

Assessment of capacity

For office use only

Date received

Case no.

Full name of person to whom the application relates
(this is the name of the person who lacks, or is alleged to lack, capacity)

Please read first

- If you are applying to start proceedings with the court you must file this form with your COP1 application form. The assessment must contain current information.
- Part A must be completed by the Applicant.
- Once Part A is completed, Part B must be completed by an appropriate assessor.
- Assessors who may be appropriate include
 - medical practitioners
 - social care professionals
- When the form has been completed, its contents will be confidential to the court and those authorised by the court to see it, such as parties to the proceedings.
- Please continue on a separate sheet of paper if you need more space to answer a question. Write your name, the name and date of birth of the person to whom the application relates, and number of the question you are answering on each separate sheet.
- There are additional guidance notes at the end of this form.
- If you need help completing this form please check the website, www.gov.uk/court-of-protection, for further guidance or information, or contact Court Enquiry Service on 0300 456 4600 or courtprotectionenquiries@justice.gov.uk
- Court of Protection staff cannot give legal advice. If you need legal advice please contact a solicitor.

Part A - To be completed by the applicant

Section 1 - The person to whom the application relates (the person to be assessed by the practitioner and referred to hereafter as 'the person')

1.1 ☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms. ☐ Other _____

First name

Middle name(s)

Last name

Address
(including
postcode)

Telephone no.

Section 2 - About the application

2.1 What decision(s) need(s) to be made? (Please number them, if more than one) **(see note 1)**

2.2 What order are you asking the court to make?

2.3 What is your relationship or connection to the person?

Section 3 - Further information

- 3.1 Please provide details about any practicable steps you know of, which may help the person make their own decision(s) (**Read note 2**)

- 3.2 Please provide any further information about the circumstances of the person that would be useful to the practitioner in assessing their capacity to make the decision(s) that is the subject of the application. This will include why an order of the court is necessary. **(Read notes 2 and 3)**

Now read note 3 about what you need to do next.

Part B - To be completed by the assessor

Section 4 - Your details (the assessor)

4.1 ☐ Mr. ☐ Mrs. ☐ Miss ☐ Ms. ☐ Dr. ☐ Other _____

First name

Middle name(s)

Last name

Address
(including
postcode)

Telephone no.

E-mail address

4.2 Please set out the nature of your professional relationship with the person (for example, social worker or general practitioner (GP)) and confirm you are giving your opinion free from conflict of interest.

4.3 Please state your professional qualifications, training and practical experience demonstrating your ability to assess capacity in accordance with the Mental Capacity Act 2005 and associated Code of Practice.

Section 5 - Relevant Information (Read Note 4)

- 5.1 Please set out the relevant information which the person would need to understand, retain, use and weigh to make the decision which is the subject of the application. If there is more than one decision, please do this for each decision, using the same numbering as set out in 2.1

Section 6 - Assessment of capacity (Read note 5)

- 6.1 Is the person able to make the decision(s) that have been identified in section 2.1? ☐ Yes ☐ No

If the person can make some decisions but there are other decisions which they cannot make, please set out those they cannot make in the box below.

- 6.2 Can the person understand the relevant information for the decision that needs to be made? ☐ Yes ☐ No

Please explain your answer in the box below. If there is more than one decision, please explain this for each decision using the same numbering as set out in 2.1

6.3 Can the person retain the relevant information for the decision that needs to be made? ☐ Yes ☐ No

Please explain your answer in the box below. If there is more than one decision, please explain this for each decision using the same numbering as set out in 2.1.

6.4 Can the person use and weigh the relevant information for the decision that needs to be made? ☐ Yes ☐ No

Please explain your answer in the box below. If there is more than one decision, please explain this for each decision in the same order as set out in 2.1.

6.5 Can the person communicate the decision that needs to be made (whether verbally, using sign language or any other means)? ☐ Yes ☐ No

Please explain your answer in the box below. If there is more than one decision, please explain this for each decision using the same numbering as set out in 2.1.

6.6 Please explain what support you gave to the person to help them understand this information (including giving an explanation in a way that is appropriate to their circumstances) and any response they gave.

6.7 If there are other steps you consider which could practicably be taken to support the person which have not been tried, please set these out in the box below.

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6.8 If the person cannot make the decision, is this because they have an impairment of, or disturbance in the functioning of, the mind or brain? ☐ Yes ☐ No

If the answer is yes, please set out in the box below the nature of their impairment or disturbance and how long it has lasted for. If the impairment or disturbance has been given a formal diagnosis, please set out the diagnosis. Please then explain why the impairment or disturbance means that the person cannot make the decision.

