

Specific Capacity Guidance

Contact With Others

Key Case: B v A Local Authority (2019)

Key elements: The person should understand:

Who they are, and in broad terms the nature of her relationship with them;

What sort of contact she could have with each of them, including different locations, differing durations and differing arrangements regarding the presence of a support worker;

The positive and negative aspects of having contact with each person. Theis J added "this will necessarily and inevitably be influenced by P's evaluations. Her evaluations will only be irrelevant if they are based on demonstrably false beliefs. For example, if she believed that a person had assaulted her when they had not. But P's present evaluation of the positive and negative aspects of contact will not be the only relevant information. Her past pleasant experience of contact will also be relevant and she may need to be reminded of this as part of the assessment of capacity".

What might be the impact of deciding to have or not to have contact of a particular sort with a particular person;

Capacity To Get Married

Key Case: Sheffield City Council v E & Anr (2005)

Key Elements: The person must understand:

The nature of the marriage contract (including financial implications of marriage)

The duties & responsibilities normally attached to marriage (usually including a sexual relationship)

Updated Case: A, B & C v X, Y & Z (2012)

Note: Capacity to get married is related to the act of getting married in general, not whether to marry a specific person (or whether this is a wise decision).

Capacity to Consent To A Sexual Relationship

Key Case: IM v LM & Others (2014)

Key Elements: The person needs to understand:

The mechanics of the act

That sex may lead to pregnancy (in situations where this is relevant)

That there are health risks attached to sexual activity

That they have the right to refuse sexual contact

Update Case: London Borough of Southwark v KA & Ors (2016)

Note: Mumby (among others) have made it clear that the bar for sexual activity must not be set too high and the 'using & weighing' element need not be particularly sophisticated.

Capacity to Decide Residence

Key Case: LBX v K, L & M (2013)

Key Elements: The person must understand:

What the options are, including information about what they are, what sort of property they are and what sort of facilities they have

In broad terms, what sort of area the properties are in (and any specific known risks beyond the usual risks faced by people living in an area if any such specific risks exist);

The difference between living somewhere and visiting it;

What activities they would be able to do if they lived in each place;

Whether and how they would be able to see their family and friends if they lived in each place;

In relation to any proposed placement, that they would need to pay money to live there, that they would need to pay bills and that there is an agreement that they have to comply with the relevant lists of "do"s and "don't"s, otherwise they will not be able to remain living at the placement;

Who they would be living with at each placement;

What sort of care they would receive in each placement in broad terms and any differences between them.

Capacity To Sign A Tenancy

Key Case: LB Islington v QR (2014)

Key Elements: The person must understand:

Her obligations as tenant to pay rent, occupy and maintain the flat & not cause a nuisance to her neighbours

The landlord's obligations to her under the contract

The risk of eviction if she does not comply with her obligations

In addition, if there are additional aspects to the tenancy (such as it being in a supported living setting) the specific aspects of that placement – such as:

The purpose of and terms of the tenancy which is to provide her with 24 hour support so that she takes her medication and can maintain her mental health

The landlord/support staff's right to enter her flat without her permission in an emergency if there is serious physical danger or risk to her

Testamentary Capacity (under Common Law rather than the MCA, although the test is similar)

Key Case: Banks v Goodfellow (1869-70)

Key elements: Testator must understand:

The nature of the act

The extent of the property he has to dispose of

The claims he ought to consider

Must also not be subject to any disorder of the mind that shall 'poison his affections, pervert his sense of right or prevent the exercise of his natural faculties' (ie must not be suffering from a delusion that affects the dispositions made in the will).

Updated Case: Key and another v Key and others (2010)