Support for decision-making and mental capacity

DRAFT FOR CONSULTATION

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We appreciate any comments provided to us during the consultation, all of which will be reviewed by the working group within the context and scope of the project. We ask that, where possible and relevant, you accompany any counter arguments to statements made in the document with supporting evidence e.g. a research reference.

Members of the working group should not be contacted directly, and all feedback should be made through the assigned route e.g. via survey or project manager. Feedback made through unassigned routes or after the closing date will not be accepted or responded to.

Thank you for your support with this project.

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Support for decision-making and mental capacity

This guidance uses both 'mental capacity' and 'capacity'. This is because different legal terms are used across the UK. The term 'incapacity' is used in Scotland only.

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Executive summary

This guidance is divided into 5 parts.

Part 1. Introduction.

This part tells you about the guidance:

- Its purpose
- Who it is for
- Why it is needed

Part 2. Support for decision-making.

This part tells you about:

- What support in decision-making involves
- How support can be given
- How to help people to make their own decisions or contribute to decisions affecting them

Part 3. Legal and conceptual frameworks.

This part tells you about:

- The words and meaning in the relevant laws
- Decision-making in health and social care
- Decision-making in research
- People with speech, language and communication needs
- The role of the speech and language therapist

Part 4. Assessment of capacity

This part tells you about:

- The core principles of assessment and what it involves
- The different stages in an assessment
- Different lawful procedures when there is an assessed lack of capacity

Part 5. Future directions

This part tells you about:

- The review of evidence to underpin the guidance
- Important topics for research

You can find additional information in the annexes:
Annex 1. Glossary A list of the legal terms and what they mean
Annex 2. Legislation A list of the different Acts of Parliament
Annex 3. References A list of references in support of the guidance content

Plain Language Summary

This plain language summary focuses on the main content within each part of the guidance. It does not include some of the details within the legal provisions, nor does it provide references to the evidence cited in the main guidance.

Part 1. Introduction

1.1 Purpose of guidance

The guidance focuses on people with speech, language and communication needs. It provides information and practical guidance on decision-making in relation to:

- Government laws
- Policies and published guidance
- Assessment of a person's ability (capacity) for decision-making
- Support for decision-making
- Risks, benefits and safeguards
- Role of Speech & Language Therapy
- Equality and diversity
- Participation

1.2 Who is this guidance for?

This guidance has been prepared for people who are interested in the legal and human rights of people who have speech, language and communication needs (SLCN). This includes:

- People with speech, language and or communication needs (SLCN)
- Family members, caregivers, supporters and advocates
- Speech & language therapists
- Health and social care practitioners, educationalists and voluntary sector workers

3. **Why is this guidance needed?**

This guidance is needed because:

- The **need for support** is increasing – particularly among people with speech, language and communication needs.
- People have an **interest in decision-making** and have their own views and opinions.
- People have the **right to participate** in decisions that affect them.
- Regardless of a person's capacity, their **involvement in decision-making** is needed.

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- **Inclusion in research** is important so people with speech, language and communication needs are represented.

Part 2. Support for decision-making

This part tells you about:

- What support in decision-making involves
- How support can be given
- How to help people to make their own decisions

2.1 Words and their meanings

We make decisions in everyday life and in particular legal contexts. There are different words used to describe support practices in decision-making.

Here are some of the different words you may come across and what they mean:

Supported decision-making
This is about enabling people with all kinds of disabilities to be decision-makers or to participate in decision-making.
A "personalised approach" is recommended for people who may lack capacity that caters for their needs and circumstances. This might include:

- help with communication or understanding information what the different choices might mean;
- allowing sufficient time to consider the options;
- using a range of media including 'easy read' or pictorial formats
- being helped by their family members, carers or advocates when they need to make a decision.

(Available at: https://www.nice.org.uk/guidance/qs194/resources/decision-making-and-mental-capacity-pdf-75545781839557).

Assisted decision-making
The active decision-making of people with disabilities in their health and social care and all forms of decision-making support.

Shared decision-making
A collaborative process that involves a person and their healthcare professional working together to reach a joint decision about care.

