

ASSESSMENT OF CAPACITY	
Name of person	
Date	
Assessor details	
Name	
Sign below to confirm that you have read and understood the five key principles of the Mental Capacity Act (Written below) and will adhere to them whilst carrying out this assessment.	
Signature	
Designation	
Relationship to person	

This MCA assessment must adhere to the act's five key principles
<ol style="list-style-type: none"> 1. Every adult has the right to make his or her own decisions and must be assumed to have capacity to make these decisions unless it is proved otherwise 2. A person must be supported in any practical manner to understand the decision to be made before anyone treats them as being unable to make their own decisions 3. Just because an individual makes what might seem to be an unwise decision, they should not be treated as lacking capacity to make that decision. 4. Anything done or any decision made on behalf of a person who lacks capacity to make that decision at that time must be done in the best interests of the person (Not the least risky or what the person assessing thinks is good for the person) 5. Anything done for or on behalf of a person who lacks capacity to make that decision at that time should be the least restrictive option to maintain the persons rights and freedoms. You should demonstrate what was ruled out and why.
What is the exact decision to be made or action to be taken? Be specific and do not lump together a number of decisions.
To determine whether XXXX is able to make a decision about having a COVID-19 test or not. A member of staff has tested positive for COVID-19.
What information has been presented to the person and how? (Refer to the communication profile)
Using methods of communication identified in XXXX communication profile we engaged him in conversation. We used XXXXX and XXXXX to support his understanding. XXXXXX will XXXX when he understands something and will XXXX when he doesn't understand something.

Mental Capacity Act Policy Appendix 1: Assessment of capacity

You are completing this form because you are offering something to a person and you require them to provide consent, sign something, make a choice about something, or agree to something. You need to assess the persons capacity because:

- You are not sure whether the person fully understands the options and choices available to them
- You feel that the decision may be challenged by someone else and wish to provide justification of the persons capacity to make the decision

You need to determine whether the person is able to understand the choice, treatment, service, care and support on offer at this point in time.

Please note that unless family members have a Lasting Power of Attorney, or Court Appointed Deputyship (Different from Appointee ship) they are not the decision maker, but where appropriate can provide family support and information to inform decision making. If there is not a suitable family member to support the person to make a decision then an advocate should be provided. Information should be sought from all parties who have been, or are involved with the person (Where relevant), about how best to determine whether the person is able to make this decision.

A Best Interest Decision can not be made without first completing the capacity assessment and identifying the persons inability to make the decision for themselves. If a person is deemed capacitated to make a particular decision, they are entitled to take risks associated with the decision made. No one can take this away from the person and make a best interest decision on their behalf if they are capacitated enough to make the decision themselves, no matter what risks are present. The person will have been able to recognise the risks and the consequences of taking those risks in order that we were reassured that they had the capacity to make that decision at that time of the assessment. If the situation changes, we must assess capacity again.

1. Diagnostic test

Does the person have an impairment of the brain function or mind?

This could be temporary such as an infection, delirium, or drug / alcohol consumption affecting the persons decision making, or long term such as Learning Disability, Autism, Dementia or other. The impairment could also be caused by serious trauma, extreme shock or similar.

Please record the diagnosis or reason to believe that the person has an impairment of the brain function or mind below.

XXXX was diagnosed with XXXX by XXXX in XXXXX

Guidance

The purpose of this form is to demonstrate to someone else why we thought that we had the right to remove a person's Human Right to make autonomous decisions. The law requires us to provide justification for doing this. Another person should be able to read our justification and understand why we thought that the person was unable to make the decision. Under each of the four questions, in the boxes provided, please write what the person did or said that made you think that they did, did/not have the ability to understand, retain, weigh up or communicate their decision. You should state, 'When I asked X about Y they said.....When I showed X the procedure they responded by.....When I tried later the same day they.....'

