

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 Jo has the ability to make a decision about having a COVID 19 test or not
What information has been presented to the person and how? (Refer to the communication profile)
<p>The discussion around having a CoVid-19 test was had using communication methods identified in Joe's individual communication plan. The test was demonstrated to Joe by talking through the stages of the test and what is expected to happen.</p> <p>An accessible poster that explains the way a test is conducted was also used.</p>

Jo watched a video about COVID-19 and testing last week and staff have maintained discussions with him about the news and things that have been happening. Jo usually responds well to having information provided a little at a time, as he can become overwhelmed if he is given too much information at once. Jo has some verbal communication skills, however, he will sometimes become fixated on a course of action and is not easy to distract from this. (For further info see communication profile).

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.

Jo was diagnosed with a Learning Disability by Dr Firman in July 1994 and with Autism in 1996 by Dr Schwartz.

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

I spoke with Jo about the Coronavirus over a three-day period. We watched the news and I pointed out things of importance. Jo said, 'This is a nasty virus, it's a bit like flu but worse.' We talked about protective measures and Jo said, 'I don't like masks, no masks.'

Jo later came to me and said that he was afraid that he might get the virus and die. Jo was reassured that we would help do everything that we could to prevent him from getting the virus and if he did we and / or the hospital would look after him. Jo said that he wanted the test now to see if he had the virus. We told Jo that the test kits would not arrive for another few days, but he would be able to have a test once they had arrived. Jo said that Coronavirus made it difficult for people to breath.

What the test is for

Jo said that he wanted the test to stop the Coronavirus. We explained that the test wouldn't stop him getting the virus. Jo said, 'I want to have a test that will stop the virus.' We told Jo that there wasn't a test like that at the minute but when one is made we shall let him know. Jo has anxiety with regard to illnesses so we distracted him for a while with activities and returned to the conversation two hours later.

We showed Jo the video that explains that the test will show whether you have the virus at the point of testing. Jo said that he wanted it to stop the virus. It was difficult for Jo to move on from this aspect as he seemed to think that we could give him something to protect him. Jo didn't seem to recognise what the test was for.

Why have the test

When explaining to Jo that the test would tell us whether he had the virus and therefore we could make sure that he and others were safe. Jo said that he wanted us to make him safe. Jo said that he wanted the test to keep him safe. We explained that we would keep him safe by making sure that he had good hygiene routines and washed his hands regularly. We would encourage him to use masks in shops and we would help him to social distance. Jo said that he would not wear a mask and didn't want others to wear the masks. Jo doesn't like people wearing masks but he has got used to staff wearing protective clothing including the masks.

How the test is taken

We showed Jo where the test would be taken from. Jo said that he didn't like things put in his nose and throat. We showed Joe on a picture where in his throat the test would be taken from and he said, 'Take it from him like that.'

Jo doesn't like any intrusive intervention and can become quite distressed by this. Jo said that he didn't want the test. We said that the test might be taken from his nose if he found the throat part too difficult. Jo said that he would try and have the test from his nose as long as it made him better.

The outcome of the test

Jo would be happy to get out and about in the community again and to get to see his friends. A positive test result would be distressing for Jo if not supported to understand that this does not mean death. Jo was not clear about either outcome and during discussions he didn't want to wear a mask and didn't want the test.

Summary

Jo seemed to understand some elements such as what the Coronavirus was and what the symptoms were but he was fixated on people dying and could not understand that people could have the virus and not have symptoms.

Jo seemed to think that the test would make him well if he had the symptoms and despite many staff attempts to explain that this wasn't the case, Jo kept reiterating that he wanted staff to make him better.

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.

Jo was distracted by his impression that the test would cure him of the virus. Jo was also of the impression that a person getting the virus would die. It was difficult to get the subtle details of the reason for testing and the outcomes of getting the virus across to Jo.

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.

Having the test means that:

Jo would be able to get out and about in the community and he could get an exception with regard to wearing masks in shops, if it were to cause him distress. Jo felt that having the test would cure him and could not understand the subtleties that would allow him to weigh up the pro's and con's.

