

FETAL ALCOHOL SPECTRUM DISORDER

and

THE MENTAL CAPACITY CODE OF PRACTICE

ASK for professional involvement

Capacity assessments for complex neurodevelopmental conditions like FASD often require specialist input.

Individuals with FASD may appear verbally fluent and socially capable but can have significant difficulties with understanding consequences, weighing information, impulse control, and applying knowledge to real-life decisions. This can make capacity difficult to assess without appropriate experience. The Mental Capacity Act Code of Practice recognises that assessors may need specialist input.

Anyone assessing someone's capacity may need to get a professional opinion.....If the person has a particular condition or disorder, it may be appropriate to contact a specialist (for example, consultant psychiatrist, psychologist or other professional with experience of caring for patient with that condition).

Ask the assessor and record in writing your request to:

- involve professionals with experience of FASD,
- seek advice from specialists or relevant organisations such as the FASD Alliance UK, or
- arrange a multi-disciplinary assessment where appropriate.

(CODE paragraph 4.51)

BE CLEAR why professional input

Paragraph 4.53 of the Code explains when additional professional input may be needed. The situations below are often relevant when assessing individuals with FASD. Refer the assessor to this paragraph and how it applies to your situation.

Professional involvement might be needed if:

- *Family members or carers disagree about the person's capacity.*
- *The individual is giving different answers to different people as this could be a red flag that the individual is just saying what they think people want to hear.*
- *The capacity finding may be challenged, either at the time or later*
- *Someone has been accused of abusing a vulnerable adult who may lack capacity.*
- *The person is repeatedly making decisions that put themselves at risk or could result in harm, suffering, or damage.*

(CODE paragraph 4.53)

PROVIDE background information

Give the assessor written information about the person's abilities and difficulties. Providing written examples can help show patterns such as:

- difficulty understanding consequences
- vulnerability to pressure or exploitation
- inability to apply knowledge to real-life situations
- repeated risky decisions despite explanation

Anyone assessing someone's capacity in respect of FASD needs to:

• make sure that they understand the nature and effect of the decision they are making. To do this they may need access to relevant documents and background information.

• They may need other relevant information to support the assessment (healthcare records etc).

• Family members and close friends may be able to provide valuable background information.

(CODE paragraph 4.49)

CHALLENGE a failure of CODE

If you believe the assessor has not followed the Code of Practice, the first step is to raise the concern with the person who carried out the assessment.

The Mental Capacity Act Code of Practice states that:

- assessors must show that they have applied the principles of the Mental Capacity Act
- professionals such as attorneys, deputies, and decision-makers must follow the guidance in the Code (Code paras 4.63–4.64)

Ask the assessor to give reasons why they believe the person lacks/or does not lack the capacity to make the decision and ask them to provide objective evidence to support that belief.

It might be possible to get a second opinion from an independent professional or another expert in assessing capacity. (Code 4.65). The following may help:

- *Make a formal complaint via a complaint's procedure*
- *Raise concerns with the LA's safeguarding team*
- *Consider independent legal advice*
- *Contact your local MP*

(CODE paragraph 4.63 – 4.65)