A 'yes' answer, signature, or tick in a box is not consent if the ability of the person to make the decision is in question. You must complete the capacity assessment to get consent. If the persons ability to make a decision is in question and we go ahead with an action anyway, this can become a safeguarding matter e.g. If I put someone in the bath without consent then I am negligent. If I use someone's finances without consent this is financial abuse. If I give someone an injection without consent this is assault. If there is any doubt about a person's ability to make any decision or choice about something that you are offering, then a capacity assessment must be conducted to justify removing the persons right to make autonomous, informed decisions. Please complete the information below.

2. Functional Test

Do they understand the relevant information given to them? Yes No

In this box identify the options available to the person, what was demonstrated to the person, the questions you asked of the person and how they responded.

What Coronavirus is

What protective measures are needed?

What the test involves

Can they retain the information long enough to make a decision? Yes No

In this box identify whether the person was able to keep up with you while you were explaining or discussing the options, choices, or decision to be made. Did the person respond at appropriate intervals and indicate that they were on topic? If the person went off topic, were they able to return to the original discussion? Was the person distracted and if so, what were they doing? If the person was unable to communicate or communicated off subject please describe.

Can they weigh up and discuss the pros and cons of the decision or action? Yes No

In this box please identify all the potential risks and benefits explained and discussed. Describe how the person spoke about or responded to the benefits or consequences of each action, inaction, refusal, acceptance, or their own chosen course of action. This is a very important aspect of the capacity assessment. If a person is deemed able to understand the pro's, con's and consequences of their actions then they are as responsible for the outcomes as you or I. A person can make unwise but risky decisions if they are capacitated to do so, but they must understand and communicate the consequences of their choice to be capacitated and to be held accountable for the outcomes. The law would not accept us saying e.g. 'They did not know they had a learning disability', if the capacity assessment proved that they did know and fully understood what would happen if they went ahead with their chosen course of action in relation to a particular choice option service, care, support or treatment. Please record how the decision was communicated, the questions asked and the persons verbal or nonverbal responses to these questions below.

The benefits of having the test

Increased freedoms specific to that person e.g they can go back to a day service, return to swimming sessions etc.)

The consequences of not having the test

(Consider increased restrictions could mean DoLs or DoLs review, weigh up the impact of the restrictions verses the having the test)

The options available

(Full nasal and throat test, nasal test, throat test or no test)

Can they communicate a decision (by any means)? Yes No
Make reference to communications identified in the persons communication plan being used and identify whether the person was able to indicate their understanding and how.

Outcome of capacity assessment:
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Best Interest Decision

Name of person

Date

Decision Maker details

Name

Sign below to confirm that you have read and understood the five key principles of the Mental Capacity Act (Written below) and will adhere to them whilst making this decision.

Signature

Designation

People consulted as part of the decision-making process

IMCA, Advocate or family representative views

Record views here or indicate if there is an Independent Mental Capacity Advocate (IMCA) or similar supporting decision making

Both the Capacity Assessment and the Best Interest Decision must adhere to the acts five key principles

Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them unless it is proved otherwise

A person must be given all practicable help before anyone treats them as not being able to make their own decisions

Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision

Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests

Explain the details of the decision to be made

Be as specific and accurate as you can

Whether XXXX should have a test for COVID 19. Options available are:

1. Full nasal and throat test
2. Nasal test
3. Throat test
4. No test

Confirmation of the person's capacity to make the above decision

Assessment of capacity form completed and attached Yes No

The assessment of capacity form must give in detail the reasons why the person lacks capacity to make this decision themselves and the name of the person(s) involved in the assessment.

NB: If the person's capacity to make the decision has NOT been assessed, a best interest meeting/decision cannot go ahead.

Regaining capacity to make this decision

Is it likely that the person may regain capacity? Can the decision wait until that time? If not, why not? What efforts were made to support the person to make the decision? You can not say that a person will not regain capacity as a result of a diagnosis. You must state a valid reason e.g communication skills not sufficient for complexity of the decision. Cognitive abilities unable to manage the complexity of the decision etc.

What are the person's past and present wishes and feelings? These may have been expressed verbally, in writing or through behaviour and habits.

Are there any beliefs and/or values that would be likely to influence the decision, if he/she had capacity? e.g. religious, cultural, moral or political.

