|  |  |
| --- | --- |
| **MENTAL CAPACITY ASSESSMENT FORM****Guidance for Assessors** |  |

**Introduction**

Your assessment must adhere to the principles of the Mental Capacity Act 2005 that are relevant to capacity assessing:

* A person MUST be assumed to have capacity unless it is established otherwise
* A person is not to be treated as unable to make a decision until all practicable steps have been taken to maximise capacity without success
* A person is not to be treated as unable to make a decision merely because they make an unwise decision

Therefore, any assessment should only be completed when there is a concern that the person might lack capacity and where support to make the decision has already been undertaken – by the assessor and/or others.

It is important that the person is put at their ease, which will include an explanation about your role, the purpose of the assessment and allowing the person an opportunity to ask questions

**SECTION 1 – THE DECISION**

Remember that the capacity is always decision and time specific so you should describe the decision as precisely and accurately as possible and document any additional decisions in a separate record.

Accurately describing the decision is a crucial part of the process if you are to ensure that your evidence gathering (including the questions you ask) is focussed and that your conclusion is valid.

**Example:**

Where the decision relates to being discharged from hospital a good description of the decision might be:

**“Mrs Smith needs to decide how her support needs will be met when she leaves hospital”**

*Which is preferable to:*

**“Mrs Smith needs to decide whether she will move to a care home when she leaves hospital”**

As it more accurately describes the decision and the range of options likely to be available to the person. Examples of other decisions include:

“Anthony needs to decide whether he will have a blood test to establish if he has anaemia”

“Sabah has expressed a wish to have a tattoo on her leg”

“David has been asked to decide whether he will permit support workers to assist him with personal care”

**SECTION 2 – PEOPLE CONSULTED**

You will probably need information from others about a range of factors relating to the person in order to complete a thorough assessment. Consultation, like support to make the decision, need not take up a lot of time and can be done quickly where necessary.

The reasons why you might want to consider consulting others (professionals, family members or friends) include:

* Identifying the reason(s) why another professional believes that the person might lack capacity
* Establishing what the person understands, how the person communicates or the best time of day to undertake the assessment
* Find out about any decision making support that is already available
* Establish the person’s normal level of functioning

**SECTION 3 – SUPPORT GIVEN TO MAKE THE DECISION / MAXIMISE THE PERSON’S CAPACITY**

Support to make the decision need not always be provided by the person undertaking the assessment and **any** work undertaken with the person within a reasonable timeframe prior to the assessment should be documented here – this should include a description of why the person was unable to make their own decision, despite support, which might include quoting the person’s responses.

Support provided to make the decision is always of value as it will either:

* Demonstrate that the person has sufficient capacity to make the decision

**Or**

* Provide information and evidence to support the assessment and inform any best interests decision that might be required later

**Or**

* Help the person to understand the decision, even if they lack the capacity to make it at this time

In order to effectively plan the support (and any subsequent assessments) you should consider and document:

1. What are the most important aspects of this decision and what will the person need to understand in order to make a full and informed decision? This will usually include:
* **Why** the decision has arisen
* **All** of the viable options available to them (find this out if you don’t already know)
* Timescales for making a decision
1. To what level does the person need to understand this information in order to be considered to have capacity?

It is not always necessary for the person to have a comprehensive or sophisticated understanding of information relating to the decision. It may be useful to seek guidance from someone knowledgeable in this area – for example, a clinician in the case of a medical procedure.

In some instances - the person might only be required to have a rudimentary understanding of the main aspects of the decision in order to be deemed to have capacity.

1. What might be preventing the person from understanding and considering this information?

This might be factors relating to the person’s impairment or condition, for example:

* Language difficulties as a result of a stroke
* Memory problems resulting from dementia
* Lack of abstract thinking as a result of a learning disability

However, barriers to understanding might be broader than this and could include environmental or psychological factors – for example:

* Low mood or other factors relating to emotional wellbeing
* A lack of experience in relation to decision making
* A sensory impairment
* Pressure or coercion from other people (reflect on how you/other professionals might also be influencing the person, albeit unintentionally)
* General acquiescence with professional opinion.

