Mental Capacity Act 2005: Making a Mental Capacity Assessment (this tool is not intended as legal advice or to circumvent professional discretion in responding to specific circumstances)

Name	Steven X	**Date of Birth**	10.05.1962
NHS No.	123 456 789	**Date & time of Assessment**	*Not when you wrote it up, when you actually completed the face to face assessment*

Case scenario for this capacity assessment support guidance:

Steven is a 62 year old male living alone in a privately owned terraced property. Steven has no formal support but has a close friend, David, who he sees regularly. Steven recently came to the attention of the council due to concerns having been raised regarding the condition of his property, to include reports by neighbours of having seen vermin in and around his home. A member of the housing team subsequently attempted to visit Steven – he was very reluctant to engage and refused them entry into the property. Due to the housing team's concerns around both the property and the appearance of Steven, a referral was made to adult mental health services.

A worker was allocated to Steven with them spending a number of weeks attempting to build a positive rapport with him, this included undertaking a number of home visits. Steven's engagement was variable, with him sometimes allowing entry into the property and other times not. When access was gained, the worker noted the following concerns placing Steven at significant risk of harm:

- *There was no hot or cold water available within the property*
- *The electrics in the property appeared to be unsafe with Steven having multiple extension leads plugged in to one another from a single socket.*
- *There was evidence of significant hoarding of items to include books, significant amounts of clothing and shoes (of the wrong size) and out of date food items. The hoarding was to the extent where Steven was unable to access his bathroom facilities or utilise cooking facilities safely.*
- *A number of vermin were witnessed to be in and around the property.*
- *The property was in a poor state of repair to include holes in the floor, ceilings and back door.*
- *There was evidence of Steven presenting with heightened emotions to include; crying, shouting, fear and anxiety.*

Steven initially stated he knew there were concerns about his property and his safety and therefore would take action such as clearing the property, however, such action has not taken place with the amount of items in the home having further increased. Concerns are also now being raised by others to include the fire service. It has been confirmed that Steven has a diagnosis of Post-Traumatic Stress Disorder, anxiety and depression.

1. What is the decision the person needs to make/the decision that this capacity assessment relates to (brief summary)?

From the information in the case scenario, the decision in question is whether Steven can make decisions in respect of managing his items and belongings
Note: There may be other decisions such as care or residence for example, but those decisions are not covered here.

Be mindful as to what has led to the move away from Principle 1 and the presumption of capacity. Best practice would be to document here what the reason for doubting Steven's capacity are. In the case scenario, it refers to Steven being at significant risk of harm due to the hoarding of items and other concerns within the property. Steven is not seeming to take action to manage or mitigate those risks, despite him saying he would. There are concerns that his mental health may be impacting his ability to take the necessary actions.

**Note: Where somebody is considered to be at significant risk of serious harm, best practice would suggest this is a prompt to evidence an assessment of capacity*

2. What reasonable efforts been made to help the person make the decision (describe the help given e.g. provision of memory aids, support from a carer/ relative, provision of information in the way the person is most likely to understand it, such as via non-verbal communication tools)?

Record in this section all the efforts you have taken to support Steven to make this decision for himself. Examples of those efforts could be:

It has been highlighted in the case scenario that Steven has a close friend, David. As engagement with Steven has been challenging, best practice would be to have David involved in the capacity assessment if Steven agrees. David may be able to support Steven through the decision making process as someone he trusts.

Ensure Steven is provided with the information relevant for this decision (see section 3 below for full details). This information needs to be provided to Steven in a way to suit his communication needs and levels of understanding. Be mindful to identify various different methods of providing this information (for example this may be through verbal information, written information, use of videos/images etc, physically identifying the areas of concern within the property etc). Consider how Steven processes information, particularly this area of decision making as it is appears to be one which causes him worry and anxiety. It is likely to be that the capacity assessment may take place over several visits to support Steven during the process, as opposed to trying to complete it within one visit.

Consider who would be best placed to undertake this capacity assessment. Which professional has built the most positive rapport with Steven? The lead professional would certainly be involved, but there may be a joint approach to take in order to best support Steven.

