



Guidance for assessing mental capacity to manage property and affairs

1. Purpose of this guidance

This guidance is aimed at professionals who are asked to assess a person's mental capacity to make decisions about their property and affairs, often referred to as 'financial capacity'. (See section 2 below). This guidance provides information on who can assess financial capacity, what information you will need and how you should approach the assessment.

Please do not automatically assume that because you have been asked to assess a person's financial capacity that they lack capacity. The reason you have been asked is because someone has concerns about the person's ability to make financial decisions. Just because a person has a diagnosis, for example they have a mental disorder, dementia, a learning disability or brain injury, it does not mean they lack mental capacity to make financial decisions. If there are no reasons to doubt the person's ability to make financial decisions, it is not appropriate to assess their capacity. This is because under the Mental Capacity Act 2005 (MCA) the person must be presumed to have mental capacity, unless there is evidence to the contrary requiring further investigation.

If a person is found to lack financial capacity they will need someone else to manage their financial affairs and make the financial decisions they cannot make.

If the person is entitled only to Department of Work and Pensions (DWP) benefits and cannot manage these, an Appointee may do so on their behalf. See <https://www.gov.uk/become-appointee-for-someone-claiming-benefits>

If the person has assets other than their DWP benefits or wider decisions need to be made, a financial deputy will need to be appointed by the Court of Protection to make decisions on their behalf.

If you conclude that the person lacks financial capacity and a deputy is required, you will need to complete a Form COP3. This form will be sent to the Court of Protection when the application is made.

This guidance should help you complete Form COP3. Part A should have been completed by the person asking for the capacity assessment. You will need to complete Part B. This guidance does not follow the same layout contained in Form COP3 but refers to relevant boxes. This is because you are expected to assess the person's financial capacity and then complete the form if you are of the opinion they do not to have capacity for this decision.

2. Can you assess the person's mental capacity? (section 4, Form COP3)

You should have a professional qualification, training and practical experience which demonstrates to the Court your ability to assess capacity in accordance with the MCA and associated Code of Practice ([the Code](#)).

The assessor is usually a medical practitioner or social care professional, but it is not limited to these professionals, and can include social workers, speech and language therapists, occupational therapists and psychologists. It may also extend as an example, to a care home manager with training and experience of assessing mental capacity of residents with dementia. It will be for you to demonstrate your understanding of the law, your ability to apply it to probe the person's mental capacity and your ability to explain your reasons.

If you have used AI to assist you to write the report:

- (1) The opinion you give must still be yours.
- (2) You should check the report to ensure it is accurate as AI may summarise information and it may be wrong.
- (3) You should confirm if AI was used and what tools was used in Form COP3 at 6.13.
- (4) You must not risk breaching confidentiality by putting private information into a public large-language model AI system.

3. Do you need to see the person? (See box 6.10, Form COP3)

As a general rule, you need to visit the person to complete the assessment. It is rarely appropriate to carry out an assessment remotely, such as by using Zoom or Microsoft Teams. If you think it is necessary for the assessment to be conducted remotely you will need to justify this. For example, if you have previously undertaken a face to face assessment and you believe the person can manage a remote assessment, your follow up assessment may be justified, or if the person would prefer the assessment to be carried out remotely, this may be a practical step to support their assessment. You will need to explain this in Box 6.10.

If it proves not to be possible to engage the person to participate in an assessment despite repeated attempts, it may be possible to form an opinion of their capacity from multiple sources, such as previous medical reports or assessments. The reason should be evidenced within your assessment. This should be approached with a high degree of caution and only as an option of last resort, as your opinion would be less robust. You should consider whether the difficulties found in engaging is due to the person exercising their right to decline an assessment or being unable to engage due to their cognitive impairment. Again, this will need to be explained with reasons in

your assessment. (See *QJ v A Local Authority & Anor* [2020] EWCOP 7: Nottingham University Hospitals NHS Trust & Anor v RL & Ors [2023] EWCOP 22).

4. What is meant by lacking mental capacity? (Section 6, Form COP3)

A person is not to be treated as lacking financial capacity unless all practicable steps to help the person have been taken without success (s.1(3) MCA).

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.

There must be a causal link between their inability to make the decision and an impairment of, or disturbance in the function of their mind or brain, which is known legally as the 'causal nexus'. (See *PC and NC v City of York Council* [2013] EWCA Civ 478 and *A Local Authority v JB* [2021] UKSC 52).

