

adult social care factsheet

Sheffield City Council Adult Social Care

Assessing Mental Capacity

This factsheet explains why it may be necessary to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability.

Introduction

The primary purpose of the Mental Capacity Act (MCA) is to promote and safeguard decision-making within a legal framework. It does this in two ways:

- By empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process.
- By allowing people to plan ahead for a time in the future when they might lack capacity.

Two-stage functional test of capacity

In order to decide whether a person has the capacity to make a particular decision, the person assessing capacity must answer two questions:

1. Is there an impairment of, or disturbance in, the functioning of a person's mind or brain?

2. If so, is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

The MCA says that a person is unable to make their own decision if they cannot do one or more of the following four things:

- Understand information given to them.
- Retain that information long enough to be able to make the decision.
- Weigh up the information available to make the decision.
- Communicate their decision – this could be by talking, using sign language or even simple muscle movements like blinking an eye or squeezing a hand.

Who should assess capacity?

Anyone caring for or supporting a person who may lack capacity could be involved in assessing capacity following the two stage test.

In situations involving complex or major decisions it may be necessary to get a professional opinion. This could be a general practitioner (GP) or a specialist (consultant psychiatrist or psychologist).

Key principles

1. **A presumption of capacity:** The assessor should always start from the assumption that the person has the capacity to make the decision in question.
2. **Individuals being supported to make their own decisions:** The assessor will be expected to show that they have made every effort to encourage and support the person to make the decision themselves.
3. **People have the right to make decisions that others might regard as unwise or eccentric:** Just because a person makes a decision which others consider eccentric or unwise, does not

necessarily mean that the person lacks the capacity to make the decision.

4. Any act done or decision made for or on behalf of a person who lacks mental capacity must be done in their best interests.
5. Someone making a decision or acting on behalf of a person who lacks capacity must consider the least restrictive option, or whether there is a need to decide or act at all.

Key points

- Lack of capacity may not be a permanent condition.
- Assessment of capacity should be time and decision specific.
- Assessors cannot decide that someone lacks capacity based on age, appearance, condition or behaviour alone.
- Assessors must take all reasonable steps to help the person make the decision. Choose the most appropriate time of day, location and communication method etc.
- Family and friends, carers or other professionals should be involved.

Recording the assessment of capacity

The **assessment of capacity record** must be used to assess a person's capacity.

Assessors must provide evidence, including:

- What is the impairment/disturbance?
- Is it temporary or permanent?
- Why could the person not understand, or retain, or use/ weigh, or communicate even with the assistance given?

Best interest decisions

If a person has been assessed as lacking capacity then any action taken, or any decision made for, or on behalf of the person, must be made in his or her best interests. The person who has to make the decision is known as the 'decision maker' and normally will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

Where can I get more information?

If you have a question about this factsheet, want a printed copy to be sent to you, or want to speak to someone you can contact us.

Factsheets can be downloaded from our website:

www.sheffield.gov.uk/factsheets.

Information can also be provided in alternative formats and other languages on request.

- Prevention and enablement
- Getting care and support
- Children's Transition to Adult Social Care
- Planning and organising your care and support
- Help with travel
- Paying for your care and support at home
- Paying for your care and support in a residential or nursing home
- Managing your finances
- Managing your Direct Payment
- Disability Related Expenditure
- Deferred Payments
- Reviewing your care and support
- Personal Assistant Handbook
- Deprivation of Liberty Safeguards
- Best Interests Meeting
- Independent Advocacy

Contact us

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