Mental Capacity Assessments Practice Guide

Supportive questioning tool for different categories of decision

October 2026

Version 2.0

Disclaimer

The guidance provided is accurate as of October 2026, it is vital that readers check that the 'relevant information' listed remains accurate to the most up-to-date case law and guidance.

This document cannot take the place of legal advice and in any case of doubt as to what to do, it is always necessary to consult your managers and legal department.

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Introduction

The 'Mental Capacity Assessments – Supportive questioning tool for different categories of decision' is a resource that **is for guidance purposes only**. It is primarily aimed at social care professionals, especially professionals who may be at the start of their career in adolescent and adult social care services and has been based on the Mental Capacity Guidance Note: Relevant Information for Different Categories of Decision | 39 Essex Chambers (2026 edition).

The main purpose of the practice tool is to give you an initial steer as to what practicable support and supportive questions may assist in enabling and empowering a person to make a specific decision for themselves at the time the decision need to be made. It may also assist, should there be grounds to doubt a person's capacity, in pre-planning questions that you intend to pose to the person, and to then determine, after these interactions, whether you reasonably believed the person was in fact able to make the decision for themselves at that time.

However, before using this tool, we would strongly advise that you read/watch the following guidance and webinars:

- Mental Capacity Guidance Note: Assessment and Recording of Capacity | 39 Essex Chambers and/or the Home - Capacity guide
- Mental Capacity Guidance Note: Relevant Information for Different Categories of Decision | 39 Essex Chambers
- Webinar - Capacity – the key points – Mental Capacity Law and Policy
- Webinar - Speech and Language Therapy and the Second Principle of the MCA - Autonomy Project

Providing all practicable support – General Considerations

s1(3) of the Mental Capacity Act 2005 states *"A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success"*. Helpfully, Chapter 3 of the Mental Capacity Act Code of Practice *"explains how the Act makes sure that people are given the right help and support to make their own decisions"*, and this chapter should be read by all professionals and practitioners. We would also emphasise, more generally, the importance of:

- Making sure a person's sensory needs are always considered
    - Question to consider - **Do you know the contact details for your local sensory services?** If not, you should find out!

- Where you have identified the person having difficulty with any of the following:
    - Difficulty speaking clearly
    - Difficulty producing words and sentences
    - Difficulty understanding what other people are saying
    - Difficulty with reading
    - Difficulty with writing
    - Difficulty understanding and using symbols

  If any of the following do apply, consider, where appropriate, whether you need to call on the input of a Speech and Language Therapist.

- The person having, where appropriate, access to advocacy. Under section 67 and 68 of the Care Act 2014 (see also the Social Services and Well-being (Wales) Act 2014 for guidance relevant to Wales) local authorities have, for certain decisions, a statutory

duty to offer the person the support of an advocate *'were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following— (a) understanding relevant information; (b) retaining that information; (c) using or weighing that information as part of the process of being involved; (d) communicating the individual's views, wishes or feelings.'*

- Have you evidenced what additional 'practicable support' you have provided to assist the person with these difficulties?
- Question to consider – **Do you know the contact details of your local advocacy services?** If not, you should find out!

- Considering whether the person needs an interpreter, BSL signers or Deaf-Blind manual communicators.

Lastly, as the Mental Capacity Guidance Note: Assessment and Recording of Capacity | 39 Essex Chambers explains *"The presumption that P has capacity is fundamental to the Act. **It is important to remember that P has to 'prove' nothing**. The burden of proving a lack of capacity to take a specific decision (or decisions) always lies upon the person who considers that it may be necessary to take a decision on their behalf (or will invite a court to take such a decision)"*.

It then explains:

"[...] *to comply with s.1(3) MCA 2005, you must take all practicable steps to help P before concluding that they are nevertheless unable to make a decision. And, importantly, consider why is it that you were unsuccessful in enabling P to decide despite those steps having been taken? This will include asking yourself – and being in a position to record – the answers to questions such as:*

- *What is the method of communication with which P is most familiar (is it, for instance, a pointing board, Makaton or visual aids)?*
- *What is the best time of day to discuss the decision in question with P?*
- *What is the best location to discuss the decision in question with P? If you do not know P, would it assist to have another person present who does (and, if they do, what role should they play)?*
- *Has P made clear (in whatever fashion) that there is someone that they would like to be present, or someone they would really like not to be present?*
- *What help does P require to learn about and understand the information relevant to the decision? For instance, does P need to be taken to see different residential options? Have you explained to P all the pieces of information that you have identified as being relevant to the decision?*
- *Is it possible to complete the assessment in one go, or is it necessary to come back and see P on more than one occasion, even if only to put P at their ease and help them engage with the process?*
- *And, perhaps above all, is there something that you can do which might mean that P would be able to make the decision? Depending upon the circumstances, this could range from simply waiting, to undergoing work with P to assist them to understand the relevant information, to helping the person to understand that they can even make decisions: as an expert identified in one case observed "in order to make a decision, first one needs to be aware that one is in a position to do so" – this is particularly important in situations where a person has never been given the opportunity to make decisions.*

Using the resource and a disclaimer

As the 39 Essex Chambers Guidance states (para 4 (b) to (c)):

[…] *because each situation is specific,* ***the information set out must always be tailored to the person's actual situation;***

This point is the same for this 'Supportive questioning tool for different categories of decision' and the guidance provided should **only** be used as a starting point for thinking through the types of 'practicable support' and 'example questions' that you might consider when supporting a person's decision making or undertaking a mental capacity assessment for a specific decision.

The list of suggested practicable support and supportive questions should never be cut and pasted into assessments and great care must be taken to ensure that any of the guidance provided to an individual is tailored to the factual circumstances and the needs of that person.

In relation to the *'Example questions to consider and tailor to factual circumstances'* section of the below guide, the questions provided:

a) are based on the relevant information provided in the Mental Capacity Guidance Note: Relevant Information for Different Categories of Decision | 39 Essex Chambers
b) are initial considerations only,
c) will not always be relevant to the factual circumstances you are faced with
d) are only to be considered after providing the person all the necessary relevant information in a format that is suitable to their needs

The questions provided should not be used as an exam that a person has to pass or fail!

You must provide the person with all the relevant information and all practicable support to understand, retain, use and weigh the relevant information and provide assistance to enable the person to communicate their decision/choice, preferences, reflections and thoughts, wishes, feelings, beliefs and values and the things that matter to them.

As such, where a person struggles with answering these questions this is not necessarily evidence of any lack of capacity and thought should be taken to ensure that we have tried to rephrase the questions or ask them in a different way, including considering whether an advocate (which could be a friend or family member of the person) may be better placed to pose these questions to the person rather than ourselves.

The 'Example questions to consider and tailor to factual circumstances' may appear to follow a very rigid questioning format, **but as explained already, they must be tailored to the factual situation and not every question will be relevant to the factual circumstances of the decision you are supporting the person with**. How you ask those questions is your choice. Be bold about reframing and rethinking questions in ways that help individuals consider the relevant information and make informed choices for themselves wherever possible. Also, be creative…asking questions in a capacity assessment doesn't always have to be verbal, it can incorporate visual prompts, pictures and other practical resources to support conversation and communication need.

As explained in the article Strengths-based questions for social work assessments, *"Pritchard (2007, p148) suggests that in* [interviews] *you should try to avoid the word 'why' to start a question, and instead use 'how', 'who', 'what', 'when', or 'where', as these are less accusatory.*

She also suggests that framing questions with words like 'tell me', 'explain', and 'describe' is good policy in many assessment situations, not just safeguarding".

Where any of the resource is being considered for the purposes of undertaking a capacity assessment, it is important to remember that a person must be informed that you are completing a capacity assessment, in whatever terms are appropriate for the person to understand. Where the person refuses to engage it is important to think of ways in which you can encourage the person to take part, for instance by explaining to them that helping you – the assessor – is likely to help them, because it will maximise the chances that you will find that they are able to make the decisions. If you are faced with a situation where a person will not engage in a supportive conversation the following information may be of assistance - I am finding it difficult to engage the person - Capacity guide.

Information in this resource is for guidance purposes only.

No responsibility or liability will be accepted for any action taken or not taken in relation to this guidance and it is recommended that appropriate legal advice be sought in relation to any specific issue or concerns.

This resource will receive yearly updates to ensure, where possible, that it is in line with the most up-to-date case law, but to ensure you access the most up-to-date information please refer to the 39 Essex Chambers Guides that can be found here - Mental Capacity Guidance Notes | 39 Essex Chambers.

Supportive questioning tool for different categories of decision

Category of decision – Care		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
In the context of decisions relating to care, each decision will be specific instead of general and will have to be revisited should circumstances or the question posed to the person under assessment change. The following constitute relevant information to an assessment of whether a person has capacity to decide their own care: a) **With what areas the person under assessment has been assessed as needing support**; b) **What sort of support they need, how often, for how long and in what form**; c) **Who will provide such support**; d) **What would happen without that support, or if the support was refused;**	Suggestions: • Have you outlined and provided the person a succinct account of what their care and support needs are (you would likely already have this listed this in the relevant social care assessment), in an accessible format? For example, summarising that the person receives support with, personal care, managing and administering medication, maintaining the property, meal preparation, shopping, accessing the community etc. • Have you asked anyone who is caring for the person (including family carers) to support you in explaining to the person what activities of daily living they are supported with currently? This support could include, carers explaining how they support the person on a day-to-day basis.	Suggestions: "[After outlining to the person what their support needs are] *What do you think you need support with day-to-day?"* Or *"Based on what I just told you, what do you think your daily support/care needs are?"* *"What's important to you in relation to your care and support"?* *"What's important to you in relation to how your care and support needs are met"?* *"Describe/explain to me how you currently look after / care for yourself?"* Consider breaking down the questions to individual areas of need if appropriate, so, *"How do you currently manage* your [insert area of need]?*"*

e) The possible risk of accepting support from carers, including that carers may not always treat the person being cared for properly; f) **That if the person has a concern about the care they are being given, the steps they could take to alert people**. Key reference: *LBX v K, L and M* [2013] EWHC 3230 (Fam)	• Have you considered providing information about the person's care needs and available care options in a pictorial format? • Have you clearly outlined what the different available care and support options are? Remember, **you must present the person you are assessing with detailed options so that their capacity to weigh up those options can be fairly assessed** (this really is a critical step in the process). This might also include other forms of support for example Technology Enabled Care (TEC), Day Services, Sitting Services or Community based support. • When explaining potential risks (reasonably foreseeable consequences) and benefits of the options to the person have you given real world examples of what has and hasn't worked in the past or recently, if applicable? It is important to note that potential **risks to (others) can also be included where appropriate.** • Have you filled in any gaps in knowledge that the person has shown in relation to what their needs are, what the available options are and what any potential risks might be in relation to those options. • Have you met your advocacy duties under section 67 and if applicable 68 of the Care Act 2014 (see also the Social Services and Well-	*"How do other people help you manage day-to-day* [provide the person with examples if helpful]*?"* Or *"How do other people support you currently?"* *"Who currently supports you?"* [Provide the person prompting where required]. *"What do you think would happen if you didn't have this support?"* *"Tell me whether there any things you struggle with managing on your own or without support from others?"* [if the person struggles to consider/reflect, use observational example where appropriate] *"Describe to me the support you think will or may help you stay safe/independent"?* *"Do you think that if you didn't have any support that this might put you at greater risk or at risk of losing your independence?"* *"Tell me what you think some of the risks might be if you didn't have any support?"* "[After outlining to the person what the different support options include and who could provide such support] *What*

	being (Wales) Act 2014 for guidance relevant to Wales)? • Develop with the person a balance sheet of the different care options and outline collaboratively what you both think are the practical advantages and disadvantages (reasonably foreseeable consequences) of the prospective options (if the person has carers involved, consider asking for their reflections as well). • Where a person's self-report does not appear to be based on the reality of the situation have you considered, where applicable/appropriate, using care staff and family/friends who support the person day-to-day to outline the support they provide to orientate the person to the factual circumstances of the situation.	*will happen if you choose option X rather than option Y* [repeat summaries of available care/support options and risks/benefits of each option if needed]*?"*. *"Tell me what you think is good about (option A) and what you think is bad about (option A)?" … "What is good about (options B) What is bad about (option B)?"* *"Why have you picked this option* [say what option they have picked if needed] *of support over the others?"* *"What do you think will happen if you pick this option over the others* [go through choices/options]*?"* [After outlining any potential risks, if applicable] *"What are your thoughts on these potential risks"*. [Where the choice the person is making poses specific risks, that you will need to explain to the person ask] "*How might this choice affect you?"* *"How might this decision affect (family member/friends etc)?"*

