**Record of a Mental Capacity Assessment**

*“Capacity assessment is not some kind of scientific process where capacity is ‘measured’, it’s a social interaction - often with hugely high stakes for the person being assessed”* - Lucy Series, 2012

Guidance: A capacity assessment should only be completed when the person’s mental capacity to make the specific decision at the time it needs to be made is in question. Mental capacity is time and decision specific. If the person’s mental capacity to make the decision fluctuates, complete the assessment at the time at which the person is most likely to be able to make the decision. You need to ask the person the specific question and you should present the person with the available options to choose from (including what might appear to you to be unwise options; the person not agreeing with another’s opinion is not evidence of mental incapacity.) You must explain to the person that you are there to assess their capacity, and why. The person does not need to fully understand every last detail, only the salient points, so you should prepare by considering in advance what these details are and how best you can enable the person to make the decision.

The person is assumed to have the mental capacity to make the decision unless proven otherwise. If it cannot be established, on a balance of probabilities, that the person lacks the mental capacity to make the decision, then they remain the decision maker. The person does not have to ‘prove’ anything. The person might, for all manner of reasons, not want to talk with the assessor; that does not necessarily mean they lack capacity.

Please note that the very act of assessing capacity could be considered an interference with the person’s right to respect for privacy and so should only be completed if necessary and proportionate to do so. Any questions, please contact the MCA team MCA-service@bradford.gov.uk

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| Name of the person | |  | | | | |
| Name of the assessor | |  | | | | |
| Please give the names of anyone who assisted with or were present during this assessment. Did the person want anyone else to be present? If so were they? If not, why not? | |  | | | | |
| Where did the assessment take place? | |  | | | | |
| Date and time this assessment undertaken  (you might make several attempts in order to enable the person to make the decision – see section below) | |  | | | | |
| Please use this space to explain why mental capacity was being assessed and provide any relevant background information, including what practicable steps have previously been taken without success to enable the person to make the decision. You can also evidence here that you explained to the person your role and why their mental capacity to make the decision was in question. | | | | | | |
| **Mental Capacity Act 2005 - Principles 1 to 3 of 5.**   1. **A person must be assumed to have the mental capacity to make the decision unless it is established that he or she lacks capacity to make the decision** 2. **A person is not to be treated as unable to make a decision unless all practicable steps to help him or her to do so have been taken without success** 3. **A person is not to be treated as unable to make a decision merely because he or she makes an unwise decision.** | | | | | | |
| **What is the specific decision to be made?**  If there is more than one decision please complete separate assessments. Note you must ask the person the specific question. | | | | | | |
| The ‘Functional’ Element  Before considering the impact a mental impairment might have on decision making, it needs to be determined whether the person can make the decision. | | | | | | |
| **Q1. Can the person understand the information they need to make a decision?** | | | | **YES** | | **NO** |
| Please explain what steps you took to enable the person to understand the information. It must be explained in a way appropriate to enabling the person to understand it.  *(E.g. providing the salient information. Consideration of any cultural requirements which might better enable the person to understand. Sensory needs, using family members or people who know how best to enable communication, providing information in written form, using non-verbal communication techniques, picture cards. Meeting the person when he or she is best able to make the decision or wants to talk with the assessor. Is an interpreter needed? Consider documenting conversations verbatim to evidence the person’s understanding of the decision to be made. Ask the person the actual question, ask them to explain in their own words their understanding of the decision to be made, etc.)* | | | | | | |
| **Q2. Can the person retain the information?** | | | | **YES** | | **NO** |
| Please explain what you did to enable the person to retain the information.  *(E.g. try repeating information, putting the options in writing to help the person remember. Ask the person if they can recall the decision they are being asked to make. It is not a test, the person might need to be prompted more than once. The person only needs to retain the relevant information during the decision making process, so remembering the assessor’s name or information provided during previous meetings is unlikely to factor*). | | | | | | |
| **Q3. Can the person use or weigh the information to make the decision?** | | | | **YES** | | **NO** |
| Please explain what you did to enable the person to use or weigh the information.  *(E.g. Presenting the available options, how you supported the person to understand and balance the risks of making or not making the decision? How did you present the options for the person? Use a balance sheet with the person if it will help them. Can the person see the consequences of making the decision one way or the other or of not making the decision at all? The person will, with support, be able to see the relevant information and options and relate the one to the other to make the decision.)* | | | | | | |
| **Q4. Can the person communicate their decision?** | | | | **YES** | | **NO** |
| Please explain what you did to enable the person to communicate the information.  *(E.g. Preferred communication for the person could be verbal, non-verbal through facial expressions or hand movements, or in the written form etc. Consider the person’s preferred language and need for interpreter)*  Note; Even if you go on to conclude the person cannot make the decision because of a mental impairment, please record here what the person indicated they would want to happen and their views or wishes and feelings, if the person is able to communicate these. E.g. the person might be talking about returning to their childhood home; even though such an option may not be available, that view should still be documented. | | | | | | |
| If you have answered **YES** to all of questions 1 to 4, then the first Principle of the Mental Capacity Act is not rebutted and person has the mental capacity to make the specific decision at that time, regardless of any impairment of or disturbance in the functioning of the mind or brain.  If you have answered **NO** to any of the questions 1 to 4, then you must determine whether, on a balance of probabilities, the person was unable to make the decision ***because of*** the impairment of or disturbance in the functioning of the mind or brain (i.e. the causative nexus) and not some other reason (e.g. a hearing impairment, or the person did not want to discuss the matter or was nervous about the consequences of admitting or saying something and did not want to talk openly etc). | | | | | | |
| The ‘Diagnostic’ Element  The MCA 2005 provides at section 2(1)  “For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”  If there is no evidence of an impairment of, or disturbance in the functioning of the person’s mind or brain, then the person cannot be considered to be lacking the mental capacity to make the decision for the purposes of the Mental Capacity Act 2005. | | | | | | |
| **Q5.** **Is there an impairment of, or disturbance in the functioning of the person’s mind or brain?** | | | | **YES** | | **NO** |
| If yes, please provide sources of information to support your decision e.g. the medical diagnosis and where you read it or who advised you of it.  A formal diagnosis is not essential however; does the person appear to have a mental impairment? If so, please describe here. For example, a person might have an as yet undiagnosed infection causing confusion. | | | | | | |
| **Q6.** **If there is evidence of an impairment of, or disturbance in the functioning of the person’s mind or brain, is that – on a balance of probabilities – causing the person to be unable to make the decision?** | | | | **YES** | | **NO** |
| Please describe here your reasoning for why the impairment as described above caused the person to be unable to make the specific decision at the time it needed to be made. | | | | | | |
| If it cannot be shown that the person lacks the mental capacity to make the decision, they may still need and want support or help.  Sign and date this form and note the outcome within the person’s records (with their consent if it can be given). | | | | | | |
| If you have concluded that, on a balance of probabilities, the person does not have the mental capacity to make the decision at the time it needed to be made, you are signing here to say you are satisfied that the person’s inability to make the decision at this time was caused by the impairment of, or disturbance in, the functioning of the person’s mind or brain. | | | | | | |
| **Signature and Print name, job title.** |  | | **Date record completed.** | |  | |

This form was created by the Mental Capacity Act Team at Bradford MDC, April 2019