

Decision-Making Capacity Considerations (Mental Health Act 2013)

Guiding principles

When assessing an ADULT:

An adult is taken to have the capacity to make a decision about his/her/their own assessment or treatment (*decision-making capacity*) **UNLESS** the person is –

- (a) Unable to make the decision because of an impairment of, or disturbance in, the functioning of the mind or brain **AND**
- (b) Unable to –
 - (i) understand information relevant to the decision **OR**
 - (ii) retain information relevant to the decision **OR**
 - (iii) use or weigh information relevant to the decision **OR**
 - (iv) communicate the decision (whether by speech, gesture or other means).

When assessing a CHILD:

A child is taken to have the capacity to make a decision about his/her/their own assessment or treatment **ONLY IF**

- (a) the child is sufficiently mature to make the decision **AND**
- (b) notwithstanding any impairment of, or disturbance in, the functioning of the child's mind or brain, the child is able to –
 - (i) understand information relevant to the decision **AND**
 - (ii) retain information relevant to the decision **AND**
 - (iii) use or weigh information relevant to the decision **AND**
 - (iv) communicate the decision (whether by speech, gesture or other means).

Informed consent for the assessment and treatment of a child who lacks decision making capacity may be given by the parent of the child.

Definitions

Child	For the purposes of the Act, a person who has not attained the age of 18 years
Parent of a child	A person having, for the child, all of the responsibilities which, by law, a parent has in relation to his or her children AND if there is not person who falls into this category, someone who generally acts as a parent, has acted for some time, and is recognised by the child as a parental figure.
'Understand' and 'retain'	An adult or child may be taken to: UNDERSTAND information relevant to a decision if it reasonably appears that he/she/they can understand an explanation of the nature and consequences of the decision given in a way that is appropriate to his/her/their circumstances (whether by words, signs or other means) AND RETAIN information relevant to a decision even if he/she/they may only be able to retain the information briefly.
'Information'	Information relevant to a decision includes information on the consequences of making the decision one way or the other AND deferring the making of the decision AND failing to make the decision.

'Use or weigh'	Consider the pros and cons of both the benefits and consequences of taking an action or not taking an action. This requires considering and evaluating pertinent information when making a decision; analysing relevant data, facts, opinions, and other inputs to assess their significance and implications; critically thinking and discernment; prioritising information based on its relevance and reliability.
Communicate	Effectively conveying a choice or conclusion clearly and transparently.

Overarching Practice Guidance

Considerations when assessing decision-making capacity	<ul style="list-style-type: none"> • Before a capacity assessment being performed the person should be advised of why the assessment is being conducted, what it will involve and possible outcomes. • Capacity is decision and situation-specific - does the person have the capacity to make this decision, now? • Assess a person's decision-making capacity, not the decision that they make. • Consider the person's individual communication needs and organise an interpreter, if needed. • Consider the person's age-specific, cultural and religious beliefs.
The process of assessment	<ul style="list-style-type: none"> • Open-ended questions should be asked wherever possible, and leading questions should be avoided. • Engage the person in discussion to identify why the person has reached their decision, what factors they took into account when making their decision, and how they balanced those factors to conclude. • Where there are concerns about the extent to which a person has been influenced by others in reaching their decision, it may be useful to ask the person who else was involved in their decision-making process. It may also help to identify the type and extent of support that may have been provided to the person in reaching a decision. • In cases where there are doubts about a person's decision-making capacity that are not resolved through the performance of a capacity assessment, consideration should be given to seeking a second opinion from a senior psychiatrist.
Documentation and Forms	<ul style="list-style-type: none"> • Make a detailed clinical note. • Decision-making capacity is included in Mental Health Act forms for Assessment Order, Affirmation of Discharge (C06).

Guidance for approved facilities and persons in charge

- Ensure policies and protocols are aligned with this guideline.
- Provide education and training programs that support provisions in this guideline.
- Ensure appropriate documentation is maintained.