		[If applicable] *"What will happen if you don't make this decision?"* *"*[insert who - doesn't have to be a name if confidential] *has raised this* [insert concern], *what are your thoughts on their concerns"?* *"If* [insert risk] *happened how would this make you feel?"* For example, *"If you went home again with no support and you had another fall and ended up in hospital, how would that make you feel?" … "Do you think that having extra support at home might reduce those risks… If yes, why, if not, why not?"* *"Why is this option right for you and what you want?"* *"If you weren't happy with the care, you received or if the carers were not nice to you, what would you do and who could you speak to about this* [remember to tell them how they could raise concerns as part of this conversation and who could help them raise any concerns]*"?* *"There will be some restrictions put in place to help you stay safe* [outline what restrictions there will be and why], *what do you think would happen if these restrictions were not in place"*

		"Tell me whether you believe these restrictions are needed? And do you have anything to add/say, good or bad, about these restrictions?"
Additional note: if there is a doubt about a person's ability to make decisions about their care, their capacity to make the relevant decisions must be considered and a conclusion reached before any Care Act 2014 assessment (or Social Services and Well-Being (Wales) Act 2014 assessment is finalised: *R (TDB) v London Borough of Haringey* [2026] EWCA Civ 1184		

Category of decision – Residence		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
The information relevant to an assessment as to person's capacity to make a decision as to their place of residence is: a) **The two (or more) options for living**. This must include the type and nature of each option, the sort of property it is, and the facilities that would be available; b) **Broad information about the area**. This would cover the notional 'sort' of area in which the property is located, and any known specific risks of living in that area beyond the usual risks faced by people living in any other given area; c) **The difference between living somewhere and just visiting it**. Pictorial methods of conducting this assessment may be useful. The courts have approved of a social worker's methodology of asking a person to describe what they	Suggestions • **Have you provided clear residence options to the person** (this really is a critical step in the process)! So, if you say that one option is moving to a care home, have you stated in what area that home would likely be? If you say that going home with a package of care is an alternative option for the person to consider, what would that package of support include? • As mentioned above for 'care decisions', consider developing with the person a balance sheet of the different care options and outline collaboratively what you both think are the advantages and disadvantages of the prospective options (if the person has carers involved, consider asking for their reflections as well). • When discussing an area consider using a map or mentioning landmarks that might help	Suggestions *"Based on what I just told you, what were the options I was asking you to choose between?"* [Ask after explaining what the different residence options are] *"After what I just told you, what is a* [insert service type]*?"* and if a permanent placement *"Do you understand that this won't be like a holiday, I am talking about moving to live in* [insert service type] *not just visiting it... How does that make you feel"*. [Ask after explaining location of service provision] *"Do you remember where the* [insert service type] *was located?"* *"If you move into the* [insert service type] *these are the activities that you might be able to engage in* [provide list] *... Do you think that these are things that you would enjoy doing? If not, what*

understood to be the meaning of living, the meaning of visiting, and to draw the difference between the two, which happened to be a picture of a bed, and which held the meaning of overnight stays. This could also include a discussion of what it means to sleep somewhere, and an understanding of the days of the week; d) **The activities that the person being assessed would be able to do if he lived in each place**; e) **Whether and how the person being assessed would be able to see friends and family if he lived in each place**; f) **The payment of rent and bills. This is not required to be understood in any detail beyond the fact that there will have to be a payment made on their behalf, as for most cases concerning protected person's, the payments will be made by an appointee**; g) **Any rules of compliance and/or the general obligations of a tenancy**. Again, the rules are not required to be known in any great detail by the	the person orientate themselves to what the location is. • Pictorial methods of conducting this assessment may be useful. The courts have approved of a social worker's methodology of asking a person to describe what they understood to be the meaning of living, the meaning of visiting, and to draw the difference between the two, which happened to be a picture of a bed, and which held the meaning of overnight stays. • If the decision relates to a long-term residence change, have you had a discussion of what it means to stay somewhere rather than just visit. • Have you provided a list of what activities the person may be able to engage in at each service? • Have you spoken to the person' • s friends and families (if applicable/appropriate) so we can make the person aware of whether they will be able to visit and what the likely frequency of visits will be?	*specific things would you like to be able to do?"* *"If you moved into a care home, who are the important people in your life you would like to stay in contact with"?* *"Your family and friends* [tailor to facts of situation and include names of those you have spoken to as well] *have said that they will/will not* (delete as appropriate) *still be able to visit you in the care home* [insert frequency if known]*, and they will call you as well. What do you think about this, and what support would you like from the care home to help you maintain contact with your family and friends"*. *"Why have you picked this option* [say what option they have picked if needed] *of where you want to live over the others?"* *What is good about (option A) What is bad about (option A)?"* *"What is good about (option B) What is bad about (option B)?"* *"What do you think will happen if* you pick [insert option] *over the others?" ... How will this decision affect you and*

person under assessment but a basic understanding of the fact that there are restrictions, and the areas in which they would operate, will be necessary. h) **Who they would be living with at each placement**; i) **The sort of care they would receive in each placement**; Key reference: *LBX v K, L and M* [2013] EWHC 3230 (Fam)	• Have we explained what the likely cost of the provisions will be and how those payments will be made by the person or their financial advocate, appointee, attorney or deputy if applicable (this does not need to be covered in great detail). • If one of the residence options will include a tenancy have, we provided the person with a general explanation of a tenancy. Mencap have an easy read guide that covers the basics of tenancy's Housing – our easy read guide | Mencap (NB: Remember the question of whether a person has the capacity to consent to a tenancy would need to be considered in a separate assessment). • Given an overview of the types of people they would be living with in any of the residence options. • Where the residence would also include the person receiving care, have you provided the person a bullet-point summary of what they will be supported with in each available service?	*how might this decision affect family member/friends etc and* [if applicable] *your relationship with them?"* *"What will happen if you don't make this decision?"* *"I have just explained what you would need to pay for while staying in* [insert service type] *... Do you understand that you will need to pay some money for staying in this service?"* [If the person is already receiving support with their financial affairs explain how that advocate, attorney, deputy can/will support them with this]. *"Based on what I just told you, what support do you think the care staff will give you in the* [insert service type]*?"* [Ask after explaining who they would be living with in each service provision] *"What do you think about living with* [insert who that would be]*?"* NB: In relation to 'The sort of care they would receive in each placement' consider using some of the suggested questions from the 'care' category of decision provided above.

Additional notes regarding care and residence: In many cases you should consider care and residence as one decision (including both sets of relevant information) and not artificially separate them out in your assessments. This approach is now supported by multiple court rulings including, but not limited to, *Liverpool City Council v CMW* [2021] EWCOP 50 (15 July 2021), *Re CLF (Capacity: Sexual Relations and Contraception) (Rev1)* [2024] EWCOP 11 (23 February 2024) and *Re ZZ (Capacity)* [2024] EWCOP 21 (12 April 2024).

It is also important to note this point made in *KK v STCC* [2012] EWCOP 2136 (26 July 2012) (bailii.org:

[...] *it is inappropriate to start with a "blank canvas".* ***The person under evaluation must be presented with detailed options so that their capacity to weigh up those options can be fairly assessed****.* ***I find that the local authority has not identified a complete package of support that would or might be available should KK return home, and that this has undermined the experts' assessment of her capacity***. [...] *As the Code of Practice makes clear, each person whose capacity is under scrutiny must be given "relevant information" including "what the likely consequences of a decision would be (the possible effects of deciding one way or another)". That requires a detailed analysis of the effects of the decision either way, which* [...] *necessitates identifying the best ways in which option would be supported. In order to understand the likely consequences of deciding to return home, KK* **[the person]** ***should be given full details of the care package that would or might be available***. *The choice which KK should be asked to weigh up is not between the nursing home and a return to the bungalow with no or limited support, but rather between staying in the nursing home and a return home with all practicable support.*

Category of decision - Property and financial affairs		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
Although there is no determinative case law that has outlined the relevant information for property and financial affairs decisions, the relevant information would likely cover three specific areas of property and affairs decision-making: 1. **The persons understanding of money and the value of things generally** This will likely only be a key part of the conversation / assessment when considering the decision-making capacity for a person managing smaller sums of money, or where a person now has such a significant cognitive impairment that the discussion in relation to this indicates immediately that the person would not be able to engage in a wider discussion about their property and financial affairs.	Please refer to **Empowerment Matters – Making Financial Decisions – Guidance for Assessing, Supporting and Empowering Specific Decision Making**, which the below guidance is based on, as more detailed guidance can be found in the above resource. Suggestions: **Practice note**: Always remember that managing your property and financial affairs is a challenge for many people including people with no cognitive impairment. As such, and probably more so than any other category of decision in this guide: a. make sure that you have details of the person's assets/income, outgoings/expenses, any property, and larger sums of capital if applicable to them (remember it is not an exam) so you can provide the person with all relevant information. **Remember**, you really need to know the makeup of someone's estate before you do the capacity assessment.	**Please** refer to the excellent **Empowerment Matters – Making Financial Decisions – Guidance for Assessing, Supporting and Empowering Specific Decision Making** (in particular pages 66 to 67), which the below guidance is based on, as more detailed guidance can be found in this resource, and the below is only a summary of the suite of incredibly helpful guidance and potential questions you could pose. Suggestions: **NB: Do not use these questions as an exam that the person has to pass or fail, remember to be providing assistance and filling in any gaps in knowledge the person may display throughout the supportive conversation**. *"What do you need to pay for/what are your outgoings?* [consider showing the

2. The actual make-up of their property and affairs This would likely include information about: a) Sources of the person's assets and income ○ Benefits ○ Savings ○ Income ○ Relevant information may include the extent of these assets, their source, how P is entitled to them, and how P might use or lose these assets b) The person's outgoing expenses ○ Bills (what bills P has, the need to pay them, the risks if they are not paid) ○ The value of bills relative to assets ○ Day to day and discretionary spending (what spending needs P has, what value P gets from spending, affordability of daily and discretionary spending) c) Any property, and larger sums of capital if applicable to them.	b. take your time to consider whether any concerns identified might in fact be attributable to a lack of support or knowledge rather than any potential lack of capacity in relation to property and affairs. As such consider: • Understand the person's financial and property situation! Whilst you could argue that this is the case for all decisions, this will be incredibly important when supporting people to make decisions in relation to their property and financial affairs. If you are not informed, how can you assist the person's decision making? This process can, in some situations, take some time, so, do not rush the process. • Does the person need general education, support, guidance around their money and property or money and property generally. • They may need to be reminded about previous agreements they had with regards their finances, for example, that staff will put a certain amount of money away each week to help them save. Or they may need someone to help go out with them on a regular basis to get groceries or work out what they need to buy. It is important not to leave someone feeling isolated within the decision-making.	person their bank statement if appropriate/possible to do so]" *"What is your monthly income, including any benefits you may receive?* [provide details of what their income they receive if available]" *"What bills do you/need to pay monthly?* [remember to fill in any gaps in knowledge like care home fees, especially if they are currently unpaid as this could be down to a lack of awareness of this]" *"What may happen if these bills are not paid?"* [provide details of risks/consequences if required] *"Do you have any savings?"* *"Is there anyone you owe money to?"* *"How do your bills get paid?* [if the person is currently supported by someone make sure you describe the support they receive]" *"Do you need any help with your money?"* [...] *"Could you describe what assistance might help you with managing your finances and property?"* [provide suggestions that are available]

3. The persons decision making in relation to their property and affairs and any 'reasonably foreseeable consequences' of those decisions This is where you will need to explore with the person what they're doing or wanting to do with their property and affairs. This is typically most pertinent when concerns have been identified in relation to the individual's management of their property and affairs. For example, where a person is giving away their money in scams, allowing individuals to stay rent free in a property they own, taking out 10 mobile phone contracts or not paying bills and accruing unsustainable debt, etc. It will always be vital that you have gathered all the relevant information in relation to these concerns before undertaking the assessment and ensuring that you have outlined these concerns clearly in your assessment. As part of the assessment, you will also need to outline clearly the 'reasonably foreseeable consequences' of their actions as this will be a key aspect of the relevant information that the person will need to 'weigh' in the balance and	• Would the person benefit from the support of a financial advocate? Consider who may be able to work with the person. This may be a paid professional or someone the person knows well and feels comfortable with. Organisations like, Dosh – Financial Advocacy – Dosh supports people with a learning disability to be able to manage their money **or** Money Carer – Appointeeship | Deputyship | Money Management for Vulnerable Adults | appointeeship, deputyship and money management for vulnerable adults may be able to assist the person. • If the person historically had a loved one who managed all the household finances, but they now need to manage this independently take your time with explaining what decisions and actions they will now need to be taking for themselves and direct them to where they will be able to get advice. Maybe create a list of contact numbers of people who could help them with different aspects of their property and finances. • The use of props or scenarios, such as bank statements and utility bills, are likely to be more beneficial when there is some knowledge of the person and how the person understands information, communicates it or expresses a choice. Consideration should be given to offering a scenario the person is most	*"Does anyone help you with your money?"* [...] *"How do they assist you?"* *"What would be the risks if you didn't have that assistance* [provide some examples if appropriate to do so]*"* *"Can you tell me where you keep copies of bills/statements?"* *"Are you in full receipt of your benefits?"* *"Do you know what benefits you are entitled to?"* [this will nearly always need to be explained to the person] *"Have you had any help to get the benefits you may be entitled to?"* *"Do you need any help to get the benefits you are entitled to?"* *"Can you always pay for essential items?"* *"Do you sometimes run out of money? What happens then?"* *"Show £10 note, ask 'how much is this and what could you buy?"*

