



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 or care 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, intoxication, shock, fear, severe pain or sedation.

The assessment of a person's capacity to make a decision about medical treatment or care is a matter for professional 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, intervention or change to care arrangements 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, intervention or change to care arrangements.
- 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, social worker or other professional has responsibility for providing an explanation to the person and obtaining his or her consent for any examination, assessment, treatment, intervention, review or change to care arrangements.

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 when the person 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, social workers and other professionals have a general authority to treat or arrange care for a person, if they believe it is in the person's best interest, who is incapable of giving consent. The Act also requires professionals 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.
- The local care giver should work with the clinician, social worker or other professional during the call to help determine what is in the person's best interest.
- Inform the person's attorney or guardian of the outcome of the consultation.