**Mental Capacity Assessment Tool**

**What the Mental Capacity Act 2005 and the Code tell us:**

**Consider if there is an impairment or disturbance in the functioning of the mind or brain*.*** *It is important to remember that it is not necessary for the impairment or disturbance to fit into a medical diagnosis of mental disorder. It can include any medical conditions causing confusion, drowsiness, concussion, and the symptoms of drug or alcohol abuse.*

## Causative Nexus: Is that impairment or disturbance directly related to the inability to make this decision?

**If YES you are required to assess a person’s capacity**

* Do all you can to maximise a person’s capacity
* Consider if the decision can wait until the person regains capacity
* Remember that unwise decisions do not in themselves prove lack of capacity



**OVERARCHING DECISION**

**CAN THE PERSON CONSENT TO A SAFEGUARDING ENQUIRY GOING AHEAD? CAN THEY GIVE CONSENT TO CERTAIN DECISIONS AND ACTIONS BEING TAKEN DURING THE SAFEGUARDING PROCESS?**

The guidance below aims to illustrate the salient points that might underpin a decision and the types of questions and points you may discuss with the person. Each case is unique with its own specific decisions, risks, consequences, and solutions so please do not use as a prescriptive checklist. It should help to shape and structure your thought process to help you make balanced and well-informed professional judgements.





**Can the person consent to the Safeguarding process starting?**

## Examples of relevant Information

* + that they have been harmed
  + that information will be shared and discussed about them with e.g. GP, care provider, nurse for the purpose of investigating the harm, and planning how best to protect them
  + that immediate safety actions need to be taken

## Examples of relevant Information



**Does the person understand that they have been harmed or they are neglecting themselves? Or does the person understand why other people are expressing concerns?**

* + they were given the wrong medication by their carer and as a result suffered ill health which caused them to need urgent medical treatment, hospitalisation…
  + that they were inappropriately touched by…
  + that their carers may have harmed them by…
  + that their property/personal belongings were sold without their permission by…
  + that they are not caring for themselves e.g. eating, washing, dressing, taking medication…
  + that they were assaulted and this caused (serious) injury to their arm, head…
  + that their savings have been spent by … without their permission



**Does the person understand the risks and consequences related to the harmful acts?**

## Examples of relevant Information

The risk and consequences of the harmful act(s)

* That if they continue to have contact with…
  + they are likely to continue to lose money, property and belongings and therefore will not have enough money to carry on living in their home/pay for food/ bills…
  + the name calling, bullying, insults and shouting are likely to continue and cause a deterioration in their mental health
  + that controlling behaviour is likely to worsen and they are therefore likely to become even more isolated and lonely
  + they are likely to suffer ongoing harm e.g. kicked, punched again and this could cause (serious) injury, loss of mobility, risk to life…
* That if they continue to live in their current circumstances and refuse essential treatment and care
  + they are likely to experience poor/worsening mental/physical health e.g. skin deterioration, infection, sepsis, pressure sores, worsening anxiety, erratic blood sugars (which can potentially impact on their organs, cause considerable pain, lead to death…)
* That if they continue to live in their own home without intervention and support
  + they (and others) are at higher risk of ill health/disease as the infestation of mice in their home is likely to considerably worsen
  + they are at higher risk of being burgled as the front door to their home does not have secure locks fitted
  + the risk of fire will continue to be high due to the heavy piles of items overloading electrical wires/appliances
  + they are unlikely to get out quickly and safely from their home in the event of a fire as their home lacks clear and safe escape routes
  + in the event of a fire, it is highly likely to spread more quickly due to the large number of highly combustible items (such as newspapers, magazines and mail that have accumulated)
  + they are at higher risk of having a fall and injuring themselves because of the multiple items that are causing an obstruction
  + they are at risk of poor health, hypothermia…as they will continue not to have access to hot water, heating, hot meals
  + the condition of their home is causing a public health concern which may lead to legal forced entry…