Co-created decision-making
This emphasises interactions and relationships between the patient and relevant others (e.g. family members, clinicians.

Joint shared decision-making and supported decision-making
The individual and the medical team work together towards an agreed solution.

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What is good about having support for decision-making?

- Better communication between people and healthcare professionals
- Being properly informed about the options and any risks;
- Greater understanding about risks and benefits of the available options;
- Improved trust between people and their healthcare professionals
- Being able to participate in own decisions
- Having the chance to voice their views and to be better heard;
- Protection of human rights
- Having your own agency
- Improved presence and involvement in society;
- Better concordance with an agreed treatment plan
- Greater satisfaction and happiness from having a say.
- Better experience of care, including more satisfaction with the outcome.

What is important for support for decision-making?

For the person:

- Understanding all the information about a decision (e.g. using different communication methods);
- The person's situation and the possible meanings of the decision for them;
- Exploring the different options and what they mean for the person.

For the environment:

- Having enough time and making sure different communication methods and media are available;
- The physical surroundings for exploring information about the decision;
- A familiar, trusting relationship between the person and the people supporting them.

What are the things that challenge and what are the things that help?
We looked at the published evidence on how support for decision-making work for people.

Here are some of **the challenges**:

- Greater power settled on the professionals;
- Needs of people not being met in decision-making;
- Lack of accessible information about decisions;
- Protection of patient can outweigh personal choice;
- Poor knowledge amongst staff and poor access to training;
- Lack of time, opportunity and support materials;
- Low confidence amongst staff and gaps in knowledge;
- Fear and distrust amongst service users and professionals;
- Management priorities not helpful to support for decision-making.

Here are some of the **things that help**:

- Training in the practice environment with real case examples;
- Training that is codesigned;

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- Support for decision-making in everyday practice;
- Development of tools for supported decision-making.

Accessible information

- Plain or simple language: simple written language for a non-expert audience.
- Easy Read: written information using short sentences, everyday words with pictures next to the text and a clean layout.
- Other media: There are lots of different methods to support written communication including:
  - Talking Mats - Available at: https://www.talkingmats.com/
  - RIX centre WIKIS - Available at: https://www.rixinclusiveresearch.org/
  - Speakeasy - Available at: https://speakeasy-aphasia.org.uk/resources/
  - Books beyond words - Available at: https://www.booksbeyondwords.co.uk/

2.2 Process and outcomes

The process involves:

- **Person-centred:** Practice that places the person at the centre and includes them in all relevant conversations.
- **Shared information:** Information that is shared, readily available and accessible to the person and provides for any relevant options.
- **Adjustments:** Appreciation and sensitive responding to the range of ways a person expresses themselves including methods other than spoken words;
- **Risks:** the material risks associated with the options being discussed should be appraised for their significance to the person.
- **Respect:** Listening to and valuing the contributions of the person.
- **Recognition:** Awareness and recognition of the person's life course values and preferences.
- **Relationship**: Social connection between the person at the centre and those providing support that is based on mutual experience and familiarity.

Things to consider include:

- **Identification -** It is helpful if the supporter knows the person, understands their particular situation and appreciates the values they hold dear to them.
- **Training -** the supporter needs to understand what is expected of them. Training to prepare the person for undertaking the role may be helpful.
- **Relationship-building –** time is needed for the supporter and the person to get to know each other.
- **The decision -** The decision needs to be named and described.
- **The support -** The support needs of the person need to be identified clearly along with any adjustments and resources that may help.
- **Interests and preferences -** The person's interests and preferences are recognised and prioritised in the interactions about the decision.
- **Possible constraints and consequences** - Time is needed to explore the available option carefully with consideration of possible outcomes and implications.
- **Review and refine decision -** This step safeguards against any quick decision-making that ignores the wider life context of the decision for the person.

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- **Clarify final decision -** The decision is clarified to the satisfaction of the person and the supporter.
- **Action the decision -** The person is supported to exercise their capacity for the particular decision. An implementation plan is enacted with the help of others who are involved in the decision.

