
LETTERS

CAPACITY ASSESSMENT

The myth that capacity assessment entails a two stage test

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It is disappointing that the *BMJ* perpetuates the myth that capacity assessment entails a two stage test.¹

McFarlane made clear in the case *PC & NC v City of York Council* [2013] EWCA Civ 478 that the Mental Capacity Act specifies a single test: "For the purposes of this act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain." Mental Capacity Act (2005) section (s) 2(1).

As McFarlane states: "Section 2(1) is the single test, albeit that it falls to be interpreted by applying the more detailed description given around it in ss 2 and 3. The detail within ss 2 and 3, outside that within s 2(1), does not establish a series of additional, free-standing tests of capacity . . . There is, however,

a danger in structuring the decision by looking to s 2(1) primarily as requiring a finding of mental impairment and nothing more and in considering s 2(1) first before then going on to look at s 3(1) as requiring a finding of inability to make a decision. The danger is that the strength of the causative nexus between mental impairment and inability to decide is watered down."

Competing interests: None declared.

1 Heslop P, Marriott A, Hoghton M, Jepson M, Noble A. Caring for a woman with intellectual disabilities who refuses clinical diagnostic investigations. *BMJ* 2014;348:f7645. (3 January.)

Cite this as: *BMJ* 2014;348:g1914

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