|  |  |  |
| --- | --- | --- |
| ***\*insert own company logo and delete advisory text (in italics) if using as template*** | |  |
| **Mental Capacity and Best Interests Assessment** | | |
| **Details** | | |
| Title |  | |
| Surname |  | |
| Forename |  | |
| Primary Address |  | |
| Assessor & position held |  | |
| Other professionals present |  | |

**Legal status**

*Advisory note: Please ensure you include any you are aware of, even if they do not apply to this decision. It shows consideration of the circumstances and could impact on a future capacity assessment/decision to be made. Confirm you have seen the registered paperwork or, you can search the office of the public guardian records to confirm any registered donee.*

|  |  |
| --- | --- |
| Enduring power of Attorney? |  |
| Lasting Power of Attorney? |  |
| Court appointed Deputy? |  |
| Advance decisions? |  |

**Decision to be made**

*Advisory note: The five statutory principles are:*

1. *A person must be assumed to have capacity unless it is established that they lack capacity*
2. *A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success*
3. *A person is not to be treated as unable to make a decision merely because they make an unwise decision*
4. *An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests*
5. *Before the act is done, or the decision is 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 restrictive of the person's rights and freedom of action*

*Every adult should be assumed to have the capacity to make an informed decision; unless it is proved that they lack capacity. An assumption about someone's capacity cannot be made on the basis of a person's age, appearance, condition, or aspect of their behaviour.*

|  |  |
| --- | --- |
| What is the decision to be made? | *There must be a separate Mental Capacity assessment completed and recorded for each decision. Any assessment of capacity must be related to a specific issue. Where there is more than one issue, more than one capacity assessment must be carried out. It might help you to consider at this stage, if there were to be a best interests decision, what would that decision be. It may also assist you to consider whether the person needs to consent to something?* |

**Practicable steps**

|  |  |
| --- | --- |
| Having determined that the person has an impairment, please confirm how you have given consideration to the location and timing of the Capacity Assessment | *Describe here what you have considered; time and place as well as hearing and sight impairments.  Consider the time of your visit, does the person respond better at a certain time of day.* |
| Please confirm how you have given consideration to the relevance of the information communicated; the communication method used e.g. sensory needs; and other people's involvement in the Capacity Assessment | *Describe what communication you explored with family/provider.  Have you considered communication difficulties and any communication tools you have used?  Are there communications assessments to consider?  Can carers, family and friends provide advice on communication?  Consider the volume and speed of your communication.  Consider what records you may have accessed to inform your decision.  It may be necessary to repeat information.* |
| Please confirm how you have given consideration to the cultural influences, or social context that may affect the person's ability to make an informed choice | *Please consider the persons ethnicity, culture and social impacts and how this may affect their decision-making process.  Consider family ties and relevant living circumstances that may impact the persons decision.  Consider what records you may have accessed to inform your decision.*  *Consider who you have consulted.* |
| Please detail the salient information needed in order for the person to have capacity | *This would be the place to record the 'salient information' what does the person need to understand, retain and weigh up in order to have capacity. Eg In order for Mrs X to have capacity to consent to her placement she would need to be able to know what her care and support needs are, what help she needs and the risks of not receiving that support.   Take time to explain to the person anything that may help them make their decision.*  *Do not give or expect more detail than needed eg Mr X may be aware he is in a care home but not the name of the home, or he may be able to say he is somewhere where people help him but not use the phrase a care home.   Before 'understanding' can be tested it is necessary to identify what someone would need to understand in order to make the specific decision. It is good practice to identify some of the salient points in this section. For example you might say "In order to make this decision Mrs Smith would need to understand where she lives, what kind of establishment it is, what care she needs and receives and why she is there." (ADASS, 2016).   You must consider decisional vs. executive capacity (consider tell me, show me questions, or modelling). Decisional capacity considers the ability to understand and reason through the elements of the decision that needs to be made, through a conversation with the person. Decisional capacity does not consider the person's ability to realise when that decision needs to be made. An example would be a person who tells you how they manage their personal care and that they do this every day, however you are able to see that they have not changed their clothes or had a wash over many days.  The burden of proof is on the professional to prove the lack of capacity not the person that they have capacity.* |

