

SRA response

Revising the Mental Capacity Act 2005 Code of Practice: Call for evidence

Published on 18 March 2019

Read the [Revising the Mental Capacity Act 2005 Code of Practice: Call for evidence consultation](https://consult.justice.gov.uk/digital-communications/revising-the-mca-2005-code-of-practice) [<https://consult.justice.gov.uk/digital-communications/revising-the-mca-2005-code-of-practice>]

The SRA is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards. We are the largest regulator of legal services in England and Wales, covering around eighty percent of the regulated market. We oversee some 192,000 solicitors and more than 10,400 law firms.

We welcome this consultation and are pleased to provide a submission with a specific focus on the expectations of professionals regarding capacity assessments.

Solicitors advise and represent people at different life stages and often during difficult times, including situations where someone may be experiencing reduced mental capacity. Our professional standards require solicitors to deliver services in a way that takes into account clients' individual needs and circumstances and have regard in particular to any issues that may affect their ability to understand their options or make decisions, such as mental capacity or duress.

We note the reminder at paragraph 4.41 that in respect of any legal transaction, the solicitor or legal practitioner must assess the client's capacity to instruct them. We support the inclusion of the reference (at 4.54) to this being a legal requirement in some cases but also good professional practice. This is consistent with our regulatory approach in so far as we expect solicitors to not just meet their legal duties, but also to behave professionally and with integrity.

We also welcome the inclusion of practical advice for example around seeking professional medical opinion (at paragraphs 4.51 to 4.53).

A revised code of practice that sets out best practice alongside legal duties is extremely welcome as a means of supporting solicitors to properly and sensitively manage these situations.

In 2016 we published a report, Providing services to people who are [vulnerable](https://higher-rights.sra.org.uk/archive/risk/risk-resources/vulnerable-people/) [\[https://higher-rights.sra.org.uk/archive/risk/risk-resources/vulnerable-people/\]](https://higher-rights.sra.org.uk/archive/risk/risk-resources/vulnerable-people/), which brings together a range of resources, information and case studies for solicitors and law firms which includes an overview of the regulatory and legislative framework. We also highlight the role of our [Professional Ethics team](https://higher-rights.sra.org.uk/home/contact-us/#helplines) [\[https://higher-rights.sra.org.uk/home/contact-us/#helplines\]](https://higher-rights.sra.org.uk/home/contact-us/#helplines), who are also able to offer guidance on this as well.

We are also currently developing a new guidance package for solicitors about our expectations specifically in relation to mental capacity, which we plan to publish during 2019. We plan for this guidance to reference relevant sections of the Mental Capacity Act 2005 Code of Practice, recommending that solicitors take account of its good practice "scenarios" when they are assessing someone's capacity to instruct.

We look forward to the outcome of your consultation and the publication of an updated Code of Practice.