'understand' and 'use' when making property and affairs decisions. It is important to understand that your assessment should not only reflect on the person's own account of how they manage their property and affairs, but also consider, in the assessment with the person, any concerns which have been raised which led to the assessment being undertaken in the first place (which may contradict what the person is saying), and what the relevant issues are specific to the person and how they are spending their money? Triangulating evidence from not just what the person is saying is the case (the persons self-report in the assessment) but comparing and contrasting this with real-world evidence of what is happening in real-time, and the observations of others will be key to a high-quality capacity assessment in this area. Key reference: As the case law is limited in this area the most helpful practical guidance for practitioners will likely be found here – **Empowerment Matters – Making Financial Decisions – Guidance for Assessing, Supporting and Empowering Specific Decision Making**, in particular '**Capacity**	likely to be familiar with; asking questions about past choice and decisions; what was important about those, including the relevant factors. These will need to be as person-centred as possible. • A money plan or financial passport can be helpful in informing others in the person's life, including professionals that may only come into contact occasionally with the person, as well as those supporting an individual on a day-to-day basis. It can cover the following: ○ Decisions where the person needs support e.g. at the bank. ○ Information about income, benefits etc. ○ What the person likes to spend their money on. ○ Where they may need support in financial planning (for example if the person is on a minimal budget) and outlining what practical day-to-day assistance the person requires and who will provide this support. ○ How their money is kept safe – any potential safeguarding issues. ○ Any education/training needs to support the person to learn money/budgeting skills etc. ○ Identifying daily activities that the person would normally carry out in the community (getting a haircut,	*"If you had £35 and you had a £34.50 bill to pay but you wanted to buy new jeans that cost £29 what would you do and why?"* *"If you needed extra money, what would you do?"* *"Does anyone provide you with help to managing your money?"* *"Is there anything else to do with your money that you need help with?"* *"Can you tell me how much money or income you have coming in every week/month? Roughly how much?"* *"Where does that money come from? (e.g. benefits, interest, pensions etc)."* *"What do you need to use this money for?"* *"Can you show me on your bank statement / banking app what is money coming in and money going out of your account?"* *"Are you overdrawn at the bank or in credit?"*

Assessment Template for assessing a person's capacity to manage aspects of their finances' (starts page 104) which is a helpful reflective practice tool.	going for afternoon tea or a café) and how to support them to budget their money to carry this out. • Where a person is being scammed involvement of the police can be helpful for assisting the individual to reflect on who they are giving their property and affairs to, but also what assistance their fraud/scam departments can provide the person to manage that risk. • Linked to the above, where the scams are happening online there are a range of online resources (see social media section of the guide) that may assist people to consider the online scams and what they can do about it, for example, Stop! Think Fraud - How to stay safe from scams, Protect yourself from scams | FCA or Take Five To Stop Fraud | To Stop Fraud. • Providing the person financial advice from their bank/building society etc, in relation to considerable debt they have accrued could be a helpful way of assisting a person to weigh up the reasonably foreseeable consequences of their current spending. • Where a consequence for an individual of uncontrolled spending and debt could be losing a tenancy and becoming 'intentionally homeless' inviting in the housing association	*"You have an electricity bill to pay; how do you do that?* *What happens if you don't pay the electricity bill?"* *"Which of these has priority, paying the bill or going out with friends/to the local pub?"* *"What is important to you about your chosen option?"* *2If you saw a new (item person may want to buy) for £30 but had to spend £30 on food. What would you do?"* *"What would happen if you didn't have enough money to pay a bill?"* *"What would happen if you got into debt?"* *"How do you budget your money?"* *"What are the essential things you need to pay for every week/month?"* *"How do you make sure those things are paid for?"* *"How do you decide what to spend your money on?"*

	to explain the implications of their actions and ways of mitigating the outcome would be a helpful way of assisting an individual to weigh up the options available to them.	*"Do you ever run out of money? What happens then?"* *"What would you do in a crisis i.e. if you had no money?"* *"Would you like/do you have help with budgeting?"* *"Can you remember your PIN for your debit/credit cards (not that you're asking them to tell you what it is)?"* *"What do you do to help you remember your pin?"* *"If not, how do you carry out banking, what safety measures are in place?"* *"Does anyone take money out of your account for you?"* *"Do they know your PIN? How do you know how much they've taken?"* *"Do you do online banking? If so, do you have any problems remembering your passwords?"* [consider showing them an example of a banking app from your phone if able] *"Does anyone else know the passwords? Q: Do you trust (name) to use the*

		passwords to get access to your account?" *"Do you keep your money in a bank or building society? Which one is it?"* *"Do you have any direct debits or standing orders? What are they?"* *"Do you have a cheque book? How do you write a cheque?* [use actual cheque or copy] *"How do you get your money?"* *"How do you keep your money safe?"* *"Do you get bank statements? What do you do with them? What are you checking on them?"* *"What does it mean if you are overdrawn?"* *"What would you do if you thought money was missing from your bank account?"* *"Is there anyone you would trust to help you with your banking?"* **The following are questions relevant to potential 'reasonably foreseeable consequences' and concerns about a**

		person's decision making in relation to their property and affairs – this will be very fact specific but the below may provide some ideas on how to set these questions out in practice: *"*[after explaining to the person what the consequences may be of their current actions – relating to their property and affairs] *What were the risks we just discussed and what was the likely outcome of you continuing to* [insert what they are doing]*?"* followed by *"Help me understand why you wish to continue to* [insert what they are doing] *when these will be the consequences* [outline consequences again if required]*?"* *"What did the police just tell you about the person you are giving your money to?"* followed by *"Why do you want to continue giving this person money when the police have confirmed they are not who you think they are?"* *"You told me that you would like to have more money to do* [insert what that is]*, but if you continue to spend your money in this way* [remind them of what they are doing if required] *then that won't be possible. I have given you some suggestions on how you could be supported to better manage your money*

		but you have refused that support on multiple occasions saying, 'you will be able to manage', but all the evidence show that you are not doing these things and the situation is getting worse. Help me understand why you still don't want this support when that support will help you achieve your goals but without it you will likely continue to get into more debt and not achieve those outcomes?" *"Your family, friends and care staff are very worried about the following concerns* [outline concerns]. *What are your views of these concerns and what do you want to do about them and why?"* If the person refuse support *"Why don't you want this support when this will be the likely outcome* [outline likely outcome]*?"* *"You have just perfectly outlined what you need to do in theory when it comes to managing your property and affairs, but you are not actually doing these things in practice. I think this is likely because of your* [insert condition that may affect the brain, for example, an acquired brain injury or alcohol related brain damage] *which may be significantly impact your ability to put these things into practice when you need to – this is also the view of your GP. What is your reflection on this,*

		and do you think continuing to refuse the support being offered to you in relation to your property and affairs could put you at further risk?"

Additional Note: There will be occasions where you may have reason to assess a person's capacity in relation to property and affairs and where the individual concerned has a very complex estate, maybe consisting of owned businesses, multiple properties both in the UK and / or abroad and/or consisting of considerable wealth. In these situations, we emphasise the following points for any social workers or other professionals considering undertaking any such assessment:

1. Do you actually have an understanding of the person's estate?
2. Have you clearly set out the makeup of the person's estate and evidenced the practicable support you have given to the person to understand, retain and use and weigh the information relevant to their estate?
3. Do you understand what the 'reasonably foreseeable consequences' are in relation to the specific property and affairs decisions that they may be faced with in the context of their estate or what the important financial factors are that they will have to weigh in the balance?
4. Have you sought appropriate legal advice in relation to this matter?
5. Have you considered whether you may need to commission an 'expert' assessor to complete the necessary assessment?

We would suggest great caution when undertaking such assessments, especially when the conclusions reached could leave the person open to significant exploitation and/or financial loss. We would strongly suggest that legal advice is sought in relation to these matters.

Category of decision - Executing a Lasting Power of Attorney for Property and Affairs		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
Capacity to execute a Lasting Power of Attorney (LPA) was first considered in *The Public Guardian v RI & Ors* [2022] EWCOP 22 where the Court held that the 'relevant information' in relation to the execution of an LPA is: • The effect of the LPA; • Who the attorneys are; • The scope of the attorneys' powers and that the MCA restricts the exercise of their powers; • When the attorneys can exercise those powers, including the need for the LPA to be executed before it is effective; • The scope of the assets the attorneys can deal with under the LPA;	Suggestions: • Consider using the guidance from the OPG website to explain an LPA. • It is also important to note that the language that was used in *The Public Guardian v RI & Ors* [2022] EWCOP 22 can of course be simplified when supporting the person in relation to this matter and the resources from both the OPG, Mencap and Age UK may assist with this. • Consider using the Mencap easy read resources on LPA's if appropriate. • If appropriate, involve the person who the individual has asked to act as their attorney in the initial discussions, as they might be able to explain the information in a different way. • Give the person time to discuss the relevant information with their circle of support.	Suggestions *"Would you like someone else to make decisions about money on your behalf when you can't make those decisions yourself?"* *"Would you like someone else to make decisions about money on your behalf when you ask them to (where you are able to make decisions for yourself but where you might just need more help and assistance)?"* *"How do you feel about another person making decisions about your money* and property*?"* *"Who are you choosing* [insert named person/persons] *to make decisions about your money?"* *"How do you feel about* [insert named person/persons] *making decisions about your money and property?"*

• The power of the donor to revoke the LPA when he has capacity to do so; and • The pros and cons of executing the particular LPA and of not doing so. Key reference – The Public Guardian v RI & Ors – Find Case Law – The National Archives and Capacity to execute a Lasting Power of Attorney (LPA) | Hill Dickinson.		*"Do you trust* [insert named person/persons] *to make decision about your money?"* *"What decisions about your money do you want your attorney(s) to make?"* *"Are there any decisions about your money/property you would you not want them to make?"* [After explaining when the attorney can make decisions on their behalf] *"Based on what I just told you - when would your attorney be able to make decisions on your behalf?"* [After explaining to the person what their assets include] *"Based on what I just told you, what would your attorney be managing for you?"* [After explaining that the person/donor can 'revoke their LPA if they have the capacity to do so] *"What did I just tell you about changing your mind about your attorney or asking them to stop being your attorney?"*. [consider working through this in a word document and breaking down the points made into bitesize chunks] *"Some of the advantage of creating an LPA for your property and affairs include:*

		• *You control what happens to your property and financial affairs in the future including if you are at some point unable to make those decisions for yourself* • *You can choose exactly who manages your finances and property when you can no longer do so yourself, ensuring your wishes are followed.* • *Peace of mind… So, knowing that someone you trust oversees your affairs provides reassurance for you and your family/friends.* • *Avoids potentially lengthy and sometimes expensive legal processes if you didn't have an LPA for property and financial affairs in place:* • *If you lose capacity without an LPA, your family may need to go through a court process to become your legal representative, which can be time-consuming and expensive.* • *You can, if you wanted to, set specific limitations on your attorney's powers, allowing them to handle certain aspects of your life while retaining control over others.* • *Once registered, an LPA can be used as soon as you lose the mental capacity to make decisions for yourself or if you choose when you would like your attorney to start*

		making decisions with your agreement. […] *Which of those advantages are important to you?"* *Some of the disadvantages of creating a Lasting Power of Attorney for your property and financial affairs include:* • *There have been some people who have acted as an attorney who have misused a person's finances or made decisions not in a person's best interests.* • *Your attorney will have access to personal information like bank details in order to act as your attorney.* • *You need to register your LPA with the Office of the Public Guardian, which can involve some administrative steps, but you can be supported with this.* […] *Which of those disadvantages do or do not concern/worry you?"*
Additional notes regarding Lasting Power of Attorney for Property and Affairs: Remember, even if the person does lack mental capacity to make decisions regarding property and affairs, that doesn't necessarily mean the person lacks the mental capacity to execute an LPA. As such, if the person has identified someone who is willing to act as their attorney, then this should/could be considered before going down the route of deputyship where possible. The guidance from Mencap will likely be particularly helpful in these situations- Guides for lasting power of attorney | Mencap Trust. If either the person clearly doesn't have the capacity to execute an LPA or there is no one willing to take on that role then a normal CoP application for Deputyship should be considered.		