**Functional assessment**

|  |  |
| --- | --- |
| Do you consider the person is able to understand the information relevant to the decision, and that this information has been provided in a way that the person is most likely able to understand? | Yes/No |
| Evidence | *This is the space you should use to 'set the scene' where you met the person and information you gave the person.  It is also important to ask the specific question that you are assessing the person's capacity to make. The level of understanding must not be set too high. The test is looking at their understanding of the salient points which you will need to have identified first. If the person is unable to understand salient information please be sure to explain why you believe this is the case. Give some examples of how you provided the relevant information, and the individual's responses to this information that has led you to believe that the person was unable to make the decision.  The rationale for your conclusions in this box are very important as they may also justify why there is less detail recorded in the other functional areas. For some people their impairment may be so complex and their understanding so limited that the evidence that you record here, also provides evidence as to why the other functional areas of "retaining" and "using or weighing" do not meet the functional test. (ADASS, 2016)* |
| Do you consider the person is able to retain the information for long enough to be able to make the decision? | Yes/No |
| Evidence | *Be aware that there is a subtle distinction between 'retain' and 'remember'. To 'retain' something means that the person is able to hold onto it long enough to be able use it at the material time. Whereas to 'remember' is the ability to pull information back from their memory banks. A person may need aids to support their retention. This does not mean they will not meet this element of the functional test.*    *If the person is unable to retain salient information be sure to explain why you believe this is the case. Give examples. Some workers will tell the person their name in order to test this element and later ask them to remember it. If the person fails to do so they will refer to this as evidence the person is unable to retain information. This is not advised as the information is not relevant to the decision. A good example would be to explain the persons care and support needs to them or other salient/relevant information.*  *It is important to remember that the test is based on the person retaining information in order to make a decision at the material time. If a further visit is necessary the BIA may consider leaving material behind that can support the person's retention of the relevant information. (ADASS, 2016)* |
| Do you consider the person is able to use or weigh that information as part of the process of making the decision? | Yes/No |
| Evidence | *Be clear about what the relevant information is and consider how the person can engage with the decision-making process. Consider their ability to see various sides of the issue and to understand the reasonably foreseeable consequences of making a decision or failing to do so.*    *It is important here not to consider someone as unable to make a decision because they are making an unwise or irrational choice. Equally bear in mind that the person may have applied his or her own values or outlook to the relevant information in making the decision and chosen to attach no weight to that information. That does not mean that s/he is unable to use or weigh it.*  *If the person is unable to use or weigh salient information be sure to explain why you believe this is the case. Please give examples. (ADASS, 2016)* |
| Do you consider the person is able to communicate their decision? | Yes/No |
| Evidence | *If a person is able to understand, retain, and use/weigh, it would be rare for them to lack capacity on the sole basis that they cannot communicate their decision. This category exists only to pick up those people where communication is completely lacking. There is no requirement to describe at length the person's communication abilities here unless they fail to meet this requirement due to them. (ADASS, 2016)*    *The Code of Practice (2007) states:*    *4.23 Sometimes there is no way for a person to communicate. This will apply to very few people, but it does include:*    *- people who are unconscious or in a coma, or*    *- those with a very rare condition sometimes known as 'locked-in syndrome', who are conscious but cannot speak or move at all. 'Locked-in syndrome' does not automatically deem someone to have capacity, it is about using effective communication tools with the person.*    *If a person cannot communicate their decision in any way at all, the Act says they should be treated as if they are unable to make that decision.*  *NB- You should further document communication methods you tried if this if the person is unable to communicate.* |

**Diagnostic assessment**

|  |  |
| --- | --- |
| Is there an impairment of or disturbance in the functioning of the person's mind or brain? | *The impairment/disturbance will usually be diagnosed by a clinician, although a formal diagnosis is not necessarily required. It can be temporary or permanent. The worker should highlight where the mental impairment is likely to be temporary. (ADASS, July 2016).*  *Here you must include the causative nexus. The person lacks capacity because of their impairment.* |
| Date and Time of assessment |  |

