

Capacity and Self-Determination (Jersey) Law 2016

Person lacking capacity - Application for Court order or appointment of a delegate

Practitioner’s Assessment of Capacity

(see note 1)

Important

This form is to be completed by a practitioner (see note 2) who has undertaken an assessment of the capacity of a person for the purposes of an application to the Royal Court for a decision on behalf of a person who lacks capacity or for the appointment of a delegate. The completed form is to be provided to the Judicial Greffe.

If you have any questions as to the purpose of this form, or require additional guidance in completing this form, please contact the Judicial Greffe on 441300.

Date of capacity assessment	
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SECTION 1 – PERSON TO WHOM THE APPLICATION RELATES (THE PERSON ASSESSED BY THE PRACTITIONER)

1.1 The details of the person to whom the application relates.

Title	
First name	
Middle name(s)	
Last name	
Maiden name (if applicable)	
Former name (if applicable)	
Wife / widow of (if applicable)	
Residential address (including postcode) (e.g. <i>home or residential care home address</i>)	
E-mail (if applicable)	
Telephone number	
Date of birth	
Gender	

SECTION 2 – THE PRACTITIONER

2.1 Your details.

Title	
First name	
Middle name(s)	
Last name	
Address (including postcode)	
Telephone number	
Email address	

2.2 Your professional qualifications.

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2.3 Nature of your professional relationship with the person to whom the application relates (for example, social worker or general practitioner), including the length of that relationship (see note 3).

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2.4 If you are not the medical practitioner for the person to whom the application relates please state from whom you have obtained confirmation of the diagnosis of the specified impairment or disturbance in the function of the mind or brain (see note 4).

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SECTION 3 – BACKGROUND INFORMATION

3.1 Details of person who requested the assessment to be undertaken

Title	
First name	
Last name	
Address (including postcode)	
Telephone number	

Email address

3.2 Relationship of person requesting the assessment to the person to whom the application relates.

3.3 Date the request for a practitioner’s assessment was made.

3.4 Confirm the nature of the application for which your assessment of capacity is requested? *(Please tick the box below as appropriate)*

Application for a Court Order to make a single decision in respect of the person to whom the application relates on -

- a property and financial affairs matter
- a health and welfare matter

Application for the appointment of a delegate for the person to whom the application relates in relation to their -

- property and financial affairs
- health and welfare

SECTION 4 – ASSESSMENT OF CAPACITY

4.1 What is the specific decision to be made on behalf of the person to whom the application relates, or the decisions and matters for which the appointment of a delegate is required *(as applicable)*? *(see note 5)*

4.2 What are the views *(if any)* of the person to whom the application relates as to the decision(s) or matter(s) noted in 4.1? Does the person to whom the application relates object to the application being made? If yes, give details -

4.3 What steps have been taken to enable the person to whom the application relates to make the decision in question on his or her own behalf?

4.4 Why can't the making of the decision(s) noted at 4.1 above be delayed? Please give details.

4.5 Is an Independent Capacity Advocate required (see note 5)? Yes No

4.6 Details of the person's ability to make the decision(s). (see note 7)

i) Is the person able to understand information relevant to the decision?

Yes No (please tick one box and give any relevant detail below)

ii) Is the person able to retain the information for a period sufficient to make the decision?

Yes No (please tick one box and give any relevant detail below)

iii) Is the person able to use or weigh the information in making the decision?

Yes No (please tick one box and give any relevant detail below)

iv) Is the person able to communicate the decision by any means?

Yes No (please tick one box and give any relevant detail below)

4.7 The person to whom the application relates has the following impairment or disturbance in the functioning of his or her mind or brain (include any dates of diagnoses) (see note 8).

4.8 If you are not the general practitioner for the person to whom this application relates, have you contacted their general practitioner about this assessment?

Yes No *(please tick one box and give any relevant detail below)*

4.9 Please provide an analysis of the person’s inability to make the decision(s) at 4.1 above **because** of the impairment or disturbance in the functioning of the mind or brain noted at 4.7.

