

ASSESSMENT OF MENTAL CAPACITY and DETERMINATION OF BEST INTERESTS

Appendix 2

SUMMARY OF STEPS IN ASSESSING MENTAL CAPACITY

For further guidance please refer to: <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/mca/mca-code-practice-0509.pdf>

1. Capacity should be judged in relation to a specific decision.
2. Some decisions are easier to make than others.
3. A mentally competent adult has an absolute right to refuse to consent to any intervention or medical treatment for a physical condition for any reason, rational or irrational, or for no reason at all, even where this decision may lead to his or her own death.

PRINCIPLES OF ASSESSING MENTAL CAPACITY

1. A person must be assumed to have capacity unless it is established that he or she lacks capacity.
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 a decision that others believe to be unwise.
4. An act carried out, or decision made, for or on behalf of a person who lacks capacity must be done, or made, in his or her best interests.
5. Before such an act is done, or decision made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less invasive or restrictive of the person's rights and freedom of action.

DEMONSTRATING DECISION-MAKING CAPACITY

In order to demonstrate decision making capacity, a person should be able to: -

1. Understand the information relevant to the decision, including the purpose of any proposed course of action, the main benefits, risks and alternatives, and the consequences of refusing to follow the proposed course of action and of failing to make a decision.
2. Retain that information for long enough to make a decision.
3. Use or weigh that information as part of the process of making the decision.
4. Communicate his or her decision, whether by speech, sign language or any other means.
5. A person who fails any one of the above four points is lacking in capacity in relation to that decision.

DETERMINING AN INDIVIDUAL'S BEST INTERESTS

In determining what is in a person's best interests, regard should be made to medical and welfare issues, and the religious, cultural and ethical principles of the person.

The following must be considered: -

1. Whether the person is likely, at some point in the future, to recover his or her decision-making capacity in relation to the matter in question.
2. The ascertainable past and present wishes and feelings of the person, and the beliefs, values and other factors that would be likely to influence him or her if he or she had capacity.
3. The need to allow and encourage the person to participate as fully as possible in any act done for, and any decision affecting, him or her.

4. The views of relatives, carers or other people involved whom it is appropriate and practicable to consult about the person's wishes and feelings, and what would be in his or her best interests.
5. Whether the purpose for which any action or decision is required can be as effectively achieved in a manner less invasive or restrictive of the person's freedom of action.
6. In the case of a medical treatment, that treatment should be necessary to save life, prevent deterioration or ensure an improvement in the patient's physical or mental health and should be consistent with a reasonable body of current medical opinion (the "Bolam" test).
7. The views of an IMCA/other advocate if appointed.

Patient Details		
Patient's Name:	NHS Number:	
Ward:	Consultant:	
Patient's home address and Postcode:	Date of birth:	
Date of Assessment: :	Date of any previous assessment of capacity:	
Details of treatment decision, or other specific issue in relation to which capacity is being assessed:		
Assessor/s details		
Name:	Email address:	
Role:	Phone no. and Bleep:	
Patient Mental Capacity Assessment		
Does the patient have a permanent or temporary impairment/disturbance in the functioning of the mind or brain?	Yes	No
If yes, give a diagnosis or brief description:		
In relation to this decision/issue please answer the following questions: Please note that if the service user fails the test at any point, they lack capacity in relation to the decision at the time of the assessment		
Can your patient understand the information relevant to the decision?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Comments:		

Can your patient retain the information long enough to make the decision? **Yes** **No**
Comments:

Are they able to weigh the information in the balance in order to make a decision? **Yes** **No**
Comments:

Can your patient communicate the decision by any means? **Yes** **No**
Comments:

Following assessment has this person been found to have mental capacity to make this decision? **Yes** **No**
If the person has been found to have mental capacity in relation to this matter, their decision should be respected and you are not required to proceed to the next section of the form.

Is your patient likely to recover capacity? **Yes** **No**
If yes, the assessment of capacity should be repeated at a future point

Suggested time-interval before further assessment required:

Has this person appointed a Lasting Power of Attorney? If so provide details: **Yes** **No**
Name: Relationship: Contact details:

Does your patient have any relatives or friends who can contribute to a best interest decision? If so provide details below:
Name: Relationship: Contact details:
Name: Relationship: Contact details:
If the person has no friends or family, please request the input of an IMCA if the decision to be made relates to a **significant** change in residence; Deprivation of Liberty application; or when a **significant** medical decision is being considered.
(Refer to NELFT MCA Policy when determining what is considered "significant")

Has a valid and applicable Advance Decision to Refuse Treatment been made in relation to the proposed treatment or care? **Yes** **No**

If you have answered "yes", a best-interest decision is not required and the Advance Decision should be respected if found to be both valid and applicable. (Consult NELFT policy on Advance Decisions to Refuse Treatment and Advance Statements)

Referral to IMCA

Date of referral

Determination of Best Interests

If the outcome of the assessment is that the service user lacks capacity, it may be possible to treat/act in their best interests. To help determine this please consider the following questions

Have the service user's past and present wishes and feelings been considered as far as possible? Have any Advance statements been considered? **Yes** **No**
Comments:

Have the service user's known beliefs and values been considered? **Yes** **No**

Comments:

Have the service user's relatives/friends been consulted? **Yes** **No**
Comments:

Is there an IMCA/other advocate involved? If yes, have their views been considered? **Yes** **No**
Comments:

Is there a lasting Power of Attorney/Deputy appointed by the Court of Protection? Have they been consulted? **Yes** **No**
Comments:

Is the person subject to a DOLS authorisation? **Yes** **No**
Comments:

Proposed course of action and reasons

Completed by: Name:

Position:

Date: