

IMPORTANT NOTE: This document has been developed and agreed by the multi-agency Sunderland Mental Capacity Act / Deprivation of Liberty Local Implementation Network, and is to be used by health and social care professionals and staff in respect of service users living in Sunderland.

N.B. NTW Trust staff may wish to use the Trust's version of this form.



**MENTAL CAPACITY ACT 2005
MENTAL CAPACITY ASSESSMENT and
MAKING DECISIONS IN BEST INTERESTS FORM**

Name: PI Number (if applicable): Date:

Address:

This is (please tick one): Person's own home Care Home Hospital

The five core principles of the Mental Capacity Act:-

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.

PART A: ASSESSMENT OF CAPACITY

Decision

1. The person to whom this assessment relates has the following impairment of, or disturbance in the functioning of, the mind or brain (see note 1)

This has lasted since:

2. As a result, the person is unable to make a significant decision for themselves in relation to the following matter in question:

Evidence

3. The person is able/unable to make a decision in relation to the relevant matter (see note 2)

3.1 He, or she, is able/unable to understand the following relevant information (please give details)

3.2 He, or she, is able/unable to retain the following relevant information (please give details)

3.3 He, or she, is able/unable to use or weigh the following relevant information as part of the process of making the decision (please give details)

3.4 For cases where he, or she, can in fact understand, retain and use/weigh the information but is unable to communicate his, or her, decision by any means at all (please give details)

4. Referring to the information under Question 3, the following is evidence of a lack of capacity (if this is the case):

5. I have acted as a health / social care professional for the person since (date/month/year e.g. 10.08.2007)

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

6. The assessment for capacity was completed on (date/month/year e.g. 25.09.2008)

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

7. Has the person made you aware of any views that they have in relation the to the relevant matter?

Yes No

If yes, please give details.

8. Do you consider there is a prospect that the person might regain or acquire capacity in the future to which the decision relates? (see note 3)

Yes – please state why and give an indication of when this might happen
 No – please state why

(Box continues on next page if more room needed)

9. Who has been consulted, and/or might be a relevant advocate for the person?
(Include legally appointed advocates, such as Lasting Power of Attorney / Court of Protection)

Please give details

10. Are you aware of anyone who holds a different view regarding the capacity of the person to whom the decision relates?

Yes No

If yes, please give details.

11. Please state the name(s), role(s) and/or relationship to the person, and the contact details of the professional(s)/staff completing the mental capacity assessment.

Name:

Role (and/or relationship to person):

Contact Details:

Name:

Role (and/or relationship to person):

Contact Details:

If more than one contact is recorded, please confirm which of these persons knows and has an established relationship with the service user.

12. Is referral to an IMCA necessary?

Any person who meets all the following criteria must be referred to the IMCA service:

Does the person lack capacity to make this particular decision?	<input type="checkbox"/>
Does the person have a condition, which is affecting their ability to make decisions?	<input type="checkbox"/>
<p>Is the person facing a decision about:-</p> <ul style="list-style-type: none"> ▪ serious medical treatment (you need to check for any advance decisions). ▪ or a change of accommodation? <p>or</p> <ul style="list-style-type: none"> ▪ a decision relating to Safeguarding Adults Proceedings for someone who lacks capacity. (The person may have family and still be eligible for IMCA in this instance). (See note 4). <p>or</p> <ul style="list-style-type: none"> ▪ a care review in relation to, a move to or change of, accommodation where it is felt that the person would benefit from an IMCA? 	<input type="checkbox"/>
Is the person 16 years or older?	<input type="checkbox"/>

<p>Is there any other person, or appropriate family member, who may:-</p> <ul style="list-style-type: none"> ▪ be nominated by the person as someone who should be consulted with (other than paid workers) ▪ hold a lasting, or enduring, power of attorney for this person ▪ be a deputy appointed by the Court for this person 	<input type="checkbox"/>
--	--------------------------

13. If having applied the test for capacity in relation to the specific decision required, the outcome is inconclusive, a referral for an expert assessment should be considered (see note 5).