4.10 Please provide details of the benefit to the person to whom the application relates of the application noted in 3.4 above being made.

SECTION 5 – OTHER RELEVANT INFORMATION

5.1 Please provide any other information that you feel would be useful for the Court in considering the application. For example, the scope or duration of the Court Order or appointment being sought from the Court.

5.2 In view of the condition of the person to whom the application relates, do you consider that it would be appropriate for notice of the application to the Court to be served on that person?

Yes No (please tick one box)

If you have ticked No, please explain why it would not be appropriate.

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SECTION 6 – PRACTITIONER’S DECLARATION AND SIGNATURE

6.1 Practitioner’s declaration as to capacity

In my professional opinion, the person assessed is unable to make the decision detailed in Section 4.1 because of an impairment or a disturbance in the functioning of their mind or brain	<input type="checkbox"/> Yes <input type="checkbox"/> No
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6.2 Do you, your family or friends have any interest (financial or otherwise) in any matter concerning the person to whom the application relates?

Yes No

If yes, please give details.

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Print your name	
Your signature	
Date	

ON COMPLETION OF THIS FORM PLEASE RETURN THE ORIGINAL SIGNED FORM TO THE JUDICIAL GREFFE, ROYAL COURT HOUSE, ROYAL SQUARE, ST HELIER, JE1 1JG.

You are advised to keep a copy for your records.

GUIDANCE NOTES

<p>Note 1</p>	<p>The Capacity and Self-Determination (Jersey) Law 2016 (the “Law”) enables the Court to –</p> <ul style="list-style-type: none"> a. make a decision in relation to a matter on behalf of a person who lacks the capacity to make that decision; or b. appoint a person (a delegate) to make the decision, or a series of decisions, in relation to the matter(s). <p>This form is to be provided to the Court with an application to the Court for a “one-off” Court order or for the appointment of delegate by the Court.</p> <p>The Court may make such decisions or appoint a delegate in relation to the property and financial affairs or health and welfare matters of the person lacking capacity. This form of assessment can be completed and submitted in support of either type of application.</p>
<p>Note 2</p>	<p>Determining a person’s capacity requires a medical assessment establishing whether that person suffers from an impairment or disturbance in the functioning of the mind or brain <i>and</i> an assessment of that person’s inability to make a specific decision.</p> <p>These assessments may be carried out by one practitioner where that person is able to provide both the necessary medical opinion <i>and</i> has sufficient interaction with the patient to form a view as to the inability of that person to make the decision in question. In those cases, the assessing practitioner can complete this form himself or herself.</p> <p>In some cases, however, it may be necessary for the assessments to be carried out by separate people, for example in cases where a medical practitioner has provided a medical opinion but has not had sufficient interaction with the patient to form a view on capacity, or where that assessment has been undertaken by another person, for example a social worker. In those cases, this form should be completed by the person assessing the capacity of the person to whom the application relates. It will however be important for that person to provide the medical diagnosis information required by this form. This information (and a written medical opinion or diagnosis where possible) should be obtained from the relevant medical practitioner.</p>
<p>Note 3</p>	<p>Please confirm the length of your professional relationship with the person to whom the application relates. If, for example, you are that person’s general practitioner, please provide the date on which you first started acting in that role, or if you have previously assessed the person’s capacity in connection with previous applications to Court, please provide details. If do not have any prior professional relationship with the person to whom the application relates, please make this clear in your response.</p>
<p>Note 4</p>	<p>As further explained at note 2 above, if you have not been responsible for assessing the medical condition of the person to whom the application relates you will need to obtain confirmation of the person’s medical diagnosis from the relevant medical practitioner.</p>

