

What are the options available to assess mental capacity?



Advances in medicine, public health and nutrition are contributing to an ageing population where many people are living well for longer. Despite these advances, old age also brings an increased risk of conditions which affect the brain, such as Alzheimer's disease and vascular dementia.

Declining mental capacity can have a significant impact on a person's day to day life as well as their ability to make important decisions such as making a Will or setting up a Lasting Power of Attorney.

For many of us, a Will is one of the most important legal documents that we will make during our lifetime. A Will can outline how a person's money, possessions and property will be distributed after their death. It can also appoint guardians for minor children and can be structured in a way that is inheritance tax efficient whilst also taking a person's unique wishes and family circumstances into account.

Having sufficient mental capacity is a key requirement for making a valid Will. The person making the Will (known as the Testator) must

1. Understand the nature of the Will and its effect;
2. Understand the extent of the property which they are giving away under the Will;
3. Be able to understand and appreciate which individuals they would usually be expected to provide for (even if they choose not to); and
4. Be free from any mental illness or disturbance of the mind that would interfere with or prevent the exercise of their thoughts in disposing of property under a Will.



Mental capacity is a sensitive topic but something we are experienced in dealing with. When taking instructions for a Will, we always keep these factors in mind and will discuss any issues that may arise regarding mental capacity with the testator. It is also important to remember that a diagnosis of dementia does not necessarily mean that a person lacks the required mental capacity to make or revise their Will.

Where there is doubt as to a person's capacity to make a Will, we will sometimes recommend that a formal, capacity assessment is obtained from either:

- a. A GP; or
- b. An independent specialist in mental capacity.

Instructing an independent specialist can often be the most straightforward and cost effective way to obtain clear evidence as to a person's capacity and reduce the risk of their Will being challenged in the future. We can help by recommending an appropriate specialist and instructing them on the testator's behalf.

How we can help

If you would like assistance with the preparation of your will or have any questions or concerns regarding mental capacity, please get in touch with Hannah Glover on 01892 506057 or hannah.glover@cripps.co.uk.

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