

Guidance on the test of capacity is set out in sections 2-3 of the Mental Capacity Act 2005. How to assess capacity is set out in the Mental Capacity Act Code of Practice.

When	assessing	capacity	you	should:
<ul style="list-style-type: none"> ➤ Ensure that you understand fully the information relevant to the decision in question or the nature and effect of the particular transaction in respect of which you are making the assessment. Amongst other things, this means making sure you have all the relevant documents and background information ➤ Be fully aware of the legal test for assessing the particular type of capacity being asked ➤ Start by assuming the person has capacity to make the particular decision. Is there anything to suggest otherwise? ➤ Consider whether the person has a previous diagnosis of mental disorder or disability and whether the condition affects their ability to make the decision at the material time. ➤ Explain all of the information relevant to making the decision in question in broad terms and in simple language, in a way which is appropriate to the individual circumstances using whichever means of communication that is best for that individual ➤ Advise on the alternatives if there are any ➤ Ask the individual to provide you with an explanation of what it is you have discussed ➤ Ask questions to show their understanding of your discussion but avoid “yes” or “no” answers ➤ Consider whether to use medical tests such as the Mini Mental State Examination which can be helpful but do not let them usurp the legal test ➤ Not be misled by the client’s social skills into believing they have capacity to give instructions or make decisions 			<ul style="list-style-type: none"> ➤ Be satisfied on a balance of probabilities not beyond all reasonable doubt ➤ Remember that people can make unwise decisions if they have capacity ➤ Make a note of your discussions and assessment immediately ➤ Consider whether you need to retake the test to ensure reliability ➤ Create the right environment for the test: <ul style="list-style-type: none"> • Minimise anxiety and stress • Wait until capacity improves if you can • Be aware of medication • Enlist help from experts if required i.e. speech therapists • Be aware of cultural, ethical or religious factors • Choose the best time of day • Be thorough but keep the assessment within manageable time limits • Avoid time checking • Consider whether assessments need to be done at the same time • Choose the best location • Remove obstructions between you and the client i.e. chair or table • Make sure the room is comfortable i.e. correct temperature and lighting • Should a third party be present • Eliminate background noise • Be sensitive to other issues i.e. sight or hearing difficulties • Speak at the right volume and speed • Use verbal and visual aids if necessary • Do not rush 	

For more information, advice or support call 01227 700 702 or email info@argolifeandlegacy.co.uk

The information contained in this document has been provided by Argo Life & Legacy Ltd for use at the Hot Potato Conference on 4 July 2016. Other providers of information and advice can be consulted. It provides background information only and should not be relied upon as an exhaustive list of the legal issues involved.