



EAST RIDING
OF YORKSHIRE COUNCIL

Mental Capacity - good practice prompt for provider sector 2020

Introduction:

This prompt sheet is intended to support care providers in carrying legally compliant and ethical mental capacity assessments in line with the Mental Capacity Act 2005 and its Codes of Practice.

It is acknowledged that many provider settings will already have robust practices in place in order to adhere to legislation but in hope to assist partners the below has been developed in order to deliver consistent and quality approaches for the service users we support.

What is the definition of mental capacity re-cap?

Mental capacity is the ability to make a decision. If a person lacks capacity, they have an impairment or disturbance that leaves them unable to make a decision. The loss of capacity could be partial or temporary. It is possible for a person to lack capacity to make one specific decision but not about another.

If the person's capacity fluctuates then it is advisable to either, wait until a time where the person may be better able to participate in the mental capacity assessment.

Assessing capacity:

If you think that an individual lacks capacity, this needs to be clearly demonstrated. Evidence should show that it is more likely than not – for example, a balance of probability – that the person lacks the capacity to make a specific decision when they need to.

An assessment that a person lacks capacity to make decisions should never be based simply on the person's age, appearance, assumptions about their condition (includes physical disabilities, learning difficulties and temporary conditions), or any aspect of their behaviour.

It is important to **clearly document** any capacity assessments carried out on a standalone document that can be easily accessed, and where appropriate shared with relevant professionals.

Promoting participation:

In order to practice in a legally and ethically compliant manner consideration must also be given to:

- Carrying out an assessment of capacity when the person is most likely to be able to engage considering sleeping pattern, known behaviours,
- Undertaking the assessment in a place where the person is most comfortable
- Providing support to the person to engage – for example; ensuring hearing aids are switched on, the use of communication aids such as note pads and pictures.
- Use language that the person will be familiar with in order to empower them to contribute.

Time and decision specific decision:

All assessments of mental capacity are time and decision specific.

In this instance the specific area we are assessing is the person's ability to consent to be tested for Covid-19.

All mental capacity assessments carried out should be in relation to **one specific element** (as above), at **a specific time**.

If assessors are in doubt about whether the person does have capacity during the assessment, a follow up assessment should be carried out at a later stage in order to provide the person with further opportunity to participate and to evidence full legal compliance.

Good practice:

In order to demonstrate good practice the capacity assessment should always detail:

- The time the assessment was carried out
- Who carried out the assessment and anyone who supported the assessment process (for example a key worker known to the person)
- Any aids used to encourage participation
- Where the assessment took place (for example the persons bedroom where it is quiet and with fewer distractions).
- Clear evidence of the information presented to the person (for example: how the test was explained to the person, reasons for the test, how the swab will be carried out).
- Clear information on the person's response to the questions.
- Overall rationale as to why the assessor believes the person does or does *not* have capacity at that time to make a decision to consent to testing.

Best Interest decision making process:

In the event that it is determine a person lacks capacity to consent to being tested for Covid-19 the following should be carried out as part of the Best Interest decision making process:

- Consultation with any known Attorneys (LPA for Health and Welfare)
- Consultation with the spouse, family members and/or close friends of the person
- Consideration as to what the person may have chosen to do in the event that they were able to make the decision for themselves.

- Consideration of any known previous wishes or feelings – Attorney, spouse and family views to be sought, along with considerations regarding any Advanced Decisions or written statements made by the person that can be referred to.
- Any cultural or religious considerations that need to be taken into account.
- Consideration to the mechanical process of swabbing and how the person is likely to react to this, for example: does the person have a known dislike for personal interventions that is likely to cause them harm in the event of being tested?
- If any form of restraint that may be required should be carefully considered; regional advice confirms that a test should **not** be carried out if medical or physical restraint is need, and that the person should be treated as if they *had* been tested and received a positive diagnosis.

Good practice Best Interest decision making:

- Best Interest decisions should be recorded on a standalone document which can be easily accessed and shared, if appropriate, with relevant professionals.
- Time of date of the Best Interest decision making should be clearly documented
- All contributors to the Best Interest process should be named on the document
- Consideration of key factors should be evidenced, as outlined above
- An overall conclusion should be evidenced outlining the agreement made between the BI meeting participants.
- In the event that there are contradicting views as to whether a test should take place you may wish to seek support from a social care practitioner.