**Mental Capacity Assessment**

A person must be assumed to have capacity unless it is established, on balance of probabilities that s/he lacks capacity to make a particular decision. If there is any reason to doubt a person’s ability to make decision or if it has been called into question, then there is an expectation that it will be assessed.

If the person does not have an impairment of the mind or brain, it should not be necessary to assess capacity. If it was decided that there was no reason to doubt the person’s capacity to consent to the specific issues, and therefore no assessment of capacity was carried out – it may be appropriate to briefly record this rationale.

**Who is responsible for assessing capacity?**

Anyone who would seek consent as part of their work should be competent to assess capacity. This will normally be completed by the person who is providing or organising the care or treatment. If it has been assessed by someone else, the person providing the treatment must be satisfied of the conclusion. Expert advice about a person’s impairment may be sought and taken into account.

**What is a formal capacity assessment?**

There are some times when an assessment needs to be completed and recorded on a set template (e.g. COP3). In most cases, a capacity assessment takes the form of a conversation or series of conversations with the person about the decision. Some people have particularly complex presentation of mental capacity such as fluctuating capacity or difficulties with executive reasoning. In these circumstances, it may be helpful to take into account contextual information including observations of family members, friends and carers when assessing mental capacity. The assessor must show, on balance, that the inability to understand, retain, weigh up or communicate is caused by the impairment or disturbance of the functioning of the mind or brain.

**Capacity is Decision-Specific – What information is relevant to this decision?**

It is helpful to have a clear idea of what information is considered “relevant” that the person must understand in order to make the specific decision in question. Relevant information will always include the nature of the decision, the reason why the decision is needed, the likely effects of deciding one way or another, and the likely effects of making no decision at all. It is not necessary for the person to comprehend every detail of the issue but needs to comprehend the salient details.

It is important not to assess someone’s understanding before they have been given relevant information about a decision. Information should be explained as clearly and simply as possible. It may need to be explained more than once. It may need to be explained in a different way, with visual cues or reminders. Concrete questions are best to test a person’s understanding. Subjective questions such as “how do you feel about living here,” may be more difficult for the person to answer. It is important that the person feels able to say, I don’t know or I’m not sure.

If a person is only able to answer yes and no questions, understanding can be assessed by repeating the question worded in a different way to check that the person has understood and not just given a repetitive response.

**Retention of information**

To meet the statutory test of capacity, it is only necessary to retain information long enough to use it and weigh it and come to a decision. It may be helpful to consider in advance, given the nature of the decision, how long would it reasonably take the person to consider and reach a decision and proceed accordingly. It is not necessary for the person to spontaneously recall information or to retain information long enough for the decision to be implemented, though this may have other implications.

**Weighing or Using Information**

Testing the person’s ability to use and weigh up information may take the form of a discussion with the person about what is important to them and how they have come to the decision. Keep in mind that individuals may give different weight to different factors. For example, a person may legitimately value independence and familiarity over physical safety or comfort. The MCA does not rely on “lack of insight” and this phrase does not feature in the functional test or the code of practice. It is helpful to define this further, i.e. inability to weigh up information about possible consequences.

**Records of Capacity Assessments**

Clear records must be kept relating to any capacity assessment. Records should be proportionate in length and detail to the gravity of the decision. It is important that records of mental capacity are decision-specific. It is not acceptable in law or in practice to make global statements about mental capacity (i.e. person has/lacks capacity). If a capacity assessment has been carried out, records should include, at minimum, the following information:

* + the specific decision to be made
* details of the impairment of/or disturbance in, the functioning of the mind or brain and how it effects the person’s ability to make this decision.
* steps taken to maximise the person’s ability to make the decision
* the information relevant to the decision and how it was explained to the person
* whether the person could understand, retain, weigh up the relevant information and communicate their decision, giving examples