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 (despite all practicable steps) they cannot, is it because of an impairment of, or disturbance in the functioning of, the mind or brain?

See: sections 2 and 3 of the MCA.

5. Does having a diagnosis mean the person lacks mental capacity? (box 6.8, Form COP3)

A person should not be treated as lacking mental capacity to make financial decisions because of their age, appearance, condition or behaviour (s.2(3) MCA). Having a diagnosis does not automatically mean a person lacks mental capacity to make financial decisions. Similarly, executive dysfunction and frontal lobe damage is not to be regarded as synonymous with the functional test for mental capacity. It is only if the consequence of their dysfunction is to impair their ability to think consequentially and ultimately, to be able to understand, retain or weigh information in order to make and communicate the specific decision, then the person will lack capacity to make that decision (see *Warrington Borough Council v Y & Ors* [2023] EWCOP 27).

6. What if there is no diagnosis? (box 6.8, Form COP3)

A person may have an impairment of, or disturbance in the functioning of, the mind or brain, even where there is no clear diagnosis. A diagnosis can be helpful:

- (1) in understanding how to best support the person to make financial decisions;
- (2) in understanding how to explain the relevant information to them in a way that is appropriate for their needs and circumstances; and
- (3) in helping explain why they can or cannot process relevant information to make financial decisions.

However, in situations where the specific nature of the diagnosis is under investigation or there are mixed opinions (such as whether a person has one type of dementia or another) or there is longer term diagnostic uncertainty, this should not delay your opinion. So long as you are confident that there is clear evidence of impairment or disturbance of their mind or brain, such as a cognitive assessment or opinion from another suitably qualified professional, you can still form an opinion. Avoiding reaching a conclusion as to the person's financial capacity simply because there is no specific diagnosis could well represent a significant failure to secure that person's rights and interests. See *RT v LT* [2010] EWHC 1910 (Fam) as an example.

7. The legal approach to managing property and affairs (boxes 5.1 & 6.2, Form COP3)

Property and affairs has been defined as 'business matters, legal transactions and other dealings of a similar kind' (see *Lord Brandon in F v West Berkshire Health Authority* [1989] 2 All ER 545).

The relevant information and level of understanding for financial capacity will vary from one person to another. It will depend on the following:

- (1) the nature and extent of the property and affairs that the person has to manage;
- (2) the extent they would be likely to seek, understand and act on appropriate advice; and
- (3) the level of support from family and others.

See: *Masterman-Lister v Jewell & Others* [2002] EWCA 1889; *Lindsay v Wood* [2006] EWHC 2895 (QB).

You will need to adapt your assessment to reflect this. This means that a person with more complex financial arrangements will have to understand more complex information than someone with simple financial affairs.

8. Managing property and affairs is a longitudinal decision (boxes 6.2, 6.3, and 6.4 Form COP3).

As mental capacity is decision and time specific, a person may lack mental capacity to make one decision but have mental capacity to make another decision. For example, a person may have mental capacity to make decisions about where they live but lack mental capacity to manage their money.

The general concept of managing finances is an ongoing act and quite unlike the time specific act of say making a will or making a lasting power of attorney. The management of financial affairs relates to a continuous state of affairs whose demands may be unpredictable and may occasionally be urgent (see *A, B and C v X and Z* [2012] EWHC 2400 (COP), para 41).

You should consider how the person would make financial decisions outside of your assessment, in the real world. Some financial decisions are made in the moment, such as buying clothing or food. Other decisions such as making a large purchase or taking out a loan will usually be considered over time. A person would generally want

to ‘mull the decision over’. Supporting a person to help with financial transactions should not be confused with enabling the person to have mental capacity. For example, supporting a person to buy their shopping is different to enabling them to have the financial capacity to make the decision for themselves.

The more significant the financial decision the longer period of time the person needs to retain and consider complex information. As financial decisions have to be made on an ongoing basis, it is important to confirm that the person can carry over their understanding and retention of the relevant information in order for them to weigh and use it to implement financial decisions in everyday life.

9. What if the person can make some financial decisions? (box 6.1, Form COP3)

Sometimes people may lack capacity to make complex financial decisions but retain the ability to make simple day to day financial decisions. Legally a binary decision needs to be made that the person has or has not the capacity to manage their finances. However, one aim of the MCA is to enable the person to continue to make those financial decisions they can make.

