



Decision-making when the person lacks capacity

Use the correct jurisdiction-specific substitute-decision framework, involve the person as far as possible and distinguish consultation from legal authority.

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

- Identify the correct substitute-decision framework for the relevant UK jurisdiction.
- Keep the person involved even when they cannot make the decision independently.
- Apply consultation and patient-centred reasoning without treating family preference as determinative.
- Recognise when proposed treatment may not provide overall clinical benefit.

Learning material

What changes after a finding of incapacity?

A finding that a person cannot make a particular decision does not transfer the decision automatically to the nearest relative. It changes the legal pathway. The team must identify the applicable jurisdiction, any legally authorised proxy, and the statutory or common-law framework governing the decision.

The person remains central. Incapacity for the decision does not erase preferences, emotions, values or the ability to participate in parts of the discussion.

England and Wales: best-interests process

Under the Mental Capacity Act 2005, acts and decisions for a person who lacks capacity must follow the statutory best-interests framework. The process considers the person's past and present wishes and feelings, beliefs and values, relevant circumstances, the views of appropriate others, and whether the person may regain capacity if the decision can wait.

Best interests is not a vote among relatives and professionals. Nor is it simply what clinicians think is medically optimal. The reasoning should consider the person as an individual.

Scotland: statutory principles

Scotland uses the Adults with Incapacity (Scotland) Act 2000. Its statutory principles include benefit to the adult, no reasonable alternative that is less restrictive, taking account of the adult's wishes and feelings, consultation with relevant others and encouraging the adult to use existing or develop new skills.

Do not describe Scottish decisions simply as “best interests” without explaining the applicable statutory framework.

Northern Ireland: commencement-sensitive framework

Northern Ireland has the Mental Capacity Act (Northern Ireland) 2016 alongside other legal provisions. Because commencement is staged and the interaction with mental health law is specific, educational material should direct clinicians to current Department of Health NI guidance and local legal support for complex cases.

Consultation, wishes, values and participation

Family and carers often provide essential information about the person's values, prior statements, usual function and what matters to them. Their contribution is important even when they do not have legal authority.

The person should still be spoken to in an accessible way and included in the decision as far as possible. Small choices and expressions of comfort or distress can remain highly relevant.

Clinical benefit, burden and review

A treatment does not become clinically appropriate merely because a relative requests it. Clinicians remain responsible for recommending treatments that offer a reasonable prospect of benefit and for explaining burdens, alternatives and uncertainty.

Serious disagreement should prompt review, second opinion, mediation/ethics input where available, or legal advice rather than adversarial language.

Key terms for review

best interests, benefit, minimum intervention, wishes and feelings, consultation, overall benefit, substitute decision, participation

Documentation exercise

Write a substitute-decision record showing jurisdiction, options considered, known wishes/values, consultation, benefits/burdens and the reason for the decision.

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-02 - Mental Capacity Act - Department of Health NI

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

LAW-UK-01 - Aintree University Hospitals NHS FT v James [2013] UKSC 67

<https://www.supremecourt.uk/cases/uksc-2013-0134>

EOL-UK-02 - GMC - Treatment and care towards the end of life: guidance

<https://www.gmc-uk.org/professional-standards/the-professional-standards/treatment-and-care-towards-the-end-of-life/guidance>

Next step

Return to [clinicaledu.uk](https://www.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.

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