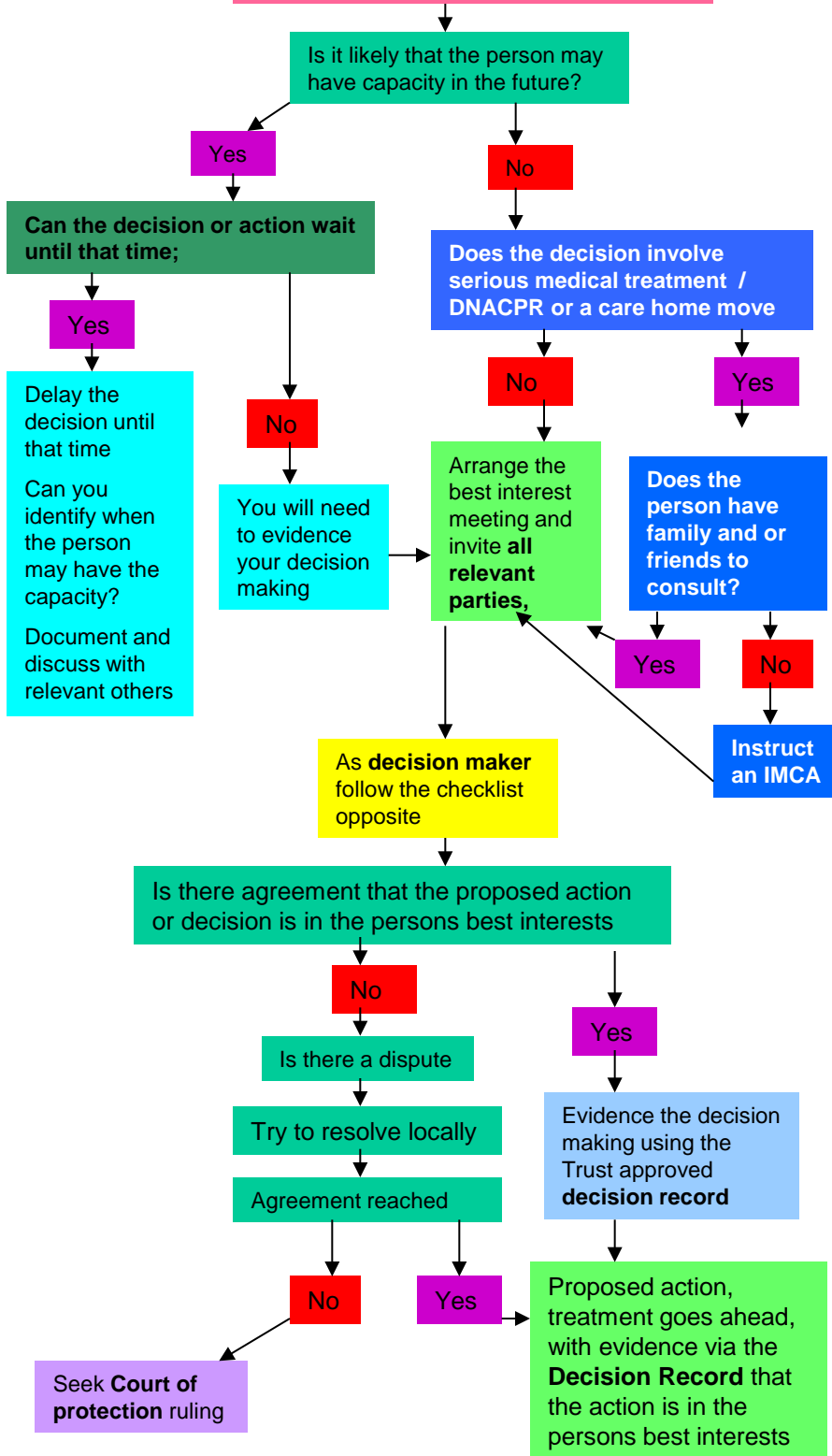# Mental Capacity Act (2005) Best Interest Pathway

Anything done for, or on behalf of a person who lacks capacity must be done in the persons best interests – This does not relate to any treatments under the Mental Health Act [1983]

Test for Capacity has found the person lacks the capacity to consent; therefore any decision made must be in the 'best interests' of the person concerned

Is it likely that the person may have capacity in the future?

- **Yes**
- **No**

Can the decision or action wait until that time;

- **Yes**
  - Delay the decision until that time

    Can you identify when the person may have the capacity?

    Document and discuss with relevant others
- **No**
  - You will need to evidence your decision making

Does the decision involve serious medical treatment / DNACPR or a care home move

- **No**
- **Yes**
  - **Does the person have family and or friends to consult?**
    - **Yes**
    - **No**
      - **Instruct an IMCA**

Arrange the best interest meeting and invite **all relevant parties,**

As **decision maker** follow the checklist opposite

Is there agreement that the proposed action or decision is in the persons best interests

- **No**
  - Is there a dispute
  - Try to resolve locally
  - Agreement reached
    - **No**
      - Seek **Court of protection** ruling
    - **Yes**
- **Yes**
  - Evidence the decision making using the Trust approved **decision record**

Proposed action, treatment goes ahead, with evidence via the **Decision Record** that the action is in the persons best interests

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The decision maker must ensure that the proposed action/treatment is in the best interests of the person

The decision maker needs to check if there is an advance directive, Lasting Power of Attorney [LPA] or Deputy or if there is a friend/carer of person nominated by the person to consult

The decision maker must:

- Consult with all relevant others i.e. the person, Medic/GP, Carers, Allied Health Professionals, Social Care staff, Advocate/IMCA, or people who know the person really well, i.e. LPA or Deputy or Enduring Power of Attorneys"

- Identify the views of all relevant people in the persons life

- Not make assumptions about a persons best interests based upon the persons age, or appearance, condition or any aspect of their behaviour

- Consider all the relevant circumstances relating to the decision in question

- Involve the person as fully as possible

- Ensure that the decision concerns the preservation of withdrawing of life sustaining treatment, the decision maker must not be motivated by a desire to bring about death

- Be able to justify and evidence their decision making

- Ensure that other least restrictive options are always explored (**please complete best interests decision record)**

If it has not been possible to contact people, give details why not possible

What constitutes a best interest meeting?

This does not always have to be a face to face meeting, as long as the decision maker follows the guidance above with all relevant others and this is documented on the agreed paperwork.

Record keeping; it is important that you accurately record and evidence any decisions made with regards to best interests

To access **Court of Protection**- contact the Trust's Mental Health Legislation Department for advice