

Appendix 4

Mental Capacity

The Mental Capacity Act 2005 (MCA) provides a statutory framework for people who lack capacity to make decisions for themselves. The Act has 5 statutory principles and these are the values which underpin the legal requirements of the act. They are:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision unless all practical steps have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
4. An act done or decision made, under this act for or on behalf of a person who lacks capacity must be done, or made in his or her best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

When a person's hoarding behaviour poses a serious risk to their health and safety, professional intervention will be required. Any proposed intervention or action must be with the person's consent, except in circumstances where a local authority or agency exercises their statutory duties or powers. In extreme cases of hoarding behaviour, the very nature of the environment should lead professionals to question whether the client has capacity to consent to the proposed action or intervention and trigger an assessment of that person's mental capacity. This is confirmed by The MCA Code of Practice which states that one of the reasons why people may question a person's capacity to make a specific decision is 'the person's behaviour or circumstances cause doubt as to whether they have capacity to make a decision' (4.35 MCA Code of Practice, p52). Arguably, extreme hoarding behaviour meets this criterion.

Any capacity assessment carried out in relation to hoarding behaviour must be time and decision specific, and relate to a specific intervention or action. The professional responsible for undertaking the capacity assessment will be the person who is proposing the specific intervention or action, and is referred to as the 'decision maker'. Although the decision maker may refer to the NSAB Self-neglect multi-agency Strategy and Guidance Document - August 2016 they need to seek support from other professionals in the multidisciplinary team, they are responsible for making the final decision about a person's capacity.

If the client lacks capacity to consent to the specific action or intervention, then the decision maker must demonstrate that they have met the requirement of the best interests 'checklist'. Due to the complexity of such cases, there must be a best interests meeting, chaired by a team manager.

In particularly challenging and complex cases, it may be necessary for the organisation to seek legal advice in order to refer to the Court of Protection (CoP) to make the best interests decision. Agencies may have their own mental capacity assessment form.