasty and off-the-cuff decisions will suddenly be required, to the possible detriment of P.
- it is helpful to set out separately a conclusion about which option you consider to be in P's best interests and why. This is particularly important where there is a dispute and where the option you prefer entails significant disadvantages to P, such as a loss of independence, intrusion into a longstanding relationship, or inevitable distress caused by a change of environment.

- It is extremely important to be clear that it is possible for there to be many apparent risks to P of a particular course of action and only one benefit, but that that benefit is of overriding importance. Such a benefit is sometimes called the factor of “magnetic importance.”
- Setting out the separate conclusion can also guard against a danger that the courts have identified in the otherwise useful balance-sheet approach, namely that completing a table can lead to a loss of attribution of **weight** to each factor

You could use **bold**, underlining, or *italics* to emphasise certain points.

Or all three!!!!



What do Court of Protection judges say?



Sheffield Teaching Hospitals NHS Foundation Trust v TH

[2014] EWCOP 4

- Mr TH was a 52 year old man and a talented drummer.
- He had a history of excessive alcohol use
- in a very low awareness state for three months. The court heard evidence from his friends and his ex-partner about his background, his life and his personality
- ‘their obvious love and affection for him has brought his character and personality to this court. They have communicated not merely his words and wishes, but also his feelings, too frequently conflated as the same concept, but in truth entirely different.’

- TH was ‘a bit cookie’ — he had a lifelong suspicion and distrust of the state, and an intense dislike of hospitals.
- He did not like relying on other people for help.
- ‘this is a situation that he would find unendurable and an affront to his dignity’.
- “If ever a court heard a holistic account of a man’s character, life, talents and priorities it is this court in this case. Each of the witnesses has contributed to the overall picture.....
Privacy, personal autonomy and dignity have not only been features of TH’s life, they have been the creed by which he has lived it.”

In re N (Mental Capacity: Medical Consent) [2015] EWCOP 76

- 68 year old Jewish woman who had lived with multiple sclerosis for 23 years.
- where the wishes, views and feelings of P can be ascertained with reasonable confidence, ‘they are always to be afforded great respect’ and observed that ‘an assessment of P’s wishes, views and attitudes are not to be confined within the narrow parameters of what P may have said. Strong feelings are often expressed non-verbally, sometimes in contradistinction to what is actually said. Evaluating the wider canvass may involve deriving an understanding of P’s views from what he may have done in the past in circumstances which may cast light on the strength of his views on the contemplated treatment.’

Manuela Sykes:

'it is her welfare in the context of her wishes, feelings, beliefs and values that is important. This is the principle of beneficence which asserts an obligation to help others further their important and legitimate interests. In this important sense, the judge no less than the local authority is her servant, not her master.' Significant problems and some distress lay ahead but, in a finely balanced decision:



Manuela Sykes

- ‘Several last months of freedom in one’s own home at the end of one’s life is worth having for many people with serious progressive illnesses, even if it comes at a cost of some distress. If a trial is not attempted now the reality is that she will never again have the opportunity to live in her own home. Her home will be sold and she will live out what remains of her life in an institution. She does not want that, it makes her sufficiently unhappy that sometimes she talks about ending things herself, and it involves depriving her of her liberty.’

Last thoughts:

- Munby – safe but miserable
- Finding a way in
- Contextualise people's behaviour - what are they communicating?
- Who knows you best? Look back at the three people you chose – who would you want consulted?
- Spread the word, have these conversations with people who need to know about you, and encourage others to do the same so if ever someone else is making a decision for them, they have the right knowledge.....



Thank you for coming!

You will be emailed your evaluation form, please complete and then your certificate will be emailed



A white rectangular card with a shadow, containing a checklist of five evaluation categories. The first category, 'Excellent', has a red checkmark in its checkbox. The other categories are 'Very good', 'Good', 'Average', and 'Poor', each with an empty checkbox.

- Excellent
- Very good
- Good
- Average
- Poor