Person completing form:

Signed

Name

Date

Job Title

Organisation

PART B: MAKING DECISIONS IN BEST INTERESTS

Following a Mental Capacity Assessment where it has been established that a person does not have the capacity to make their own decision (in relation to a ‘significant decision’ – see Guidance Notes – Note 1), then that decision must be taken for them by another person/people in their best interests. The questions and statements below therefore follow on from the numbering in the Mental Capacity Assessment (Part A), and where relevant, the answers from some of those questions may need to be referenced here. For further guidance, see Guidance Notes – Note 6.

If completion of Part A determines there is a lack of capacity, then Part B must always be completed. If completion of Part A determines there is no lack of capacity, i.e. the person can make their own decisions, then Part B does not need to be completed.

Part B must be completed as soon as possible after Part A. In some circumstances, it will be necessary to start the process again, by completing a new Mental Capacity Assessment form. Examples of circumstances:

- i. If there is going to be a significant delay between completion of Part A and Part B (e.g. it may be that all relevant parties to be consulted with are not immediately available; or there is a need to carry out further reports/visits)
- ii. If the person’s circumstances unexpectedly or quickly change (e.g. there could be reason to believe they are regaining some capacity, and therefore may be able to take the significant decision in relation to their care).

The decision maker will mostly be the person who has / had the greatest amount of direct involvement with the person at the time the decision has to be made, although it would be expected that, as with the Mental Capacity Assessment, they consult with all other relevant parties relevant to the person’s care.

14. Equal Consideration

I confirm that the decision has not been based on

- (a) The person’s age or appearance; or
- (b) Any condition or behaviour likely to lead others to make unjustifiable assumptions

(Please tick box as confirmation)

15. Considering all the Relevant Circumstances

The following circumstances have been considered:

16. Regaining Capacity

It is: Likely Unlikely

That the person will have capacity to make the decision in the near future (tick the box that applies).

If the person is likely to regain capacity please indicate when:

17. Encouraging Participation

The following actions were taken to involve the person in the discussion (actions could include e.g. different methods of communication, scheduling appointments to a particular time of day when the person's decision-making capacity is better).

18. Special Considerations for Life-Sustaining Treatment

I confirm that the decision is not motivated by a desire to bring about the person's death

(Please tick box as confirmation)

19. The Person's Wishes, Feelings, Beliefs and Values (including any relevant written statement. If there is no written statement, please evidence where you obtained the information from, e.g. relative, staff member, etc)

Please indicate what information (if any) you have gathered about the person's past and present:

- Wishes and Feelings (including any written statement made when the person did have capacity, e.g. an Advance Decision)
- Beliefs and Values
- Any other relevant factors

Wishes and Feelings

Please state the person's past and present wishes and feelings:

In relation to wishes and feelings, if there is a relevant written statement, please state the following:

Nature of Statement:
(e.g. Advance Decision)

Date Statement Created:

Location of the Document:

Beliefs and Values

Please state any beliefs and values likely to influence the person's decision if they had capacity:

Other Relevant Factors

Please note here any other relevant factors that the person would be likely to consider, if they still had capacity to do so:

20. Views of Other People

I have taken into account the views of the following relevant people, particularly in relation to Question 19 (person's wishes, feelings, etc).

(Please tick box as confirmation)

Please outline the relevant people's views, or indicate if they do not have a view (and why). Please also note if it is not practical and/or appropriate to consult them:

Anyone named (state who) by the person as someone to be consulted on this or similar decisions:

Anyone (state who) caring for or interested in the person's welfare:

An attorney with a lasting or enduring power of attorney granted by the person:

A deputy appointed for the person by the court:

An IMCA (if appointed):

21. BEST INTERESTS DECISION

Please state the decision that has been made on behalf of the person, in relation to their best interests, following the establishment (via the Mental Capacity Assessment) that the person does not have the capacity to make this decision themselves. Ensure the reason(s) and any disagreements are clearly recorded.

22. THE DECLARATION

If a decision involves an act to be taken in connection with the person's care or treatment, please confirm the following:

I reasonably believe the person lacks capacity in relation to the decision and that it will be in their best interests for the actions and/or interventions associated with the decision to be carried out.

(Please tick box as confirmation)

Important Note: Where the assessment has taken place in relation to a person in a care home registered under the Care Standards Act 2000 (whether placed under public or private arrangements) or in a hospital setting, a further assessment under the Deprivation of Liberty Safeguards (DoLS) process should be considered as an option (see guidance Notes – Note 7).

