

# Court of Protection

## Assessment of capacity

### COP 3 12.13

<b>For office use only</b>
Date received
Case no.

Full name of person to whom the application relates (this is the name of the person who lacks, or is alleged to lack, capacity)

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### **Please read first**

- If you are applying to start proceedings with the court you must file this form with your COP1 application form. The assessment must contain current information.
- You must complete Part A of this form.
- You then need to provide the form with Part A completed to the practitioner who will complete Part B. The practitioner will return the form to you or your solicitor for filing with the court.

- The practitioner may be a registered:
  - medical practitioner, for example the GP of the person to whom the application relates;
  - psychiatrist
  - approved mental health professional
  - social worker
  - psychologist
  - nurse, or
  - occupational therapist

who has examined and assessed the capacity of the person to whom the application relates. In some circumstances it might be appropriate for a registered therapist, such as a speech therapist or occupational therapist, to complete the form.

- When the form has been completed, its contents will be confidential to the court and those authorised by the court to see it, such as parties to the proceedings.
- Please continue on a separate sheet of paper if you need more space to answer a question. Write your name, the name and date of birth of the person to whom the application relates, and number of the question you are answering on each separate sheet.
- There are additional guidance notes at the end of this form.
- If you need help completing this form please check the website, [www.gov.uk/court-of-protection](http://www.gov.uk/court-of-protection), for further guidance or information, or contact Court Enquiry Service on 0300 456 4600 or [courtofprotectionenquiries@hmcts.gsi.gov.uk](mailto:courtofprotectionenquiries@hmcts.gsi.gov.uk)
- Court of Protection staff cannot give legal advice. If you need legal advice please contact a solicitor.
- This form has been prepared in consultation with the British Medical Association, the Royal College of Physicians, Royal College of Psychiatrists and the Department of Health.

## Part A - To be completed by the applicant

### Section 1 - Your details (the applicant)

#### 1.1 Your details

Mr.

Mrs.

Miss

Ms.

Other

First name

Middle name(s)

Last name

#### 1.2 Address (including postcode)

Telephone no.

Daytime	
Evening	
Mobile	

E-mail address

1.3 Is a solicitor representing you?

Yes

No

If Yes, please give the solicitor's details.

Name

Address (including postcode)

Telephone no.

Fax no.

DX no.

E-mail address

1.4 To which address should the practitioner return the form when they have completed Section 2?

Your address

Solicitor's address

Other address (please provide details)

## Section 2 - The person to whom the application relates (the person to be assessed by the practitioner)

2.1

Mr.

Mrs.

Miss

Ms.

Other

First name

Middle name(s)

Last name

Address (including postcode)

Telephone no.

Date of birth

Male

Female

## Section 3 - About the application

3.1 Please state the matter you are asking the court to decide.  
(see note 1)

3.2 What order are you asking the court to make?

3.3 How would the order benefit the person to whom the application relates?

3.4 What is your relationship or connection to the person to whom the application relates?

## **Section 4 - Further information**

Please provide any further information about the circumstances of the person to whom the application relates that would be useful to the practitioner in assessing his or her capacity to make any decision(s) that is the subject of your application.

**(see note 2)**

**Now read note 3 about what you need to do next.**

## Part B - To be completed by the practitioner

### Section 5 - Your details (the practitioner)

5.1

Mr.

Mrs.

Miss

Ms.

Other

First name

Middle name(s)

Last name

Address (including postcode)

Telephone no.

E-mail address

5.2 Nature of your professional relationship with the person to whom the application relates (For example, social worker or general practitioner (GP))

5.3 Please state your professional qualifications and practical experience with particular reference to making assessments of capacity in accordance with the Mental Capacity Act 2005 and associated Code of Practice.

If there is information that you do not wish to provide in this form because of its sensitive nature you can provide the information directly to the court.

6.1 Are you providing any sensitive information separately to the court?

Yes

No

Please provide it in writing to:

Court of Protection

PO Box 70185

First Avenue House

42-49 High Holborn

London WC1A 9JA

DX 160013

Kingsway 7

Please include your name and contact details, and the name, address and date of birth of the person to whom the application relates on any information you provide separately to the court.

## **Section 7 - Assessment of capacity**

7.1 The person to whom the application relates has the following impairment of, or disturbance in the functioning of, the mind or brain. Where this impairment or disturbance arises out of a specific diagnosis, please set out the diagnosis or diagnoses here: **(see note 4)**

This has lasted since:

As a result, the person is unable to make a decision for themselves in relation to the following matter(s) in question:

7.2 The person to whom the application relates is unable to make a decision in relation to the relevant matter because: **(see note 5)**

he or she is unable to understand the following relevant information (please give details);

**and/or**

he or she is unable to retain the following relevant information (please give details);

**and/or**

he or she is unable to use or weigh the following relevant information as part of the process of making the decision(s) (please give details);

**and/or**

is unable to communicate his or her decision(s) by any means at all (please give details).

7.3 My opinion is based on the following evidence of a lack of capacity:

7.4 Please answer either (a) **or** (b).

(a) I have acted as a practitioner for the person to whom the application

relates since  and last assessed

him or her on

(b) I assessed the person to whom the application

relates on

following a referral from:

7.5 Has the person to whom this application relates made you aware of any views they have in relation to the relevant matter?

