



Criteria for decisional capacity

The Mental Capacity Act 2005 obliges clinicians first, to assume capacity in all patients but second, to assess those whose capacity to consent may be impaired. The criteria for capacity are given in the Act's Code of Conduct as follows:

- Does the person have a general understanding of what decision they need to make and why they need to make it? [US: Ability to understand relevant information]
- Does the person have a general understanding of the likely consequences of making, or not making, this decision? [US: Ability to appreciate the nature of the situation and possible consequences]
- Is the person able to understand, retain, use and weigh up the information relevant to this decision? [US: Ability to manipulate information rationally]
- Can the person communicate their decision (by talking, using sign language or any other means)? [US: Ability to communicate a choice]

These are obviously medical criteria but the basic principle of being able to take in, retain, process, recall, and give an answer applies to any situation. For consent to be valid, people need to know what is going to happen and, if they are vulnerable so that mistakes might be made about their capacity, to be able to demonstrate that they know and that they have weighed up the information to make a decision.

A very important point to take into account is that, however much a person appears to understand, if they do not communicate their decision to the person who needs to record that, or their proxy, then they lack effective capacity.

Of course, it is imperative to ensure that all possible avenues for communication are explored and appropriate aids put in place. A deaf person does not lack capacity if their hearing aid fails, and nor does someone with cerebral palsy just because the interviewer does not take the time to listen.

