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 of 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.