

Property and affairs means business matters, legal transactions and other dealings of a similar kind. It does not include matters relating to personal welfare or medical treatment. When assessing capacity, the degree of incapacity of managing and administering a person's property and affairs must be related to all the circumstances including: the state in which the person lives; and the complexity and importance of the property and affairs which they have to manage and administer. Consideration should also be given to all aspects of the personality and behaviour of the person in question, including their vulnerability to exploitation.

The Mental Capacity Act 2005 confirms that a person's capacity must be assessed in relation to each particular decision about property and financial affairs at the time that decision needs to be made rather than "capacity" to manage those affairs generally. SS2-3 of the Mental Capacity Act 2005 and the Principles of the Act in s1 sets out the test for capacity.

The following points may be helpful in assessing capacity to manage daily personal affairs:

🔍 **Is the donor suffering from a mental disorder?**

- i.e. a mental illness, incomplete development, psychopathic disorder or any other disorder or disability of the mind

🔍 **If so (on the balance of probabilities) is the donor incapable or becoming incapable by reason of a mental disorder from managing or administering their property and affairs?**

🔍 **What property and affairs does the donor have to manage?**

- i.e. income, earnings, occupation, value of home, other assets, debts outgoings, needs, responsibilities, family and social responsibilities
- Does the donor have the skills, time and specialist knowledge to manage?
- Are the personal affairs already in a mess because of a mental state?
- Are the personal affairs likely to get into a worse condition because of mental state?
- Are the likely to be changes in the property and affairs in the future?

- Would the donor be better if the property and affairs were managed?

🔍 **Consider the donor's personal circumstances:**

- Age, life expectancy
- Psychiatric history and potential recovery
- Deterioration and rate
- Fluctuating capacity
- Condition in which they live
- Family background
- Degree of help and support available and received
- Wishes, thoughts and feelings of the donor

🔍 **Consider the donor's vulnerability:**

- Do assets need to be protected from their own recklessness, carelessness or irresponsibility?
- Does the donor need to be protected from exploitation by others?
- Do others need to be protected from the donor's inability to manage their affairs?

**For more information, advice or support call 01227 700 702 or email [info@argolifeandlegacy.co.uk](mailto: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.