## Can the person participate in making decisions about interventions/ protective measures? \*



* **Examples of relevant information**

Do they understand this involves:

* + having someone like a neighbourhood warden visit to make sure they are safe and can summon help in times of need/harm
  + having security locks fitted to make their home safer
  + having a police marker registered to their property so when they call the police they will get an urgent response (eg in high risk DVA cases)
  + agreeing to increased support or supervision e.g. having a carer visit to ensure they eat, take their medication, have a bath…
  + restrictions being put in place on accessing specific services/places
  + accessing counselling or psychological support to understand and address the risk of further abuse
  + requesting the Court of Protection to appoint a property and affairs deputy
  + seeing the district nurse regularly to ensure they get the right care eg applying dressing, giving injections, wound monitoring
  + having their bills paid by direct debit so they have less cash at home
  + having their benefits managed by someone else they can trust (eg appointee)
  + paying someone to de-clutter and deep clean their home
  + having contact with certain people restricted
  + having a court order in place to prevent…from coming near them
  + moving home (either temporarily or permanently)\*\*

*\* if the person is unable to understand one or more protective measures then you, on behalf of the local authority, have the discretionary power to instruct an IMCA – please see advocacy section*

*\*\* you will have a duty to instruct an IMCA if the person lacks capacity and if the move exceeds 8 weeks.*



**Can the person give consent to an interview with the Police taking place?**

## Examples of relevant information

Do they understand this involves:

* + making a statement to a police officer so they can decide whether a crime has taken place and take action afterwards. This could include
    - talking to the person who is causing the harm
    - witnesses going to court and giving evidence\*\*\*
    - collecting forensic evidence

*\*\*\* Please note that assessing mental capacity to litigate is a separate decision and needs specialist advice. Please consult Legal Services.*

The [Understanding Mental Capacity website](http://www.umccoventry.co.uk/) has a specific section for carers (and professionals) which contains lots of useful information about the Mental Capacity Act.

**Questions To Consider When Assessing Capacity**

1. Is there an impairment or disturbance in the functioning of the mind or brain?
2. Is that disturbance directly related to the inability to make this decision?

If NO – the Mental Capacity Act cannot be used but there may other legal options.

1. **Introduce yourself**

Explain the purpose of your visit to the person and clearly inform them of the decision they have to make.

***Can the person consent to a safeguarding enquiry going ahead? Can they give consent to certain decisions and actions being taken during the safeguarding process?’***

1. **Is the person able to understand the information relevant to the decision** Explain that you are concerned that they may have been harmed and it is your role to look into this further and support them to be safe from future harm
   * Can you describe what happened? [or is happening or might happen]
   * Where did it happen?
   * Who did it involve? Do you know their names?
   * How often does this happen?
   * How does this make you feel? Are you scared or anxious about this?
   * Do you know this is abusive/harmful or why others might think it is abusive/harmful because ……. (e.g. has caused injury, caused you to lose money, property)
   * Do you want the harm to stop?
   * How can you make it stop? Who would help you? What steps would you take?
   * Do you need any help to protect yourself?
   * Do you want this situation to be investigated? Do you want my help to do this? What kind of help would you need?
2. **Is the person able to recall the information?**
   * What is the decision that you have to make? Do you know why you have to make it?
3. **Is the person unable to use and weigh the information as part of the decision making process**?
   * What will happen if the harm stops?
   * What will happen if the harm doesn’t stop?
   * What steps would you take to prevent this harm? 5, Is the person unable to communicate his decision?
4. **Is the person unable to communicate their decision?**

**Mental Capacity Questions and Answers**

1. **What factors trigger a mental capacity assessment?**

An assessment of mental capacity should be considered in all safeguarding cases where:-

* + there is a formal diagnosis of cognitive impairment
  + a neuro-psychological assessment testing suggests cognitive impairment
  + there are concerns about the persons capacity that have been raised by others
  + there are discrepancies in the persons own evaluation of their abilities
  + there is collateral evidence suggesting a change in personality
  + there is a failure to learn from mistakes
  + there is repeated risky or unwise decisions

## Safeguarding activity can potentially involve lots of decisions taking place at different points of the process. At what point do I have to assess capacity, and do I formally record the assessment?

