



# British Triathlon Safeguarding Adults

## Guidance on Consent and Capacity



## Guidance on Making Decisions and Capacity

England and Wales share the Mental Capacity Act of 2005. Scotland has the Adults With Incapacity (Scotland) Act 2000.

The Acts all apply to people over the age of 16 years, where there is a permanent or temporary disturbance or impairment in the mind or brain and whenever and wherever a decision needs to be made.

The issue of capacity or decision making is a key one in safeguarding adults across all legislature. It is useful to have an overview of the concept of capacity.

We make many decisions every day, often without realising. We make so many decisions that it's easy to take this ability for granted. But some people are only able to make some decisions, and a small number of people cannot make any decisions. Being unable to make a decision is called "lacking capacity".

The various legislation sets out the principles for working with adults who lack capacity to make decisions. A person's ability to do this may be affected by things like learning disability, dementia, mental health needs, acquired brain injury and physical ill health.

Good practice states that every individual has the right to make their own decisions and legislation provides the framework for this to happen.

The legislation is designed to ensure that people have the support they need to make as many decisions as possible. The legislation also protects people who need family, friends or paid support staff to make decisions for them because they lack capacity to make specific decisions.

Any intervention in the affairs of an adult should:

- Benefit the adult
- Take account of the adult's wishes, so far as these can be ascertained
- Take account of the views of relevant others, as far as it is reasonable and practical to do so
- Restrict the adult's freedom as little as possible while still achieving the desired benefit

Our ability to make decisions can change over the course of a day.

Here are some examples that demonstrate how the timing of a question can affect the response:

- A person with epilepsy may not be able to make a decision following a seizure
- Someone who is anxious may not be able to make a decision at that point
- A person may not be able to respond as quickly if they have just taken some medication that causes fatigue

In each of these examples, it may appear as though the person cannot make a decision. But later in the day, presented with the same decision, they may be able to at least be involved or to make an informed and measured decision.

Legislation recognises that capacity is decision-specific, so no one will be labelled as entirely lacking capacity. The legislation also recognises that decisions can be about big life-changing events, such as where to live, but equally about small events, such as what to wear on a cold day.

When should capacity be assessed?

You might need to assess capacity where a person is unable to make a particular decision at a particular time because their mind or brain is affected by illness or disability. Lack of capacity may not be a permanent condition. Assessments of capacity should be time- and decision-specific. You cannot decide that someone lacks capacity based upon age, appearance, condition or behaviour alone.

The test to assess capacity

Two-stage functional test of capacity

In order to decide whether an individual has the capacity to make a particular decision you must answer two questions:

Stage 1. Is there an impairment of or disturbance in the functioning of a person's mind or brain? If so,

Stage 2. Is the impairment or disturbance sufficient that the person lacks the capacity to make a particular decision?

To make a decision we need to:

- understand information given to them
- retain that information long enough to be able to make the decision
- weigh up the information available to make the decision
- communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

Every effort should be made to find ways of communicating with someone before deciding that they lack capacity to make a decision based solely on their inability to communicate. Also, you will need to involve family, friends, carers or other professionals.

The assessment must be made on the balance of probabilities - is it more likely than not that the person lacks capacity? You should be able to show in your records why you have come to your conclusion that capacity is lacking for the particular decision.

To help you to understand better, consider the following five points:

In Triathlon, you do not have to be an expert in assessing capacity but try to follow the 5 principles:

1. Assume that people can make decisions, unless it is proven that they cannot - if you have concerns about a person's level of understanding attending one of your events you should check this with them and if applicable people supporting them.
2. Give people as much support as they need to make decisions - you may be involved in this, you might need to think about the way you communicate or provide information, you may be asked your opinion.
3. The right to make unwise decisions if you understand the implications - a person may want to play a contact sport even though they are unsteady on their feet. If they understand the implications then consider how risks can be minimised so they do not miss out, for example by using protective sports equipment.
4. Best Interests - If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests'. This means that the decision must be what is best for the person, not for anyone else. If someone was making a decision on your behalf, you would want it to reflect the decision you would make if you were able to.

5. If someone is having a decision made for them, then find the least restrictive way of doing what needs to be done.

When a person needs help to make a specific decision, the following should be considered before a decision can be made in their best interests:

- The individual needs all the relevant information to make the decision.
- If there is a choice of options, has information been provided on the alternatives?
- The communication needs of the individual must be taken into account, and the information must be presented in a way that makes sense to them.
- Different communication methods must be explored, including obtaining professional or carer advice and support.
- The risks and benefits must be considered for any decision.

Who should assess mental capacity?

The person who assess an individual capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made.

In complex decision and where professional gives advice on an individuals mental capacity the final decision about a persons capacity must be made by the person intending to make the decision or carry out the action on behalf of the person who lacks capacity - not the professional who is there to advise.

**Remember:**

You should not discriminate or make assumptions about someone's ability to make decisions, and you should not pre-empt a best-interest's decision merely on the basis of a person's age, appearance, condition, or behaviour.

When it comes to decision-making, you could be involved in a minor way, or asked to provide more detail. The way you provide information might influence a person's ultimate decision. A person may be receiving support that is not in-line with the MCA, so you must be prepared to address this