**Summary**

|  |  |
| --- | --- |
| Do you think that the person has the capacity to make this informed decision at this time? | Yes/No |
| Explain why the person is unable to make the specific decision because of the impairment of, or disturbance in the functioning of, the mind or brain | *The person can only be proven to lack capacity if their inability to do one or more of the functional elements is 'because of' the impairment/ disturbance (as opposed to something else). There must be a causal connection [the causative nexus] to prove incapacity. An inability 'related to' the impairment/ disturbance would not, for example, be adequate to prove incapacity. The question is not whether the person's ability to make the decision is merely affected by their mental impairment/disturbance: rather, it is whether they are rendered 'unable' to make the decision 'because of it'. (ADASS, 2016)*  *NB: you only need to believe on the 'balance of probability' the person lacks capacity.* |
| Do you need to complete a best interests decision? | Yes/No |

**Best Interests assessment**

**Gathering information**

|  |  |
| --- | --- |
| What is the decision to be made? | *Ensure this is not an excluded decision:*   * *Consenting to marriage or a civil partnership* * *Consenting to have sexual relations* * *Consenting to a decree of divorce on the basis of two years separation* * *Consenting to the dissolution of a civil partnership* * *Consenting to a child being placed for adoption or the making of an adoption order* * *Discharging parental responsibility for a child in matters not relating to the child's property, or giving consent under the Human Fertilisation and Embryology Act 1990* * *Mental Health Act matters (Section 28)*   + *Where a person who lacks capacity to consent is currently detained and being treated under Part 4 of the Mental Health Act 1983, nothing in the Act authorises anyone to:*     - *Give the person treatment for mental disorder, or*     - *Consent to the person being given treatment for mental disorder* * *Voting rights (Section 29)*   + *Nothing in the Act permits a decision on voting, at an election for any public office or at a referendum, to be made on behalf of a person who lacks capacity to vote* * *Unlawful killing or assisting suicide (Section 62)* * *For the avoidance of doubt, nothing in the Act is to be taken to affect the law relating to murder, manslaughter or assisting suicide*   *Please specify the question this assessment of capacity is intended to answer.*  *NB. Any assessment of capacity must be related to a specific issue. Where there is more than one issue, more than one capacity/best interests assessment must be carried out.* |
| Who is the decision maker? | *Is there a valid Lasting Power Attorney/Court Appointed Deputy to make the decision?* |
| Persons wishes and feelings | Please provide evidence/comments and source. Please include the person's current or previous opinions on each option being considered. |
| Written statements; by person or another? | *Please provide evidence/comments and state if none found.* |
| Consultation with others | *Include the views of others involved in the person's care, relatives and friends, and any person previously named by the person as someone they want to be consulted on the issue in question. Written statements should be considered.   Please state reason if person(s) not appropriate to consult.*  *Consider advocacy here, if appropriate* |

**Relevant circumstance**

|  |  |
| --- | --- |
| Describe the circumstances | *Include here:*   * *Likelihood of person regaining capacity* * *Why the decision needs to be made and why now* * *The options available* * *Family and personal circumstances of the person* * *Their wishes and feelings* |

**Options**

*Fill in this table considering the benefits and burdens of the options and how we can balance the decision that needs to be made. Consider risks of choosing each option and how this could impact the person. Not all benefits and burdens are weighted equally the best interests process is about choosing what the person would, if they were able to. Therefore their wishes and feelings should remain central.*

|  |  |  |  |
| --- | --- | --- | --- |
| Option number and detail | Benefits | Burdens | Risks |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Outcome**

|  |  |
| --- | --- |
| Having considered all the relevant factors, the Best Interest Decision for the person is... |  |
| This decision will be reviewed on |  |
| Disagreements:  Has there been a Best Interest strategy meeting? | *If there are any disagreements as to what is in the best interests of the person, a meeting must be held. Please detail all such disagreements.* |
| Decision maker name |  |
| Time and date of best interests decision being made |  |