

Letter to the Editor

Capacity and the Intellectual Disability Psychiatrist

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The question of capacity and the intellectual disability psychiatrist

The Assisted Decision-Making (Capacity) Act (ADA) fully commenced on the 26th of April 2023. This aims to support people to make their own decisions as far as is possible. The ward of court system will be replaced within 3 years, having operated through the Lunacy Regulation Act of 1871. Not only is Wardship frequently referred to as a blunt instrument, but its terminology is also pejorative. The ADA does not directly address protection of liberty safeguards. This is pending and of significant importance to psychiatrists particularly those assessing and treating people with an intellectual disability.

As an Intellectual Disability (ID) psychiatrist previously based in the United Kingdom and now in Ireland I have been legally instructed to write reports in relation to numerous aspects pertaining to capacity. These have included

1. Contact with family members where there is concern in relation to abusive and/or neglectful behaviour towards the individual with ID.
2. Restrictive practices within the home where there is concern about offending behaviour from the individual with ID towards community members.
3. Surgical procedures where there may be refusal by the individual with ID of proposed treatment, and concerns about capacity and health sequelae if interventions cannot be implemented.

4. Requests to assess capacity of individuals with ID to consent to sexual relationships. There have been cases where the individual to be assessed is married, has had children then immigrated to another country.
5. Assessments due to consideration of Termination of Pregnancy or Vasectomy and where there are concerns about capacity.

Some of these cases are very complex and legal outcomes in such a case may have a huge impact on the individuals' lives. The ADA is clear on the emphasis of individuals' wills and preferences, and presumption of capacity. ID psychiatrists may be instructed to write reports in challenging cases where the principles of the act and risk issues require a careful balancing act. MDT colleagues such as Speech and Language therapists are likely to play a significant part in supporting understanding information and communication of decisions for some individuals. Overall, despite these challenges, the act commencing is a hugely welcome development and it is time to move on from the language and approaches used in 1871 which have no place in today's society.

ID consultants need to consider the boundary of what they feel appropriate within the scope of their day to day practice, and it should be noted that all capacity assessments should be viewed as having potential medico-legal consequences especially for those who do not routinely engage in medico-legal practice.

Competing interests. None.

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