Yes

No

If Yes, please give details.

7.6 Do you consider there is a prospect that the person to whom the application relates might regain or acquire capacity in the future in respect of the decision to which the application relates? **(see note 6)**

Yes – please state why and give an indication of when this might happen.

No – please state why.

7.7 Are you aware of anyone who holds a different view regarding the capacity of the person to whom the application relates?

Yes       No

If Yes, please give details.

7.8 Do you, your family or friends have any interest (financial or otherwise) in any matter concerning the person to whom the application relates?

Yes

No

If Yes, please give details.

7.9 Do you have any general comments or any other recommendations for future care? **(see note 7)**

Signed

Name

Date

**Now read note 8 about what you need to do next.**

## **Guidance notes**

### **Note 1: About the application**

These questions are repeated on the COP1 application form. Please copy your answers from the COP1 form so that the information on both forms is the same.

### **Note 2: Further information**

Please provide any further information about the circumstances of the person to whom the application relates that would be relevant in assessing their capacity. For example, if your application relates to property and financial affairs, it would be useful for the practitioner to know the general financial circumstances of the person concerned. This information will help the practitioner evaluate the decision-making responsibility of the person to whom the application relates and may help to inform the practitioner's view on whether that person can make the decision(s) in question.

### **Note 3: What you need to do next**

Please provide this form to the practitioner who will complete Part B.

The practitioner will return the form to you or your solicitor when they have completed Part B. You will then need to file the form with the court together with the COP1 application form and any other information the court requires. See note 8 on the COP1 form for further information.

### **Note 4: Assessing capacity**

For the purpose of the Mental Capacity Act 2005 a person lacks capacity if, at the time a decision needs to be made, he or she is unable to make or communicate the decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.

The Act contains a two-stage test of capacity:

1. Is there an impairment of, or disturbance in the functioning of, the person's mind or brain?
2. If so, is the impairment or disturbance sufficient that the person lacks the capacity to make a decision in relation to the matter in question?

Please refer to Part A of this form where the applicant has set out details of the application and relevant information about the circumstances of the person to whom the application relates. In particular, section 3.1 sets out the matter the applicant is asking the court to decide.

The assessment of capacity must be based on the person's ability to make a decision in relation to the relevant matter, and not their ability to make decisions in general. It does not matter therefore if the lack of capacity is temporary, if the person retains the capacity to make other decisions, or if the person's capacity fluctuates.

Under the Act, a person is regarded as being unable to make a decision if they cannot:

- understand information about the decision to be made;
- retain that information;
- use or weigh the information as part of the decision-making process; or
- communicate the decision (by any means).

A lack of capacity cannot be established merely by reference to a person's age or appearance or to a particular condition or an aspect of behaviour. A person is not to be treated as being unable to make a decision merely because they have made an unwise decision.

The test of capacity is not the same as the test for detention and treatment under the Mental Health Act 1983. Many people

covered by the Mental Health Act have the capacity to make decisions for themselves. On the other hand, most people who lack capacity to make decisions will never be affected by the Mental Health Act.

Practitioners are required to have regard to the Mental Capacity Act 2005 Code of Practice. The Code of Practice is available online at [www.gov.uk/court-of-protection](http://www.gov.uk/court-of-protection) Hard copies are available from The Stationery Office (TSO), for a fee, by:

- phoning 0870 600 5522;
- emailing [customerservices@tso.co.uk](mailto:customerservices@tso.co.uk); or
- ordering online at [www.tsoshop.co.uk](http://www.tsoshop.co.uk).

For further advice please see (for example):

- Making Decisions: A guide for people who work in health and social care (2nd edition), Mental Capacity Implementation Programme, 2007.
- Assessment of Mental Capacity: Guidance for Doctors and Lawyers (2nd edition), British Medical Association and Law Society (London: BMJ Books, 2004)

### **Note 5: Capacity to make the decision in question**

Please give your opinion of the nature of the lack of capacity and the grounds on which this is based. This requires a diagnosis and a statement giving clear evidence that the person to whom the application relates lacks capacity to make the decision(s) relevant to the application. It is important that the evidence of lack of capacity shows how this prevents the person concerned from being able to take decision(s).

### **Note 6: Prospect of regaining or acquiring capacity**

When reaching any decision the court must apply the principles set out in the Act and in particular must make a determination that is in the best interests of the person to whom the application relates. It would therefore assist the court if you

could indicate whether the person to whom the application relates is likely to regain or acquire capacity sufficiently to be able to make decisions in relation to the relevant matter.

**Note 7: General comments**

The court may make any order it considers appropriate even if that order is not specified in the application form. Where possible, the court will make a one-off decision rather than appointing a deputy with on-going decision making power. If you think that an order other than the one being sought by the applicant would be in the best interests of the person to whom the application relates, please give details including your reasons.

**Note 8: What you need to do next**

Please return the completed form to the applicant or their solicitor, as specified in section 1.4. You are advised to keep a copy for your records.

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