Consider the environment at the time of undertaking the capacity assessment. Where is most appropriate? Where will Steven feel comfortable talking about this topic? Would he prefer to be at home or perhaps somewhere else (although being in the property will support in highlighting to Steven the things of concern) What is the best time for Steven? For example, try to ensure that the assessment does not impact on his daily routine as this may affect his engagement levels.

Don't forget to explain to Steven the purpose of the assessment i.e. that you are going to be assessing his capacity for this decision! You should also explain why it is important for professionals to know that Steven can decide about how to manage his items and belongings. It shouldn't be done covertly: be open and honest with him.

3. What is the information relevant to the decision (against which you will test the person's capacity). Guidance for key decisions available below*?

*Case law identifies the information relevant to this decision, but this should be tailored for Steven, both in terms of the content and the language. It is important that as the assessor, you are clear on what this relevant information is before undertaking the capacity assessment with Steven. If you aren't clear, how can you expect Steven to be clear?! Think carefully about which parts of the relevant information below **may** apply to Steven and his circumstances, and how best to share this information with Steven in a way to suit his needs (this is just guidance and may need to be adapted to suit the facts of any particular case).*

(a) ***Volume of belongings and impact on use of rooms:*** *The relative volume of belongings in relation to the degree to which they impair the usual function of the important rooms in the property for the person (and other residents in the property) (e.g whether the bedroom is available for sleeping, the kitchen for the preparation of food etc). Rooms used for storage (box rooms) would not be relevant, although may be relevant to issues (c) and (d) below.*

(b) ***Safe access and use:*** *the extent to which the person (and, if relevant, other residents in the property) are able or not to safely access and use the living areas.*

(c) ***Creation of hazards:*** *the extent to which the accumulated belongings create actual or potential hazards in terms of health and safety of those resident in the property. This would include the impact of the accumulated belongings on the functioning, maintenance and safety of utilities (heating, lighting, water, washing facilities for both residents and their clothing). In terms of direct hazards this would include key areas of hygiene (toilets, food storage and preparation), the potential for or actual vermin infestation and risk of fire to the extent that the accumulated possessions would provide fuel for an outbreak of fire, and that escape and rescue routes were inaccessible or hazardous through accumulated clutter.*

(d) ***Safety of building:*** *the extent to which accumulated clutter and inaccessibility could compromise the structural integrity and therefore safety of the building.*

(e) ***Removal/disposal of hazardous levels of belongings:*** *that safe and effective removal and/or disposal of hazardous levels of accumulated possessions is possible and desirable on the basis of a "normal" evaluation of utility.*

__Note__: At the time of writing this guidance (September 2024) the above relevant information was accurate, however this may change so please keep up to date with case law by referring to this resource from 39 Essex Chambers>

4. Can the person make this decision at the time it needs to be made (by reference to the points at 4a to 4d below)?

4a. Can the person **understand the information** relevant to this decision (nature + purpose + reasonably foreseeable consequences)? Please give details (record how you tested whether the person could understand the information, including the questions you used, how you presented the information, the responses the person gave to your questions, and your findings)	Yes/No
*You need to **evidence** here how you have been able to conclude that Steven did/did not understand the **relevant** information outlined above. Don't set the level of understanding too high or make it more complicated than it needs*	