Note. Depending on the context and nature of the decision, the need for an assessment of mental capacity within the relevant legal framework may be triggered before any decision is actioned.

2.3 Participation in decision-making

Participation' is about:

- Attendance - being in the same place as other people;
- Involvement – making active contributions to decision-making.

When a person experiences capacity difficulties, it is important to

1. Have **knowledge** of the person's:
   - Past views and opinions about topics relevant to the decision in hand before their capacity was affected;
   - Ways of responding to different options given to them.
2. **Interact** with the person:
   - In a way that is responsive to their communication style;
   - Checking out any interpretations of what meaning the person is trying to convey.

A **Communication Passport** may help in this situation. It summarises the person's preferred communication methods, likes and dislikes, support needs and important people.

Expressing agreement or disagreement

Some people may be unable to consider the options around a particular decision. They are dependent on others to be the decision-maker. However, they may be able to indicate their agreement or disagreement to what is on offer. This is particularly the case for people with severe cognitive impairment and complex speech, language and communication needs. Communicating **agreement and disagreement**, sometimes referred to as **assent** and **dissent**, is relevant to decision-making in everyday life and in legal contexts. These terms have no meaning in UK law currently where other arrangements are made for a person who lacks capacity. They may be relevant to how a person is involved in decision-making processes.

Assent: A positive act or expressive behaviour that communicates a person's agreement to something or willingness to take part in whatever opportunity is presented.

Dissent: An individual's action or behavioural expression that communicates their objection or disagreement or alternative viewpoint to something

Part 3. Legal and conceptual frameworks

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This part tells you about:

- The words and meaning in the relevant laws
- Decision-making in health and social care
- Decision-making in research
- People with speech, language and communication needs
- The role of the speech and language therapist

3.1 Concepts and definitions

- Capacity/mental capacity are legal terms used to capture a person's ability to make informed decisions for themselves in relation to their health and social care, and participation in research.
- It covers simple day to day decisions through to more complex and life-changing decisions.
- Legal frameworks across the UK emphasise the importance of maximising an individual's involvement in decision-making and providing all useful support before concluding that a person is unable to make a particular decision.

Frameworks

For the purposes of the UK laws, mental capacity is:

- **decision-specific**: the nature and significance of a decision may vary;
- **time-specific**: an individual's abilities may fluctuate or change over time so their mental capacity is judged at the time the decision is needed. This means that a person may be able to make a decision on one occasion and unable to make a similar decision at another time;
- a **binary concept**: either a person has capacity or they do not for a specific decision at a specific time - as established through an appropriate assessment of capacity that takes account of the relevant legal framework.

3.2 Decision-making in health and social care

Different laws and codes of practice apply across the UK.

England and Wales

- Mental Capacity Act (MCA, 2005)
- Mental Capacity Code of Practice (2007)

Core principles include:

- Presumption of capacity
- Support for individual to make own decisions as far as practicable
- Right to make own decision regardless of it being perceived as 'unwise' by others.

Note 1. Safeguarding may be relevant if the 'unwise' decision leaves the person unprotected.
Note 2. A person who lacks capacity has the right to a best interests decision balancing quality of life with safeguarding them.

- All decisions and actions must be in the best interests of the person lacking capacity
- Decisions and actions must be less restrictive of individual's rights and freedom.

Northern Ireland

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- Mental Capacity Act (Northern Ireland) (MCA, 2016): includes mental health provisions for persons over 16 years.

Note 3. Currently only part of legislation in force, primarily DoLS framework - December 2019.

Core principles include:

- Presumption of capacity
- No unjustified assumptions about capacity
- Supported decision-making
- Right to make unwise decisions
- Best interests

Scotland:

- Adults with Incapacity (Scotland) Act (AWI, 2000)
- Adults with incapacity: Code of practice and associated guidance

Note 4. The AWI is undergoing significant changes due to be published in 2027.

- Any intervention must be of benefit to the adult
- Any intervention must be least restrictive option
- Take the person's past and present wishes into account
- Take the views of other people into account
- Encourage the person to exercise whatever skills they have.