Not having the test means that:

Not having the test means that Jo would have to continue shielding. Jo finds it difficult not to hug staff and he also tries to remove staff masks, although this has become less problematic as he has familiarised himself with the masks. Access to community has been difficult so far, but with a negative test and lots of support it was hoped that Jo would be able to stop shielding and to begin being reintroduced a little at a time back into the local community activities. Jo was not able to weigh up the pro's and cons of this even when we discussed his favourite activities and how he could start going back to them if he were able to have tests and social distance.

Jo was easily distracted and focussed either upon the COVID deaths saying, 'People will die, hands, face and space.' Jo then focussed wanting to go for coffee and cake at Chapters café saying, 'Chapters do excellent carrot cake don't they.'

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.

Jo initially said that he would like to have the test, believing that it would stop the virus. Jo then realised how the test was conducted and said that he didn't want the test. Jo was able to communicate his understanding and the things that would be difficult for him.

Outcome: Jo Lacks capacity to make a decision about having a COVID-19 test.

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

Mrs Smith

Jo's mum

Jayne Goodyear

Social Worker

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

Jo's mum was part of the conversation supporting Jo at times. Mrs Smith joined in initially by Zoom but this was too much of a distraction for Jo and so she said that she would like Jo to have the tests and that she was happy if we could support Jo to understand as much as possible about the importance of testing.

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

To determine whether Jo should:

- Have the full COVID test
- Have the nasal COVID test
- Have the throat COVID test
- Not have the 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?

Over a longer period of time Jo may get to understand the virus and purpose of testing. Staff have added this to his activities plan to try and help him to understand. Staff recognise when Jo has had enough and needs to talk about something else so this may take a few months.

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

Jo does not like any intrusive intervention and really struggles with dental treatment. Jo doesn't like intrusive interventions.

We now recognise that many people may struggle with dental treatment because of a number of sensory factors and may find the test more bearable.

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.

Jo's mum would like him to have the test if at all possible.

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.

Jo doesn't like intrusive testing and can become upset by any medical intervention. Jo has anxieties with regard to illness and treatment so a balanced approach that responds to Jos expressed feelings is required.

Jo would really struggle with the throat swab but could possibly be persuaded to try the nasal swab.

Jo has not responded well to the current restrictions and regularly asks when he can get back to his day service, get out to the shops and see his friends at the dungeons and dragons sessions held locally.

It is in Jo's best interests to have the test and to be supported to access the community resources, familiarising him further with the use of masks to facilitate his possible return to activities. Jo has displayed some signs of distress recently when told that he can not get out and about in the community as he was before Coronavirus.

It is in Jo's best interest to have the nasal swab but not the throat swab as he would find this very difficult resulting in him jerking away which might result in injury.

If Jo becomes distressed by the nasal swab then Jo will have to be supported further to understand the need for testing but time should be given until he is able to manage the test. If additional restrictions are required then consideration will be given to the review of Jo's Deprivation of Liberty Safeguards. There are currently no additional restrictions in place.

If the outcome of the test is positive Jo will need to be told by Sarah his key worker and evening time is the best time of day for Jo. Staff will need to support Jo's understanding that a positive test result does not mean that a person will die. Jo can pick things up from the television so any programmes that look at recovery and asymptomatic people will be of value.

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.

No identified conflicts

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

Access to community
 Increased access to friends
 Establish whether has the virus
 Contact with staff and others residing at the property
 Reduce challenging behaviours as a result of social isolation
 Gain increased understanding and reduce concerns.

Cons

Afraid of intrusive tests
 Difficult to understand that the test isn't going to cure
 May find it frightening if the results come back positive – Jo will require support between now and the test to ensure that he knows a positive outcome does not mean death
 Heighten social anxieties relating to illness

The best interests decision

For Jo to have nasal swab test and not the throat test. To prepare Jo for the possibility of a positive test. To demonstrate the benefits of being tested with a negative result. To review the DoLs in light of any additional restrictions.

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.

To review in 4 weeks time when next whole home testing is due.

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.