Person completing form:

Signed

Name

Date

Job Title

Organisation

Guidance Notes

GENERAL NOTE:

Although there is no statutory requirement to complete this form, it acts as evidence of decision-making and thereby provides a safeguard for any decisions made on behalf of the person who lacks capacity.

Note	1	(See Question 1)
------	---	------------------

Assessing capacity

It must be noted that all Assessments of Capacity are **ISSUE SPECIFIC**; so it is probable a service user may have several different assessments of capacity in respect of different issues and decisions. Clinical and professional judgement should be used to determine whether an assessment of capacity should be repeated if an adult's capacity appears to change in respect of a specific decision. This could be done when the service user or their family contacts services due to a change in their circumstances, and/or as good practice during a routine case review.

For the purpose of the Mental Capacity Act 2005 a person lacks capacity if, at the time a decision needs to be made, he or she is unable to make or communicate the decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.

The Act contains a two-stage test for capacity:

1. Is there an impairment of, or disturbance in the functioning of, the person's mind or brain?
2. If so, is the impairment or disturbance sufficient that the person lacks capacity to make a decision in relation to the matter in question?

The assessment of capacity must be based on a person's ability to make a decision in relation to the relevant matter, and not their ability to make decisions in general. It does not matter therefore if the lack of capacity is temporary, if the person retains the capacity to make other decisions, or if the person's capacity fluctuates.

Under the Act, a person is regarded as being unable to make a decision if they cannot do any one (or more) of the following:

- understand information about the decision to be made;
- retain that information;
- use or weigh the information a part of the decision-making process; or
- communicate the decision (by any means).

A lack of capacity cannot be established merely by reference to a person's age or appearance or to a particular condition or an aspect of behaviour. A person is not to be treated as being unable to make a decision merely because they have made an unwise decision.

Where a significant decision is being made, a formal assessment of capacity **MUST** be completed, where there are concerns that a service user may not have the capacity to:

- **Consent to serious medical treatment** (see 6.15 – 6.19, Code of Practice)

- **Consent to an informal admission** (to hospital, nursing or care home)
- **Consent to arrange accommodation (or change of accommodation)** – e.g., move from inpatient bed to different hospital, nursing or care home and they will stay in hospital for more than 28 days or in a care home for more than 8 weeks.
- **Request a Tribunal Hearing when detained under the Mental Health Act (1983)***
- **Manage their property or financial affairs, health or welfare**
- **Consent to their confidentiality being breached** – e.g. during a Safeguarding Adults investigation

(* Where there is any suggestion through the patient's behaviour that they do not wish to be there and they do not request a Tribunal Hearing, every sensible effort should be made to enable the service user to exercise their right to a Tribunal Hearing where there is reason to believe they would wish to do so (if they had the capacity to make that decision) (See MH vs, Secretary of State for Health, House of Lords, 20 Oct 2005))

Wherever possible, two professionals should be involved in the assessment, to allow the different aspects of their mental capacity and circumstances to be thoroughly considered. I.e. ideally one of the professionals should have relevant expertise into the service user's situation and one professional should have an established relationship with the service user.

Note	2	(See Question 3)
------	---	------------------

Capacity to make the decision in question

Please give your opinion of the nature or the lack of capacity and the grounds on which this is based. This requires a statement giving clear evidence that the person lacks capacity to make the decision(s). It is important that the evidence of lack of capacity shows how this prevents the person concerned from being able to take decisions.

The period required to 'retain' information is not clearly defined in the Code of Practice, but it does state that a person needs to be able to retain the relevant information long enough to be able to use it to make the decision in question.

Note	3	(See Question 8)
------	---	------------------

Prospect of regaining or acquiring capacity

Consider whether the person is likely to regain capacity (e.g. after receiving medical treatment). If so, can the decision wait until then?

Note	4	(See Question 12)
------	---	-------------------

In relation to Safeguarding Adults cases, the regulations specify that Local Authorities and the NHS have powers to instruct an IMCA if the following requirements are met:

- where safeguarding measures are being put in place in relation to the protection of vulnerable adults from abuse: and
- where the person lacks capacity.

