

Mental Capacity Act

Talis Consulting Limited

Let us undertake capacity assessments for you.....

- Dr. Ryan-Morgan, is presently preparing several papers for publication on the topic of Mental Capacity and has recently completed a chapter in an edited book on this subject, due for publication in Summer 2012.
- In December 2011, Dr. Ryan-Morgan submitted a co-authored paper to the Journal of Social Care & Neuro-disability. The paper, which presents a case study in maximizing capacity, is presently under review.
- In 2007, Dr. Ryan-Morgan was invited to give an address alongside The Master of the Court of Protection, at the Hugh James Mental Capacity Act Conference.
- In 2005, Dr. Ryan-Morgan published an article in the Association of Personal Injury Lawyers (APIL) professional journal on the role of Clinical Neuropsychology and the Mental Capacity Act (October 2005, Volume 15, Issue 6, pp14-16)

Here at Talis Consulting Limited, we have extensive experience of undertaking objective and formal assessments of mental capacity in a wide variety of contexts.

The following is a selection of the typical range of assessments that we are asked to do:

- Capacity to decide where to live or who a person lives with (welfare)
- Capacity to manage one's own monies and make financial decisions
- Capacity to make a Will
- Capacity to enter **con-sensually** into a sexual relationship
- Capacity to give substantial gifts to others
- Capacity to litigate

Current clients include:

- Solicitors
- Local Authorities (particularly Adult Protection services)
- Police Forces
- Courts

A standard assessment process would be functional in approach and all efforts would be made to optimize potential for capacity at the outset of any assessment

The following information would be sought, as a minimum:

- Significant medical history (this might relate to a diagnosis of developmental disability; head injury or other medical condition which gives rise to compromised cognitive function)

- Interview with client and significant others
- Current living conditions and arrangements
- Previously identified vulnerabilities or sources of significant influence (if any)
- Level of decision making currently enjoyed by the person in question—what decisions they currently make, if any, on a day-to-day basis.
- Current levels of cognitive ability—assessed by standardized and widely-used psychometric measures



Complex considerations:

Psychologists are named in the Code of Practice, which accompanies the Mental Capacity Act (2005), as being appropriate to undertake such assessments (Paragraph 4.42).

It is clear that there are a number of difficult areas that are commonly encountered in assessments of capacity, which include:

- What is the difference between “best interests” and “substituted judgement”?
- How much “fluctuation” of capacity can be tolerated under the Act?
- How many unreasonable or “silly” decisions can a person make before it is reasonable to question their capacity?
- When does the difference between “knowing” and “doing” become significant?



The Mental Capacity Act (2005): key elements and case examples

The two stage test of capacity applies the following considerations:

1. Does the person (making the decision) have an impairment of, or disturbance in, the functioning of mind or brain, whether permanent or temporary?
2. Is the person unable to undertake any of the following steps in relation to the decision:
 - Understand the information relevant to the decision
 - Retain that information
 - Use or weigh up the information as part of the decision making process

- Communicate the decision made (by whatever means)

There are five principles enshrined within the MCA (2005) which are as follows:

1. A person is deemed to have capacity until it is established otherwise
2. A person is not to be treated as though they are unable to make a decision unless and until all practicable steps have been taken to help them to do so but without success
3. A person is not to be treated as unable to make a decision because they may make what others deem to be an unwise decision

4. When decision are made on behalf of a person who is established to lack capacity it must be made in their best interests

5. Any decision made on behalf of a person lacking capacity must be the least restrictive.

Case example 1:

A referral was received to work with a young adult with Cerebral Palsy and marked communication difficulties in order to maximize his capacity to make a Will and decide on the direction of his resources.

Case example 2:

A referral was received to assess a young adult female's ability to consent to a sexual relationship

against a backdrop of lifelong learning disabilities and a history of being taken advantage of by a Schedule 1 Offender.

Case example 3:

A referral was received for a retrospective assessment of an elderly lady's capacity to decide to re-mortgage her owned property. The lady in question had lifelong learning disabilities, uncontrolled epilepsy and was illiterate.

Case example 4:

A referral was received for an assessment of whether an adult female with learning disabilities retained the capacity to litigate in Care Proceedings, her children already having been made subject to a Care Order.

Talis Consulting Limited specializes in Clinical Neuropsychological and Psychological Services. We are based in Carmarthen, West Wales and provide services throughout the M4 corridor. Current and recent clients requesting Capacity Assessments include: Newport, Pembrokeshire, Neath/Port Talbot and Swansea Local Authorities; Aneurin Bevan, Hywel Dda and ABMU Health Boards; numerous Solicitors as well as Dyfed-Powys and South Wales Police Forces.



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