



Foundations: capacity, autonomy and the presumption of ability

Build a rights-based, decision-specific approach to mental capacity and avoid assumptions based on age, diagnosis, disability or disagreement.

Estimated learning time	Sources checked	Review due
45 minutes	17 September 2026	2027-03-17

Clinical safety: This educational module does not replace current law, statutory guidance, local policy, legal advice or patient-specific clinical judgement. Jurisdiction-specific rules must be checked for the nation in which care is delivered.

Your reflection is private. After completing the assessment you may optionally save a reflection in your Clinical Education account. Reflection is not part of this downloadable reading file, is not shown on the module certificate and is not exposed through the site administrator interface. Do not put identifiable patient, colleague or confidential employer information into reflective notes.

Learning objectives

- Explain why capacity is specific to a particular decision and time.
- Apply the presumption of decision-making ability without treating diagnosis or age as proof of incapacity.
- Distinguish an unwise decision from evidence that the person cannot make the decision.
- Identify when jurisdiction-specific law must replace generic UK terminology.

Learning material

Why capacity matters: autonomy and lawful decision-making

Questions about capacity arise because healthcare decisions affect a person's body, liberty, relationships and future. The starting point is respect for the person as the decision-maker wherever they are able to decide. A diagnosis, an admission to hospital, a move into residential care or a professional view that a choice is risky does not by itself remove that status.

Capacity assessment is therefore not a search for a reason to override a decision. It is a structured way of deciding whether this person can make this particular decision at this particular time, after appropriate support has been offered. The result determines which lawful decision-making route follows.

Decision-specific and time-specific reasoning

Capacity is not a permanent global label. A person may be able to decide what to eat, who to speak to or whether to accept a simple blood test while being unable to decide about a complex operation with several material alternatives. Equally, ability may improve when delirium resolves, pain is controlled, medication effects wear off or communication support is provided.

Good records therefore name the decision and the time. “Lacks capacity” is incomplete. “At 14:00, while acutely delirious, the patient was unable to use and weigh the information needed to decide whether to remain in hospital for treatment of sepsis” is far more useful because it explains what was assessed and why review may be needed.

Presumption of ability and avoiding diagnostic shortcuts

In England and Wales the Mental Capacity Act begins with a presumption of capacity. Scotland and Northern Ireland use different statutory language and frameworks, but the professional principle remains that clinicians should not infer inability from diagnosis, disability, age, appearance or residence. Dementia, learning disability, acquired brain injury and mental illness may create a reason to consider decision-making ability, but they are not conclusions in themselves.

Cognitive tests can contribute clinical information, but they do not replace the legal or professional assessment of the specific decision. A person can score poorly on a screening tool yet still make a particular decision, and a person can score well while being unable to use or weigh the information relevant to a complex choice.

Unwise decisions, risk and disagreement

People with capacity are allowed to make choices that clinicians, relatives or society regard as unwise. Risk is relevant because it affects what information should be discussed and how carefully the decision should be explored. Risk is not, however, a shortcut to incapacity.

The practical question is not “Do I agree with this choice?” but “Can the person understand the relevant information, retain it as required, use or weigh it in reaching a decision, and communicate the decision under the applicable framework?” A decision can be unconventional, emotionally difficult or professionally uncomfortable and still be capacitous.

UK jurisdiction map

The legal framework must be identified before applying legal terminology. England and Wales use the Mental Capacity Act 2005. Scotland uses the Adults with Incapacity (Scotland) Act 2000 and its statutory principles. Northern Ireland has the Mental Capacity Act (Northern Ireland) 2016, with commencement and interaction with other law requiring current checking.

For cross-UK educational material it is safer to state the common professional principle first, then label the legal rule by jurisdiction. Avoid presenting “best interests”, “Lasting Power of Attorney” or a particular deprivation-of-liberty safeguard as if it applied identically everywhere.

Key documentation principles

A defensible note normally records the exact decision, why the issue arose, what support was provided, the information discussed, the evidence for the person’s abilities, the legal framework used and the conclusion. It should also state whether reassessment is planned and what would trigger it.

The purpose is not to produce a long legal essay. It is to make the reasoning transparent enough for the person, the team and the next clinician to understand how the decision was reached.

Key terms for review

capacity, decision-specific, time-specific, presumption, unwise decision, autonomy, Mental Capacity Act, Adults with Incapacity, Northern Ireland

Documentation exercise

Draft a one-paragraph record that names the exact decision, the relevant time and why a capacity question arose, without using a global label.

Official sources and further reading

The links below are the authentic official sources used for this module. They should be rechecked for time-sensitive clinical or legal decisions.

MC-EW-01 - Mental Capacity Act 2005

<https://www.legislation.gov.uk/ukpga/2005/9/contents>

MC-EW-02 - Mental Capacity Act Code of Practice

<https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

MC-S-01 - Adults with Incapacity (Scotland) Act 2000

<https://www.legislation.gov.uk/asp/2000/4/contents>

MC-S-03 - Adults with incapacity: code of practice for medical practitioners

<https://www.gov.scot/publications/adults-incapacity-scotland-act-2000-code-practice-third-edition-practitioners-authorised-carry-out-medical-treatment-research-under-part-5-act/>

MC-NI-01 - Mental Capacity Act (Northern Ireland) 2016

<https://www.legislation.gov.uk/nia/2016/18/contents>

MC-NI-02 - Mental Capacity Act - Department of Health NI

<https://www.health-ni.gov.uk/topics/mental-capacity-act>

CON-UK-02 - GMC - The seven principles of decision making and consent

<https://www.gmc-uk.org/professional-standards/the-professional-standards/decision-making-and-consent/the-seven-principles-of-decision-making-and-consent>

Next step

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