Category of decision – Entering into a tenancy

Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
In respect of the decision to **enter into a tenancy**, the following information is likely to be relevant: a) The obligations as tenant to pay rent, occupy and maintain the flat; b) The landlord's obligations to the individual under the contract; c) The risk of eviction if the person does not comply with their obligations; d) The purpose of and terms of the tenancy e) The landlord/support staff's right to enter the flat without permission in an emergency if there is serious physical danger or risk to the person.	Suggestions: • Start by *explaining "The tenancy agreement is a contract between you and your landlord. It may be written or verbal. The tenancy agreement gives certain rights to both you and your landlord. For example, your right to occupy the accommodation and your landlord's right to receive rent for letting the accommodation"*. • Useful guidance on Tenancy's can be found here – Understanding your tenancy agreement – Citizens Advice. • If applicable, ask whether the housing association has taken steps to support the person in understanding the tenancy. • Ask for a copy of the tenancy agreement from the housing society and go through it with the person. • With agreement from the housing provider see if you can put together a 2-page summary sheet of the tenancy agreements.	Suggestions 'enter into a tenancy': *"Based on what I just told you, what might happen if you did any of the following: didn't, pay all of your rent on time; live in the home (so started staying somewhere else most of the time); keep your home clean or refused to let people in to fix the property when repairs were needed?"* [After explaining what 'eviction' means] *"What does eviction mean, and what things could put you at risk of eviction?"* *"If, for example, you failed to pay your rent, or you started neglecting the property could you be at risk of eviction?"* [After explaining to the person, the responsibilities of their landlord as outlined in the tenancy agreement] *"Based on what I just told you, what responsibilities does your landlord have to you?"*

Key reference: Guidance Note: Capacity and Housing Issues | 39 Essex Chambers	• Consider putting the key components of the tenancy agreement into an easy read format (see Housing – our easy read guide | Mencap).	*"Based on what I just told you, if the landlord or your support staff were worried that you were in danger or something bad had happened to you, would they be allowed into your house to check if you were, ok?"* *"Based on what I just told you what is the aim of the tenancy?"* [in this situation you might be explaining to the person that the 'aim' of the tenancy is to support with aspects of their care needs or specific activities of daily living]

Category of decision – Surrendering a tenancy

Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
In terms of a decision to **surrender a tenancy**, the following information is likely to be relevant: a) By surrendering a tenancy, the person loses the right to live or return there; b) A person is no longer under the obligation to pay rent and maintain the flat; c) A person might, however, owe outstanding rent to the landlord; d) The landlord no longer has obligations to the person.	Suggestions: • If you are a housing provider or a local authority have you created a guide on surrendering a tenancy. • Encourage the person, where required, to mull over the decision before making the decision. Especially when you believe the decision may have negative consequences for the person. • Linked to the above, suggest that they seek independent advice in relation to the matter. • If the person has outstanding debts and there are concerns about the person's ability to budget for the debt repayments support the person to weigh this factor into the balance by developing a budget plan with the person.	Suggestions: Start by explaining the points a) to d) listed in the relevant information, and then ask: *"If you surrender your tenancy, would you be allowed to live there again?"* [...] *"What if you changed your mind?"* *"Would you still need to pay rent or maintain the property if you surrender the tenancy? If no, why not?"* [if the person owes outstanding debt] *"you owe* [insert debt amount] *to the landlord you will still need to pay that back. How will you, with support do this and what would happen if you didn't?* [you will need to explain to the person what the potential implications of not paying the debt would be] *"Once you the surrender the tenancy does the landlord have any responsibility to you?"*

Key reference: Guidance Note: Capacity and Housing Issues | 39 Essex Chambers		

Category of decision - Engaging in Sexual Relations		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
In A Local Authority v JB (Rev1) [2021] UKSC 52 (24 November 2021), the Supreme Court held that, normally, the question in relation to sexual relations is whether the person has capacity to decide to engage in sexual relations. When considering that question, the information relevant to that decision may include: a) **the sexual nature and character of the act of sexual intercourse, including the mechanics of the act**; b) **the fact that the other person must have the ability to consent to the sexual activity and must in fact consent before and throughout the sexual activity**; c) **the fact that P can say yes or no to having sexual relations and is able to decide whether to give or withhold consent.** The courts have held previously that person must understand that they can change their	Suggestions: • Before meeting the person, ask yourself whether you feel comfortable having this conversation. If not speak to a manager about your concerns and consider what training or support, you may require. • Rapport and trust building with the person is going to be essential. These conversations are rarely a one-off conversation and will typically only be effective once rapport and trust have been built with the person. • Best practice in learning disability services would suggest that a speech and language assessment should be considered prior to undertaking work in this area. • Consider the involvement of a trusted advocate to support the person, with their consent.	Suggestions: *"What would you do if another person wanted to have sex with you, but you didn't want to?"* *"Do you feel you can say no if someone asks you for sex?* […] *What if they really wanted to, but you didn't?"* *"If someone made you have sex with them when you didn't want to, especially if you had said or shown in your actions that you didn't want to, would that be a bad thing for the other person to do?"* […] *"Do you think that a person doing that to you would be criminal?"* *"If you initially agree to have sex with someone, are you allowed to change your mind and say no even whilst having a sexual encounter with someone?"* *"What would you do if you wanted to have sex with a person, but the other person said they didn't want to have sex with you?"*

mind in relation to consent to sex at any time leading up to and during the sexual act. d) **that a reasonably foreseeable consequence of sexual intercourse between a man and woman is that the woman will become pregnant**; e) **that there is health risks involved, particularly the acquisition of sexually transmitted and transmissible infections, and that the risk of sexually transmitted infection can be reduced by the taking of precautions such as the use of a condom**. The courts have held previously that the knowledge required is fairly rudimentary. "In my view it should suffice if a person understands that sexual relations may lead to significant ill-health and that those risks can be reduced by precautions like a condom." Nothing more than this is required. There is thus no need to be able to name and describe each, or indeed any, potential infection, nor must a person specifically be able to understand condom use (this is an example of a precaution)	• Take time to know and understand the person's factual sexual relationship history that is relevant to the factual circumstances of the situation. • Consider whether the person been made aware of the conversation topic before the meeting and consider what pre-meeting planning may best support the person on the day of the conversation. • Resources that might assist in conversations include Sex and the 3 Rs: Rights, Risks and Responsibilities - Pavilion Publishing, Relationships & Sex Education - Downs Syndrome Association and Picture Yourself 1 & 2 - Bodysense Education (further resources can be found here Choice Support | Resources for staff, supporters and family members) • Consider whether an Assessment of Sexual Knowledge (ASK) assessment might help in identifying where additional educational support is required and/or highlight areas of strength that the person has. • When discussing STI's, pregnancy and contraception consider taking examples	*"If you were having sex with someone and they started saying "stop" or "no don't, I want you to stop" or started to push you away, what would you do and why?"* … Potential follow up question *"If you ignored what they were saying and forced them to carry on having sex would you be doing something that is wrong or could get you in trouble with the police?"* [this may also include considerations, where applicable, where refusal is expressed non-verbally] *"If you tried to have sex with someone who was saying they didn't want to, could you get in trouble for this, maybe even with the police?"* *"What does having sex involve?"* [consider using different examples of sexual relations, so, vaginal/anal sex, oral sex, someone using sex toys on someone else (e.g. vibrators), groping private areas] *"Apart from vaginal/anal sex, what other activities would you consider sexual in nature?"* *"If you had sex (vaginal or anal) with someone, what could be some of the potential outcomes or risks after sex has taken place?"*

Key reference – *A Local Authority v JB* (Rev1) [2021] UKSC 52 (24 November 2021).For practical guidance consider referring to the Mental Capacity, Intimate Relationships and Safeguarding Adults: Frontline Briefing, Research in Practice, 2022.	of contraceptive options to explain this to the person. Make sure this is tailored to the person factual circumstances. • The Family Planning Association Resources have extensive resources that many local authorities may already have access to. If you are looking for guidance around contraception in your local authority it might be advisable to speak to one of your Learning Disability Nurses. • Consider whether they would prefer to have the supportive conversation with a man or woman. • Consider leaving educational information with the person. However, remember some information can include explicit pictures that assist in explaining sexual relationships. As such, consider how the person can make sure that others who they live with don't see the information provided. • Be honest about how the information gathered in these supportive conversations may be used. Especially when there are safeguarding concerns, or evidence might be used in supporting a capacity assessment.	*"What can people use if they want to have sex without making a baby?"* *"What could you or the other person do to protect yourself/themselves from the risk of pregnancy or STIs?"* *"Could a man wearing a condom reduce the risks of infection and/or pregnancy?"* The next questions are very case specific examples of questions, where there might be concerns about a person's understanding of consent. **These questions will likely also have an overlap with decisions relating to 'contact'**. As such, these examples, would need to be reformulated to the person and the factual situation and it is strongly advised that legal advice sort in relation to cases like these: *"As you are living with people with quite significant conditions that affect the brain, that might impact their ability to consent to sex (as well as affecting their ability to make other decisions as well), what could you do to ensure that a person is consenting to having sex with you?"* *"For example, if I had* very advanced *dementia, and I lived in this care home, and I held your hand in the lounge one afternoon, and you asked if I wanted to come to your*

	• These conversations can be difficult for the person so you must consider support for the person not only during but also after this conversation has taken place.	*room for sex, and I didn't say anything, but I followed you. Would you take that as evidence that I am consenting to sex?"* *"If you weren't sure if someone could consent (because some of the residents have dementia for example), what could you do to find out?"* *"In some situations, might it be helpful to ask a member of staff for advice? If no, why not, if yes, why and in what situations would ask for advice?"* *"If a woman with a severe learning disability in the care home touched you on your private parts (imagining you also found that person attractive), what would you do?" … "If care staff had told you that the person had a disability that really impacted their ability to make choices, what would you do and why?"* *"If you were found, by a member of staff, to be having sex with someone with very advanced dementia what do you think care home staff would have to do in that situation and why?"* *"If the police were told that a person had sex with someone who was unable to consent because of their dementia what do you think the police would have to do and why?"*

Additional notes regarding engaging in sexual relations: As explained in the MENTAL CAPACITY GUIDANCE NOTE: RELEVANT INFORMATION FOR DIFFERENT CATEGORIES OF DECISION | 39 Essex Chambers:

42. The Supreme Court in JB made clear that assessment will usually be on a 'generalised forward looking basis,' i.e. without reference to a specific (actual or prospective) sexual partner. However, it also made clear that there are situations where the question is person-specific, for instance:

a) sexual relations between a couple who have been in a long-standing relationship where one of them develops dementia or sustains a significant traumatic brain injury;
b) in the case of sexual relations between two individuals who are mutually attracted to one another but who both have cognitive impairments.

43. If the decision is can properly be described as person-specific, then there are four consequences:

a) the information relevant to the decision may be different, for instance depending on the characteristics of the other person (e.g. in same sex relations, the risk of pregnancy resulting from sexual intercourse will not be relevant), or because of the risks posed by a specific person;
b) The practicable steps may also differ, for instance, it might be possible to help P to understand the response of one potential sexual partner in circumstances where they will remain unable to understand the diverse responses of many hypothetical sexual partners;
c) The reasonably foreseeable consequences of deciding one way or another may differ. There may, for example, be no reasonably foreseeable consequence of a sexually transmitted disease in a long-standing monogamous relationship where one partner has developed dementia;
d) The potential for "serious grave consequences" may also differ. This might include the situation where a woman of child-bearing age were to have a high risk of suffering serious or grave complications of pregnancy.51

44. An example of a person-specific application of the test as clarified in JB can be found in *Hull City Council v KF* [2022] EWCOP 33, in which (on the specific facts of the case) Poole J identified that the information relevant to the decision included that set out in JB together with "that KW has sexually assaulted KF previously, that the assault was very harmful to KF, whether further sexual intimacy between KF and KW gives rise to a risk of a further assault on KF and/or harm to her, the degree of that risk, the consequence if it should materialise, and the means by which the risk could be mitigated."

