[Address of Director of Adult Social Care/ [Your address]

Director of Health Trust]

[Date]

Dear Sirs/ Madam,

**Name of Person with Learning Disability**

**Date of Birth of Person with Learning Disability**

**Address of Person with Learning Disability**

**Failure to Assume Mental Capacity/ Failure to Assess Mental Capacity – delete as appropriate**

I am writing about [name of person with learning disability]. I am [set out relationship with named person eg name of person’s mother/father/sister/ brother/carer etc].

I am writing in relation to your recent decision [give brief explanation of decision e.g. to place name of person into residential care] and your failure to assess their mental capacity prior to making that decision. As you are aware, under the Mental Capacity Act 2005, a person should be assumed to have capacity to make their own decisions, unless they are assessed otherwise. By failing to assess [name of person’s] capacity prior to making the decision you failed to act in accordance with your legal duty. Therefore, I request that you suspend the decision, and carry out an assessment of [name of person’s] mental capacity before reviewing the decision in light of that assessment.

**Legal Context**

One of the guiding principles of the Mental Capacity Act 2005 (MCA) set out in section 1(2) of the Act is that “a person must be assumed to have capacity unless it is established that he lacks capacity”.

Chapter 4 of the Mental Capacity Act Code of Practice sets out the two stage test that should be followed when deciding whether a person has capacity to make a particular decision.

Stage 1 requires proof that the person has an impairment of the mind or brain, or some sort of or disturbance that affects the way their mind or brain works. If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under the Act.

The Code states that significant learning disabilities are an example of an impairment of the mind or brain.

Stage 2 requires assessment of whether the impairment or disturbance mean that the person is unable to make a specific decision when they need to.

Chapter 4.13 states that people must be given all practical and appropriate support to help them make the decision for themselves

4.14 states:

“*A person is unable to make a decision if they cannot:*

 *1. understand information about the decision to be made (the Act calls this ‘relevant information’)*

 *2. retain that information in their mind*

 *3. use or weigh that information as part of the decision-making process, or*

 *4. communicate their decision (by talking, using sign language or any other means).”*

The Code states disputes involving assessments of capacity to be heard at the Court of Protection.

Next steps

Please can you provide a copy of your assessment of [name of person’s] capacity to make a decision in relation to his accommodation, within the next 7 days.

If such an assessment has not been carried out then please can the decision [details of decision] be suspended whilst a proper assessment of [name of person’s capacity] is carried out.

I look forward to hearing from you.

Yours sincerely