***These examples are not exhaustive*** *You should identify the relevant barriers through discussions with the person. Other people may also be able to offer pertinent information or communication aids, e.g. specialist practitioners like Speech and Language Therapists, where appropriate.*

*Once you have identified these barriers, think about how they might be affecting the person’s ability to understand and consider aspects of their decision.*

1. What could be done to eradicate or minimise these factors?

There are likely to be a range of ways in which you can address any issues that are identified. Examples could include:

* Support to delay the decision where appropriate
* Visits or other experiences to make abstract information more concrete
* Information that the person can refer to in their own time
* Simplified information (written or verbal)
* Aids to support memory that might include memory boards / blister packs for medication / general prompts e.g. notes, phone calls
* Photographs, picture cards or story boards with repetition over time or within the assessment session

Support needn’t take excessive amounts of time. Simply having a conversation with the person during which you use good, evidence based, communication techniques and actively listen to their thoughts and questions can be a powerful way to support the person to make their own decision.

**SECTION 4 – THE DIAGNOSTIC TEST**

Ensure that you document the person’s impairment or condition and indicate the source of the information, how long the person has had the impairment and any effect that it might have on capacity.

*It is important to link the person’s impairment to any functional deficits relating to, for example, the person’s ability to understand the decision.*

**SECTION 5 – ADDITIONAL FACTORS BEYOND THE SKILLS OF THE INDIVIDUAL**

This section requires both the identification of other potential factors that might be affecting the person’s ability to make a free and informed decision and a summary of what attempt has been made to minimise the impact of these factors if this has not been documented in other sections.

For example, if the person is being pressurised to make a specific decision it might affect their ability to properly consider information or to express their views. Alternatively, it might be that the person’s mood or emotions are impacting on their ability to make the decision. In such instances measures like speaking to the person on their own or arranging for a mental health assessment (where time allows) might help you to more accurately understand the person’s true level of capacity at that time.

The functional test (section 6) should take into account **cognitive, communication and psychosocial factors** and so all additional factors should be considered as part of your assessment of capacity.

Beyond this, if you feel that a vulnerable person is at risk you must use existing safeguarding procedures.

**SECTION 6 – THE FUNCTIONAL TEST**

Document evidence relating to the four-stage functional test as comprehensively as possible. A common pitfall in written assessments is to include lots of information that is not directly relevant to the question.

Documenting the questions you ask and the response given (in whatever format) is usually the most effective way of recording your evidence.

1. **Understand the decision and why it needs to be made**

This is primarily about the person’s ability to understand why the decision has arisen, the decision itself and the possible options available to them as part of the decision making process. This might also include a consideration of whether the person accepts information (for example from a clinician) that relates to them.

This is NOT exclusively about their understanding of their condition or impairment, although this might be an aspect of what the person needs to understand.

***For example:***

“I asked Mrs Smith if she might need any help after she leaves hospital. She replied “I know that I sometimes forget to take my tablets and I might need some help with that.”

We discussed some of her options and when I asked if she could describe her options in her own words she said….”

1. **Retain the information for a sufficient period to make the decision**

Most people will be able to retain information long enough to make a decision but retention might be a something to particularly attend to if the decision is significant and ongoing or where the person’s memory is very poor.

Again, recording primary evidence from your assessment is best practice.

***For example:***

I asked Mrs Smith’s son and daughter-in-law if there were any issues with her memory. They explained that her memory is usually OK but that she can require prompting.

At my second visit I asked Mrs Smith about information relating to the decision that we had discussed previously. She wasn’t able to remember all the details relating to the decision but did say “I remember we talked about my tablets and that I could have a special pack or someone could call in.” She was able to consistently provide the same reasoning in relation to the options available and in her opinion of them…

1. **Use and weigh the information as part of the decision making process**

This aspect of the assessment concerns the person’s ability to describe the benefits and risks of the options available and weigh them against each other.

Recent case law has emphasised that this is both about the person’s comprehension of objective risks and benefits and their subjective interpretation of them. In other words, people give different weight to different factors based on factors that can include beliefs and cultural values and we should not assume that this means that they lack capacity about the decision.

A common pitfall is to assume that “use and weigh” is exclusively about the person’s ability to recognise risk associated with their impairment.

***For example:***

I asked Mrs Smith “Do you think there would be any problems if you were to return home without any extra help at the moment?” She explained that she might struggle to get to the shops or might not always remember to take her tablets. She also explained that she valued her independence and that she wouldn’t want too much interference.

1. **Communicate the decision**

The person’s ability to understand and weigh up information relating to their decision is dealt with as discrete issues earlier in the test but it is also important that the person is afforded every opportunity to communicate their understanding and views.

The MCA Code of Practice is clear that both verbal and non-verbal communication is acceptable.