Category of decision - Items and belongings (hoarding)		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
In deciding whether a person has capacity to make decisions in respect of their items and belongings, relevant information is likely to be that concerning: a) **Volume of belongings and impact on use of rooms**: the relative volume of belongings in relation to the degree to which they impair the usual function of the important rooms in the property for the person (and other residents in the property) (e.g. whether the bedroom is available for sleeping, the kitchen for the preparation of food etc). Rooms used for storage (box rooms) would not be relevant, although may be relevant to issues of (c) and (d); b) **Safe access and use**: the extent to which the person (and, if relevant, other residents in the property) are able or not to safely access and use the living areas. c) **Creation of hazards**: the extent to which the accumulated belongings create actual	Suggestions: • Develop a rapport - Home - Hoarding Disorders UK already have excellent resources, in particular the - Ice Breaker Form - Hoarding Disorders UK that may assist with this. • In relation to the above, adapt professional curiosity. Take an interest in the person and their life. Understanding the person's history, background, likes, dislikes, hobbies, interests and current and previous relationships will be key. Consider if the hoarding behaviours are a new presentation or long standing. The following video may assist in helping you reflect on the lives of the four people you will meet in this excellent documentary. We suggest watching this video and making a list of all the things each individual tells you about	As already highlighted, the risk assessment tools that you will, where possible, be completing with the person, will naturally assist in asking the person questions to consider not only on the risks that their acquisition of items and belongings can cause but also on the options that available for managing this in practice (this might include risk assessment tools that other agencies are using, for example Fire Services). For example the SPACE Risk Assessment Tool - Hoarding Disorders UK can be used in conjunction with the Clutter Image Ratings - Hoarding Disorders UK. The British Psychological Society - A Psychological Perspective on Hoarding | BPS have also created a very helpful tool that might help with structuring conversations in relation to the person's behaviour - A hoarding assessment interview | BPS - British Psychological Society.

or potential hazards in terms of the health and safety of those resident in the property. This would include the impact of the accumulated belongings on the functioning, maintenance and safety of utilities (heating, lighting, water, washing facilities for both residents and their clothing). In terms of direct hazards this would include key areas of hygiene (toilets, food storage and preparation), the potential for or actual vermin infestation and risk of fire to the extent that the accumulated possessions would provide fuel for an outbreak of fire, and that scape and rescue routes were inaccessible or hazardous through accumulated clutter. d) **Safety of building**: the extent to which accumulated clutter and inaccessibility could compromise the structural integrity and therefore safety of the building. e) **Removal/disposal of hazardous levels of belongings**: that safe and effective removal and/or disposal of hazardous levels of accumulated possessions is possible and desirable on the basis of a "normal" evaluation of utility. Key reference - *AC and GC (Capacity: Hoarding: Best Interests)* [2022] EWCOP 39	themselves that describes who they are POSSESSED on Vimeo. • Understand what feelings the person has about themselves, their house and why things are the way they are – adapt motivational interviewing techniques – 'tell me what you like about your home' don't focus on the negatives all the time • Use a strengths-based approach to determine the positive things that a person has in their life or can achieve for themselves and how they would like to manage risk. • Consider the language used e.g., hoarded, rubbish, dirty, get rid of. Change to more approachable language. 'busy, cluttered, could we move that out?' • Consider trauma-informed approaches and methods of motivation and communication. • Create cognitive dissonance – the difference between the person and their behaviours – to help them see themselves more positively.	Suggestions: *"How much of the living area in your home is cluttered with possessions (consider the amount of clutter in your kitchen, living room, dining room, hallways, bedrooms, bathrooms, or other rooms)?"* [Top tip - use the clutter Image rating as a resource here (Clutter Image Ratings - Hoarding Disorders UK)] *"How much of your home is difficult to walk through because of clutter?"* *"How much of your home does the clutter prevent you from using (consider the kitchen, living room, dining room, hallways, bedrooms, bathrooms, or other rooms)?"* *"Does the clutter in your home prevent you from using parts of your home for their intended purpose? For example, cooking, using furniture, washing dishes, cleaning, etc."* *"Do you have urges to acquire possessions?"* *"How much control do you have over your urges to acquire possessions?"* *"How much control do you have over your urges to save possessions?"*

	• Take one small step at a time with lots of encouragement. • Maybe consider offering some practical support to see how the individual responds to items being moved out. Offer to help them remove recycling or take items to a charity shop [if this is agreed]. • Adapt harm reduction models of practice both in practice when working with the individual and in your own practice/ethics and values when considering the change needed to someone's home to make it safe. A home will never be risk free, but it can be safer. • Use a multi-agency response. • Consider wider safeguarding issues such as hate crime, domestic abuse, anti-social behaviour, safeguarding other adults or children in the property or historical abuse. • Do not force change if at all possible.	*"How distressed or uncomfortable would you feel if you could not acquire something you wanted?"* *"How strong is your urge to buy or acquire free things for which you have no immediate use?"* *"How often do you decide to keep things you do not need and have little space for?"* *"How upset or distressed do you feel about your acquiring habits?"* *"How much does clutter in your home interfere with your social, work or everyday functioning? Think about things that you don't do because of clutter."* *"Does the clutter in your home prevent you from inviting people to visit?"* *"To what extent has your saving or compulsive buying resulted in financial difficulties for you?"* *"How strong is your urge to save something you know you may never use?"* *"To what extent do you feel unable to control the clutter in your home?"*

	• How to help a loved one - Hoarding Disorders UK – a helpful video for loved ones of the person.	*"Are you ever unable to discard a possession you would like to get rid of?"* *"To what extent do you have difficulty throwing things away?"* *"To what extent do you feel unable to control the clutter in your home* [NB: if the person had requested previously to remove clutter independently with no support, but has seemingly struggled with this help them reflect on this]*?"* *"How distressing do you find the task of throwing things away?"* *"Would you find it distressing if someone else threw away your possessions?"* *"Would this still be distressing if you have listed the possessions that you were willing to have thrown away?"* *"Would you find it distressing to be in the property whilst other people were throwing away your possessions, even those you had indicated you were happy to be removed?"* *"Do you avoid trying to discard possessions because it is too stressful or time consuming?"*

		"Do you think support from [delete as relevant] family, friends or local support agencies might help you with managing/reducing your possessions and the level of clutter in your home?" *"What support would you like to help with you with managing/reducing your possessions and the level of clutter in your home?"* *"What do you think would happen if you didn't have any support with managing your possessions and the level of clutter in your home?"* *"Can you tell me when you are more likely to go out and buy items? Is it whenever you see something you like or when you are feeling a certain emotion?"* *"Your home has not always been this busy, can you tell me what helped and supported you to manage it differently in the past?"* *"Tell me what you think the risks are in your house, for example: how could the clutter on the stairs impact on you and others?"* *"Tell me what your understanding is of the risks mice and rats pose to your property"*

		"I can see some food that it out of date and starting to go off, do you think that this could attract flies, mice and rats? What are the risks here to you and others?" *"I can see that there is a big crack in the ceiling. Above is the room where there is a lot of your things, can you tell me what you think the risks are with this and how it might impact on the safety of the house/structural integrity"* *"You told me 2 weeks ago that you would move those items [be specific] because you identified that they blocked your exit from the house if a fire happened, can you tell me what's happened between then and now to mean that you have not been able to do this?'* *"When we met X weeks ago, you told me that you wanted to be able to sleep in your bed again and that you would move items so that this could be achieved. We are now X weeks along and you are still sleeping in the chair. Why do you think this is/What's happened?"* *"Sometimes, people keep things because they are going to use them for something else, e.g., boxes to store things in – this can sometimes be a good idea! You told me*

		that you were going to use those boxes to put the books in so the hallway could be clearer to walk through but, it's not happened yet. Would you like some help to do this?"

Category of decision - Contact

Relevant information	Practicable support considerations specific to category of decision	Example questions to consider and tailor to factual circumstances
In the delicate task of assessing whether a protected person has the capacity to decide whether to maintain, reduce or eliminate entirely their contact with another person, the factors which may constitute relevant information are: a) **Whom the contact will be with**. The identity of the person in regards to whom the decision would be made is crucial. The decision must always be specific to a particular person or (where relevant) category of persons; b) **In broad terms, the nature of the relationship between the person under assessment and the contact in question**; c) **If there is a specific person or people in respect of whom decisions about contact need to be made, what sort of contact the person under assessment could have with each of the individuals**	This can be an incredibly complex area that requires the professional, at the outset, to be clear about who the 'contact' relates to. For example, does the contact decision, relate to contact with one 'specific person' or a 'group of people' (e.g. a person being cuckooed, a family group, or a group of residents the person lives with) or 'others' (e.g. where a person puts themselves at risk when accessing the community and meeting strangers). Additional guidance is provided in the 'Additional notes regarding contact' section below. It is important to remember that decisions about 'contact' may also overlap with many other decisions listed in this guide (e.g. care, engaging in sexual relations, residence, social media, finances) and are very rarely looked at as an isolated decision. Suggestions: • These conversations will typically take place in situations where there are safeguarding concerns about a person for who the individual we are supporting is having contact. As such, professionals must remember that these conversations might be	This can be an incredibly complex area that requires the professional, at the outset, to be clear about who the 'contact' relates to. As such, additional guidance is provided in the 'Additional notes regarding contact' section below. It is important to remember that decisions about 'contact' may also overlap with many other decisions listed in this guide and are very rarely looked at as an isolated decision. You should also consider safety aspects if there are any risks associated with domestic abuse, county lines and/or cuckooing. Where are you going to have the conversation and is it safe? In these cases, you should also consider including safety planning within the conversation, if safe to do so.

with whom they may have contact. This must include an exploration of different locations in which contact could occur, including within a private home or in a community setting such as a cafe. It must also include an exploration of the duration of contact available to the person under assessment, from an hour to overnight stays. There should also be discussion and understanding of the arrangements regarding the presence of a support worker; d) **The positive or negative aspects of having contact with each person**. This will require a broad discussion which must be kept structured in the assessor's mind. If there are allegations about past behaviour that is relevant to risks from contact, P's evaluation of those risks may need to be disregarded as irrelevant if it is based on "demonstrably false beliefs". Furthermore, the discussion should include not only current experiences but also a discussion of past pleasant experiences with the contact, of which, in appropriate circumstances, the person under assessment should be reminded.	incredibly difficult for the person as we are dealing with personal relationships. So, good pre-planning is essential! The following points may be of assistance in relation to this: ○ Have you considered whether the person requires the support of an advocate? ○ Does the person require support and time to prepare for the conversation. If yes, record what steps you have taken to facilitate this. ○ Have you ensured you are aware of the relevant facts, the available options of support and been wary of imposing any of your own values on the situation. ○ If some of the facts relate to criminal activity by the person for who the individual, we are supporting is having contact. Have you discussed and gathered the relevant facts from the police? Remember that this could potentially include criminal actions that the person is involved in with the person or person's for whom the individual is having contact. ○ Have you considered any risks associated with having the conversation (especially in cases of domestic abuse, county lines, cuckooing) and properly risk assessed the situation and discussed these risks with your manager.	Suggestions: [After explaining to the person, whom the contact decision relates to and the relationship between them (son, daughter, friend, carer, neighbour, etc)] *"So who are we talking about today?"* [...] *"What their relationship to you?"* *"So, I am talking to you today about your relationship with* [insert name of person and relationship to the person we are speaking to]... *Who have I just said we were here to discuss?"* *"What type of contact would you like to have with* [insert name]*?"* Should the person need further assistance see the below made-up case example. [By way of example for 'relevant information' point (c) – this might need to be broken down for some individuals] *"So we are here to talk about how you can be supported to have contact with your mum Trudy, and what type of contact you would like to have with her. You could either:* • *keep things as they are and your mum can visit when she wants at the care home,* • *decide that your mum has to plan visits with you with the support of*

e) **Whether the person with whom contact is being considered has previous criminal convictions or poses a risk to the protected party**. If so, there must be a discussion of the potential risk that the person poses to the protected party, and if such a risk exists, whether the risk should be run. This may entail looking closely at the reasons for conviction and the protected party's ability to understand the danger posed to themselves or others around them. f) **The risks of having unfettered contact with people generally**. This could arise as a result of risks to P from others that P cannot recognise or risks that P poses to other people which could in turn put P at risk of retaliation. This decision may overlap with decisions about care, where the professional view is that P needs support to be safe in new environments or in the community. g) **Where the proposed contact is with a family member, what a family relationship is and that it is in a different category to other categories of contact**. However, the assessor must take care not to	○ Have you considered what support the person may require after the supported conversation and ensured where possible that this support has been made available. • Be very clear with the person at the outset about the identity of the person or person's for whom the decision would be made. • Outline the nature of the relationship. Is it a parent, sibling, extended family, husband, wife, long-term partner, friend, their next-door neighbour who provides support to them etc. This might include using pictorial methods of explaining the nature of the relationship (also relevant to point 'g' 'Where the proposed contact is with a family member, what a family relationship is and that it is in a different category to other categories of contact'), some resource provided here might assist Choice Support | Resources for staff, supporters and family members. • When exploring 'the positive or negative aspects of having contact with each person' with the person it is strongly advised that pre-planning is undertaken so you can: ○ Ensure that the information is factually accurate. ○ Ensured that the information focuses on the 'salient details' rather than	*your carers (so at times that work for you),* • *decide that you only want to meet your mum at the local café which you go to once a week,* • *you could decide to just have contact with mum on WhatsApp or* • *you could decide to have a break from seeing mum which you have suggested previously… Could you tell me which option you would like to choose and why?"* *"What do you see as the positives of having contact with* [insert name / relationship]*?"* *"What do you see as the negatives of having contact with* [insert name / relationship]*?"* *"Do you think that if you didn't have any support when having contact with* [insert name / relationship] *this might put you at greater risk?"* *"Tell me what you think some of the risks might be if you didn't have any support when having contact with* [insert name / relationship]*?"*

impose their own values in this assessment; Key references - *LBX v K, L and M* [2013] EWHC 3230 (Fam); endorsed most recently in *Re B* [2019] EWCOP 3 per Cobb J. See also *Re EOA* [2021] EWCOP 20 for an example of differentiation between three different categories of person on the facts of the case.	potential hypothetical risks for which there is no supporting evidence. ○ Be wary of imposing any of your own values or experiences on the situation. ○ Be careful not to subconsciously weight the assessment to focus on potential disadvantages when in reality the person has experienced positive experiences with the person/person's for whom the contact decision is being made. • In relation to *'the risks of having unfettered contact with people generally'* this is most likely to be relevant when we are having conversations with a person about 'contact with others' (see 'Additional notes regarding contact' below) rather than a specific person or person's. Consider as applicable: ○ Using scenarios to help the person reflect on the risks to themselves or others. ○ Using a risk balance sheet to help the person explore what that the risks might be in different situations and with different support options. • In situations where, the person or person's for whom the decision would be made, have stated that should the individual make [x choice] in relation to contact with them they will then do 'y' this should be explained to the	"[After outlining to the person what the different contact options include and who could provide such support with contact] *What will happen if you choose option X rather than option Y* [repeat summaries of available contact options and risks/benefits of each option if needed]*?"*. *"Tell me what you think is good about (option A) and what you think is bad about (option A)?"* … *"What is good about (options B) What is bad about (option B)?"* *"Why have you picked this option* [say what option they have picked if needed] *of support over the others?"* *"What do you think will happen if you pick this option over the others* [go through choices/options]*?"* [After outlining any potential risks, if applicable] *"What are your thoughts on these potential risks"*. [Where the choice the person is making poses specific risks, that you will need to explain to the person ask] "*How might this choice affect you?"* [Consider including safety planning when discussing specific risks] *"What would you* do if [insert applicable scenario]?" […] *"How could you safely call for help if needed?"*

	person. For example, a parent saying, if they refuse to see me, I will cut them out of my life and I will never see them again, this should be explained to the person, and steps taken to gather the person's views on this.	*"How might this decision affect your relationship with "What do you see as the positives of having contact with* [insert name / relationship]*?"* *"What will happen if you don't make this decision?"* *"*[insert who - doesn't have to be a name if confidential] *has raised this* [insert concern], *what are your thoughts of their concerns"?*

