



Institute of  
Money Advisers®

Assuring quality in the money advice profession

# Mental capacity for debt advisers



Welcome!

# Interacting with us

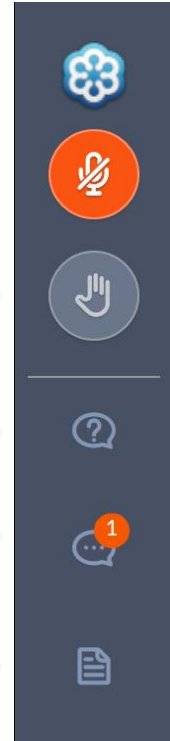


Raise your hand

Submit a written question

View messages from the webinar team

Download handouts



# Webinar objectives



- What is mental capacity
- The Mental Capacity Act and who must have regard to it
- How issues around capacity can impact on the advice process
- Acting in the client's "best interest" and adapting advice

# What is mental capacity?



- The ability of a person to make a particular decision, or take a particular action, for themselves at the time the decision or action needs to be taken.
- If someone cannot do this, they may be ‘a person who lacks capacity’.



# Mental capacity – where do we start?...

1. There is a presumption of capacity unless it can be shown otherwise
2. There is a presumption that no-one has capacity unless you can demonstrate that they do
3. We shouldn't make presumptions!

# Mental Capacity Act 2005



- In the UK, the law relating to persons who lack mental capacity is contained in the Mental Capacity Act 2005.
- Sets out 5 principles to help people who might lack capacity to make decisions
- Supported by a Code of Guidance

# Principles



- A person must be assumed to have capacity unless it is established that he lacks capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

# Assessment of mental capacity



- Understand information about the decision to be made *and*
- Retain that information *and*
- Use that information as part of the decision-making process *and*
- Communicate their decision (by talking, using sign language or any other means).





**Why might a client lack mental capacity at an interview with a debt adviser?**

Type your suggestions using the question option in the menu on the right.

# Mental capacity can be affected by...



- Medical conditions
- Medication (temporary or long-lasting)
- Brain injuries
- Learning disabilities
- Mental ill-health
- Addictions / intoxication

# Assessments should not be based on



- Age
- Intelligence (or our perception of it)
- Appearance
- Behaviour
- Making “unwise” decisions
- Assumptions

# Helping someone make a decision



- Obligation to take ‘reasonable steps’ to help someone make a decision.
- This can cover each of the four things someone needs to be able to do.
- Many practical suggestions in the Code of Practice.



**How could we adapt the typical advice process/setting to support someone to make their own decisions?**

Type your suggestions using the question option in the menu on the right.

# Adapting the advice process



- Flexibility with appointments (sometimes lack of capacity is temporary or depends on time of day)
- Let client choose venue / home visit
- Draw pictures
- Several short interviews instead of one long one
- Role play
- Additional time
- Arrange for someone that client trusts to attend too

# Can you decide a client lacks capacity?



Short answer – **yes**, but make sure you have:

- Taken all reasonable steps to help the client make the decision themselves,
- Considered each of the four things that a person needs to be able to do, **and**
- Made a record of your steps and grounds for your ‘reasonable belief’ they lack capacity.

# Acting in the client's best interest



- Any actions taken or decisions made must be what the client would have done if they had capacity and in their best interest.
- Don't make assumptions about the person.
- Involve family and social workers, GP and consider a formal "best interest" meeting



# The least restrictive option



- Any decision or action also needs to be the ‘least restrictive option’ – that interferes less with their rights and freedoms of action.
- Both this and ‘best interests’ apply to others (e.g. friends/family) supporting clients to make decisions.



# Which of the following options are likely to be the 'least restrictive'?

1. Making offers of token payments
2. Requesting for write-offs on medical grounds
3. Applying for a debt relief order

# Lasting Power of Attorney



- Can only be made when client HAS capacity.
- Client must be 18 years of age or over.
- If client has temporary periods of capacity then choose a time when client is well.
- 2 types of LPA: health and welfare; and property & financial affairs
- Costs £82

# Mental capacity advocate



May be of use where:

- Age **16** and above
- Client lacks capacity
- Client is the subject of financial abuse from family or “friends”
- Has no-one else willing or able to help
- Advocate appointed by Local Authority or local NHS

# Court of Protection Deputy



- Where client **already** lacks capacity
- Suitable for very important decisions
- Deputy must be 18 years of age or older
- Two or more deputies can act
- £385 fee
- Can make one-off emergency decisions

# Dealing with debt



- Consumer Credit Sourcebook (CONC)
- National Standards for Enforcement Agents
- Equality Act 2010
- Protection from Harassment Act 1997
- Debt and Mental Health Evidence Form

# Resources



- Advice Workers Guide

<https://www.ouh.nhs.uk/patient-guide/safeguarding/documents/advice-workers-guide.pdf>

- Mental Capacity Act Code of Practice

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/497253/Mental-capacity-act-code-of-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)

- Mental Capacity Act 2005

<http://www.legislation.gov.uk/ukpga/2005/9/section/3>



# More Resources

- Lasting Power of Attorney  
<https://www.gov.uk/power-of-attorney>
- Mental Health Advocacy Service  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365629/making-decisions-opg606-1207.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/365629/making-decisions-opg606-1207.pdf)
- Court of Protection  
<https://www.gov.uk/courts-tribunals/court-of-protection>



# Recap



- Everyone is presumed to have capacity
- Assess on objective and reasonable grounds
- Make sure that you can justify your decision to act, and that it is in the client's best interests
- Seek help from other professionals



**Thank you!**  
**Please take a minute to complete  
the feedback survey**