What are the views of other relevant people in the person's life? Family, friends, advocates, neighbours, other professionals.

In making this best interest decision describe what you have considered including any alternative options, why you feel this is the least restrictive option, what you have ruled out any why.

Within this best interest decision, I have considered:

- 1. How we have tried to support the person to understand the importance of the test and to reassure the person about the test**
- 2. Different times we have tried to support the person to have the test**
- 3. The impact of not having the test**
- 4. The benefits of having the test**
- 5. Any implications or risks not having the test might have on others and what would need to happen to keep others safe**
- 6. Whether the additional restrictions imposed by not having the test amount to a change in DoLs or to a new DoLs and whether we can demonstrate this to be the least restrictive option for the persons rights and freedoms**
- 7. Why particular options have been ruled out**

Please record any conflicts or objections and the reason that you believe this to be in the persons best interests. Record the rationale presented by anyone objecting or with conflicting opinions. How have these conflicts been resolved or concluded.

The balance sheet approach:

Use the information gathered above and your knowledge of the risks and benefits related to carrying out and not carrying out the proposed action, care or treatment to weigh up the pros and cons (remember to include what is **important to** the person as well as what is **important for** them).

Pros

Cons

The best interests decision

Disagreement

If there is disagreement, consider the options outlined in the MCA code of practice:

Involve an advocate

Get a second opinion or attempt some form of mediation

Pursue a complaint using the complaints procedure

Approach the Court of Protection for a decision where all other attempts to resolve the disagreement have failed.

Review

Identify a review date where required, or circumstances where this decision is likely to require review i.e should the person be thought to regain capacity, should there be a change in the persons circumstances or situation that means that it is unlikely for this to continue to be in the persons best interests.

Date of review (if required)

Decision maker (print name)

Signature

Date

Best Interest Decisions – a quick summary

When trying to work out the best interest of a person who lacks capacity to make a particular decision you should weigh all this up in order to work out what is in a person's best interests.

Encourage participation: Do whatever you can to encourage the person to take part or to improve their ability to take part in making the decision.

Identify ALL relevant circumstances: Try to identify all the things that the person who lacks capacity would take into account if they were making this decision themselves.

Find out the person's views: Try to find out the views of the person who lacks capacity, including:

The person's past and present wishes and feelings – these may have been expressed verbally, in writing or through behaviour or habits

Any beliefs and values (e.g. religious, cultural, moral or political) that would be likely to influence the decision in question

Any other factors the person themselves would be likely to consider if they were making the decision or acting for themselves.

Avoid discrimination: Do not make assumptions about someone's best interests simply on the basis of their age, appearance, condition or behaviour.

Assess whether the person might regain capacity: Consider whether the person is likely to regain capacity (e.g. after receiving medical treatment). If so, can the decision wait until then?

If the decision concerns life-sustaining treatment: It is an offence to be motivated in any way to bring about the person's death. Assumptions should not be made about the person's quality of life.

Consult others: Where it is practical and appropriate to do so, consult other people for their views about the person's best interests to see if they have any information about the person's wishes, feelings, beliefs and values. In particular, try to consult:

Anyone previously named by the person as someone to be consulted on either the decision in question or on similar issues

Anyone engaged in caring for the person

Close relatives or friends who have an interest in the person's welfare

Any attorney appointed under lasting power of attorney or enduring power of attorney made by the person

Any deputy appointed by the Court of Protection to make decisions for the person.

For decisions about major medical treatment or where the person should live, and where there is no one who fits into the above categories, an independent mental capacity advocate (IMCA) must be consulted.

When consulting remember that the person who lacks capacity to make the decision or act for themselves still has the right to keep their affairs private – so it would not be right to share every piece of information with everyone.

Avoid restricting the person's rights: See if there are other options that may be less restrictive of the person's rights.

Take all of this into account: Weigh up all of these factors in order to work out what is in the person's best interests.

If you need help, look in the [Mental Capacity Act \(2005\) Code of Practice](#), contact your line manager or the MCA Lead.