<p>Note 5</p>	<p>Please provide an explanation of the decision or decisions and matters which it is alleged the person to whom the application relates lacks capacity to make on his or her own. By way of example –</p> <ul style="list-style-type: none"> • In the case of health and welfare matters, this may be a decision on deciding where that person should live; deciding what contact that person is to have with specified persons; giving or refusing consent to the carrying out or continuation of treatment by a person providing health care to that person. • In the case of property and financial affairs, this may be a decision in relation to the control and management of the person’s property (e.g. cash at hand, current accounts, vehicles and valuables, premium bonds); the sale, exchange, charging, gift or other disposition of the person’s property; the conduct of legal proceedings on that person’s behalf.
<p>Note 6</p>	<p>An Independent Capacity Advocate (“ICA”) is a legal safeguard for people who lack the capacity to make specific important decisions. An ICA is mainly instructed to represent people where there is no one independent of services, such as a family member or friend, who is able to represent the person.</p> <p>The Law requires an ICA to be appointed for a person lacking capacity, who lacks support, in specific cases: where serious medical treatment is proposed, where provision of, or a change of, accommodation in a hospital or care home is proposed, or where a significant restriction on liberty is proposed. If you are in doubt as to whether an ICA is required, please contact the Judicial Greffe in the first instance.</p>
<p>Note 7</p>	<p>For the purposes of the Law a person lacks capacity in relation to a matter if, at the material time –</p> <ul style="list-style-type: none"> • the person is unable to make his or her own decision in relation to the matter; because • he or she suffers from an impairment or a disturbance in the functioning of his or her mind or brain. <p>Prior to completing the assessment due regard must be given to the practicable steps previously taken in supporting the person in making their own decision and the practitioner accepting that the person can make unwise decisions. The Law states that a person is not to be treated as unable to make a decision unless all practicable steps have been undertaken without success (as noted further above). Additionally, a person is not to be treated as being unable to make a decision merely because they have made an unwise decision. Section 4.3 allows practitioners to address these principles in the assessment.</p> <p>The capacity ‘test’ contains three elements. These must be detailed in sections 4.5, 4.6, 4.7 and 4.8. Section 4.8 must include analysis of why the disturbance or impairment renders the person unable to make the specific decision.</p>

This capacity assessment must be based on the person’s ability to make a decision in relation to the relevant matter, and not their ability to make decisions in general. It does not matter therefore if the lack of capacity is temporary, if the person retains the capacity to make other decisions, or if the person’s capacity fluctuates.

Please detail the persons inability to:

- a. understand information relevant to that decision;
- b. retain the information for a period, however short, which is sufficient to make the decision;
- c. use or weigh the information in making the decision; or
- d. communicate the decision (whether by speech, sign language, or any other means).

It is important to appreciate that many disturbances or impairments in the functioning for the mind or brain may result in fluctuating capacity, such that an assessment of capacity must be time and decision specific. A person may lack capacity to make a decision in a relation to a certain matter but retain capacity to make decisions in relation to other matters, and that capacity may change on a basis varying in frequency. A lack of capacity cannot be established merely by reference to a person’s age or appearance or to a particular condition or an aspect of behaviour.

The test of capacity is not the same as the test for admission under the Mental Health (Jersey) Law 2016. Many people covered by the Mental Health (Jersey) Law 2016 have the capacity to make decisions for themselves. On the other hand, most people who lack capacity to make decisions may never be affected by the Mental Health (Jersey) Law 2016. The test is also different from the test for the appointment of a curator under the Mental Health (Jersey) Law 1969 (now repealed).

Practitioners are required to have regard to the Capacity and Self-Determination (Jersey) Law 2016 Code of Practice. The Code of Practice is available online at gov.je.

For further advice please see guidance set out at gov.je or contact the Capacity Section of the Judicial Greffe.

Note 8

Please provide details of the impairment or disturbance in the functioning of the mind or brain of the person to whom the application relates, including any dates of diagnoses.

If you are not the medical practitioner who has assessed the medical condition of the person to whom the application relates you will need to obtain this information from the relevant medical practitioner. It is recommended to seek a copy of that practitioner’s medical opinion or diagnosis, where possible. You may wish to annex a copy of any medical opinion or diagnosis to this application form (in which case, please refer in Section 4.7 to such documents being submitted with the application).