

RECOMMENDATION FOR A SINGLE TEST FOR CAPACITY

The definition of capacity in revised legislation should provide a single and unified legal test for capacity that mirrors Section 3(1) to (4) of the MCA, including:

1. Section 3 (1):

A person is unable to make a decision if they are unable -

- (a) To understand the information relevant to the decision;
- (b) To retain that information
- (c) To use or weigh that information as part of the process of making the decision, or
- (d) To communicate their decision.

2. Section 3(2) of the MCA:

A person is not to be regarded as unable to understand the information relevant to a decision if they are able to understand an explanation of it given to them in a way that is appropriate to their circumstances (using simple language, visual aids or other means).

3. Section 3 (3) of the MCA:

The fact that a person is able to retain information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

4. Section 3(4) of the MCA:

The information relevant to a decision includes information about the reasonably foreseeable consequences of –

- (a) deciding one way or another; or
- (b) failing to make the decision.