



# **Position statement: The unique and essential contribution of speech and language therapists to supported decision making and mental capacity assessment**

## **Context**

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Within the UK, different legislative frameworks describe how people should be supported to make decisions and how the interests of people who lack the ability or “mental capacity” to make informed decisions should be safeguarded.

UK mental capacity law requires capacity assessors to provide whatever practical support people may need, in order to maximise their decision-making abilities. People with speech, language and communication needs (SLCN) may need support to make decisions. This is because communication difficulties can affect the way people understand, think and talk about decisions.

The Mental Capacity Act Code of Practice (2007)<sup>i</sup> and the General Medical Council (2013)<sup>ii</sup> recommend the involvement of speech and language therapists (SLTs) in mental capacity assessments for people with communication difficulties. SLTs have specialist knowledge and skills in assessing and supporting individual communication needs. SLTs are experts in inclusive communication, the use of a wide range of communication methods to support individuals with SLCN to understand information and express themselves in whatever way suits them.

## **Risks of not involving speech and language therapists**

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### **Risks to service users**

- Mental capacity assessors who are not able to identify and support individual communication needs effectively may make inaccurate judgements about a person’s mental capacity.<sup>iii</sup>
- People who are erroneously judged to lack capacity will be denied the opportunity to make autonomous decisions.
- People who are erroneously judged to have capacity may not fully understanding the implications and consequences of the decisions they are asked to make.



- People's health and quality of life may be affected negatively if they are not fully supported to participate in decisions about their care and treatment.<sup>iv</sup>

#### **Risks to substitute decision makers**

- People who have the responsibility of making decisions on behalf of others may not know how to support individuals with SLCN to express their wishes and preferences about decision options.
- This could be stressful for family carers and other substitute decision makers and cause them to feel a sense of guilt or burden.<sup>v</sup>

#### **Risks to provider organisations**

- Service users and their families or advocates may make legal challenges to the findings of mental capacity judgements, if they perceive assessment processes to be inaccurate or inadequate. This could result in financial losses for providers.
- Regulatory bodies may make inferior judgements about the standard of care provided by organisations, if they observe low quality mental capacity assessment practice.
- Health and social care costs may increase if people with SLCN are not adequately involved in decisions about their treatment and care.

#### **Risks to the speech and language therapy profession**

- The under-involvement of SLTs in supported decision making and mental capacity assessment could mean that the public and other professionals may undervalue the profession's expert knowledge and skills in communication assessment and facilitation.
- This could undermine the status of SLTs within multidisciplinary teams.

#### **Benefits of involving speech and language therapists**

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- Expert communication assessment and support by SLTs can enable people with SLCN to understand, make and talk about decisions.
  - The involvement of SLTs during mental capacity assessments means that people with SLCN are more likely to be able to demonstrate their decision-making capacity and maintain their autonomy and independence.



- The involvement of SLTs means that people with SLCN who lack capacity will find it easier to express their preferences and wishes about decision options. This information can be used by others to make decisions on their behalf, in their best interests.
- The quality of multidisciplinary mental capacity assessments and best interests decision making processes can be enhanced by the involvement of SLTs, either directly or indirectly, through education and training.

### Key recommendations

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- People with SLCN need access to support from SLTs to engage in supported decision making and to maximise their decision making abilities during mental capacity assessments.
- Commissioners, decision makers and provider organisations should ensure speech and language therapy services are available to meet this need.
- Speech and language therapy services should educate service users, families, carers and professionals about the types of support people with SLCN may require, to make decisions and demonstrate their mental capacity.
- Speech and language therapy services should raise awareness of the important contributions SLTs can make to supported decision making and mental capacity assessment.

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<sup>i</sup> 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](http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf)

<sup>ii</sup> General Medical Council (2013). Good medical practice. [www.gmc-uk.org/guidance/good\\_medical\\_practice.asp](http://www.gmc-uk.org/guidance/good_medical_practice.asp)

<sup>iii</sup> Ferguson, A., Duffield, G., Worrall, L. (2010). Legal decision-making by people with aphasia: critical incidents for speech pathologists. *International Journal of Language and Communication Disorders*, 45(2), 244-268.

<sup>iv</sup> Lai, J.M. & Karlawish, J. (2008). Assessing the Capacity to Make Everyday Decisions: A Guide for Clinicians and an Agenda for Future Research. *American Journal of Geriatric Psychiatry*, 15, 101-111.

<sup>v</sup> Murphy, J. & Oliver, T. (2013). The use of Talking Mats to support people with dementia and their carers to make decisions together. *Health and Social Care in the Community*, 21, 171–180.