



We aim to be the most trusted provider of Case Management, Expert Witness Reports and Mental Capacity Assessments across the UK.



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Instructing a Capacity Expert: Top Tips (and things to consider)



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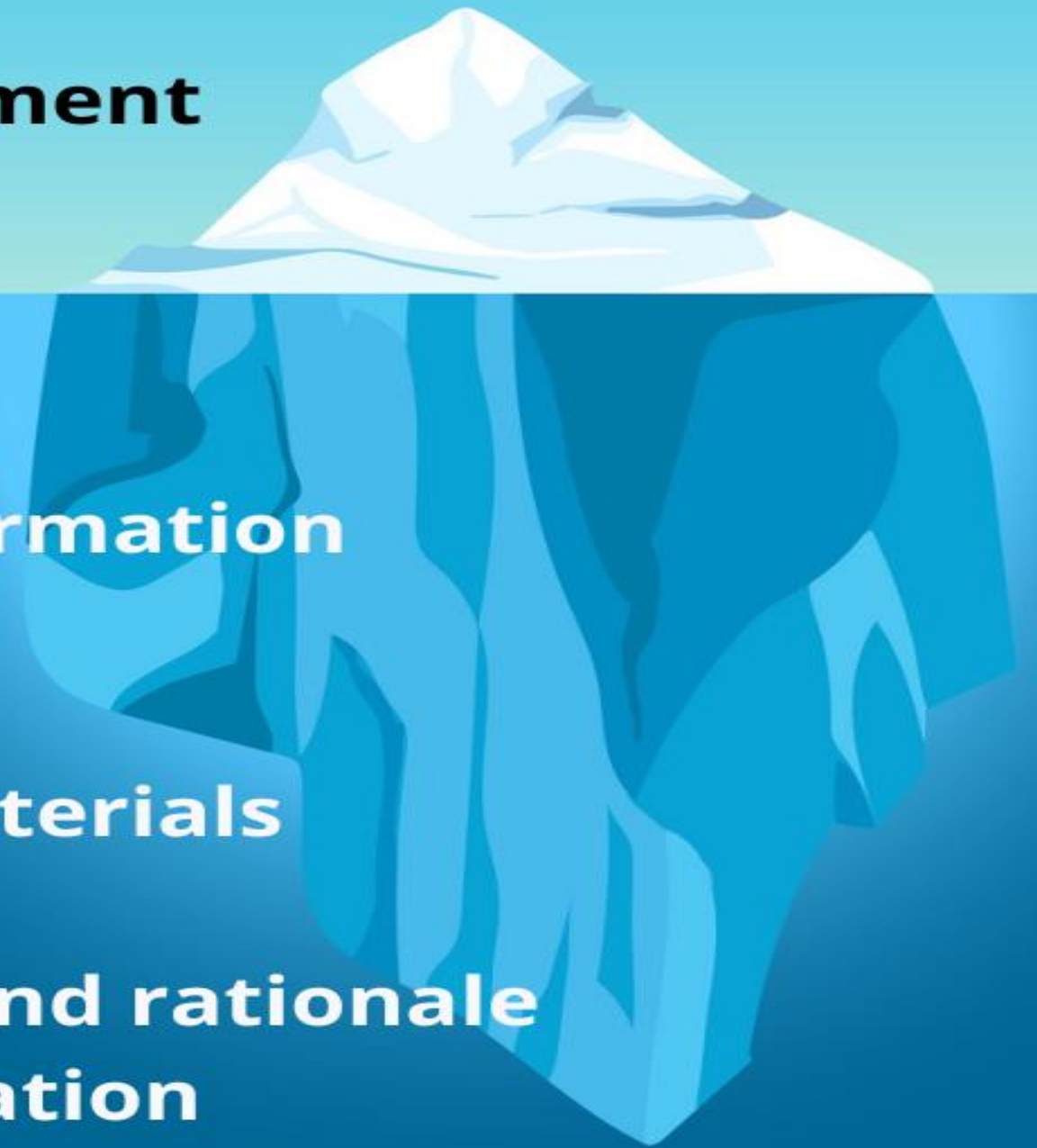
Assessing capacity is a complex affair

- **A rigorous process**
- **Opinion based on evidence and clear formulation**
 - **Functional: The ability to make the decision(s)**
 - **Diagnostic; Evidence as to the impairment or disturbance of mind/brain**
 - **The causative nexus – linking it all together**
- **It is not a 'one size fits all' – each assessment is unique to the individual and their circumstances**
- **'You don't know until you get there'**
- **Some assessments will take longer than others**