Decisions related to safeguarding activity are classed as complex decisions and you have to formally record your assessment. You are required to assess mental capacity at the point you are planning to take action on behalf of a person. The more complex and/or contentious the decision the more vital your recording will become. The details of the case will determine at what point you are planning to take an action on behalf of a person. You can use the guidance above to determine what decision is needed and at what point.

## What is the threshold for demonstrating sufficient understanding of the decision?

The person must be able to understand why the decision needs to be made and the consequences of the decision. It is acceptable for information to be understood in broad terms. Case law indicates that the level of understanding does not need to be in-depth. It is for you as the assessor to judge how much information to provide and ask the necessary questions.

## Sometimes decisions in the safeguarding process are medical or criminal in nature? Who is the decision maker in these situations?

You are undertaking safeguarding activity on behalf of the person so it is you who will be making many of the decisions on behalf of the person (if they lack capacity). Remember that the person only needs to demonstrate an understanding of the salient points of a decision and not an in-depth understanding. Therefore you should feel equipped to confidently undertake the assessment. Where you feel you don’t know the salient points or need assistance in undertaking the assessment consult or directly involve the relevant professional e.g. GP, Psychiatrist, Sexual Health Nurse, Psychologist, Police Officer.

## What is the role of the person holding the Lasting Power of Attorney in safeguarding? Are they the decision maker?

A health and welfare LPA/Deputy cannot stop you commencing a safeguarding enquiry as it is you who is undertaking a statutory duty on behalf of the Local Authority. If there is a finance and health and welfare deputy both need to be part of the decision

making process with regard to the safeguarding plan as it will involve both of them potentially. The LPA(s) would need to agree to the safeguarding plan unless they are the ones you are safeguarding the person against.

You need to check the LPA content as the person writing the LPA may have said that there are things the LPA is not permitted to do.

## What happens when there are conflicting concerns about a best interest decision?

Family members, partners and carers may disagree with you and between themselves about the decision. Or, they might have different memories about what views the person expressed in the past. As the decision maker you will need to find a way of balancing these concerns or deciding between them. The first approach should be to review all elements of the best interest checklist with everyone involved. They should include the person who lacks capacity (as much as they are able to take part) and anyone who has been involved in earlier discussions.

## There will be times when an adult who has capacity decides to accept a situation considered as harmful or neglectful. What happens next?

If the person has the mental capacity to make informed decisions about their safety and they do not want any action to be taken, this does not preclude the sharing of information with relevant professional colleagues. This is to enable professionals to assess the risk of harm and to be confident that the person is not being unduly influenced, coerced or intimidated and is aware of all the options. This will also enable professionals to check the safety and validity of decisions made. It is good practice to inform the person that this action is being taken unless doing so would increase the risk of harm. You can share information with other professionals if the following apply.

* + other people are being put at risk (for example, letting friends who are abusive or exploitative into a shared living environment, where they may put other residents at risk)
  + a child is involved
  + the alleged person causing harm has care and support needs and may also be at risk
  + a serious crime has been committed
  + staff are implicated
  + coercion is involved

## Carers and/or family members often need more information about the Mental Capacity Act and how it is affecting their loved one. Sometimes conflict can arise when an assessment outcome is disputed. Where can they get more information?

Encourage family members or relevant others to refer to the Code of Practice. You can also advise them to visit the **MCA portal** for more information. This is a public facing website which has a specific section for carers (and professionals) which contains lots of useful information. It can be accessed at: <https://www.umccoventry.co.uk/>