Note 5. A person should not be considered incapable solely because of a communication difficulty if that difficulty can be overcome by human or mechanical aid.

Mental capacity and informed consent

Across the UK: Person aged 16 years or above: for consent to be valid it must be properly informed, given freely without coercion, and the person must have capacity to make the required decision.

For informed consent: there needs to be information about the benefits, risks and reasonable alternatives relevant to the decision. Information should include any risk that a reasonable person in the patient's position would consider important, or that the clinician knows the individual patient would consider important.

3.3 Decision-making in research

The laws governing research across the UK are for different types of research.

1. Clinical Trials of Investigative Medical Products (CTIMP)

Participation is dependent on:

- Respect for persons and informed consent
- Maximise benefits and minimise risks
- Entail little or no discomfort
- The adult does not object
- The research has been approved by an appropriate Research Ethics Committee.

Note. Exception is emergency research

For people assessed to **lack capacity** –

- A **legal representative** gives consent on behalf of them.

If a legal representative is not available –

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- Independent person who is responsible for the medical treatment of the adult.
- Person nominated by the healthcare provider.

2. Other intrusive research or non-CTIMP
The rule vary across the UK according to the capacity law of the home nation.
England and Wales; Northern Ireland:
Advice is sought from a **consultee** on the likely wishes and feelings of adult lacking capacity - about participation in research study or not.
They do not give consent on behalf of that person.

- **Personal consultee** - a person who cares for the adult lacking capacity or is interested in that person's welfare, but is not doing so for remuneration or acting in a professional capacity;
- **Nominated consultee** - a professional who is independent of the study, can do so where a nominated consultee is not available or willing.

Scotland:
A **legal representative** can be asked to give consent on behalf of adult who lacks capacity to do so themselves. This might be:

- Adult's **Welfare Guardian** or **Welfare Power of Attorney**, or Welfare Attorney (appointed under a Power of Attorney) or **Attorney**, if not appointed:
- The adult's **nearest relative**.

If the participant expresses a view that they do not wish to take part in your study, this view must be acted upon.

There are provisions concerning **loss of capacity.**
In all cases, you should consult with carers and take note of any signs of objection or distress from the participant.
England and Wales; Northern Ireland:

- Very limited set of circumstances where earlier consent covers a loss of capacity.
- **Plan ahead** what steps you would take in the event of capacity loss during a study: withdraw from or remain in study.
- **Remain in study:** as required by protocol - requires approval by appropriate Research Ethics Committee and advice from a **consultee**.
- **Legal obligation** to consider request by participant's representative for them to withdraw from study, after loss of capacity. Consideration of current situation (e.g. possible benefits and harms associated with continued participation).

Scotland:

- Legally - no specific provision for adults who lose capacity.
- RECs might expect the original consent should be respected in most circumstances

Request by **legal representative** to withdraw person from a study after capacity loss should be considered carefully to ensure that it reflects person's wishes before they lost capacity.
Also consider their current situation fully (e.g. possible benefits and harms associated with continued participation).

3.4 People with speech, language and communication needs (SLCN)

The following conditions may be associated with communication and/or cognitive differences

that may impact on a person's decision-making abilities:

- Acquired brain injury
- Autism
- Intellectual/learning disabilities
- Mental health conditions (*Note.* When someone is compulsorily detained under section of the Mental Health Act (MHA, 1983) there are circumstances where they can be given treatment without their consent)
- Progressive neurological conditions, including dementia
- Stroke

Some temporary conditions include:

- Delirium and the effects of acute illness on the function of the brain
- Effects of substance misuse
- Effects of medication

Post-traumatic amnesia characterised by confusion, disorientation and short-term memory loss associated with a head injury, illness or fluctuating mental health.

A person's ability to make decisions may be affected by factors that define the decision:

- **Context:** the background for a decision, including any time limits, available options and any constraints that may apply.
- **Complexity**: the number of variables, the cognitive effort require to process choices and any uncertainty of outcomes**;**
- **Magnitude**: the overall importance of the decision to the person and the potential outcomes;

Depending on decision complexity, magnitude and context - a person may be able to make some decisions and not others.