Enquiry and instruction
The assessment appointment
The completed report

Triage process
Gathering & reading information
Applying the case law
Preparing the questions
Preparing supporting materials
Collateral information
Formulation of opinion and rationale
Report-writing and validation



Top tip #1: Be realistic – agree expectations

- **A full and robust assessment takes time**
 - **Greater complexity (eg documents, reading, preparation)**
 - **Adjustments and supports (eg communication, language)**
 - **Higher number of specific questions to be addressed**
 - **Interviews with relevant persons**
 - **Potential for multiple visits**
- **Approach and instruct as soon as you possibly can. Be clear and realistic as to when a draft report needs to be submitted.**
- **If there are several distinct matters to be addressed, what are the priorities?**
- **Be open and transparent as to the options and process (if applicable) to request extensions**



Top tip #2: Details matter - Be Specific

What

Why

Where

Who

When

How



What?

- **What is / are the specific matter(s) to be assessed?**
- **If there is more than one matter, which is the priority?**
- **What is the health status or nature of the condition / illness?**
- **What is the overarching context?**



Who?

- **Who is the person being assessed?**
 - **Does the person know about the assessment?**
 - **How involved are they?**
 - **What information have they been given about an assessment?**
 - **Would it be helpful for the person to meet or speak to the assessor before the assessment takes place?**
- **Who is requesting the assessment? Who is instructing?**
- **Who is paying?**
- **Who are the relevant persons and their roles / relationship to the person being assessed?**



Why?

- **Why is the assessment being requested**
 - **For this particular matter?**
 - **At this particular time?**
- **What has given rise to warrant the question of capacity to be explored?**
- **Who has expressed these concerns?**



When?

- **When does the decision need to be made?**
 - **Is it an appropriate time? Can it wait?**
- **Is there an urgency, a deadline?**
- **When is the client most likely to engage in an assessment?**
- **Is fluctuating capacity likely to be an issue?**
- **Are there concerns around who else might be there?**



Where?

- **Where should the assessment take place?**
 - **Geographical location**
 - **Venue**
- **A safe and private space, free of distractions.**
- **A neutral venue?**
- **Who else is present / in the vicinity?**
- **Access issues? Safety?**



How?

- **Adjustments and supports required?**
 - **Sensory needs**
 - **Communication needs**
 - **Psychological / emotional needs**
 - **Cognitive limitations**
 - **Behavioural considerations**
 - **Physical needs**
- **In person? Remote / virtual?**
- **How many sessions might be needed?**



Top tip #3: Safety first – Consider Risk

- **How often do we think about risk when planning an assessment of mental capacity?**
- **Talking about capacity can be inflammatory and difficult**
- **Mental capacity assessors are most often lone workers**
- **Clients may present with psychological, emotional or behavioural issues**
- **There may be family members that could be obstructive, suspicious, controlling or threatening**



Top tip #4: Preparation is key

- **How do you prepare the client?**
 - **How do you explain the need for an assessment?**
 - **How can you equip, inform and educate them prior to the assessment taking place?**
- **Be clear with the assessor about how much information has already been shared with the client-**
 - **About the assessment process itself**
 - **Have there been attempts to inform and educate the client on the matters? Have they been provided with information and opportunity to discuss / ask questions?**



Top tip #5: Don't assume knowledge

- **Solicitors are the experts on legal matters**
- **Mental capacity specialists are experts in applying the provisions of the MCA 2005 to given problems. Skills in clinical assessment and interview**
- **.....but they MUST understand the problems to which the MCA needs to be applied!**
- **The assessor can only know what questions to ask if they understand the problem or matter that is at the centre of the assessment.**

