

## Capacity Checklist

**Always assume capacity** – It should be assumed that an individual has mental capacity unless it is proven otherwise.

**What is the decision that is to be made?** *'a person's capacity or lack of capacity refers specifically to their capacity to make a particular decision at the time it needs to be made'* (Code of Practice (2007) p. 29)

**Does the particular decision need to be made now?** Consider if the decision is delayed will this enable the person to have capacity? i.e time to recover from illness

**Ensure all practicable steps have been taken?** (gather background information, make no assumptions about the service user's age, appearance, condition or disability. Speak with those who know the person being assessed, identify the adult's best time of day, where would they be most comfortable)

**Determine if the adult has any communication needs,** (would they benefit from any aids to support)

**Has the Adult been given all the salient information** to make the specific decision (give them all of the information they need to make the decision)

**Has the adult been offered support** of a family member/friend/carer to help them understand the decision.

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The Mental Capacity Act Code of Practice refers to a two stage test, however the Supreme Court's decision [A Local Authority v JB | 39 Essex Chambers](#) confirms the appropriate three stage test which should now be applied

- 1) **Functional:** Is the person able to make a decision? The person is unable to make a decision for himself if he is unable to:
  - Understand the information relevant to the decision
  - Retain that information or
  - Use or weigh that information as part of the decision making process
  - Communicate his decision
  
- 2) **Impairment:** Is there an impairment or disturbance in the functioning of the person's mind or brain. This can be temporary or permanent
  
- 3) **Causation:** Is the person's inability to make the decision because of the identified impairment or disturbance?