to be. Steven just needs to understand the salient (key) factors. For each of the relevant pieces of information above, think of questions you need to ask Steven in accessible language, to see if he understands it. *A good way to evidence your findings in this section, is to give examples of the type of questions you asked and what Steven's responses were. It may be helpful to have a notepad and pen to hand during the assessment to make an accurate note as to what Steven's answers were. Where possible and proportionate, prior to starting the assessment with Steven, consider the relevant information above and plan some questions you would need to ask to gather the evidence and how you are going to put them to him (e.g. verbal conversation? Use of other communication aids?) Some **examples** of the questions you may ask are:* • *"There are lots of books, clothes and shoes in your bathroom and kitchen Steven. Let's take a look together and I can show you. How would you get to the toilet Steven with these items in the way?"* • *"The fire service are concerned about the number of books and clothes you have in the rooms in your house Steven. There are so many that you can't safely get to the doors and there are concerns that if there was a fire you wouldn't be able to get out. What do you understand the risks to be from having this amount of books and clothes around the house?"* • *"There are some mice in your house Steven, have you seen them? Mice will be attracted to coming into your house because of the food which is around the kitchen, they will be getting in through the hole in your back door there. What do you think would be the concerns about having mice in your house?* *Document what questions you asked Steven (in a format to meet his needs) and what his responses were. Ensure you provide professional commentary: if Steven answers in a particular way, think 'so what?' – what does this response tell me about Steven's understanding of the decision? Show your working out!* *If an individual is unable to understand the relevant information, it may be unlikely that they can retain it, or use and weigh it in order to reach a decision. However, don't skip the remaining sections - you must still **evidence why** you conclude they are unable to do those things if that is the case.*	
4b. Can the person **retain the information** for long enough to use it to make this decision? **Note that a person's ability to retain information for only a short period does not prevent them from being able to make the decision.** Please give details (record how you tested whether the person could retain the information, and your findings)	Yes/No
Steven only needs to retain (remember/recall/hold in his mind) the information for long enough to make the decision in question. Ask yourself, how often does Steven need to make this decision – is it a one off decision or is it a repeated decision required to be made over a period of time? What is the material time? The practicalities around how/when to undertake this assessment need considering. ***Note:** if the capacity assessment evidenced Steven as having the relevant capacity, review of that capacity should only take place if a further reason to doubt is anticipated or presents itself. Best practice suggests a capacity assessment has a shelf life of 12 months before it should be reviewed** *Evidence how you have come to your conclusion: skipping this box or writing 'could not retain' only is **NOT** an option. Include extracts from your conversation with Steven in this section which you feel evidences whether he could/couldn't retain the relevant information at the time he needed to make the decision.*	
4c. Can the person **use or weigh up the information** as part of the process of making this decision? Please give details (record how you tested whether the person could use and weigh the information, including the person's ability to identify relevant options and the risks and benefits of each, and your findings)	Yes/No
To evidence whether Steven can use or weigh up the information, he needs to have at least two options to choose from. The options in the scenario may include him clearing some of the belongings/items out of the house, at least enough to ensure he can leave the property safely in the case of a fire etc. To have repairs done to his property such as replacing his broken door. To allow pest control to undertake actions to remove the mice etc.	