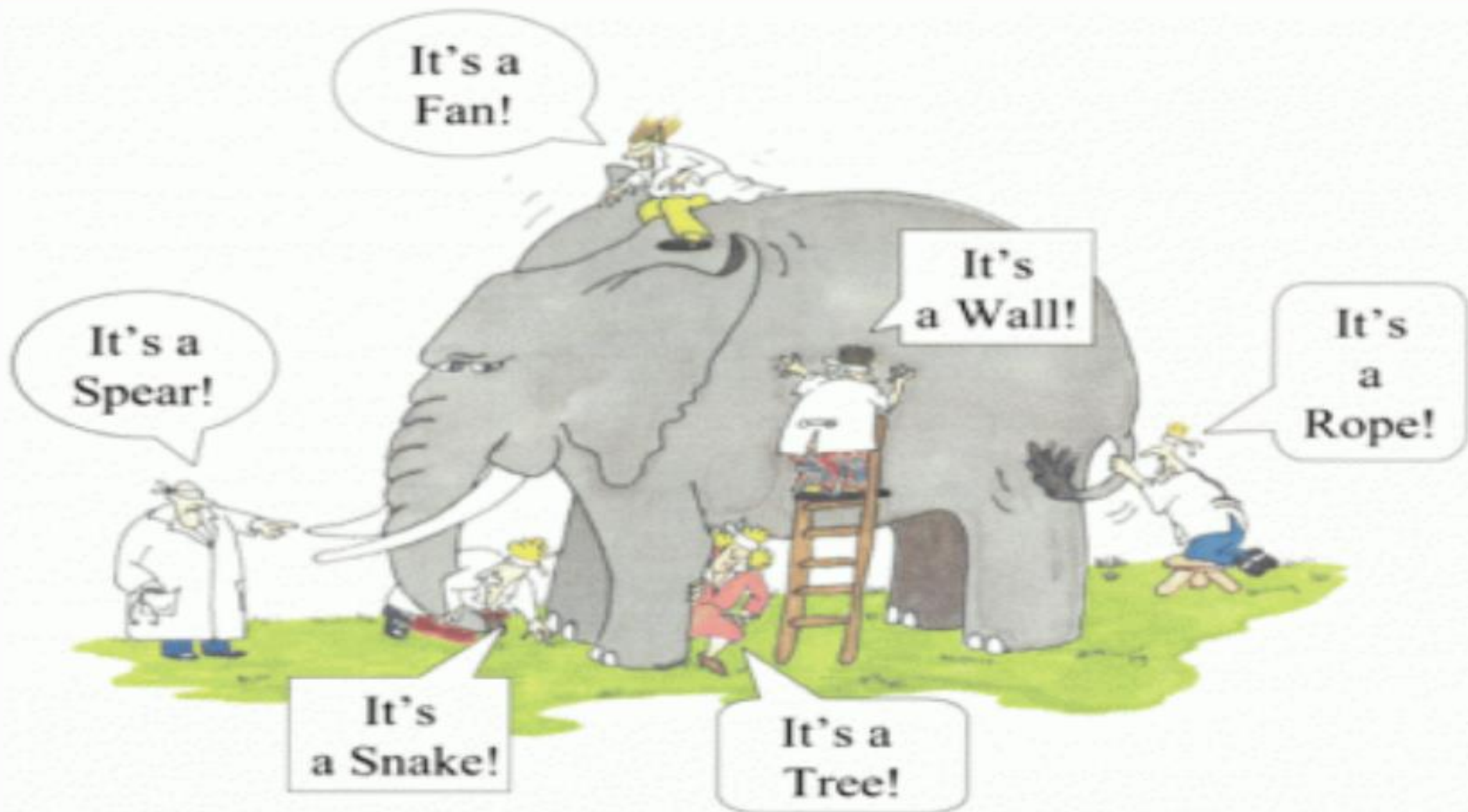


Top tip#6: Information is gold!

- **An assessor must be able to take a neutral, independent and objective stance**
- **Where there are conflicting opinions, these needs to be shared and made clear**
- **The assessor should have access to all relevant information (records, documents, people)**



We all have a different view and experience.



Information provision

- **Assessor needs to be clear on what decisions are in question, what the options are.**
- **Need to be in receipt of supporting documents BEFORE the assessment and ideally at least 2-3 working days before ****(or more if complex case with lots of pre-reading)**
- **Remember respective areas of specialism**
- **Refer to relevant case law and judgments that set out the legal tests for capacity**
- **Do not assume knowledge about how certain arrangements operate**



Top tip #7: Organise Information

- **Order and paginate**
- **Send individual documents as separate entities OR use hyperlinks so the documents are easy to navigate, switch between and access**
- **Separate documents into meaningful chunks or sections**
 - **GP Records**
 - **X Hospital Records (date to date)**
 - **Y Hospital records (date to date)**
 - **Attendance Notes**
 - **Witness statements**





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