
Making Safeguarding Personal Toolkit

Case Example 6: Best interests decisions





Case Example

Scenario: Whose best interests?

Pedro, a young man with a severe learning disability, lives in a care home. He has dental problems which cause him a lot of pain, but refuses to open his mouth for his teeth to be cleaned.

The staff suggest that it would be a good idea to give Pedro an occasional general anaesthetic so that a dentist can clean his teeth and fill any cavities. His mother is worried about the effects of an anaesthetic, but she hates to see him distressed and suggests instead that he should be given strong painkillers when needed.

While the views of Pedro's mother and carers are important in working out what course of action would be in his best interests, the decision must not be based on what would be less stressful for them. Instead, it must focus on Pedro's best interests. Having talked to others, the dentist tries to find ways of involving Pedro in the decision, with the help of his key worker and an advocate, to try to find out the cause and location of the problem and to explain to him that they are trying to stop the pain. The dentist tries to find out if any other forms of dental care would be better, such as a mouthwash or dental gum.

The dentist concludes that it would be in Pedro's best interests for:

- > a proper investigation to be carried out under anaesthetic so that immediate treatment can be provided
- > options for his future dental care to be reviewed by the care team, involving Pedro as far as possible.

What follows suggests how the dentist and those caring for Pedro might have used the statutory checklist to decide what was in his best interests.



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The statutory checklist

4(1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of:

(a) the person's age or appearance; or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

Pedro has a learning disability, but this does not mean that he should not receive the same treatment as everyone else.

4(2) The person making the determination must consider all the relevant circumstances.

The dentist considered a range of issues when trying to decide what treatment she should give Pedro. These included the amount of pain he is experiencing, the consequences to his health if no dental work is undertaken, the impact on his quality of life if he remains in pain, the distress and fear he experiences when anyone tries to look in his mouth, his future needs for oral health care and the risks of a general anaesthetic.

And, in particular, take the following steps.

4(3) He must consider:

(a) whether it is likely that the person will at some time have capacity in relation to the matter in question; and

(b) if it appears likely that he will, when that is likely to be.

The degree of Pedro's learning disability means that it is unlikely that he will gain capacity to make the decision for himself in the future.

4(4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.

The dentist consults with others who know Pedro well, to see if there are any ways in which they can involve him in the decision; and if they cannot involve him in the whole decision, can they involve him in some of it.

4(5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

This decision does not relate to a life or death matter.

4(6) He must 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).

Pedro has shown, by his behaviour, that he does not want anyone to do anything to his teeth. Although he cannot verbally express a preference, his refusal to co-operate shows that he would prefer that people left him alone.

(b) the beliefs and values that would be likely to influence his decision if he had capacity.



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Pedro has never been able to tell people about any beliefs and values.

(c) the other factors that he would be likely to consider if he were able to do so.

The dentist and Pedro's carers have no way of knowing what other factors he might consider.

4(7) He must take into account, if it is practicable and appropriate to consult them, the views of:

(a) anyone named by the person is someone to be consulted on the matter in question or on matters of that kind.

Pedro has not been able to name anyone who should be consulted about the decision.

7(b) anyone engaged in caring for the person or interested in his welfare.

Pedro's mother is clearly interested in his welfare, and therefore must be consulted. The staff who care for him also must be consulted.

7(c) any donee of a power of attorney granted by the person.

Pedro has never had the capacity to make a lasting power of attorney.

7(d) any deputy appointed for the person by the Court.

The Court of Protection has not appointed a deputy to make decisions on Pedro's behalf

as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

The dentist must consult as many of the people described as possible, and consider their knowledge of what Pedro would want and what they consider to be in his best interests.

The dentist is the person who is actually responsible for deciding whether or not to treat Pedro. She has an obligation to carry out the steps in the statutory checklist, and those who care for Pedro have an obligation to give her all the information that they can. She had to consider the views of Pedro's mother, who felt that the relief of pain would be of more benefit to Pedro, than subjecting him to the risks of a general anaesthetic. However, the dentist decided that Pedro's current and future best interests would be served by risking the general anaesthetic in order to relieve current pain and be able to carry out future oral health care. The general anaesthetic was likely to be less distressing for Pedro than any other alternatives which would allow for her to examine his mouth and carry out necessary treatment.

If the substituted judgement framework was to be adopted in this case, then it is possible that Pedro would not have received any treatment. It could be said that he was clearly demonstrating his wishes by refusing to open his mouth and that a substitute decision-maker would be doing what Pedro wished by refusing treatment. If the substitute decision-maker was his mother, then again Pedro may not have been treated, as she may not have wished him to have had a general anaesthetic.

The best interests framework, therefore, asks for a range of views and a range of factors to be considered and weighed up. The decision that should be made is one that appears to be, on balance, in the best interests of the person. The fact that the 'standard' is that of the balance of probabilities reflects the reality that is not always immediately obvious what is in their best interests.