

# Template letter : Contact with a loved one

YOUR NAME  
YOUR ADDRESS  
DATE

Dear [NAME]

I am writing to you in respect of my [son/daughter/brother/sister/family friend, etc]. He/ she [insert here a summary of their disabilities], and as a result lacks the capacity to make decisions concerning contact with his/her family.

I understand that [explain the restrictions on contact that have been introduced].

[If appropriate] Currently I am showing no symptoms of Covid-19 and will of course follow Government advice regarding personal hygiene, handwashing, social distancing and if necessary self-isolation. I feel that the restrictions placed on both [insert name] and I will have a detrimental impact on [his/her] well-being and may result in an increase in challenging behaviour.

Whilst I appreciate that you and your staff will be concerned about the current COVID-19 pandemic, the law regarding decision making has not changed.

As you will be aware, the Mental Capacity Act 2005 (MCA) governs the process for decision-making in someone's best interests where they lack the mental capacity to make that decision themselves. The Act says that when a person lacks capacity to make a decision themselves, a decision must be made in their best interests. If there is a dispute over mental capacity, the MCA and its code of practice also govern the process by which that dispute should be resolved.

While the term 'best interests' is not defined by the MCA, section 4 of the Act provides a list of some of the matters that should be taken into account when considering what is in an individual's best interests. The code of practice to the MCA provides detailed guidance on what should be considered, and the steps that should be taken, when considering best interests. In particular, I would like to draw your attention to the requirement that a best interests decision must take account of all the relevant circumstances and, in particular, should include the following steps:

1. Encourage [insert name] to participate as fully as possible in the decision-making process.
2. Consider [insert name]'s past and present wishes and feelings and the beliefs and values that would be likely to influence his/her decision if he/she had capacity. [Insert specifics here if relevant, eg your cultural or religious background].
3. Consider the views of anyone engaged in caring for the person or interested in his/her welfare. Steps need to be taken to properly consult.

**Clearly this decision should have involved me as [insert name]'s [insert relationship],** and I would like to draw to your attention the comments of Mr Justice Hedley in the case Re P [2010] EWHC 1592 (Fam):

*“... in a society structured as is ours, it is not the State whether through the agency of an authority or the Court, which is primarily responsible for individuals who are subject or citizens of the State. It is for those who naturally have their care and well being at heart, that is to say members of the family, where they are willing and able to do so, to take first place in the care and upbringing, not only of children, but of those whose needs, because of disability, extend far into adulthood. It seems to me at least that the Act ought to be read subject to that overriding policy aim.”*

**This does mean that both [insert name] and I should be fully involved when any decision is being made on his/her behalf.**

Involving [insert name] will mean taking practical steps to assist him/her in communicating his/her wishes or preferences, for example [explain how they might do this, eg by using simple language or pictures]. [insert name] may need help to express his/her wishes or preferences, so you may need to involve someone who knows him/her well – such as me – in this.

**In addition, you must consult with me and anyone else interested in [insert name]’s welfare to get our views. I do not need to be appointed a ‘welfare deputy’ in order to be consulted.**

I have written this letter using a guide that has been published by Ambitious about Autism, Mencap and the Challenging Behaviour Foundation. The guide was based on legal advice. I hope you will confirm that the council will now act in accordance with its obligations under the MCA in relation to [insert name], but if you do not I will have to consider taking the matter further.

I would therefore be grateful if you would contact me on [insert your contact details] to arrange a best interests meeting so we can work together to ensure that this immediate issue and any future decisions regarding [insert name]’s welfare are taken in his/her best interest in accordance with the MCA. I understand that at this time a face to face meeting will not be possible and that we may need to meet via conference calling or another platform such as Skype or Zoom.

Given the urgency of this matter, I would be grateful if you would contact me as soon as possible.

I look forward to hearing from you shortly.

I have copied this letter to [insert name of LA/NHS/care manager, etc].

Yours sincerely  
[Print name]