Steven then needs to consider the advantages/pros and disadvantages/cons to each option. This is more complex than simply understanding the relevant information: we are now asking Steven to do something with that relevant information, to apply it to himself. Steven might struggle to do this on his own. We could offer our assistance here but need to be mindful that our views/values do not influence Steven, try to stick to the facts. It may be helpful to use visual tools with Steven: have a physical sheet for each option and have him place the information on either the advantage/pro or disadvantage/con side. Steven may conclude by stating that he chooses the option which has the most risks/disadvantages, but how does Steven then explain his decision? We all live with risk every day and just because Steven chooses the riskiest option is not – alone - a reason to conclude he lacks capacity to make the decision. For example: - *It may be evidenced that through supporting Steven with the relevant information, such as the factual risks and consequences to him continuing to live in his environment as it is, that he was able to use a balance sheet to consider advantages/disadvantages to either option. Steven may say that he understands that there is a risk of eviction from his home due to the health risks to his neighbours as a result of the mice and therefore he has decided to accept support to remove the mice. He may then be observed to use or weigh this information at the time the decision needs to be made by accepting appointments with pest control and allowing necessary actions to be taken. The same may be evidenced/observed with regards to clearing some items, rectifying risks around fire etc.* ***OR*** - *Steven may appear to understand the relevant information but then not be able to apply it to himself despite being supported to do so. It may be the case that Steven understands that when a property has large amounts of books and other items it increases risks around fire, he may even verbally at that time agree to letting others support him to remove some of the books and other items from his home. However, when the time comes to take action he may refuse the support, or once the items have been removed he takes them back out of the clearance bags and returns them to his property. When asked why he is doing this, Steven may display as being very anxious and low in mood. He may struggle to explain why he is returning the items given he is aware of the risk.* *Ensure you clearly conclude your professional opinion in this section based on the evidence you have been able to gather. In such cases, it may be that you gather the evidence for this part of the functional test after the capacity conversation. Whether Steven is able to use or weigh the relevant information to reach a decision may not be evidenced until the time he needs to put the decision into action, such as when support is due to take place to take the agreed steps to manage the risks as mentioned above.*	
4d. Can the person **communicate** this decision (whether by talking, sign language or any other means)? Please give details (record your findings about whether the person can communicate the decision)	Yes/No
This does not just mean can Steven communicate – it means can he communicate the decision he has made. For example, if Steven did not understand the relevant information, could not retain it, use or weigh it, then he would be unable to make a decision therefore unable to communicate one. *If Steven was able to do all the above but he could not communicate his decision (by any means) then he would be deemed as lacking capacity (although such examples are unlikely/rare e.g. such as when a person has locked in syndrome).* ***Remember****: Steven may communicate his decision in various ways, not just verbally. He may communicate via the use of pictures, written words etc.*	
5. Is the person unable to make this decision at the time it needs to be made **because of** an impairment of, or disturbance in, the functioning of their mind or brain? (This could result from (e.g.) symptoms of alcohol/ drug use, delirium, concussion, conditions associated with mental illness, dementia, significant learning disability, drowsiness or loss of consciousness due to a physical or medical condition)? **Please give details** (describe the nature and degree of the impairment/ disturbance. Where the impairment/ disturbance arises out of a specific diagnosis, state the diagnosis/es. Explain **why** the person is unable to make this decision, at the relevant time, **because of** the impairment/ disturbance – **you must establish the link between the impairment/ disturbance and inability to decide**)	Yes/No
In this scenario, Steven does have a diagnosis of Post-Traumatic Stress Disorder, anxiety and depression. In other scenarios, it may be that the person does not have a formal diagnosis, but in your professional opinion they present as having some sort of impairment to the functioning of their mind or brain, such as cognitive impairment, short term memory difficulties etc. If that is the case, you need to provide evidence as to what makes you believe this is likely, e.g. increased confusion, poor memory recall etc.	

Remember: *Just because Steven has a diagnosis, it does* ***NOT*** *mean he automatically lacks capacity. This can only be established through the completion of a capacity assessment.* *Is Steven unable to do one or more of the 4 areas (understand, retain, use or weigh and communicate)* ***because*** *of the impairment or disturbance in his mind or brain – i.e. because of his Post-Traumatic Stress Disorder/anxiety/depression? Is it this that stops him being able to do 1 or more of the 4 areas? In order for a determination of lack of capacity in this decision to be reached, you need to be able to make a casual link between Steven's diagnosed impairment and his inability to do 1 or more of the functional test elements (if that is indeed the case!).* *An example recording could be (on the basis that Steven can't use or weigh the relevant information in order to reach a decision):* • *Steven has a diagnosis of Post-Traumatic Stress Disorder, anxiety and depression, recorded on his Systmone File dated XXX. In preparation for this capacity assessment, Steven has been provided with the relevant information in a way to meet his needs. Despite this support, it is my professional opinion (in agreement with others who know Steven well), that Steven likely remains unable to use or weigh the relevant information to reach a decision regarding managing his items and belongings, as a result of his Post-Traumatic Stress Disorder/anxiety/depression (which ever you feel is most likely the cause). At the time when steps were to take place to manage Steven's items and belongings, he presented as increasingly anxious…..(expand on what happened and why you feel this was evidence of his anxiety impacting his ability to put a decision into action at the time it needed to happen).*	
6. If the person lacks capacity to make this decision, is it likely that they will regain capacity to make it? Please give details	Yes/No
Consider here whether there is a chance Steven will regain capacity. For example, is there any therapeutic work which could be provided to Steven to support with his anxiety around removing items and belongings from his home?	
7. If it is likely that the person will regain capacity to make this decision, can it wait? Please give details	Yes/No
You need to consider here, perhaps by liaising with an appropriate professional, whether a period of therapeutic input could support Steven to regain his capacity but balance this against the level of risk currently being experienced. Is there sufficient time to undertake this support or are the risks of such an extent, this cannot be facilitated? Clear risk assessments are very important when this is in question. If it is felt that therapeutic input could be of benefit but the current risks are too high to wait, then it should be identified which risks are of priority and only take action on those in Steven's best interests, and any other decisions that can wait until he has potentially regained capacity, should wait. For example, do not remove all items from Steven's home at this time, just the ones causing immediate risk e.g. enough to clear appropriate exit routes should there be a fire.	
8. If the person lacks capacity, is there a person appointed to take this decision on the person's behalf (e.g. court appointed deputy or an attorney)? Please give details (check the court order/ attorney document to ensure relevant authority has been granted, and retain a copy; provide the name and contact details of the appointed person)	Yes/No
In this case scenario, there does not appear to be anybody appointed as a legal decision maker, however, you would need to be satisfied you have taken appropriate steps to confirm this.	
9. What recommendations/ actions result from this capacity assessment? Please give details (what actions are required by whom, by when?). **You must include a date for review of this assessment, by whom**	Review date, by whom
What needs to be done by who and by when? *An example recording could be:* • *A best interest meeting will be arranged to explore what options there are available to support Steven in minimizing the current risks around his environment.* ***Note:*** *this is not where you record what the best interest decision is; this is recorded on the appropriate best interest decision record to ensure evidence of the best interest checklist having been followed.*	

