

## Electronic Annex 4a

# Best interests checklist for patients with PDOC

Patient ID			
Decision(s) to be made:			
	<b>Checklist</b>		<b>Action</b>
1	Has this person been assessed as lacking capacity to make this decision?	<input type="checkbox"/> Yes <input type="checkbox"/> No	In PDOC, the person will always lack capacity, but this must be documented.
2	Does this person have a Welfare LPA or court-appointed Welfare Deputy who has authority to make this decision?	<input type="checkbox"/> Yes <input type="checkbox"/> No	The team should ask to see the documentation to understand the extent of any LPA or Deputy's authority. <b>If yes</b> , the LPA or Deputy must be consulted and has a legal right to veto the decision.
3	If the decision under consideration is for medical treatment, has the person made an advance decision to refuse this treatment (ADRT)?	<input type="checkbox"/> Yes <input type="checkbox"/> No	The team should ask to see the documentation to understand if the ADRT is valid and applicable.  <b>If yes</b> , the ADRT is legally binding, if valid.
4	Is it likely that the person will regain capacity in relation to the decision in question?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(If yes, and it is reasonable to wait, then the decision-maker should do so.) In PDOC, the answer is almost always 'No'.
5	Can the decision wait until the person regains mental capacity?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Again, in PDOC the answer is almost always 'No'.
6	Has the person been helped to participate in the decision-making process as fully as possible?	<input type="checkbox"/> N/A	This is not usually applicable for patients with PDOC.
7	<p>Record all relevant information about the person's wishes and beliefs in relation to this decision. (In particular, any relevant statements made when he/she had capacity (see note 1) and who has been consulted with in <i>best interests</i> discussions (see note 2).  State how these have been considered as part of the <i>best interests</i> process.)</p>		

	Decision(s) reached:	
	<b>For decisions regarding life-sustaining treatment</b>	
8	<p><b>Agreement</b></p> <p>Are all parties in agreement with the decision reached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, summarise the areas of disagreement and the reasons:</p> <p>What steps if any are being taken to address /mitigate any disagreements?</p>	
9	<p><b>Conflicts of interest (Col):</b> (See Notes 4 below)</p> <p>Has the potential for common conflicts been openly discussed in the best interests discussion along with the explanation that these are expected. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Have any parties to the decision-making declared any exceptional Col ? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, how were these taken into account in the decision-making process?</p>	
<p><i>I confirm that I have understood and reviewed the checklist in respect of the above-named person and the decision has been made in accordance with the guidance in Chapter 5 of the MCA 2005 Code of Practice.</i></p>		
<p><b>Name of decision-maker:</b></p> <p><b>Date:</b></p>		<p><b>Other people involved in the decision-making process:</b></p>

Source: Royal College of Physicians. *Prolonged disorders of consciousness: national clinical guidelines*. London: RCP, 2020.

## Notes

1. The MCA Code of Practice states:
  - > *'All reasonable efforts must be made to find out whether the person has expressed views in the past that will shape the decision to be made. This could have been through verbal communication, writing, behaviour or habits, or recorded in any other way (for example, home videos or audiotapes).'* (MCA Code of Practice 5.41)
  
2. **Sections 4(6) and 4(7) of the MCA state that**, when making *best interests* decisions, the decision-maker must:
  - (6): Consider, so far as is reasonably ascertainable –**
    - (a) *the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),*
    - (b) *the beliefs and values that would be likely to influence his decision if he had capacity, and*
    - (c) *the other factors that he would be likely to consider if he were able to do so.*
  
  - (7): Take into account, if it is practicable and appropriate to consult them, the views of—**
    - (a) *anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,*
    - (b) *anyone engaged in caring for the person or interested in his welfare,*
    - (c) *any donee of a lasting power of attorney granted by the person, and*
    - (d) *any deputy appointed for the person by the court, as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection 4.6.*
  
3. The British Medical Association (BMA) / Royal College of Physicians (RCP) guidance on clinically assisted nutrition and hydration (CANH) in adults who lack the capacity to consent, 2018, states as follows:
  - > *The person responsible for making the decision should ultimately decide how wide this consultation should be, but should take account of the views of other members of the healthcare team in reaching that decision. The decision of who to consult must not be influenced by a desire to achieve agreement on a particular course of action.*
  
  - > *For the most significant decisions, it is important to ensure that attempts are made to identify all relevant people to be consulted about whether CANH would be in the patient's best interests. Those consulted usually include family members and could also include friends, colleagues etc., who have known the patient well and may be aware of their views and values. In some cases a neighbour or close friend may have been more involved in the patient's day-to-day life and have a clearer view of the patient's wishes than family members, and so it is important to look beyond the immediate family to gain as much information as possible to feed into the decision-making process.*

#### 4. Agreement and Potential conflicts of interest

In the case of serious decisions, such as those relating to continuing or withdrawing life-sustaining treatment including CANH, recent legal guidance ([www.bailii.org/ew/cases/EWCOP/2020/2.html](http://www.bailii.org/ew/cases/EWCOP/2020/2.html)) has highlighted that if, at the end of the medical process, there remain concerns that there is lack of agreement as to a proposed course of action from those with an interest in the person's welfare or there is a **potential conflict of interest** on the part of those involved in the decision-making process, then consideration must be given as to whether an application to the court is required.

While undertaking *best interests* decisions regarding serious medical treatments, it is therefore useful to note and record whether there is or is not agreement on the proposed course of action and the presence of any potentially significant conflicts of interest.

The updated RCP PDOC Guidelines 2020 note that:

*It is important to understand what this may mean in practical terms and what is meant by a 'potential conflict of interest'. Given that, by definition, best interests decision-making needs to involve consultation with all those close to the patient as well as those who are involved with their care, it would be rare to find an a case in which one or more parties could not be said to have a potential conflict of interest of one kind or another. For example:*

- *A decision to withdraw treatment can mean that*
  - *the commissioner or service provider would no longer have to fund or provide on-going care or that*
  - *a family member would be relieved of caring duties/ responsibilities or may benefit sooner from a patient's will.*
- *A decision to continue treatment can mean that*
  - *a care home continues to receive income,*
  - *the family is spared from experiencing the final loss of their loved one or*
  - *the clinical team does not have to face managing treatment withdrawal and end-of-life care with which they may not be familiar.*
- *Decisions either way can affect different individuals (both professionals and family members) who may have their own strongly held views.*

*These types of conflicts are part of everyday life and do not necessarily mean that people are unable to participate in decision-making, so long as they are able to maintain focus on what the patient him/herself would want.*

At the outset of a formal decision-making meeting for serious decisions, the potential for these common conflicts should be openly discussed along with the explanation that these are expected. However, those present should be invited to declare if they have any exceptional conflicts – the details of which do not need to be shared in the meeting, but can then be explored in private by the decision-maker to determine their significance.

The Best interests checklist should record:

- > at (8) if there was any disagreement between parties and if so any steps taken to address /mitigate it
- > at (9) the presence of any exceptional conflicts and if so whether these were taken into account.