

Knowledge of, and ability to assess, capacity

Knowledge of how capacity is defined

An ability to draw on knowledge that assessment of capacity refers to a specific issue at a specific point in time
An ability to draw on knowledge that relevant legislation on capacity applies to people over the age of 16 who (by reason of mental health problems or inability to communicate because of physical disability) may be deemed to lack capacity if they meet one or more of the following criteria, and are incapable of:
acting, or
making decisions, or
communicating decisions, or
understanding decisions, or
retaining the memory of decisions
An ability to draw on knowledge relevant to capacity to give consent to an intervention:
that young people aged 16 or over are presumed to have capacity to give or withhold consent, unless there is evidence to the contrary
that a child under 16 who is able to understand and make their own decisions is able to give or refuse consent
that the capacity to give consent is a 'functional test' and is not dependent on age:
a child with sufficient ability to understand the nature and consequences of what is proposed is deemed competent to give consent
An ability to draw on knowledge that where a person is judged not to have capacity, any actions taken should:
be of benefit to them
be the least restrictive intervention
consider their wishes and feelings
consider the views of relevant others
encourage independence
An ability to draw on knowledge that capacity should be assessed in relation to major decisions that affect people's lives (e.g. safety/risk-taking, appraisal of their health needs)
an ability to draw on knowledge that capacity is not 'all or nothing' and may vary across time and across specific areas of functioning
An ability to draw on knowledge that incapacity can be temporary, indefinite, permanent or fluctuating, and that it is important to consider the likely duration and nature of the incapacity
An ability to draw on knowledge that diagnosis alone cannot be used to make assumptions about capacity

Assessment of capacity

An ability to ensure that judgements regarding capacity consider any factors that make it hard for a person to understand or receive communication or to make themselves understood
an ability to identify ways to overcome barriers to communication (where possible)
An ability to maximise the likelihood that a person understands the nature and consequences of any decisions they are being asked to make, for example, by:
speaking at the level and pace of their understanding and 'processing' speed
avoiding jargon
repeating and clarifying information, and asking them to repeat information in their own words
using 'open' questions (rather than 'closed' questions to which the answer could be 'yes' or 'no')
using visual aids
An ability to determine capacity where a person has significant cognitive impairments and/or memory problems, for example:
if they are able to make a decision but unable to recall it after an interval, asking for the decision to be made again, using the consistency of their response as a guide to capacity
deciding when further formal assessment is required in order to determine capacity