

Mental Capacity Act 2005 – 11 things to think about

Just because someone has an impairment, doesn't mean they lack capacity!

People who do have capacity may still need support. They may still be living in a desperate, risky, unhappy situation that we could try to help do something about, and we still have a duty of care

Good recording is essential particularly in the case of 'unwise or eccentric' decision making

On the other hand, if a person lacks capacity, it's not a 'done deal'/ it doesn't mean they can be spirited off to a residential home, for example. You must have a very, very good, legally sanctioned reason for removing a person from their home. If a person lacks capacity, then the least restrictive option should be the first to be considered.

You must be satisfied that you have fully discussed the risks in a situation, so that the person has the information he needs to understand, retain, and use and weigh information about the situation. Otherwise, how can you possibly know that the person has really thought about all the information that is pertinent to the decision to be made?

Mental capacity involves not only the ability to understand the consequences of a decision, (decisional Capacity), but also the ability to execute, or carry out, the decision, (executive capacity). A simple way to demonstrate this is to use 'tell me/ show me' approaches. Ask the person to 'tell you' how they can do something, and ask them to 'show you' how they do it

A Person MUST Satisfy the two-stage diagnostic test before you can make a decision about their capacity. So, they must have an impairment of the mind or brain, and it must be enough of an impairment to mean that they can't make a particular decision at this particular time. If they haven't got an impairment, then why are you testing their capacity?

You need to be really clear about what the specific decision is that needs to be made. You must establish what the decision is that the person needs to make, so that you can confidently say 'this person does or doesn't have capacity to make this particular decision at this time'.

Refusal of treatment does not necessarily indicate a lack of capacity.

Indecision or avoidance should not be confused with lack of capacity

It's always ok to get a second opinion and have someone else in the room