

What is meant by capacity for safeguarding?

People can in their lives become unable to make some decisions for themselves due to ill health or mental impairment. When this happens, the person is said to 'lack capacity'. The Mental Capacity Act is the law in England and Wales that protects and supports these people, and outlines who can and should make decisions on their behalf.

What does capacity mean in the context of making a safeguarding notification?

If you are making a safeguarding notification because you are concerned that the person is at risk of harm you should gain the persons consent to do this.

You would gain their consent by giving them information about the safeguarding process and you should consider the following:

Does the person understand what making a safeguarding notification means? That you will be sharing their personal details and information about their circumstances with Social Services? That this will mean the information will be saved on a data base and a record kept of their details and details of the issue? That this information may be shared with other agencies such as the Care Quality Commission, the Police or Health services? That someone from social services will be in contact with them and or their family to discuss the issue?

Is the person able to decide if they want a Safeguarding Notification made based on the information you have given them about what will happen? Yes or No to making a safeguarding notification.

Is the person able to inform you what they want to happen given the information above? Yes or No to making a safeguarding notification.

If the person cannot consent to the notification being made you can still make one in their best interests.

If the person can consent but says No they do not want a notification to be raised but you believe that other people are at risk of harm, you can still make the notification. For example if the person receives care from a domiciliary care agency and discloses that an agency worker has harmed them, by not raising a notification you potentially would be leaving others at risk of harm from this worker. You would need to explain this to the person and inform them that you have a duty to safeguard others who may be at risk from this worker.

What does the Mental Capacity Act state?

The Mental Capacity Act states to have capacity a person must be able to:

- understand the information that is relevant to the decision they want to make
- retain the information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision by any possible means, including talking, using sign language, or through simple muscle movements such as blinking an eye or squeezing a hand

It must always be assumed that everyone is able to make a decision for themselves, until it is proven that they cannot. The law says that the only way to establish this is to do a test or assessment to find out whether a person has the ability to make a particular decision at a particular time. This assessment should focus on the persons:

- understanding of the information relevant to the decision
- must be able to retain the information
- must be able to weigh up/use that information as part of the decision making
- and be able to communicate their decision in any way, this could be through speech, sign language or any other means