



Fluctuating and complex capacity

Recognise fluctuating or complex decision-making ability and adapt timing, reassessment and multidisciplinary support to the person's clinical state and the urgency of the decision.

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

- Recognise common clinical causes of fluctuating or complex decision-making ability.
- Plan review timing when capacity may improve and delay is safe.
- Distinguish executive or communication difficulty from a simple inability to recall information.
- Escalate when mental health law or specialist advice may be relevant.

Learning material

Why capacity can fluctuate

Decision-making ability can vary over hours or days because the underlying clinical state changes. Delirium, hypoxia, infection, seizures, medication effects, intoxication, withdrawal, fatigue and pain are common examples. The practical implication is that timing matters.

A finding made at the worst point of an acute illness should not automatically follow the person after recovery. Conversely, a previously capacitous decision does not guarantee ability during a new episode of acute confusion.

Delirium and acute illness

Delirium often causes impaired attention, disorganised thinking and fluctuation. Treating the underlying illness and optimising the environment may improve participation. When the decision can safely wait, reassessing during a clearer period is often appropriate.

When the decision is urgent, clinicians must act under the relevant emergency/incapacity framework while still explaining and involving the person as far as possible.

Dementia and executive dysfunction

Dementia can affect memory, language, insight or executive function in different ways. Some people can repeat information but have difficulty applying consequences to themselves, sequencing choices or resisting impulsive

action. These features require careful, decision-specific exploration rather than a global conclusion.

Executive difficulty may be particularly relevant to complex risk decisions. It should not be inferred from diagnosis alone; evidence should come from how the person engages with the actual choice.

Acquired brain injury and mental illness

Acquired brain injury, severe mood disorder, psychosis and other conditions may affect decision-making, but mental disorder and incapacity are not synonyms. The interface with mental health legislation can be complex and differs across UK jurisdictions.

When treatment for mental disorder, detention powers or safeguards are potentially relevant, seek senior or specialist advice rather than assuming the capacity framework answers every question.

Medication, substances, fatigue and pain

Sedatives, opioids, anticholinergic burden, alcohol or other substances may alter alertness and cognition. Pain and severe anxiety can also reduce concentration. The team should consider whether these factors can be modified without causing harm.

Documentation should separate the observed decision-making difficulty from the suspected contributor and record what was done to improve the person's ability to participate.

Timing, review and specialist input

A practical review plan identifies the reversible factors, the best time to revisit the decision, who should be involved and what would make further delay unsafe. Repeated assessment may be useful where ability fluctuates, but it should not become repeated pressure to change a valid decision.

Complex cases may benefit from senior clinical review, psychiatry, neurology, speech and language therapy, advocacy, safeguarding or legal advice depending on the issue.

Key terms for review

fluctuating capacity, delirium, executive dysfunction, dementia, brain injury, mental illness, substances, fatigue, review timing

Documentation exercise

Create a review plan documenting reversible contributors, optimal timing, support measures and the trigger for reassessment.

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-02 - Mental Capacity Act Code of Practice

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

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-06 - Mental Health (Northern Ireland) Order 1986 - Code of Practice (2026 Revision)

<https://www.health-ni.gov.uk/publications/mental-health-northern-ireland-order-1986-code-practice-2026-revision>

CON-UK-01 - GMC - Decision making and consent

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

Next step

Return to clinicaledu.uk to take the module assessment. After a pass, you may obtain the module certificate and, separately, add an optional private reflection and generate a learner-controlled Learning & Reflection Record.

This module is independent educational material and is not externally accredited CPD unless explicitly stated otherwise.