If completing Form COP3, you will need to set out the financial decisions which the person retains capacity to make and those decisions which they lack financial capacity. You should also identify any steps that you think could practically be taken to support them to make any decisions they currently lack the capacity to make.

If a financial deputy is appointed, their authority is suspended in relation to any financial decision or decisions the person is able to make (s.20(1) MCA). The financial deputy is expected to facilitate the person in making their own financial decisions, when able. This should be a flexible approach with the deputy taking a reduced role over time if the person is recovering capacity or increased role over time if capacity is reducing, for example where the person has a degenerative condition.

10. What information do you need before you assess the person? (Part A, boxes 3.1 and 3.2, Form COP3)

To identify the relevant information you should be provided with information by the person requesting the assessment. You may also need to ask the person for some of this information, such as bank statements, especially if there are situations where you need to check the accuracy of what they say. This information you are likely to need includes:

- Details about how to best support the person to help them make their own financial decisions and to enable their participation in the assessment, using simple language, visual aids and other means (s.1(3) and s.3(2) MCA). Chapter 3 of the [Code](#) sets out ways in which a person can be supported.
- Details of the person’s beliefs, values and wishes, particularly if they have any ethical, religious or spiritual beliefs which would be relevant for them when making financial decisions or aid their ability to engage in the assessment.
- Details of the person’s plans and aspirations for their future.

- Details of the person's property, business interests, capital, savings, investments and income or what they are entitled to or will be entitled to in the foreseeable future (for example they may have an inheritance, are a beneficiary in a trust or are in the process of claiming a personal injury award).
- Details of the person's expenditure, debts or liabilities, for example, regular set expenses, child maintenance, have a mortgage or a renewal of mortgage is needed.
- Details of the person's day to day needs.
- Where and by whom the person is being cared for and what is the nature of that care. How care is currently being funded.
- Details of how the person has most recently been managing their finances or who has been managing them on the person's behalf. This would include how they access their money and how they typically spend it.
- What is the person's own understanding of their ability to make financial decisions?
- If the person, previously had mental capacity to manage their finances, when and what was the event which triggered the current concerns that they now lack capacity and why others believe a deputy is required.
- Are others concerned about how decisions are being made or intend to be made; and why and what are the nature of the concerns? Is the person making decisions out of character from how they made decisions in the past? Is there behavioural evidence that the person is not making financial decisions in the way they say they will. For example, a person with frontal lobe brain injury might present as intelligent and with full historic knowledge and answers questions well, but be unable to implement their financial decision in the real world. This is known as the frontal lobe paradox and presents as 'talking the talk but not walking the walk'.
- Copies of any past assessments of their mental capacity and relevant medical evidence which relate to the person's ability to make financial decisions. You should not be influenced by previous assessments as you must form your own opinion, but they may contain useful information. If forming a different opinion from prior assessors, you should reflect on why and provide reasons for holding a different view.

There may be occasions where the person requesting the information is unable to provide detailed information about the person's finances. This may be because they are a professional, such as a local authority and do not have access to this information. You will still need to show how you have formed your opinion without this information.

11. Avoiding mistakes when assessing capacity

The person should:

- be presumed to have mental capacity to manage their finances, unless it is established that on the balance of probabilities that they do not have mental capacity for this decision (s.1 (2) & s.(2)(4) MCA). This is not the same as

saying that they should be presumed to have capacity so as to prevent inquiry (see section 1 above); rather, that the burden of proof does not lie on them to show that they have capacity.

- not be treated as lacking mental capacity to manage their finances because they have made or might make a financial decision, which others might consider to be unwise (s.1(4) MCA).
- be assisted and supported to make their own financial decisions (s.1(3) MCA). (see **box 6.6, Form COP3**)
- be provided with relevant information in a format that is suitable for their needs and circumstances to enhance their ability to understand (s.3(2) MCA)(see **box 6.6, Form COP3**).
- be given time to think and process the information- a second appointment may be appropriate to establish retention and consistency of decision making.

You should be mindful that your own values, feelings and beliefs could unintentionally impact on the assessment. There is a potential risk that you might conflate the capacity assessment with what you consider is in the best interests of the person. For example, you might feel the person needs protecting from making an unwise decision. If the person has capacity they are legally allowed to make unwise decisions (see **CC v KK & STCC [2012] EWHC 2136 (COP)**).

