

What is mental capacity?

The law assumes that every adult has the mental capacity (or is competent) to make their own decisions if they are given sufficient information, support and time to do so.

However, the law does not define 'capacity'. And it does not set out when someone does not have the capacity to make their own decisions.

Very few people are totally unable to make any decisions. But many people, who may need support to make decisions or who are able to make some decisions and not others, are inadequately protected by the law.

How do you know if someone has capacity?

There are many different ways to assess a person's capacity. The Government and the Making Decisions Alliance support a 'functional' test.

A functional approach to assessing capacity recognises that a person's ability to make decisions may vary over time and depend on the level of difficulty of particular decisions, like choosing where to live or how to manage money. All

practical steps should also be taken to enable that person to make that decision (**please see *Communication, Choice and Decision Making* factsheet 6 for further information**). A functional approach also means that we should not impose our own values. For example, what you perceive to be an unwise or irrational decision may be the preference of that person and their choice should be respected.

This approach allows for a person to make as many decisions as possible. It focuses on a person's ability to make a particular decision and allows for situations where a person is able to make some decisions and not others. For example, a person may be able to make decisions about what they want to buy, but not about how to manage their money.

This functional approach assumes that a person with an illness or disability can make some decisions about their own lives. It means that individuals are not prevented from making certain decisions just because they have a medical diagnosis of a disability or illness. This capacity may vary over time and depends on the circumstances and the level of difficulty of that decision.

The Making Decisions Alliance believes that new legislation on mental capacity is urgently needed

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