

Guidance Note: Assessing Financial Capacity & Good Recording

1. The following guidance note focuses on two subjects:
 - i. Common areas to focus on when assessing a person's capacity to manage their property and affairs when the assessment may show that a court appointed deputy is needed; and
 - ii. How to record assessments within a report to a "good" standard that would demonstrate the principles of the Mental Capacity Act 2005 ("MCA") have been adhered to.

For further reading in the context of capacity to make financial decisions, I recommend the useful guidance called *Making Financial Decisions - Guidance for assessing, supporting and empowering specific decision making* - which can be downloaded for free [here](#).

It is often unhelpful and inaccurate to state a person "lacks capacity to manage finances"

2. A person ("P") may only be stated to "*lack capacity to manage finances*" if they have no awareness of money, or the relative value of coins and notes at all, and despite all practicable support, they cannot learn/re-learn the skills needed to make decisions about using money.
3. Most people can make decisions in some areas of their finances. Capacity assessments showing that a deputy is needed must be clear and indicate the specific areas where the person lacks capacity, including whether they have capacity to sign a Lasting Power of Attorney (LPA), when this option is available.

Managing property and affairs is unlike the act of making a specific decision, it is an ongoing act...

4. Justice Hedley emphasised in [A, B and C v X, Y \[2012\] EWHC 2400 \(COP\)](#): "*the general concept of managing affairs is an **ongoing act** and, therefore, quite unlike the specific act of making a will or making an enduring power of attorney. The management of affairs relates to a continuous state of affairs whose demands may be unpredictable and may occasionally be urgent*".
5. It is therefore important to establish the areas a person appears to be having difficulty acting. The complexity of the decision (read: ongoing act) varies from making day-to-day purchases (low complexity) to managing a portfolio of investments (high complexity). The following are common areas to focus on when assessing a person's capacity to manage their property and affairs:
 - i. Recognition and awareness of money;
 - ii. Relative values of things e.g., a pint of milk and a new coat;

- iii. Control of money at the current time (to consider to what extent a person has control over their money and whether they could have more control than they currently do);
- iv. Comprehending their approximate income and/or value of benefits;
- v. Balancing responsibilities (to consider a person's understanding of their responsibilities and their personal values and how that influences their decisions);
- vi. Budgeting and planning (to determine the person's understanding of budgeting and planning their money and their ability to act this out);
- vii. Money safety (security and PIN);
- viii. Banking;
- ix. Investments, savings, ISAs and shares (NB, this is a higher level of decision-making).

If an area of the person's capacity has not been assessed, it must be assumed the person has capacity in that area.

6. It is important that assessors have all the "relevant information" to assess the person's capacity to manage each area of their affairs. Crucially, this will include gathering financial information that is relevant to the person **before** a conclusion of the person's capacity is established. If this information is not available, then a **section 48** – interim orders and directions can be applied for from the Court of Protection to obtain this. However, this should be a last resort option after other efforts have been made but failed. Remember, local authorities have an obligation under **section 47** of the Care Act 2014 to protect moveable property from the person's home, which may also include paperwork containing relevant information.

Managing property and affairs (an ongoing act) vs. Deciding to buy a Lamborghini (a specific decision)

7. Whilst managing property affairs is an ongoing act, a person may still be faced with specific financial decisions, such as:
 - i. Selling property to fund a private care home;
 - ii. Spending £3000 on a holiday to America;
 - iii. Gifting money to a relative.

Where a person is faced with a specific financial decision then their capacity to make that decision should be assessed in the regular way specific decisions are assessed.

8. You must remember that, even if someone lacks capacity to manage some aspects of their affairs, it should not be assumed that they lack capacity to make all financial decisions. If you are assessing someone's capacity to manage their affairs and there is also a specific financial decision to be made, then the person's capacity to make the specific decision should be assessed in addition to their capacity to manage their affairs (unless **paragraph 2** applies).

Good Assessment Recording (within a report)

9. A good record of a capacity assessment will show that you have:
 - i. Been clear about the areas that P is being assessed, and what decision(s) they are being asked to take. This should never just be "managing finances", unless **paragraph 2** applies;

- ii. Identified why you have reason to doubt their capacity to make this decision (NB, this is equally important if the outcome is that you consider P to **have** capacity);
- iii. Identified the salient and relevant details P needs to understand/comprehend (ignoring the peripheral and minor details);
- iv. Ensured P (and you) have the concrete details of the choices available;
- v. Avoided the “**protection imperative**”;
- vi. Demonstrated the efforts taken to promote P’s ability to decide and, if unsuccessful, explained why your efforts failed;
- vii. Recognised that an assessment is not necessarily a one-off matter, and that you have taken the time to undertake to gather as much evidence as is required to reach your conclusion – including, for instance, returning to have a further conversation with P or obtaining corroborative evidence (particularly important in the case of deficits in executive functioning);
- viii. Evidenced each element of your assessment:
 - i. Why could P not understand, or retain, or use/weigh, or communicate despite the assistance given?
 - ii. What is the impairment/disturbance? Is it temporary or permanent?
 - iii. How is the inability to decide caused by the impairment/disturbance (as opposed to something else)?
- ix. Answered the question: why is this an incapacitated decision as opposed to an unwise one?;
- x. Verbatim notes of questions and answers;
- xi. If you are assessing a person’s capacity to make several different decisions, ensure your conclusions all make sense logically together.

10. In addition to the specific points mentioned above, as with all documentation, the key general points to remember are:

- i. Contemporaneous documentation is infinitely preferable to retrospective recollection;
- ii. Do not assert an opinion unless it is supported by a fact;
- iii. “Yes/No” answers are unlikely to be of assistance unless they are supported by a reason for the answer.
- iv. What is reasonable to expect by way of documentation will depend upon the circumstances under which the assessment is conducted, i.e., you will be expected to have adhered to all the points above unless you are carrying out an emergency assessment in an A&E to assess a brain-injured patient’s capacity to decide to run out of the ward into a busy road.

11. As Justice Poole concluded in paragraph 29 of **AMDC v AG & Anor**: *“it will be important that the parties and the court can see from their report that the fundamental principles of the MCA 2005 have been followed, that proper steps have been taken to support AG’s decision-making and participation in the assessment, and that the conclusions reached are adequately explained”*.

12. Justice Poole outlined in **paragraph 28** what an “expert” (read: assessor) must include in their report and I would recommend it is read by all practitioners assessing an individual’s capacity.