Additional notes regarding contact: It is vital that in any supportive conversation or capacity assessment that is undertaken that you firstly clearly identify who the contact relates to. Typical scenarios where contact may be considered include:

- **Contact with a specific individual** - for example in cases of domestic abuse and/or coercion, coercive control. Consider how you can safely make contact without increasing risk.
- **Contact with a specific group of people** - for example where a person with dementia poses a risk, due to sexual disinhibition, to other vulnerable residents in the home. This could also arise in cases of cuckooing where the home of a vulnerable person is taken over by individuals (some of which may be known by the police) to use it to deal, store or take drugs, facilitate sex work, as a place for them to live, or to financially abuse the tenant.
- **Contact with others** - sometimes referred to as 'strangers' or 'third parties' (see Re EOA [2021] EWCOP 20 (29 January 2021) as an example) – This can arise in situations where there are no known individuals, but where a person, perhaps due to a 'lack of social awareness' or 'social naïveté' is, based on real-world evidence, vulnerable to exploitation and abuse. In cases like this the relevant information will need to be carefully tailored to the facts of the specific situation.

Lastly, there will be some situations where decisions relating to a person's capacity to engage in sexual relations can overlap with decisions relating to contact. Whilst the legal process of evaluating these capacities will be the same the factors to be considered will differ.

Category of decision – Social Media		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
The relevant information is (described in the terms that would be applicable in assessing a person with learning disability): a) **That information and images (including videos) which you share on the internet or through social media could be shared more widely, including with people you don't know, without you knowing or being able to stop it**; b) **That it is possible to limit the sharing of personal information or images (and videos) by using 'privacy and location settings' on some internet and social media sites**. The precise details or mechanisms of the privacy settings do not need to be understood but P should be capable of understanding that they exist, and be able to decide (with support) whether to apply them;	Suggestions: Helpful guidance that might assist in explaining some of the points highlighted in the listed relevant information can be found here: ○ 11-18s | CEOP Education although aimed mostly at children the information provided is pitched at an accessible level. ○ Staying safe on the internet and social media (easy read) | SeeAbility ○ Online relationships and staying safe Easy Read | Mencap | Easy Read ○ Dating Safety Tips | Tinder | Match. Chat. Meet. Modern Dating ○ The Stages of Dating: A Guide to Grindr Romance | Grindr ○ Online Banking | Safe and secure internet banking | Barclays	It will be vitally important at the start of this process to have Identified the specific harm and/or risk in relation to the person's internet and social media use. Failure to do so will lead to the danger of not tailoring our questions to factual circumstances and/or inadvertently setting the bar of mental capacity too high. Many of the questions might not in fact be relevant to the specific issue you are dealing with so make sure you tailor the questions to the factual situation. Suggestions: *"If you shared a message, video or picture with someone using social media* [mention the social media platforms they use if known] *could the person receiving the message share this with other people?"* *"When might it be ok to send someone an intimate image? What could you do to keep yourself safe if you were going to do this?"*

c) **If you place material or images (including videos) on social media sites which are rude or offensive, or share those images, other people might be upset or offended**. 'Sharing' in this context has the same meaning as in 2018 Government Guidance: 'Indecent Images of Children: Guidance for Young people': that is to say, "sending on an email, offering on a file sharing platform, uploading to a site that other people have access to, and possessing with a view to distribution. 'Rude or offensive' is used here as "these words may be easily understood by those with learning disabilities as including not only the insulting and abusive, but also the sexually explicit, indecent or pornographic;" d) **Some people you meet or communicate with ('talk to') online, who you don't otherwise know, may not be who they say they are ('they may disguise, or lie about, themselves'); someone who calls themselves a 'friend' on social media may not be friendly**; e) **Some people you meet or communicate with ('talk to') on the internet or through social media,**	○ Safety resources and ways to stay safe on Facebook | Facebook Help Centre (also includes links to additional guidance) ○ A Guide to Protecting Yourself on OnlyFans - DeleteMe ○ Safety Center - Social Media Safety Tips | Snapchat Safety & Introducing "The Keys: A Guide to Digital Safety" ○ Tik Tok Safety Guide - Right To Be • As obvious as it may sound, you might want to consider exploring some of the identified issues with the person whilst using the technology with the person, as this will reduce the risk of the issues being discussed in the abstract. Some of the above resources may assist with this. For example, if discussing 'Friend requests' consider discussing this whilst using Facebook. • Complete a thorough risk assessment to outline the specific risk/harm issue or issues relating to their internet / social media engagement. Wherever possible this should be done collaboratively with the	*"If you are angry with someone, is it ok to say mean things to the person online/gaming* [delete as appropriate]*?"* *"When might a mean thing you say online turn into something that could get you in trouble with the police or the social media provider?"* [The following follow up question is an example based on the facts of a specific case, you will need to ensure that any follow up question is relevant to the facts of a specific situation] "*For example, if I call someone a fucking idiot online/while gaming* [delete as appropriate] *would that get me in trouble with the police? Or, if I said I am going to burn your fucking house down, would this be different?"* *"What types of things could get you in trouble with the police or social media company, if you shared them with someone else, even if you sent them privately with someone you thought was a friend."* *"If I shared a picture of me having sex with my girlfriend, with other people, could I get in trouble? If no, why not, if yes why?"* *"If I shared a porn video online, could I get in trouble for doing this? If no, why not, if yes why?"* [...] "*What if I shared that video with someone under 18?"*

who you don't otherwise know, may pose a risk to you; they may lie to you, or exploit or take advantage of you sexually, financially, emotionally and/or physically; they may want to cause you harm; f) **If you look at or share extremely rude or offensive images, messages or videos online you may get into trouble with the police, because you may have committed a crime**. 'Sharing' has the same meaning as above; see above also in relation to 'rude or offensive.' This statement "is not intended to represent a statement of the criminal law, but is designed to reflect the importance, which a capacitous person would understand, of not searching for such material, as it may have criminal content, and/or steering away from such material if accidentally encountered, rather than investigating further and/or disseminating such material. Counsel in this case cited from the Government Guidance on 'Indecent Images of Children' [...] Whilst the Guidance does not refer to 'looking at' illegal images as such, a person should know that entering this territory is extremely risky and may easily lead a person into a form of	person. If you could not complete this with the person, explain why not. • Where appropriate/applicable consider developing a 'My social media support plan' with the person and their carers to agree ways in which they can potentially minimise any potential risk. • Consider what education/guidance the person might need and explore this with the person. • If appropriate / applicable consider working with your local authorities Speech and Language Therapists to develop 'social stories' that can be used with the person when exploring potential scenarios that pose a risk to the person. • Where the person's online actions are potentially criminal in nature consider discussing this with the person with the support of a police officer who might be able to assist in explaining what actions could get them in trouble and what the implications of those actions could be. • In the even that something could or has occurred in relation to their social media activity have you discussed routes for disclosure about any issues or concerns	*"If someone shared something about you online which you didn't like, how could you try to stop it being shared and do you think is it an easy thing to stop?"* *"Have you ever been sent or seen certain upsetting, violent or sexual pictures and videos online that you didn't want to see? If you then shared these things with more people could you also get in trouble even if you didn't send the original message? If no, why not, if yes why?"* *"Is it ok to look at another person's social media account without them agreeing?"* *"Would it be ok to track someone on their mobile devices?"* [After explaining to the person what they can/could do to protect their personal information] *"What could you do to better protect your personal information online"* [consider then asking them to show you how they could do this on the social media platforms they use] [After explaining some of the risks of not trying to protect your personal information online] *"If you don't use these privacy setting what might the risks be"?*

offending. This piece of information [...] is obviously more directly relevant to general internet use rather than communications by social media, but it is relevant to social media use as well."	with the person, and what support they would receive after making that disclosure. In relation to this have you considered developing an agreed upon plan for any disclosures. • Have you considered whether some form of online monitoring technology might assist the person with managing any potential online issues or risks. At the same time being aware of the need to agree with the person, any intervention that might be considered an invasion into the person's privacy. • In relation to point (f) it is vitally important that you explain to the person what content/material they are viewing or sharing is in fact potentially criminal. We would highly recommend that you speak and discuss with police colleagues and potentially consider inviting the police to your conversations with the person in relation to this matter.	*"Can people share things with you online that you didn't want to receive? Can people share things with you online that are illegal? What could people share online that could be upsetting or maybe even illegal?"* *"Could get you in trouble with the police if you share certain pictures, videos or written words? What might these things be?"* *"If you are not sure if something online is safe to access, should you ask for help? Who could support you if you weren't sure something was safe to access?"* *"Should always download documents and click links that you have been sent via email from people you don't know?"* *"Do you think contacting children (under 16) that you don't know online is ok?"* [...] *"If someone told you they were 14 what would do?"* [...] *"If they asked you to send them a picture of your private parts, what would you do and why?"* [...] *"If they sent you a picture of their private parts, what would you do and why?"* *"Are people who say they are your friend online always are?"* *"Is everyone on social media is an adult?"* [...] *"Do you think that everyone who tells you that*

		they are an adult online is telling the truth?" [...] *"Do you think that everyone who tells you that they are a child online is telling the truth?"* *"Should you always accept friend requests on social media? If no, why not, if yes why?"* *"If you tell people to hurt themselves online, could you get in trouble?"* *"Is it ok to say something racist or homophobic online as long as you are joking?"* [...] *"Could doing these things get you into trouble?"* *"Is sharing an intimate image that someone else sent you illegal?"* *"Is it ok to ask a stranger for a nude picture?"* [...] *"What about if they hadn't asked for you to send a picture like that?"* *"Is contacting lots of people online and asking for sex a safe way to meet people?"* [...] "what might some of the risks of doing this be?" [after explaining some of the risks and compensatory strategies] *"Are their specific things you could do to keep yourself safe when meeting people online for sex and/or friendships/relationships generally?"* *"Are people on dating sites always who they say they are?"* [...] *"Do you think some people*

		on dating sites and social media are pretending to be someone else and sometimes their profile picture isn't who they say they are?" *"If you post / share something with your friends online does that mean it can't be shared any further?"* *"If other people are being mean to someone online, is it ok to join in? If no, why not, if yes why?"* *"Should you share your bank details with people online? If no, why not, if yes why?"* *"Are people who asking you for money online always being honest about the reasons why they need it? If no, why not, if yes why?"* *"Can spending too much money online can get you into debt?"* *"Will banks ask you to share all your bank details in an email?"* *"Will someone who says that they work for your bank and contact you online always will be from the bank?"* **NB:** During conversations about social media use you may also be offering the person options for support and education. For

		example, offering the person support from staff to help monitor what they put online, only using mobile devices with staff support, limiting screen time, to stop using certain social media sites or to attend some in person relationship and safe internet teaching sessions. Where this is the case, it will be important to ask the person questions about which support option they wish to have and why, including, where the person refuses any support, asking follow up questions that explore the potential risks and the reasons why the person is willing to take those risks.

Additional notes regarding social media: **What might help in 4 Steps** (based on - Safeguarding Adults Online – Perspectives on Rights to Participation).