Decision-making process

There are 3 main steps to making a decision:

1. Ensure that all necessary support is in place for the person to use their own skills as far as possible.
2. Presume that the person has capacity.
3. Assess capacity in the context of a decision as required.

For people with SLCN, there are **risks and support needs,** which include:

- **Masking:** It may be difficult to recognise a person's true ability to make decisions: their capacity for decision making-is masked.
- **Under/over-estimation:** A failure to recognise and understand an individual's SLCN, may lead to their capacity for decision-making being under-estimated, or alternately over-estimated. If under-estimated, there is the risk of disempowerment and exclusion from their role as decision-maker. If over-estimated, there is the risk of the person making 'uninformed decisions' simply because they do not understand the information as presented.
- **Unnecessary capacity assessments:** Professionals without specialist knowledge, or experience of working with people with SLCN, may make assumptions about an individual's decision-making abilities based on initial view of their communication skills. This may lead to professionals carrying out mental capacity assessments for people with

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SLCN who do not require them.

- **Under-representation in research:** People with SLCN are vulnerable to being excluded from research that is relevant to their care and treatment. Their non-participation means that health and social care interventions may not have been tested on them.

3.5 Role of speech and language therapist

The SLT brings some specialist knowledge, skills and experience to the context of decision-making. This includes:

- Acting within the law
- Awareness of the person's cultural background and beliefs
- Inclusive communication
- Working in a multi-disciplinary context
- Being clear about the decision options available
- Meaningful support and materials used that consider:
  - Individual preferences or familiarity with particular types of support and materials (e.g. symbols set preference).
  - The person's cultural and linguistic background and arrangements for translators/interpreters as appropriate;
  - The person's own communicative repertoire (skills, style and preferences) including any highly individual modes of expression.
- Skilful communication

It is important for the SLT to consider the relevant place of their expertise in relation to the knowledge and skills of other members of the MDT. Depending on the nature of the decision the SLT may undertake various roles, including:

- **Assess SLCN:** an in-depth **assessment** of a person's communication skills, which might include their ability to communicate at the current time and also in the future with reference to the person's ability to understand, retain and recall information, to weigh up different options and their implications, and to express a decision.
- **Assess capacity:** This refers to a process that determines whether an individual has the ability or mental capacity to make a specific, informed decision at the time it is needed.
- **Involvement in lawful decision processes:**
  - Supporting advance care planning (sometimes known as an 'Advance Decision to Refuse Treatment': ADRT) or living will.
  - Best interests – A process that involves the person at the centre of the decision-making and others connected to the person.
- **Expert support:** provide tailored support to either enable people with SLCN to demonstrate their capacity for decision-making or to express their wishes and preferences when they lack capacity for decision-making.
- **Expert advice:** provide advice and training on how to support someone with SLCN so they can exercise their own capacity or participate in a decision-making process.

Other roles in decision-making include:
Decision-maker: the person who ultimately works out what is in the individual's best interests and who will carry out any actions arising from the best interests decision.
Advocate: If a mental capacity assessment finds that a person with SLCN lacks capacity to make

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a decision, an SLT could be an advocate, or alternately support a mental capacity advocate when a decision is made in their best interests.
Educator or trainer: educating professionals, service users and their families and carers about the types of support people with SLCN may require to make decisions and demonstrate their mental capacity
Communication expert: using knowledge and skills for carrying out accurate assessments of service users' communication skills. It is especially important to collect information about the reliability of an individual's.

Part 4. Assessment of capacity

This part tells you about:

- The core principles of assessment and what it involves
- The different stages in an assessment
- Different lawful procedures when there is an assessed lack of capacity

4.1 Principles of assessment

Preparation involves:

- Planning how to provide support during the capacity assessment.
- Tailoring support to meet individual needs.
- Collaboration with the multi-disciplinary team and people who know the person being assessed well (e.g. a family member or carer).
- Carrying out a communication assessment, in order to establish what types of support are likely to be most effective, acceptable and easy to use for the person during an assessment of capacity.
- Inclusive communication approaches can be used during capacity assessments.