The Local Authority or NHS body may instruct an IMCA to represent the person concerned if it is satisfied that it would be of benefit for the person to do so. To determine this, there are criteria for referring someone to the IMCA service, as follows:

For someone who has been abused or neglected:

- Where there is a serious exposure to risk
 - Risk of death
 - Risk of serious physical injury or illness
 - Risk of serious deterioration in physical or mental health
 - Risk of serious emotional distress
- Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart
- Where there is a conflict of views between the decision-makers regarding the best interests of the person

For someone who is alleged to be the abuser:

- Where a life-changing decision is involved and consulting family or friends is compromised by the reasonable belief that they would not have the person's best interests at heart
- Where there is a conflict of views between the decision-makers regarding the best interests of the person

In Safeguarding Adults cases only, access to IMCA's is not restricted to people who have no one else to support or represent them. Therefore, people who lack capacity who have family and friends can still have an IMCA to support them through the safeguarding process.

The regulations equally apply to a person:

- Who may have been abused
- Who has been neglected: and
- Who is alleged to be the abuser.

Where the qualifying criteria are met, it would be unlawful for the Local Authority or the NHS not to consider the exercise of their power to instruct an IMCA for Safeguarding Adults cases.

Further guidance in relation to IMCA's can be found in Sunderland's Safeguarding Adults Procedural Framework, Section 2 page C36.

The referral form for an IMCA can be obtained from Sunderland's IMCA service provider, Age Concern:

Email: advocacy@acsunderland.org.uk

Website: www.acsunderland.org.uk

Note	5	(See Question 13)
------	---	-------------------

If required, seek further advice from your line manager or from the legal department.

Note	6	(See Part B: Making Decisions in Best Interests (Questions 14 – 22))
------	---	--

It is recognised that most significant decisions regarding a person who lacks capacity will be made in the context of a multi-disciplinary discussion. However, the 'decision maker' is the person proposing to take action in the person's best interests, and may be a social care practitioner, a doctor, or a nurse, for example, depending on the proposed actions to be taken. This means that the decision maker may potentially be different to the person who has undertaken the Mental Capacity Assessment, in some circumstances.

The Mental Capacity Act Code of Practice (2007) states in section 5.18 that 'When trying to work out someone's best interests, the decision-maker should try to identify all the issues that would be most relevant to the individual who lacks capacity and to the particular decision, as well as those in the 'checklist'. Clearly, it is not always possible or practical to investigate in depth every issue which may have some relevance to the person who lacks capacity or the decision in question. So relevant circumstances are defined in section 4(11) of the Act as those:

- (a) of which the person making the determination is aware, and
- (b) which it would be reasonable to regard as relevant'.

A 'checklist' is therefore a useful starting point in thinking about making a decision in a person's 'best interests'. The Mental Capacity Act (2005) contains a checklist of factors (Section 4 of the Act) to be considered by the decision maker, and a summary of these is shown below (please make reference to the Mental Capacity Act Code of Practice document for more detailed advice and examples):

- All relevant circumstances
- Likelihood of regaining capacity – could the decision be delayed?
- As far as possible encourage the person to participate
- If life-sustaining treatment, then the decision must not be motivated by a desire to bring about the person's death
- Is it possible to ascertain the person's past and present wishes and feelings?
- It is possible to ascertain the person's beliefs and values?
- The views of other people, in particular anyone formerly named by the person as being someone to be consulted, those involved in caring for the person, those interested in their welfare, donees of a lasting power of attorney or any court deputy.
- Consultation with an Independent Mental Capacity Advocate (IMCA), if one is required.

Note	7	(See Question 22)
------	---	-------------------

Where any actions / interventions to be made may or will lead to a deprivation of liberty for the person, it is essential to consider the Deprivation of Liberty Safeguards (DoLS) process, as it may be necessary to undertake a Best Interests Assessment in relation to the potential Deprivation of Liberty (which is a separate process to the making of a best interest decision in relation to a person's mental capacity that this form covers).

Note: The full DoLS process is not legally in place until April 2009 – before that date, the Court of Protection would be the route for determining whether it is reasonable to deprive a person of their liberty, or whether less restrictive methods should be used to achieve the same intended outcome. After April 2009, Best Interests Assessors will be available to undertake a Best Interests Assessment in relation to potential Deprivation of Liberty situations.