

Video Consultations for Adults with Incapacity

Assessment of Capacity to Consent

All adults are presumed, in law, to have the capacity to consent to treatment unless there is evidence to the contrary. A person who is suffering from a mental disorder or impairment does not, necessarily, lack the competence to consent. Equally, people who would otherwise be competent may be temporarily incapable of giving valid consent due to factors such as fatigue, drunkenness, shock, fear, severe pain or sedation.

The assessment of a person's capacity to make a decision about medical treatment is a matter for clinical judgement guided by professional practice and subject to legal requirements.

To demonstrate capacity individuals should be able to:

- Understand (with the use of communication aids, if appropriate) in simple language what the medical treatment or intervention is, its purpose and nature and why it is being proposed.
- Understand its principal benefits, risks and alternatives.
- Understand in broad terms what will be the consequences of not receiving the proposed treatment or intervention.
- Retain the information for long enough to use it and weigh it in the balance in order to arrive at a decision.
- Communicate the decision (by any means).

Prior to and during the consultation, the clinician has responsibility for providing an explanation to the person and obtaining his or her consent for any examination, treatment or intervention.

Incapacity

In Scotland, the Adults with Incapacity (Scotland) Act 2000 ('the Act') allows people over 16 years of age to appoint a welfare attorney who has the power to give consent to medical treatment when the patient loses capacity. The Sheriff Court may also appoint a welfare guardian on behalf of an incapacitated adult.

Where there is no proxy decision maker, clinicians have a general authority to treat a person, if they believe it is in the individual's best interest, who is incapable of giving consent to the treatment in question. The Act also requires doctors to take account, so far as is reasonable and practicable, the views of the person's nearest relative and his or her primary carer.

Best Practice

- Where possible, obtain consent for the video consultation from the person's attorney or guardian.
- Ensure that the video consultation is in the best interests of the person.
- If the person shows signs of undue stress or agitation, stop the video call and arrange an alternative consultation.
- As the local care giver, work with the clinician during the call to help determine what treatment is in the person's best interest.
- Inform the person's attorney or guardian of the outcome of the consultation.