Some tools and resources have been developed to support more consistent practice and improved legal compliance in mental capacity assessments for people with SLCN with/without cognitive impairment.

- The **Mental Capacity Assessment Support Tool (MCAST)** (Jayes et al. 2026).
- The **web-based mental capacity assessment tool** (**MCA WAT**) for people with learning disabilities (Dodd et al. 2023) in England.
- The **web-based ASSENT guidance** for adults who may lack capacity and have communication difficulties in the context of the research provisions of the MCA (2005) for England & Wales (Bunning et al. 2022).
- **Supporting Adults with Communication Impairment** resource pack. Available at: https://www.blacksheeppress.co.uk/product/new-supporting-adults-with-communication-impairment-copy/.

4.2 Assessment considerations

In common, each legal framework of the four nations requires the assessor to demonstrate that a person is incapable of making the specific decision in question at that given time due to a

condition that affects the functioning of their mind or brain.

Stage 1 Functional test.
The UK legal frameworks require you to assess the person's ability to:

- understand information relevant to the decision;
- retain that information;
- use and/or weigh that information to make a decision;
- communicate their decision or preferred option.

Stage 2. Diagnostic test
You need to identify that the person has a health condition that affects the way their mind or brain works. This condition can be temporary or chronic/permanent and can include conditions that affect communication skills.

Stage 3. Causative nexus I
This links the outcomes from stage 1 to stage 2.

Recording outcomes
It is very important to record your assessment comprehensively and clearly. The documentation does not need to be typed but it should be completed at the time, clearly presented and signed.

Persons present: Who was present during the assessment and what were their roles?
The decision: What was the decision the person was asked to make?
Support: What support was provided to help the person understand the information about the decision? And if appropriate support is identified but was not practical or appropriate to provide, what is the reason for this?
Information: What information about the decision was provided to the person?
Functional: How were the person's abilities underpinning their decision-making capacity assessed?
Evidence: What evidence was collected relating to the person's ability to understand, retain and weigh information about the decision and communicate their decision?
Diagnosis: What evidence was gathered relating to the presence/absence of an impairment or disturbance of the mind or brain and, if present, whether it was temporary or permanent?
Causative Nexus: What evidence is there that the person's functional ability is explained by an impairment or disturbance of the brain or mind?
Response: How did the person communicate during the assessment in order to demonstrate their decision-making abilities and decision choice (e.g. by using words or gestures or by pointing to written words or images)?
Outcomes: What were the outcomes of the assessment? Where the person lacked one or more decision-making abilities, how do they relate to an impairment or disturbance of the mind or brain?
Conclusion: The assessor's conclusion about the person's capacity.
Capacity: If the person was judged to have capacity, what decision did they make?
Lack of capacity If the person was judged to lack capacity, were they able to indicate a preference for a particular decision option?
Management plan: Based on the outcomes and conclusion, and the legal provisions detailed, what is the recommended procedure, e.g. best interests process; refer to an advanced decision;

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consult a nominated attorney; deputy or guardian to review capacity at a later date?

What does the published evidence say about carrying out capacity assessments?
The **challenges** identified include the following:

- Assessment is a **complex enterprise** involving the person, their familiar others and the setting
- **Insecure understanding** amongst carers and professionals exists
- **Variable practice** has been observed with people who have SLCN.
- **Access to training** varies and affects knowledge and skills.
- **Time and resources** may be limited.
- **Conflicting viewpoints** may happen between people involved in the decision-making process.
- **SLT expertise** and knowledge of SLCN are relevant to the assessment process.

The f**acilitators** of a good capacity assessment include:

- **Training** for those involved.
- **Support and practical resources** made available.
- Observing **person-centred care** at all times.
- **Best practice** for best interest procedure at regional level.
- Close collaboration amongst the **multi-disciplinary team**.
- **Relationship development** at the heart of decision-making by and with the person and their relevant others.