A copy of this assessment and any supporting documents must be kept on the person's health/ care record

On the balance of probabilities the person **HAS/ LACKS** (delete one) capacity to make this decision at the time it needs to be made

Name and signature of assessor	
Designation/ position of assessor and contact details	

*Information relevant to decisions at: https://www.39essex.com/information-hub/insight/mental-capacity-guidance-note-relevant-information-different-categories

***Some key points to remember when assessing an individual's capacity**:*

- *All decisions about care/ treatment should start with seeking an individual's consent.*
- *You must have reasonable cause to doubt a person's capacity to consent/ make a decision. This doubt could arise for a number of reasons such as: observations of/conversations with the person raising concern, doubts around capacity shared by others who know the person well, concerns surrounding capacity evidenced in care records etc. A diagnosis such as dementia or learning disability is not a reason to assume a lack of capacity, but it may well be a reason to consider it carefully.*
- *The individual has to prove **nothing**. It falls to us as professionals to evidence a lack of capacity (if that is the case) for a specific decision.*
- *Capacity is assessed 'on the balance of probabilities'. You are not saying there is no doubt, just that it is more likely than not that they do or do not have capacity. E.g. it is my professional opinion, on the balance of probabilities, that on 01.04.20 at 2pm, Julie lacked capacity with regards to engaging in sexual relations.*
- *If the individual is unable to do **1 or more of the 4** functional test elements (understand, retain, use or weigh and communicate) then they are assessed as lacking capacity at that time with regards to that decision, so long as the reason they are unable to decide is likely due to an impairment/disturbance in their mind/brain.*
- *It is a myth that only medical professionals are able to carry out capacity assessments – sometimes a particular professional's input may be required but this is due to their expertise rather than their position.*
- *Capacity assessments should be considered as a **conversation** with the individual on a level which meets their needs.*
- *Where possible you need to be aware of the individual's values and beliefs as this will impact upon their decision making which may differ from our own.*
- *Writing 'did not understand' or one word answers to the above questions is **NOT** sufficient and does not evidence how you have reached your decision. Ask yourselves, if somebody who didn't know Julie read this assessment, would it be clear to them why I have assessed Julie as having/lacking capacity? If the answer is no then that tells you that you have not recorded enough information – you risk not being protected under the MCA (the MCA only protects you if you do what it requires).*
- *Make sure you take time to plan how you are going to complete the assessment and to write it up afterwards!*

Please note this support document is not intended as legal advice.

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