

Mitigating the risk of assumptions and biases in assessments of mental capacity

A brief for policy makers and mental health professionals

Mental health professionals routinely assess the capacity of people who are experiencing mental illness, impairment or distress to make decisions about their lives, in accordance with the Mental Capacity Act (MCA). Deciding capacity in accordance with the MCA requires professionals to judge whether a person can understand information relevant to a decision, retain that information, and use or weigh that information as part of the process of making the relevant decision.

However, it has been argued that these instructions underdetermine the decision, because deciding whether a person is using or weighing information, for instance, depends on whether information is perceived by an observer as being used in the right kind of way (source: [Banner 2012](#)). Various stakeholders have indicated that assumptions are often made about people's capacities in this process (source: NICE [Decision making and mental capacity](#), 2020). The difficulty is illustrated in practice by a significant number of capacity decisions that are overturned in court (source: [Ruck Keene et al. 2019](#)).

A wealth of research shows that our judgements about people who experience mental distress or illness can be distorted by particular cognitive processes without our immediately realising this. How does this affect the accuracy of judgements of mental capacity, and what should be done? This brief will address this question, and will:

- Summarise the social biases that can manifest automatically in our perceptions of people experiencing mental illness or distress.
- Demonstrate how these biases and assumptions can distort judgements about people experiencing mental illness.
- Provide a series of case studies involving capacity decisions which illustrate the risks.
- Outline some strategies that can be put in place to mitigate these risks, and articulate the need for further training for mental health professionals making decisions of capacity in accordance with the MCA.

This briefing note is being prepared by researchers at the University of Birmingham, who specialise in issues of rationality and bias in judgements about mental health, as part of Project PERFECT, see more at www.projectperfect.eu.