4.3 Lack of capacity & lawful procedure

There are some common principles shared across the home nations as well as separate provisions.
Best interests (England and Wales only)

- Encourage the **active involvement of the person** who lacks capacity in the decision-making process as much as possible.
- Consider the **present and past wishes and feelings** of the person when making a best interests' decision.
- Involve **relevant people in the decision-making process:** the person's nearest relatives, carers, any attorneys, deputies and guardians or an IMCA (if appropriate) and anyone else concerned with the person's welfare.
- Choose a decision option that **benefits the person and is least restrictive** of their rights and freedom.
- Demonstrate resect for confidentiality issues.
- Record the decision and give clear reasons.

Scotland
The Adults with Incapacity (Scotland) Act 2000 does not use the term *best interests*. Instead, decisions are guided by statutory principles including benefit to the adult, the least restrictive alternative, taking account of the person's wishes and consulting relevant others.

Research
England, Wales & N. Ireland: This applies to research provisions of the Mental Capacity (England & Wales) Act 2005. Those undertaking the role of consultee should:

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- Remember that no one legally can give consent on behalf of an adult lacking capacity to participate in research.
- Be kept informed about the person's research participation and lend support as appropriate.

Give advice to the researcher on what the likely wishes and feelings about their participation would be if they were able to consent for themselves.

Scotland: There is no direct equivalent to the consultee role. Research involving adults with incapacity is governed by the Adults with Incapacity (Scotland) Act (2000) and requires consent from an appropriately authorised representative in accordance with the Act.

Deprivation of Liberty Safeguards (DoLS)

England & Wales: The Deprivation of Liberty Safeguards (DoLS) Code of Practice comes under the legal framework of the Mental Capacity Act (2005). It is about:

- Safeguarding the rights of people who are under high levels of care and supervision
- People in care homes, hospitals, supported accommodation, Shared Lives accommodation, and their own homes

It needs to be authorised in advance where possible by a responsible body which includes health authorities.

Scotland: There is no equivalent system to the Deprivation of Liberty Safeguards (DoLS). Restrictions on liberty are governed through the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003 and relevant human rights law. Any intervention must comply with the statutory principles of the Adults with Incapacity (Scotland) Act 2000, including benefit to the adult and the least restrictive option.

The 3-dimensional capacity assessment model

This model is about assessment in context and across time and includes:

Conversations with the person: Exploration of the person's awareness of and explanation for the difference between what they say they will do and what they actually do (knowing-doing dissociation).

Conversations with familiar others: Gathered evidence of mismatch between the person's self-report and other people's reports and cross-referencing.

Real world observation: Gathered evidence of how the person functions within real-world environments, and situations where actions did not match what they said they could do or would do. This approach requires repeated observation over an extended period of time for collecting evidence.

5. Evidence, research priorities & future directions

5.1 Structured review of evidence

Guidance development aimed to map out and define the concepts, procedures and reported outcomes associated with two main topics:

- Assessment of capacity;
- Support for decision-making.

Exploratory questions guided the background search for evidence and information.

Topic 1. Assessment of capacity

1. What difficulties are identified with regard to assessing the mental capacity of adults with

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speech, language and communication needs for the purposes of: a. research, and b. treatment?
2. How are speech, language and communication needs accommodated in mental capacity assessment procedures for the purposes of: a. research, and b. treatment?

Topic 2. Support for decision-making

1. How are support for decision-making procedures conceptualised for use with people who have speech, language and communication needs for the purposes of: a. research, and b. treatment?
2. How are speech, language and communication needs accommodated in support for decision-making procedures for the purposes of: a. research, and b. treatment?

5.2 Research priorities

Support for decision-making

- Design and evaluation of support for decision-making interventions for people with SLCN?
- Development of core outcome measures?
- Effectiveness of communication support and reasonable adjustments to decision-making?
- Exploration of the perspectives and experiences of people with SLCN in decision-making processes?
- Development of training for SLTs?

Assessment of capacity

- Reliability and validity of capacity assessments for people with SLCN?
- Efficacy of assessment approaches for people with SLCN?
- Evaluate the impact of SLT on assessment processes/outcomes?
- Implementation of legal frameworks across UK jurisdictions - barriers and faciliators?
- Development and evaluation of assessment tools and resources?

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