



Appendix 9

Mental Capacity

Generally, it is not for the club, employees, workers, consultants, agency staff or volunteers to make a decision about whether an adult at risk lacks mental capacity in relation to the concern in question, but it is useful to have an understanding of the notion of capacity explained below:

Definition

- The ability to make a decision at a particular time. The starting assumption must always be that an adult at risk has the capacity to make a decision, unless it can be established that an adult at risk lacks capacity.
- The term "lacks capacity" means an adult at risk who lacks capacity to make a particular decision or take a particular action for themselves at the time when the decision or action needs to be taken. This reflects the fact that some people may be unable to make some decisions for themselves, but will have capacity to make other decisions. For example the adult at risk may be able to make small decisions about everyday matters such as what to wear or what to eat but lack capacity to make more complex decisions about financial matters.
- It also reflects that an adult at risk who lacks capacity to make a decision at a certain time may be able to make that decision at a later date - this may be due to illness or accident.

Assessing Capacity

An adult at risk's capacity must be assessed specifically in terms of his/her capacity to make a particular decision at the time it needs to be made. Anyone assessing another's capacity to make a decision for the adult at risk should use the two-stage test of capacity:

Stage 1

Does the adult at risk have an impairment of the mind or brain, or is there some sort of disturbance affecting the way his/her mind or brain works? It does not matter whether the impairment/disturbance is temporary or permanent.

Stage 2

If so, does that impairment or disturbance mean that adult at risk is unable to make the decision in question at the time it needs to be made?

Assessing ability to make a decision

- Does the adult at risk have a general understanding of what decision he/she needs to make and why he/she adult at risk needs to make it?
- Does the adult at risk have a general understanding of the likely consequences of making, or not making, this decision?
- Is the adult at risk able to understand, retain, use and weigh up the information relevant to a decision?
- Can the adult at risk communicate his/her decision (by talking using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?



Appendix 9 (continued)

Assessing capacity to make more complex or serious decisions

In most instances, a Doctor or Social Care professional will have assessed an adult at risk's capacity. Where background information is provided from a partner agency or the adult at risk themselves, the information should be stored confidentially.

An Independent Mental Capacity Advocate (IMCA) should be appointed to assist an adult at risk who is judged to lack capacity and face serious decisions with no other person to be an advocate for the adult at risk.

The statutory principles

The Mental Capacity Act 2005 sets out five statutory principles.

1. An adult at risk must be assumed to have capacity unless it is established that he/she lacks capacity;
2. An adult at risk is not to be treated as unable to make a decision unless all practical steps to help him/her to do so have been taken without success;
3. An adult at risk is not to be treated as unable to make a decision merely because he/she makes an unwise decision;
4. An act done or decision made, for or on behalf of an adult at risk who lacks capacity must be done, or made, in his/her best interests; and
5. Before the act is done, or the decision is made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the adult at risk's rights and freedom of action.