Step 1 – Identify the specific harm and/or risk in relation to the person's internet and social media use

- Complete a thorough risk assessment as this is where you need to begin to outline the specific risk/harm issue or issues. Wherever possible this should be done collaboratively with the person. If you could not complete this with the person, explain why not.
- If there is more than one harm and/or risk identified look at them separately, unless there is a very clear overlap between them?
- Begin to ask yourself 'what is the actual decision in hand'? In other words, if you were going to ask the person how they like to manage this identified risk and or harm how would you phrase this question to the person? Remember, if you do not define this question with specific precision at the start, the exercise will be pointless.
- Once you have identified the specific decision make a clear record of this in your notes.
- Remember at this stage we are not thinking about capacity, start by thinking supported decision making.

Step 2 – What are the planned supportive interventions that you are going to offer the person to manage the identified harm or risk?
This should include:

- A brief explanation of why we believe that a supportive intervention is necessary. Your risk assessment should be able to provide you the evidence needed for this conclusion.

- Identified the salient and relevant details that the person needs to understand/comprehend (ignoring the peripheral and minor details), at the same time remembering not to set the bar to high.
- An outline of what the different supportive interventions could be. This should include exploring doing nothing if this is what the person wants.
- What are the potential advantages and disadvantages of the options/measures and how are you supporting the person to understand this.
- How your support has been tailored to the person's specific learning / support needs (Principle 2, MCA).

Step 3 – Is there any reason to doubt this person's capacity to make their own decisions about how the specific risk or harm is managed?
If the answer is no:

- Have you documented the risks that have been discussed with the person and the reasons why you consider that the person is able and willing to take on those risks?
- Have you clearly recorded the decision that the person has decided to make?
- If people have raised concerns about the person's mental capacity in relation to this matter, may it beneficial to outline your conclusions in a Mental Capacity report.
- Remember, even when the person can make the decision this does not stop you offering continued support to the person.

Step 4 – Is there any reason to doubt this person's capacity to make their own decisions about how the specific risk or harm is managed?
If the answer is yes**:**

- Firstly, ask yourself 'is the problem with me and not with them'? Is the information relevant to the decision clear and accessible, have they got the right support to make the decision, would a different person get a different result, etc.

If you believe that you have done everything practicable to support the person to make the decision evidence; why you believe that the person could not understand, or retain, or use/weigh the relevant information, or communicate the decision in spite of the assistance given, and why you believe that the inability to make this decision is because of the impairment of the mind or brain.

For detailed guidance on completing mental capacity assessments and reports go to the 39 Essex Chambers the mental capacity guidance note.

Should the person lack the capacity to make the decision for themselves, a best interests assessment and decision will need to be made.

This should, in addition to the above guidance, include:

- Whether the person or anyone interested in their welfare is objecting to the proposed best interests decision? If there is an objection this should be immediately discussed with your manager and legal advice may be required.
- Consider whether:

a. Further education and practicable assistance would make a difference. If you do, you must clearly outline, what the support/education will include, a timeline for the delivery of that support, outline who will deliver it and why they were chosen and include a review date where the person's decision making / capacity could be re-considered or
b. Be able to evidence why you believe that no amount of education would change their ability to make this decision for themselves. We would strongly suggest corroborating evidence from either a psychologist or psychiatrist will be needed to evidence this conclusion.

For more detailed guidance refer to the 39 Essex Chambers 'A brief guide Best Interest Assessments'

Category of decision – Education		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
The following is relevant information to a person's ability to make decisions about their education: a) **The type of provision**; b) **The type of qualifications, if any, on offer**; c) **The cohort of pupils and whether the person would match the profile of other pupils at the provision**; d) **That person with special educational needs will have additional rights up to the age of 25 because of those needs**.	Suggestions: As education is typically a planned and anticipated activity it should be possible to spend a **considerable** amount of time supporting a person to understand and consider what education opportunities are available to them both now and in the future. As such, the following support options should be available: • Clearly outlining the different provision options. • Enabling the person to visit and experience, in advance, different education provisions. • Providing contextual information about the available education options (where, what, who, how long, etc). • Should the person need to visit an alternative education allowing the person to be accompanied by a trusted member of staff from their current education provision and/or their circle of support.	Suggestions: *"What's important to you in relation to your education"?* ""[After outlining to the person what the available/alternative education provisions are – the same question could be adapted for qualification options] *Which of these [education provisions] / [qualifications] interest you and why?"* [linked to the above questions relating to education provision and qualification options] *"Tell me what you think is good about (option A) and what you think is bad about (option A)?"* … *"What is good about (options B) What is bad about (option B)?"* "[if there are practical issues/concerns relating to any of the education provision / qualification options], *what are your thoughts on these issues/concerns? Why are you picking this option when there are concerns that you might struggle with* [insert area of challenge]*"*

	• The above points would also afford the person the opportunity to experience engaging with the profile of students/pupils who may be already in that education provision. Should this potentially be a challenging experience for the person considering what support and scaffolding could be afforded to the person on the day is essential. • Where qualifications may be available to the person, affording them the opportunity to understand what would be needed to undertake such a qualification and consider what practicable assistance they could receive if undertaking such a qualification. This could be done over an extended period. • To explain to a person with special educational needs that they will have additional rights up to the age of 25 because of those needs, ensure that the information provided is matched to their individual communication needs. You should also consider sharing this information with the person's wider circle of support so they can also assist with explaining this information to the person.	"[Where there are concerns that the person would not match the profile of the other pupils in a new education provision] *What are your views on these concerns. If* [X] *happened how would that make you feel? Why do you want to pick this option over the others available to you?"*

Category of decision - Sharing information about health and care provision		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**

In an unreported case determined in January 2024 by Sophia Roper KC sitting as a Tier 3 judge, permission was given by the judge to publish a note setting out the relevant information given to the capacity expert to assess P's capacity to consent to permit professionals to share information about her health and care provision with her family, which was agreed between the parties. The relevant information was identified in the note as being:
 	
a) **What sort of information might be shared by professionals**.
 	
b) **The benefits of sharing this sort of information with their family including support with appointments, monitoring of care provision, support to engage with services and medication and so on**.
 	
c) **The risks of not sharing this information with their family, including the risk of deterioration,**
	Suggestions
	
	• It would be advisable to have leaflets that can either be shared in hard copies or electronically in a range of different accessible formats that outlines:
	  ○ the sort of information that might be shared
	  ○ who we want to share information with
	  ○ the typical reason why we would like to share the information and examples of the benefits of sharing information and acknowledging what the typical concerns people may have about sharing information with certain individuals.
	
	• This is another example of a decision where we should be able to leave information with a person to consider
		Suggestions
		
		[After outlining the information, you would like to share, who with and why] *"What was the information I wanted to share, and do you remember who I wanted to share it with and why"*. [consider setting this out in a table, so what information you want to share, a picture/name/relationship of who you want to share the information with and the reasons why you would like to share that information / the benefits]
		
		"What were some of the benefits I mentioned of sharing this information with 'X' [then if applicable] *and what are your reasons for not wanting to share this information?"*
		
		"Is there any specific information that I have already listed that you would not want share... If so, who do you not want to share the information with and why?"
		
		"What might be some of the risks of not sharing this information?"

the reported risk of death due to substance abuse, the risk of non-engagement with services. The court also identified that P would need to be able to recall and weigh up past events where their family have, and have not been provided with information, and the impact of those decisions on P. **NB:** Although the term 'family' is used this should also be taken to include unpaid carers, informal advocates and other non-professionals where appropriate.	wither their circle of support or an independent advocate if appropriate. • When considering the benefits/risks of sharing vs not sharing consider breaking this up with the person into a balance-sheet that is in a format appropriate to the person's needs. • If the person is already being supported by a care/educational service, they may already have had similar conversations with the person and may be in a good situation to support the person to reflect on this decision.	"[if person refusing to share information] *As your family are your main carers, who assist you with your day-to-day care, appointments etc what might be some of the risks of not sharing this information* [consider setting this out in a balance sheet to work through together]"

Category of decision – Marriage

Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
The test for capacity to marry is a simple one, and it has been identified as being issue, rather than person specific. The wisdom of the marriage is irrelevant, and the courts have emphasised that the bar must not be set high so as to avoid discrimination. The information relevant to the test is: **a) The broad nature of the marriage contract;** **b) The duties and responsibilities that normally attach to marriage,** including that there may be financial consequences and that spouses have a particular status and connection with regard to each other**;** **c) That the essence of marriage is for two people to live together and to love one another.** **d) That marriage will make any existing will invalid.**	Suggestions • Perhaps a simple way to think about this at the start, is that it's not about the person who an individual wants to marry (NB: as one judge put it *"The wisdom of a marriage is irrelevant"*), if you are worried about who a person is marrying this issue would probably be more about a contact decision. As a judge also explained in relation to this *"The contract of marriage is a very simple one, which does not take a high degree of intelligence to comprehend"*. After reminding yourselves that this decision is in principle a 'simple one' consider using the following resources for assisting a person to understand the 'contract' of marriage: ○ The Resources - My Marriage My Choice | My Marriage My Choice is a good place to start especially their Toolkit. ○ The Right to Choose - Easy Read ○ Getting married - Citizens Advice ○ Making a will: Overview - GOV.UK	Suggestions [after providing all the relevant information over as long a time as feasible]: *"What do you think marriage is?"* *"Do you have to get married"* or *"Do you have a choice about getting married?"* *"If someone, like a family member for example, said they wanted you to get married to someone or they would like you to get married to someone, would you have to?"* *"If we were married, what responsibilities would we have to each other?* [consider explaining what you think your responsibilities would be to assist the person to reflect – but do be very careful of leading questions in relation to this and responses limited only to yes/no will unlikely be of any assistance]*"*

	• There will often be a lot of time to provide information and to have supportive conversations with the person, so do not rush and do not rush into undertaking the assessment unless very specific factors indicate the need to do so. • Spiritual leaders and registrars who do not have any understanding of mental capacity and marriage should be encouraged to seek training on this, especially local authority registrars. • Where appropriate involve both parties, they are ultimately in a relationship and will in most cases be advocates for each other in different ways and may be able to facilitate each parties decision-making. If this is not appropriate it would be important to record, why. • Consider the involvement of an independent advocate, a professional or loved one of the person, with good advocacy skills, that could support the persons decision making.	[if there are financial consequences of the marriage for which the person should be aware this should be explained to the person – then ask] *"What were the financial consequences I just explained to you and why do you think those consequences are worth taking?"* *"What are the most important things for you and the person you love to remember about what marriage is?"* *"Do you have a Will?"* [if yes – only applicable if a Will exists] *"What will happen to your current Will if you get married?"* [remember this is not an exam this should and can be explained to the person] **For the next questions please read the *'additional notes'* section below:** *"Do you have any plans to engage in sexual relation with* [insert name]*?"* *"Do you think* [insert name] *would wish to be sexually intimate with you?"* *"Do you think yours or* [insert name] *family would want you to be sexually intimate?"*

		"Do you think yours or [insert name] *family would want you have a baby with* [insert name]*?"*
Additional notes regarding marriage: There is now caselaw suggesting that both parties to a marriage must have capacity to engage in sexual relations, whether they choose to do so or not. For capacity to engage in sexual relations see 'Engaging in sexual relations' from earlier in the guide. If it appears that a person wishing to marry does not have capacity to engage in sexual relations, **please seek legal advice**.		

