What is mental capacity?

What is the definition of mental capacity?

Section 2(1) of the Mental Capacity Act 2005 ("The Act") states that an individual lacks capacity "in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain."

There are some important elements to this definition:

- Capacity always relates to a particular decision; a person does not lack capacity in general terms. It is possible to have capacity to make one decision but lack capacity to make another;
- A person's capacity should be considered at the time that they are required to make a decision;
- There must be a causal link between a person's inability to make a decision and their impairment of, or disturbance in the functioning of, the mind or brain

The Act also makes clear that it does not matter if an individual's impairment or disturbance of the mind or brain is permanent or temporary.

How is mental capacity assessed?

The Act explains that an individual is unable to make a decision for themselves if they cannot do one or more of the following:

- Understand the information relevant to the decision to be made;
- Retain that information;
- Use or weigh the information as part of making their decision; or
- Communicate their decision (by talking, sign language, gestures, or any other means).

Once it has been established that a person is unable to make a particular decision, it must be determined whether this is due to an impairment of, or a disturbance in the functioning of, the mind or brain. This does not require a specific diagnosis.

The mental capacity principles

The Act contains a set of principles which underpin the assessment of a person's capacity and the way that decisions are made for them if they are deemed to lack capacity to make particular decisions:

- A person must always be assumed to have capacity unless it is established that they lack it.
- A person is not to be treated as unable to make a decision unless all practical steps have been taken to help them to do so without success.
- A person cannot be treated as unable to make a decision simply because they make an unwise decision.
- A decision made or action taken on behalf of a person who lacks capacity must be made or done in the person's best interests.
- Decisions and actions must be taken and made in a way that is least restrictive of the person's rights and freedoms.

What happens if a person lacks capacity?

In line with the principles, any decision made or any action taken on behalf of a person who lacks mental capacity must be made or taken in their best interests.

To determine whether a decision is in a person's best interests a range of factors must be considered. These are detailed in section 4 of the Act. These factors include whether the person will regain capacity in the future, the person's wishes and feelings, and the wishes and feelings of those engaged in caring for the person or interested in their welfare. See our factsheet entitled.