

What is Mental Capacity?

When we are talking about mental capacity, we are talking about the ability to make decisions. If you have the mental capacity to make a decision it means that you are able to make a choice for yourself and that people should respect that choice

Sometimes people are not able to make decisions for themselves. This could be for a variety of reasons:

- Mental health issues
- Dementia
- Under the influence of drugs or alcohol
- A brain injury
- Unwell due to medication or illness.

Everyday we make many decisions about many different things, and they can vary in how important they are. For example deciding to buy a bag of crisps for a snack and deciding to buy a house are both decisions, but very different choices. A person might be able to decide about the crisps, but not about the house.

Mental Capacity Act 2005

The law that deals with people making decisions is the Mental Capacity Act 2005, and this sets out how we test if somebody can make a decision, and what to do if they can't. Just because somebody can't make the decision themselves doesn't always mean that the

decision shouldn't be made at all.

First of all the law says that we should always presume that somebody has capacity and is able to make their own decisions, so we need to have a reason to think that they might not be able to.

The law also says that we must help people to make their own decisions. This might mean that we give people plenty of time to think things over, or that we make sure people can understand the information. We might take time to explain things, use sign language or use an interpreter.

Just because somebody makes a choice that we don't think is sensible or that we don't like doesn't mean that we should assume that they don't have capacity. People are allowed to make unwise choices as well as wise ones.

If somebody isn't able to make a decision for themselves then the law says that we should always act in their best interests and that we should restrict them as little as possible.

How we assess capacity

- First of all we need to know what decision it is we are looking at. You cannot assess capacity in general it has to be decision specific.
- Next we need to look at whether the person making the decision has 'an impairment of the mind or brain' or is there some disturbance affecting the way their brain works. This might be

that they are very drunk, or that they have a brain injury, or are mentally unwell. If they do not have any impairment then they have capacity and can make the decision.

- If a person is found to have an impairment of the mind or brain or has some disturbance affecting the way their brain works we start assessing their ability to make the decision.
- First, does the person understand the information needed to make the decision – if I want to make a decision about buying a house then I need to understand about the financial implications, the legal responsibilities, what happens if I don't pay my mortgage etc. Remember that we need to help people make decisions so we should be giving people the information in a way they can understand it.
- Is the person able to keep the information in their mind long enough to make a decision. This doesn't mean that they have to remember every single detail forever, just long enough to make the decision.
- Next we look at if the person is able to weigh up the information. This means can they think about the pros and cons and arrive at a decision. If I want to buy a house this might

mean thinking about the fact that I will have to pay the mortgage and do my own repairs, but will have the advantage of owning my own place.

- Finally the person has to be able to communicate their decision but this can be by any means. It doesn't have to be spoken or written, it could be using a sign.

At the end of this assessment we will know if somebody has the capacity to make the decision or not.

If they do have capacity then they must be allowed to make their own decision.

What happens if somebody doesn't have capacity?

If the assessment shows that a person is not able to make the decision themselves then we look at whether they have appointed somebody with **Lasting Power of Attorney or a Property and Affairs Deputy**. This is where you give somebody the ability to act on your behalf if you are ever unable to make decisions.

Without the Power of Attorney or Deputy Order a family member or relative cannot make decisions for somebody. If there is nobody with the Power of Attorney or Deputy then we would have to look at a **Best Interests Decision**.

Mental Capacity & Housing

A best interest decision should take into account the views of the person themselves, their friends and family, any professionals working with them and should try and work out what the person themselves would take into account if they were able to make the decision.

Sometimes a Best Interest Decision is all that is needed to do something when a person lacks capacity to decide for themselves, but major decisions, especially those that are legally binding, must be made by someone with a Power of Attorney or a Deputy Order or be made by the Court of Protection.

Applying for housing.

To apply to the housing register you need to complete an application form and to sign a declaration. If somebody wants to do this we should always assume they have capacity and that they are able to make that decision themselves. If we have reason to think that they may not be able to, then we carry out the assessment as discussed above.

If they have capacity they can make their own decision

If they do not have capacity then we look at if somebody has Lasting Power or Attorney or a Deputyship order that can make the decision for them

If they do not have an Attorney or Deputy then a Best Interests decision will need to be made.

As applying for housing is a significant but not a major decision, the Best Interests meeting can appoint somebody to sign the application form on the person's behalf and they can join the housing register.

Signing a tenancy.

This is considered to be a very important decision as it is a legally binding contract and has rights and responsibilities attached to it.

If somebody wants to sign a tenancy we should always assume they have capacity and that they are able to make that choice themselves. If we have reason to think that they may not be able to, then we carry out the assessment as discussed above.

If they have capacity they can make their own decision.

If they do not have capacity then we look at whether they have an Attorney or Deputy who can make the decision for them and they can sign the tenancy on the person's behalf.

If they do not have an Attorney or a Property and affairs Deputy then an application will need to be made to the Court of Protection to authorise the tenancy.

To sign a tenancy you either have to have capacity or authority – the person either signs it themselves or it is signed by a person with the legally appointed authority to do so.

FAQ

- My wife has dementia and has

Mental Capacity & Housing

been assessed as not having capacity to sign a tenancy; can I sign it on her behalf?

Unless you have Lasting Power of Attorney or have been appointed Property and affairs Deputy you cannot sign it. Being a family member or spouse does not give you the right to do this.

- My husband has had a stroke and can't speak; does that mean he doesn't have capacity?

No, we always assume somebody has capacity and would look at how his stroke has affected his ability to make a choice. It might be that there is no 'impairment of the mind or brain' and he can make his own decisions. And remember that a person can communicate their decision in any way.

- My mother keeps making really stupid decisions; last week she bought a really expensive pair of boots when I had already told her not to. Can I say she hasn't got capacity and stop her?

No, first of all we have to assume she has capacity and people are allowed to make decisions that we may not agree with. To assess capacity we would have to have reason to think she may not, then we would need to see if she has an 'impairment of the mind or brain' and only if she has could we carry out the assessment.

- Does it have to be a doctor who

carries out a capacity assessment?

No, the assessment should be carried out by somebody who understands the Mental Capacity Act and the decision to be made. If it is a decision about signing a tenancy then the assessment could be carried out by an estate manager, or a housing worker. If the decision is about care it might be a social worker.

I have autism and my parents say this means they have to sign all my forms for me, is this right?

No, just because somebody has a condition or a diagnosis does not mean they automatically lack capacity. We must follow the process set out above and do all we can to help people be able to make their own decisions. If somebody doesn't have capacity then we look at who has authority to act on their behalf, and this is not automatically somebody's parents.

Polish : Niniejsza broszura zawiera wszystkie informacje potrzebne w rozwiązaniu jakichkolwiek problemów mieszkaniowych, które może Pan/Pani doświadczać. Pakiet informacyjny jest również dostępny w innych wersjach językowych.

Turkish : Bu broşürde olabilecek bütün konut sorunlarınızla ilgili ihtiyaç duyacağınız bilgilerin tümü bulunmaktadır. Bu bilgiler kendi lisanınızda da tedarik edilebilir.

Cantonese: 这将告诉你如何解决住房问题。我們可以您所需的語言提供該資訊