You should be mindful that the person is only required to understand the salient factors and not every ramification of financial decisions. Doing otherwise creates a risk that the threshold for capacity is set artificially higher than for a person where there is no doubt about their mental capacity. See: **LBJ v RYJ [2010] EWHC 2664 (Fam); PH and A Local Authority v Z Limited & R [2011] EWHC 1704 (Fam); CC v KK & STCC [2012] EWHC 2136 (COP)**.

12. Undertaking the assessment

The relevant information will vary depending on the person's own finances, and their circumstances. Some assessments will not be complex, for example if a person is in a coma or severely unwell, whilst others will be more involved.

You must:

- (1) identify the relevant information which the person needs to understand; (**box 5.1, Form COP3**) such as the nature of financial decisions and the different ways to manage finances, including seeking, considering and acting on financial advice, where the person has the financial resources and it is appropriate for advice to be obtained.
- (2) Explain this to the person in a way they will best be able to understand.
- (3) Provide an opportunity for the person to reflect back to you the salient factors they would need to understand when making financial decisions.
- (4) Demonstrate whether they are able to weigh or use the relevant information to make a financial decision.
- (5) Understand what would be the foreseeable consequence of the person making financial decisions, such as keeping money safe when it is not needed to be spent, spending money, paying bills and having sufficient left on which to live;

and not making financial decisions, such as bills being unpaid and debts forming. If the reasonably foreseeable consequences for them of their decision(s) are serious, it is important that you probe carefully as to whether they can understand, retain, use and weigh the relevant information (**A Local Authority v JB** [2021] UKSC 35).

Financial decision making can be separated into three elements (Moyes and Marson 2007), including:

- (1) Declarative knowledge which refers to knowledge of facts and concepts such as loans, interest rates, bank accounts;
- (2) Procedural knowledge, or awareness of the routine and repetitive actions that are related to money management such as withdrawing money, paying money in or paying a bill; and
- (3) Ability to form judgements so as to solve financial problems, such as how to pay for a holiday via budgeting, setting limits to expenditure, and so on.

This is applied to the circumstances of the person assessed, over the types of financial decisions that person would ordinarily make. Examples of sample questions include:

- Recognising the values of notes and coins (use real ones)
- Basic calculations and awareness of the cost of common items/reasonable compensation methods
- Ability to use ATM's and pay for items
- Knowledge of income, expenditures, assets, debt
- History of financial management- are they always someone who got into debt or is this new?
- Ability to budget
- How do you pay your bills?
- Do they understand any support requirements, and can they implement these? Any risks of other's supporting them?
- What would happen if support arrangements changed?
- Financial risk situations. What could happen if you do not pay your electricity bill?
- Financial vulnerability- can they keep themselves safe? What would you do if you get an email saying you have won a prize and there is a link to follow?
- Have there been any situations of concern?

- You may wish to take sample bills/financial documents to assess whether clients can identify the salient information in these and tell you how they would pay them.

If the person will receive or is expected to receive a personal injury award they will need to understand:

- The likely or actual size of the award; and other money and property they have
- The need to seek, understand, remember and act on professional financial and investment advice
- The need for the award to last for their lifetime
- Their care needs and how they will use the funds to meet those needs

13. Financial rehabilitation & recommendations (box 6.11, Form COP3)

Consider if the person's ability to make financial decisions could be enhanced by being given the opportunity to learn how to manage their finances. For example a family member might think that the person cannot manage their money because they are at risk of exploitation or would make an unwise decision. Learning how to identify scams, and practicing and being involved with how to manage money may help the person improve their skills. People with mental capacity are able to make decisions which others believe is unwise- and so it cannot be assumed the person lacks mental capacity simply because they might make a decision that others disagree with.

During the assessment you may also identify that another type of assessment might be required, for example capacity to decide their residence and care. You should bring this to the attention of those asking you to carry out an assessment and include it in your recommendations.

14. Next steps

Once you have formed your opinion, you should let those who have instructed you know the outcome. If you consider the person lacks financial capacity, complete Form COP3 and send it to those who instructed you.

Date: 22 June 2026

This resource aims to help professionals assess financial capacity and has been written by Dr. Catriona McIntosh, a Consultant Clinical Neuropsychologist who specialises in undertaking capacity assessments for people with acquired brain injury and neurological conditions, and Caroline Bielanska, a solicitor, author and legal trainer who specialises in the Mental Capacity Act 2005.