

Speech and language therapists helping to determine mental capacity



Speech and language therapists play a key role in determining a person's mental capacity (their ability to make decisions) and supported decision-making. Speech and language therapists protect and promote the interests of people with communication needs by supporting them to demonstrate whether or not they have decision-making capacity. They promote inclusion, dignity, choice, and equality of access to services. They also reduce the potential risk of people with communication needs being wrongly deemed as lacking capacity and, in some extreme cases, being deprived of their liberty (having decisions about their care or treatment made on their behalf in hospitals, care homes and other settings) unnecessarily because their individual needs have not been properly assessed and supported.

An increasingly important issue

Demographic changes are resulting in an increasing need for mental capacity assessments. Speech and language therapists work with a wide range of people for whom mental capacity assessments may be necessary. These include people with:

- head and neck cancer
- learning disabilities
- traumatic brain injury
- mental health problems
- progressive neurological conditions (such as dementia, Parkinson's disease, motor neurone disease, and multiple sclerosis)
- people who have had a stroke

All of these can have a significant impact on an individual's communication and thinking skills, including:

- comprehension
- expression
- retention and recall
- reasoning

Communication and thinking difficulties can have an impact on:

- **A person's capacity** – someone with a communication disability may also have cognitive difficulties due to the nature of their condition (e.g. dementia). These cognitive difficulties may mean the person lacks the capacity to make certain decisions.
- **A person's ability to demonstrate that they have capacity** – a person with a communication disability may have capacity to make decisions, but not the means to communicate it if their disability is left unsupported.
- **Other people's perceptions of their capacity** – a person with a communication disability may be at risk of being determined not to have capacity if people working with and caring for them mistake their communication disability for a lack of capacity.

Mr J's story

Mr J had been diagnosed with dementia following a series of unexplained changes in his behaviour and communication. After some months he was admitted to a care home on a temporary basis to give his wife some respite. Mr J remained in the care home for five months. He continually asked to go home. His wife reported that he no longer understood her when she was speaking to him and that she felt unable to receive him home again. Following an assessment by a speech and language therapist, and the introduction of appropriate supports, including visual strategies and appropriate language, Mr J was able to communicate sufficiently well to demonstrate that he could understand, think about and weigh up the different options, and make an informed decision on his future care. He subsequently decided that he wished to stay in residential care voluntarily.



Supporting the determination of mental capacity for those with communication needs

In each of the four countries of the United Kingdom, laws require assessors to make adjustments to the assessment process in order to help people to make decisions. This can include supporting people's communication needs.

In England and Wales, the Mental Capacity Act Code of Practice (2007)¹ and the General Medical Council (2013)² recommend seeking the professional opinion of a speech and language therapist to support capacity assessment of individuals with communication difficulties.

In Scotland, the Adults with Incapacity (Scotland) Act 2000³ states that people are deemed 'incapable' if they cannot act or make, communicate, understand or remember decisions because of mental disorder or are unable to communicate because of physical disability. Those with communication difficulties will not be deemed 'incapable' if they are able to communicate through either an interpreter or equipment to support communication.

In Northern Ireland, Section 4 of the Mental Capacity (Northern Ireland) Act 2016⁴ on the meaning of 'unable to make a decision' makes clear that help and support must be given to enable people to communicate their decision and that there will be legal consequences if this support is not given. Section 5 of the act sets out a legal duty to seek support for someone if it is required to support them to make a decision.

The role of speech and language therapists

Speech and language therapists are registered health practitioners who support people with communication and swallowing needs. They are uniquely trained and qualified to:

- undertake in-depth, detailed assessments of an individual's current, and likely future, ability to communicate, including their ability to understand, express themselves, retain and recall information, and reason (weigh up different options)
- carry out capacity assessments themselves and/or contribute to multidisciplinary capacity assessments of people with communication needs
- support people with communication needs to demonstrate their decision-making capacity
- support people who cannot make informed decisions to express their preferences and wishes in relation to any decision made on their behalf
- advise and train people on the best means by which someone with a communication disability might overcome their disability so they can make and communicate informed decisions about their treatment and care
- support people to understand how to communicate with individuals who have been found to lack decision-making capacity

Speech and language therapists are experts in inclusive communication, removing barriers to communication and advising and training others to do so. This includes encouraging people to adapt their communication styles to meet people's individual needs and supporting individuals to communicate in whichever way suits them. This can involve the use of supported and Augmentative and Alternative Communication – using writing, gestures, signing, symbols and pictures, word boards, communication boards, and other forms of technology to support or replace spoken communication.

► For more information, please contact: info@rcslt.org

Ms P's story

Ms P was admitted to hospital following a stroke. She had a range of communication difficulties, including problems using language and problems saying sounds, syllables, and words. She also had a history of anxiety. She wanted to return home on discharge. Her family had concerns about this and wanted her to go to a residential home. A speech and language therapist assessed Ms P's communication and found her strengths included reading at short phrase level and being able to speak clearly for short periods when in a relaxed environment. They also built up rapport with Ms P who was very wary of "strangers", including her social worker. The speech and language therapist and social worker carried out a capacity assessment, with written word and pictorial support. Thanks to the involvement of the speech and language therapist, Ms P was able to demonstrate that she had capacity and could make her own decision, based on understanding, retaining, weighing and communicating the risks associated with returning home.

REFERENCES AND RESOURCES

¹ Department of Constitutional Affairs (2007). *Mental Capacity Act Code of Practice*. London, Department of Constitutional Affairs. www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf

² General Medical Council (2013). *Good medical practice*. www.gmc-uk.org/guidance/good_medical_practice.asp

³ *Adults with Incapacity (Scotland) Act 2000*. www.legislation.gov.uk/asp/2000/4/contents

⁴ *Mental Capacity (Northern Ireland) Act 2016*. www.legislation.gov.uk/nia/2016/18/contents/enacted