

# 7-minute briefing: Undertaking a Mental Capacity Act 2005 Assessment

## 1. What is the decision to be made?

What is my reason to doubt the person's capacity to consent to or make the decision?

Is there evidence of an impairment of or disturbance in the functioning of mind/brain that may be preventing or stopping them?



## 2. MCA 2005 S 1 to 3

The MCA 2005 has a Code of Practice that staff must follow. If staff depart from the guidance set out in the Code of Practice they must have a cogent reason for doing so. The Code of Practice can be accessed via the MCA ICON link

-You must take steps to do as much as you can to help the person to understand information?

-Think about how you present information in a way that is right for the person for e.g. in a written or visual format or perhaps an object of reference. Is the person comfortable? Do they need their glasses? hearing aid? false teeth? Would the person benefit from having someone they trust with them: Family/Advocate? Is it the best time of day for the person? Is the environment, right? Allow the person time where possible. Record steps taken to maximise understanding

The MCA FACE assessment tool is on PARIS within assessment module and the MCA ICON link.

**7. MCA ICON:** Caselaw, Code of Practice, Assessment Forms and Proforma Policy, Guidance Tools, IMCA Details, Information Books [Pages - Mental Capacity Act \(torbayandsouthdevon.nhs.uk/mca-2005\)](https://www.torbayandsouthdevon.nhs.uk/mca-2005)

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**Balance of Probability.** The assessment process is a balance of probability assessment, this means 51% or more. Therefore, you must have a reasonable belief that at the time of the assessment, the person was more likely than not to either have capacity or not. **It is not a beyond all doubt assessment.**

**Causal Nexus.** If the determination is of a lack of capacity, it is really important that you clearly record that *'on balance of probability the person lacks capacity to make the decision because the impairment /disturbance (name it) was significant enough to prevent /stop/disable them from doing so.*

## 6. MCA S3 : Functional Stage Determining capacity

**Can they use and weigh the information?** Is the person able to show an ability to consider the options and balance benefits, risk factors or consequences? Check to see what information may be important to the person and which they may be weighing as important to them within the process. This may not be immediately obvious to you so ask them. Does the person appear able to use and apply the information within the context of their life/decision? Some people struggle to use and apply the information provided, i.e. actually undertake, execute or sequence the necessary steps as a consequence of their cognitive functioning, even though they verbalise they can or will. Be vigilant for this as people often have a really good social veneer that masks this deficit.

Record the outcome of this section and state why it is the case the person either can or cannot use or weigh the information whilst coming to a decision.

**Can they communicate their decision?** The person must be able to communicate their decision to you, in any format. This section is not asking whether the person can communicate per se, it requires an ability to communicate the specific decision that you are assessing. Record the outcome of this section and state why the person can either communicate or not their decision.

**If, following your assessment process, you have formed a reasonable belief that the person is unable to do any one of the following: understand/ retain/ use or weigh information/ communicate their decision, you have assessed that person to lack capacity at that time to make that specific decision.**

## 5. MCA S 3: Functional Stage Determining capacity

Provide the relevant information/salient factors about the decision to the person in an accessible format where -ever possible, this is really important.

**Can they understand the information?** Be curious, check responses, use open ended questioning such as 'tell me about, explain to me how, describe to me what, rephrase questions and watch out for echolalic speech patterns.

Remember some people are very good at masking their deficits and may present, on the face of it, as if they understand, when in reality they may not. Record the outcome of this section and state why it is the case they either can or cannot understand.

**Can they retain the information that you have provided to them?** The person only needs to retain the information long enough to enable them to make and communicate their decision to you. Check to see if the person can hold the thread of the conversation. Can the person stay focused on what you are wanting to communicate about? Avoid checking their retention 5 or 10 mins later as this may be unfair. It's ok to gently prompt the person as we all forget things at times. With a gentle prompt has the person recalled the information and is able to continue. Record the outcome of this section and state why it is case they either can or cannot retain the information.

3. You must identify the relevant points or salient factors regarding the decision to be made. These will include but are not exhaustive:

Why the decision is necessary/ what options are available/the benefits and disbenefits of the available options/ what will happen/ consequences and risks of doing or not doing /having or not having/any financial implications.

It is important that you present this information to the person. Remember that you will be assessing their understanding of these points so it is imperative that you are clear exactly what information is important.

Record the information you have provided.

A person needs to have a general understanding, there is no requirement to understand complicated terminology or detail

## 4. MCA S 2: Diagnostic stage

You must identify the impairment of or disturbance in the functioning of their mind or brain?

This does not have to be a clinical diagnosis. It could be something that you are observing about the person, for e.g. they may be behaving in a way that is out of character (common with infection)

Other examples may include but are not limited to:

**Permanent Factors:** Brain Injury, learning disability, stroke, dementia

**Transient Factors:** Infection, effects of drugs or alcohol, poorly controlled sugar levels, seizure activity, pain, sleep deprivation, acute episode of poor mental health, anxiety

The assessment process is to determine whether the impairment or disturbance you have identified is sufficient enough to stop/disable the person from making the decision. This is termed the Causal Nexus. This may not be the case every time

Record the nature of the impairment or disturbance.