Category of decision – Foreign Travel		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
There have now been a number of reported Court of Protection decisions that have considered capacity and foreign travel. Ranging from **short trips away** (Cardiff County Council v Ross & Davies | 39 Essex Chambers), to **visiting a foreign country for a longer period of time** (*J v Luton Borough Council & Ors [2024]* EWCA Civ 3 (11 January 2024) (bailii.org), High Court judge refuses to block trip by vulnerable adult abroad but urges her not to go) and into circumstances **where a person wishes to move abroad permanently** (What to do when P wants to return home abroad? – Mental Capacity Law and Policy, High Court backs move of 89-year-old man with Alzheimer's from care home in UK to Jamaica). The courts however have not set out the relevant information for these decisions, but they have provided some pointers, which we will outline below.	Suggestions • In all likelihood the guidance already provided in the Care Decisions and Residence Decisions section of this resource will be just as helpful with decisions relating to foreign travel, **as long as the necessary amendments are made to tailor the information given to care and if applicable residence when holidaying or moving abroad!** • The My Holiday Choice easy read resource will likely be helpful in the appropriate situations. • Holidays and dementia – things to consider | Alzheimer's Society • Holidays and travel | Headway and Let's go on holiday! | Headway • Travelling With a Mental Health Condition: 10 Tips | Psychology Today United Kingdom &	Suggestions In all likelihood the guidance already provided in the Care Decisions and Residence Decisions section of this resource will be just as helpful with decisions relating to foreign travel or where a person wishes to move abroad permanently as long as the necessary amendments are made to the suggested questions. Additional questions that also may be relevant include: *"Do you want to go on holiday to* [inset holiday location]*?"* *"Based on what I just told you, who will be going with you on the holiday?"* *"Based on what I just told you where would you be going on holiday?"*

Holidays abroad: The simple choice for the person is *"whether to go on holiday or not"*. Part of that choice would likely require an appreciation of: • who they would be going with • where they would be going (not requiring any great level of detail) • For how long the trip will be • Anything about a person's physical or mental health to travel • If applicable - confirmation that necessary medication will be available should there be any issues and potential risks if not. The relevant information would also likely include information about how their care needs will be met whilst on the holiday but adapted to the relevant circumstances of the trip. For example: • With what areas the person has been assessed as needing support on the holiday; • What sort of support they need, how often, for how long and in what form will it take on the holiday; • Who will provide such support on the holiday;	Travelling abroad with a mental health condition: Planning, medication, insurance, and support • At a very practical level the Holiday packing and pre-travel checklist | Post Office is helpful for taking a person through what they may need to consider. • Use the Foreign travel advice - GOV.UK website to explain to a person what certain risk there may be of visiting / moving permanently to certain countries.	*"Based on what I just told you how long the trip will be?"* *"What support will you need on the holiday with your care needs?"* *"We think the support you will need on the holiday would be* [insert support proposal]. *Are you happy with the plan and why do you think you will need that support / what would be the risks without that support?"* *"Based on what I just told you who is going to provide that support to you on the holiday?"* *"What would be the risks of not having that support, or if you refused the support on the holiday?"* *"Based on what I just told you, what had your Dr told you about the important things to remember about your physical health on the trip?"* *"Based on what I just told you what had your Mental Health Dr (CPN) told you about the important things to remember about your mental health on the trip?"* *"Based on the risks that your Dr made you aware of in relation to the holiday/moving*

• What would happen without that support, or if the support was refused on the holiday; In certain circumstances, there may be additional factors to add into the relevant information, for example, where a country is currently at war and the risks of visiting in those circumstances or where there are very specific equality issues that may need to be considered. As such, it will always be worth checking the Foreign travel advice - GOV.UK to see if there are additional factors for the person to consider. **Moving abroad permanently** For moving abroad permanently, this will likely require consideration of all the points listed above but amended to the fact that they are not considering a holiday but a permanent move, for example, changing the choice for the person to *"whether to move abroad permanently to* [insert location] *or not"*. In addition, to all the above, the person would likely have to consider some or all of the following where appropriate to the facts of a specific case: • Issues pertaining to citizenship, benefit entitlement and health and social care provision in the relevant		*permanently to* [insert location] *why do you still wish to go on the holiday/move permanently?"* *"What were the plans we agreed upon for making sure you have the necessary medication whilst on the holiday?"* *"If you remember when we looked at the Foreign travel advice - GOV.UK website there were going to be certain risks or going to* [insert location]*, what were those risks?"* *"Help me understand why going on holiday/moving to* [insert location] *is important to you?"* *"Help me understand why going on holiday/moving to [insert location] is important to you, even when there are those risks we discussed about going to* [insert location]*?"* **In relation to a permanent move abroad** (these issues will be very fact specific, and questions for the purposes of a capacity assessment should only be posed after providing all the relevant information): *"Based on what I just told you what are the things you needed to consider in*

country, or any other issues relevant to the case. This will also require an appreciation of whether they will need to make any applications to receive certain entitlements in said country. • Where they will be living – will it be a family home or in a residential placement in the country; • Broad information about the area of where they will be living; • The difference between living somewhere and just visiting it; • The activities that the person being assessed would be able to do if they lived in each place; • Whether and how the person being assessed would be able to see friends and family if they lived in that country (e.g. may there be limitations on seeing loved ones / friends still based in England for example?); • The payment of rent and bills, if applicable.		*relation to citizenship in* [insert location]*?"* *"Based on what I just told you what will you need to consider in relation to the benefits you would/would not be able to claim in [*insert location]*?"* *"Based on what I just told you what will you need to consider in relation to the social care support that would be available in* [insert location]*?"* *"Based on what I just told you why are the applications for* [insert purpose of applications e.g. visa application] *important to do before your permanent move to* [insert location]*?"*

Category of decision – Capacity to conduct proceedings relating to deprivation of liberty		
Relevant information	**Practicable support considerations specific to category of decision**	**Example questions to consider and tailor to factual circumstances**
With increased frequency we are finding that social workers are being asked to undertake these assessments for the specific purposes of Section 21A (s21A) Mental Capacity Act 2005 applications to the Court of Protection. Where there is now a need to determine whether the person (referred to a P in the proceedings) has the mental capacity to conduct proceedings and if not where a litigation friend must be appointed for the person concerned. The Certificate as to capacity to conduct proceedings guidance has some very helpful guidance for the 'assessor', but we would also advise that local authorities ask their legal teams to provide clear guidance and training for social workers (and other health and care professionals) for undertaking such assessments. Below we summarise the likely relevant information for these specific issues which is based on the MENTAL CAPACITY GUIDANCE NOTE: RELEVANT	Suggestions In relation to a person's capacity to conduct proceedings relating to deprivation liberty and Section 21A (s21A) Mental Capacity Act 2005 applications to the Court of Protection, start with explaining what the Court of Protection is and what it does **in relation to these specific issues**. You could explain that the Court of Protection can: • decide whether a person 'has capacity' (is able) to make a particular decision for themselves and if not, determine where the person's best interests lie. This can be in relation to issues about care and residence, i, social media use, consuming alcohol, contact with specific people or individuals and many other areas relating to a person's care. • decide whether a person's care arrangements indicate a deprivation of liberty and if so whether those arrangements are in a person's best interests (which would include considering whether there would be other 'less	Suggestions **None of the questions below should not be seen as a test/exam; these will be questions you ask <u>after</u> providing the person the relevant information in a form appropriate for them.** *"What do you think a Judge does, and what is the role of a solicitor?" or ""What do you think my job is as your solicitor? What do you think the Judge's role is?"* "[after explaining to the person their role in proceedings] *what is your role in the proceedings?"* *"We just spoke about the Court of Protection, section 21A proceedings, deprivation of liberty and decisions about your care and residence / accommodation. What is your understanding of these proceedings?"*

INFORMATION FOR DIFFERENT CATEGORIES OF DECISION | 39 Essex Chambers. You will need to consider whether the person (the individual 'party' to proceedings) is capable of considering: • **the nature of the dispute – and the likely issues they will have to consider during the course of the proceedings**. This will require the person to be able to recognise a problem, obtain and receive, understand relevant information, including advice, the ability to weigh the information (including that derived from advice) in the balance in reaching a decision, and the ability to communicate that decision. In relation to the above, as s21a application are about Deprivation of Liberty authorisations (DoLS), some of the likely relevant information that the person should be made aware of would include: • Where they currently reside • What the persons assessed health and social care needs are • What support they receive day-to-day with these needs currently	restrictive alternatives to the current arrangements) **A Basic Guide to the Court of Protection 2020**, has on page 6 a great overview of ***"What does the Court have to do with deprivation of liberty?"*** and ***"How does the Court decide what to do?"*** on page 7. **The Court of Protection Handbook highlights a few additional helpful resources including:** • A guide by Jakki Cowley called "*You're going to a welfare hearing at the Court of Protection – what does this mean for you?"* can be found **here**. This is not in easy read, as such, we would strongly advise that local authorities consider approaching an appropriate user led advocacy organisation and/or their local authority Speech and Language therapists to put this guidance into an easy read resource. • An easy read guide, focusing on participation and written by Dr Jaime Lindsey of the University of Essex, can be found **here**. There is also this resource - How to prepare for seeing a solicitor or adviser | Advicenow More generally for these specific issues:	*"If a solicitor gave you advice during these proceedings, how would you weigh up what they had said to you, and what support do you think you may need to do this?* *"How would the solicitor know what you wanted them to do in the proceedings? Would you know how to instruct a solicitor during the proceedings?"* *"How would you ask the solicitor for more information if you didn't understand what the advice was or if you wanted to challenge the solicitors' advice if you needed to? Who would you talk to?"* *"What are you hoping to achieve in these proceedings about your current arrangements that indicate a deprivation of liberty?"* or *"What would consider to be the most positive outcome and why in these proceedings* [so this might be related to returning to a property they own, a reduction in certain restrictions, moving to similar but alternative placement]*?"* *"I just explained, and we outlined together on this decision tree* [a decision tree is a flowchart-like model that maps out choices, conditions, and potential outcomes using a tree-like structure] *the*

• What are the factors currently indicating that they are confined / deprived of their liberty • What the local authority are suggesting would be available alternatives to the current arrangements • If certain arrangements are not available, and P is indicating they would like that as an option, why the local authority considers this option to not be available • What suggestions have been put forward for reducing any of the current restrictions • **the nature of legal proceedings themselves**, and in particular the specific demands they make on the person will also need to be considered by the person. • **That legal proceedings are *"not being simply a question of providing instruction to a lawyer and then sitting back and observing the litigation, but rather a dynamic transactional process, both prior to and in court****, with information to be recalled, instructions to be given, advice to be received and decisions to be taken, potentially on a number of*	• Take the person through their current care plan (both the care provider's and local authority's / ICB's if applicable) – focusing on their key areas of needs and the restrictions being imposed on them and the rationale / reasoning provided as to why these are in Ps best interests. • Assist the person to look through any relevant daily records to give the person an account of how carers see the persons presentation throughout the day. • The use of social stories may be particularly helpful when exploring giving instructions to a lawyer within court proceedings, taking advice and considering decisions / choices that may be available to the person in relation to the issue at hand. • Assist the person to write down what they want to happen / be the outcome of the hearing. • Assist the person with writing down the most important questions that they want to ask before the hearing, so the person doesn't forget anything. • Support the person to write down any particular experiences or conversations that may be pertinent to the issues in play.	*different decisions and choices that you may have to consider during the proceedings. What were those decisions we discussed, and what were the choices you were stating that you wanted to make and why?* *"We discussed the care and residence options* [summarise options again if needed] *a few minutes ago. Can you remember what those choices were and what outcome you wanted and why?"* *"If you remember we discussed the pros and cons of the different options available to you, in relation to your future care and accommodation* [ensure these have been clearly laid out to an individual. Using a balance sheet to do this with pros and cons can be a simple way to do this]. *What were those pros and cons and what is your preferred choice and why?"* and *"what are your views as to the risks associated with* [insert option]*?"* *We just discussed all the restrictions that are being imposed on you currently, and we wrote them down on this piece of paper. Can you remember what those restrictions are, why those involved in your care think they are necessary and what are your views on these individual restrictions?"* Followed by *"What is it that*

occasions over the span of the proceedings as they develop." **NB: If you are asked to consider litigation capacity outside of the scope of deprivation of liberty and Section 21A (s21A) applications you should ask for very clear guidance from your legal team as to what is required!**	• Consider using a decision tree which is a flowchart-like model that maps out choices, conditions, and potential outcomes using a tree-like structure. You start with the 'Initial Decision Node' (The Fork in the Road) which may have a number of choices for the person to consider, and for each decision you separate this off into potential outcomes (risks/benefits) for the person to weigh and consider in the balance. • Consider using a balance sheet to explore different care and residence options with the person including the pros and reasonably foreseeable consequences of deciding one way or another.	*you want to tell the court/judge about these restrictions and whether you think they are needed and even if so if you think they are proportionate, or whether different approaches could be taken to manage the risks in a different way?"* *"Can you clearly state what you want your legal team to tell the court?"* and *"What questions do you want us to pose to the other side?"* *"Are you aware that you may not get the outcome that you want when the proceedings finish?"* *"Do you know what the chances of not succeeding are (not getting the outcome you want) is?"* *"How would you come to a view about what you would like to do if you couldn't go home?"* *"Do you understand that the solicitor or court may talk to you about what you might like to happen if you cannot return home?"* *"If the courts needed you to read through documents, understand them and sign them, what support would you need to do that?"*

		“I do have some concerns about your ability to give instructions throughout the proceedings [make sure you outline what you consider the challenges are likely to be] *what are your views on these challenges?”* *“Would there be any additional support we could provide that would make the process less challenging for you?”* and/or *“If you refuse this support what might be some of the risks of doing this?”* *"If you feel overwhelmed or disagree with something happening in the courtroom, how will you let me or your solicitor know?"* *“If you want to tell us something, or ask a question about what is being discussed how will you let me or your solicitor know?"* *“If you didn’t concentrate during the proceedings on what we, the judge and the other party are saying what might be some of the risks?”* *“Might the court ask you personal or sensitive questions? If they did, what would you do and how would that make you feel?”*

		"If you are not sure what a question means are you allowed to ask the person to repeat it or make it clearer?" *"There are sometimes very strict limits on what information you are allowed to share after a hearing. Based on what I just told you, what might be some of the risks if you shared what was discussed on social media for example after the hearing?"*

Future updates

If you wish to comment on any of the above or have suggestions for future updates, email james.codling@cambridgeshire.gov.uk

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