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6.9 Please answer either (a) **or** (b).

(a) I have acted as a practitioner for the person

since

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 and last assessed
on

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(b) I assessed the person

on

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following a referral from:

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6.10 I assessed the person

☐ In person

☐ Remotely - please state why and the steps taken to support them to be assessed remotely.

6.11. Do you consider there is a prospect that the person might regain or acquire capacity in the future in respect of the decision to which the application relates?

☐ Yes – please state why and give an indication of when this might happen.

☐ No – please state why.

6.12 Has the person made you aware of any views they have in relation to the relevant matter?

If Yes, please set these out in the box below

- 6.13. If you have any other information, comments, or recommendations which you consider relevant please include them in the box below.

Section 7 - Statement of truth

I believe that the facts stated in this assessment of capacity are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed

Name

Date

What to do next: Read Note 6

Guidance notes

Note 1

What decision(s) need(s) to be made?

This is the decision about which the practitioner needs to give their opinion. There may be more than one decision that needs to be made. For example, the assessor may need to form an opinion about whether the person to whom this application relates ('the person') lacks mental capacity to make a decision about a particular medical treatment and whether they lack capacity to conduct the proceedings, where it is contemplated that they will be joined to proceedings relating to that treatment. If there is more than one decision you should number and list these in box 2.1.

Note 2

Further information

Box 3.1: The person should be helped to make their own decision(s). It is only when all practicable steps have been taken without success that a decision can be made for them. Chapter 3 of the Mental Capacity Act 2005 Code of Practice contains guidance which may help you. The Code of Practice is available online at www.gov.uk/government/publications/mental-capacity-act-code-of-practice

You should set out known ways in which the person can be supported. For example, they may be able to communicate by sign language, pictures or assistive communication technology. There may also be a person who can provide additional support, such as an interpreter.

In Box 3.2 you should provide further information about the circumstances of the person that would be relevant in assessing their capacity. You should consider what information the assessor may need. For example, if your application relates to property and financial affairs, it would be useful for the assessor to know the general financial circumstances of the person concerned. This information will help the practitioner evaluate the decision-making ability of the person and may help to inform the practitioner's view on whether that person can make the decision(s) in question.

If you send the practitioner a separate letter containing this information, this should be sent to the court when the application is made.

Note 3

What to do after you have completed Part A

Please provide this form to the practitioner who will complete Part B.

The practitioner will return the form to you or your solicitor when they have completed Part B. The form will need to be filed with the court together with the COP1 application form and any other information the court requires. See the guidance notes on the COP1 form for further information.

Note 4

Relevant information

The assessor needs to be clear as to what information is relevant to the decision(s) in question, so that they can consider whether the person can understand, retain, use and weigh that information.

The relevant information includes:

What the decision is

- The reason the decision needs to be made
- The options or choices
- The consequence of each option or choice (if there are any)
- The consequence of making the decision
- The consequence of not making the decision

If there is more than one decision, the relevant information will be different for each decision.

Note 5**Assessment of capacity**

For the purpose of the Mental Capacity Act 2005, a person lacks capacity if, at the time the decision needs to be made, they are unable to make or communicate the decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.

This is approached by asking:

1. Can the person make the decision at this time? (i.e., can they understand, retain, use and weigh the relevant information, and communicate their decision)?
2. If not, is it because of an impairment of, or disturbance in the functioning of, the mind or brain?

Not every person who has an impairment of or disturbance in the functioning of their mind or brain has a diagnosis, but if they have one it can be helpful for the court to know.

Please refer to Part A of this form which set out what decision(s) need to be made, what order(s) the court is being asked to make and further information about the circumstances of the person

The assessment of capacity must be based on the person's ability to make a decision in relation to the relevant matter, and not their ability to make decisions in general. It does not matter therefore if the lack of capacity is temporary, if the person retains the capacity to make other decisions, or if the person's capacity fluctuates.

A person is not to be treated as being unable to make a decision:

- unless all practicable steps have been taken to help the person make their own decision without success, including explanations given in a way that are appropriate to the person's circumstances
- merely because they want to make a decision which others consider is unwise
- merely because of their age or appearance, their condition or an aspect of behaviour, without justification It is important that you explain your opinion in respect of each of the matters asked of you in relation to the assessment of capacity

Assessors are required to have regard to the Mental Capacity Act 2005 Code of Practice, which is available online at www.gov.uk/government/publications/mental-capacity-act-code-of-practice

Note 6**What you need to do next**

Please return the completed form to the applicant or their solicitor. You are advised to keep a copy for your records.