**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 | | Betty | | | | |
| Name of the assessor | | Social Worker | | | | |
| 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? | | Betty – Betty has a close friend who she has said she wants to be present to support her when meeting others but she was busy when I saw Betty. *FRIEND SHOULD HAVE BEEN THERE. COULD HAVE WAITED UNTIL FRIEND WAS PRESENT IF IT WAS POSSIBLE TO DELAY THE CAPACITY ASSESSMENT.* | | | | |
| Where did the assessment take place? | | Betty’s home. | | | | |
| Date and time this assessment undertaken  (you might make several attempts in order to enable the person to make the decision – see section below) | | *NEED INFORMATION HERE ABOUT THE TIME AND DATE OF ASSESSMENT. HOW MANY VISITS IF MORE THAN ONE?* | | | | |
| 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.  I am Betty’s allocated social worker. I have known her a few weeks now and have a good relationship with her. This capacity assessment is needed as we are exploring care options. *DO WE KNOW IF THERE ARE GROUNDS FOR A CAPACITY ASSESSMENT!?*  When I visited her I reminded her I was her social worker and told her I was there to see how she was. *PRACTICABLE STEPS? SOCIAL WORKER WASN’T CLEAR WITH BETTY ON PURPOSE OF VISIT.* | | | | | | |
| **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.  Can Betty make decisions about her care needs?  *THE QUESTION IS SPECIFIC, BUT NEED TO OUTLINE THE RELEVANT INFORMATION* | | | | | | |
| 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.)*  *NEED TO CROSS REFERENCE TO THE RELEVANT INFORMATION*  Betty doesn’t understand the decision. I arrived at her house and we had a chat. I then told her “you understand you are not really coping with things don’t you?” – she didn’t respond. I asked her this again and she said “what?”. I asked her the same question twice again and she said she didn’t understand. *AVOID USE OF LEADING QUESTIONS. MAYBE SHE DIDN’T UNDERSTAND WHAT ‘COPING’ MEANT? SOCIAL WORKER DIDN’T CHANGE OR RE-PHRASE QUESTIONS. SOCIAL WORKER NOT CLARIFYING WHAT THE ACTUAL DECISION IS. IS BETTY HARD OF HEARING?*  I then told her that her behaviour is quite risky and she didn’t agree with this. I asked her if she agrees she needs help to prevent risks and she said she didn’t know what I meant. *PROFESSIONAL VALUES/VIEW DOMINATES AROUND PERCEPTION OF RISK? SOCIAL WORKER SHOULD HAVE CLARIFIED WHAT SHE MEANT BY “RISKY”. NO EXPLORATION OF WHY BETTY HAS THIS VIEW THAT HER BEHAVIOUR ISN’T RISKY* I asked her if she knows what health conditions she has and she said she wasn’t sure. I asked her other questions about her care and she didn’t know the answers. This shows she doesn’t understand risks or her care needs. *SHOULD HAVE GIVEN BETTY THE RELEVANT INFORMATION ABOUT HER HEALTH CONDITIONS AND HER CARE NEEDS AND HOW THESE AFFECT HER BEFORE HAVING A FURTHER DISCUSSION TO EXPLORE HER UNDERSTANDING.*  I showed her pictures of care tasks and asked her to tell me what was happening. She didn’t know. *ISSUES WITH EYESIGHT? DOES SHE WEAR GLASSES? DID THE SOCIAL WORKER EXPLAIN THE PICTURES TO HER?* I asked her if she knows what a CQC registered domiciliary care provider is and she didn’t know. I asked her if she knows what the CQC registration means and if she knows what DBS is. She told me she didn’t understand what I was asking. *IS THIS REALLY RELEVANT TO THE DECISION?! RAISING BAR TOO HIGH*  Betty then started talking about her food when I asked her questions not related to this. This shows how confused she is. This also proves there are issues with her understanding*. SO WHAT? MAYBE SHE WAS HUNGRY AND FED UP WITH THE CONVERSATION*  With the above in mind, Betty can’t understand about her care needs. | | | | | | |
| **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*).  Betty didn’t remember my name and what my role is, even when I reminded her. She needed some prompts to remember what number house she lives at – she also got her postcode wrong which shows she can’t retain information. She also couldn’t remember who the current Prime Minister is*.*  *IRRELEVANT.*  *NEED TO CROSS REFERENCE TO THE RELEVANT INFORMATION.* ***REMEMBER,*** *BETTY ONLY NEEDS TO RETAIN THE RELEVANT INFORMATION LONG ENOUGH TO BE ABLE TO USE AND WEIGH THIS UP. THIS IS NOT A MEMORY TEST* | | | | | | |
| **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.)*  Betty is unable to use and weigh the information to make a decision as she can’t understand or retain this.  *THIS IS NOT ADEQUATE. FURTHER DETAIL NEEDED OUTLINING BETTY’S ABILITY/INABILITY TO UNDERSTAND THE RELEVENT INFORMATION (THE SECTION ABOVE DOESN’T DO THIS) AND HOW THIS COMPRIMISES, OR NOT, HER ABILITY TO USE AND WEIGH UP.*  *WHAT IS HER PERCEPTION OF THE PROS AND CONS OF RECEIVING CARE VS NOT RECEIVING CARE? WHAT CONVERSATIONS/ACTIVITIES HAVE TAKEN PLACE TO EXPLORE THIS WITH HER?* | | | | | | |
| **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.  Betty didn’t communicate much with me, predominantly telling me she didn’t know what I was asking her.  *EVEN IF THE PERSON CAN’T COMMUNICATE AN INFORMED DECISION, THIS SECTION SHOULD SUMMARISE THINGS THAT THEY HAVE COMMUNICATED.* | | | | | | |
| 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.  Betty has dementia. | | | | | | |
| **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.  Betty’s dementia means she can’t make the decision. *NEED MORE EVIDENCE THAN THIS, BUT FUNCTIONAL PART OF CAPACITY ASSESSMENT IS VERY POOR AND NOT SOUND ENOUGH TO SAY SHE CAN’T UNDERSTAND, RETAIN AND USE AND WEIGH THE RELEVANT INFORMATION.* | | | | | | |
| 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.** | **A social worker** | | **Date record completed.** | | **22/6/2024** | |

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