

# Capacity tool

The *Capacity tool* on **page 71** has been developed to take into account the lessons from research and the case *CC v KK*. In particular:

- that capacity assessors often do not clearly present the available options (especially those they find undesirable) to the person being assessed
- that capacity assessors often do not explore and enable a person's own understanding and perception of the risks and advantages of different options
- that capacity assessors often do not reflect upon the extent to which their 'protection imperative' has influenced an assessment, which may lead them to conclude that a person's tolerance of risks is evidence of incapacity.

The tool allows you to follow steps to ensure you support people as far as possible to make their own decisions and that you record what you have done.

It is important to refresh our understanding of these steps, even if we are not routinely working with people who may not have capacity. They reflect good practice in promoting control over decision-making for the person whose decision it is.

## How to use the Capacity tool

The numbers below correspond to boxes in the tool.

1. Specify the decision that needs to be made as clearly as you can.
2. Specify the different options for meeting care and support needs, including where the person could live and how they would be supported. Include all options, even ones that are regarded as risky or undesirable. However, do not include an option if it would not actually be possible to do it because there are no resources.
3. Now apply your professional judgement to what you think the benefits and risks of each option are, and the likelihood of those occurring. Include emotional welfare and relationships, as well as any physical or medical risks and benefits. Record your views.
4. Choosing the optimal time and place for this, discuss each option with the person. Take time to enable the person to understand the options. You can use some of the other tools in this handbook to help gather information or promote their understanding. Also, discuss the risks and benefits you perceive for each option. Ask them about their feelings and views on the benefits and risks of each option. Record the person's views.
5. If you and the person disagree over the risks and benefits of each option, reflect on the reasons for this. Be clear about: how strong the objective evidence for believing a risk or benefit exists is; whether the person understands that a risk or benefit exists; whether the person thinks that a risk or benefit is more or less important than you do. If the person has a mental disorder which could impair their decision-making, consider whether:
  - \* a. They understand the alternatives available to them – they do not need to understand every detail, only the details that affect the decision.
  - \* b. They can 'use or weigh' the relevant information about each option - different people weigh risks and benefits differently.

A person will need to be able to retain the information long enough for this process; be careful not to impose an arbitrary limit on how long they must be able to remember the relevant information for.

Record your conclusions about why people have different views.

6. Clearly record the outcome of your decision as to whether or not a person has mental capacity. Only progress to the 'best interests' decision steps below if you conclude that they lack mental capacity. If you conclude that the person has capacity then you must let them choose their preferred option.

If you conclude that the person lacks capacity then a 'best interests' decision must be made.

---

## \* Good practice suggestion

### How might you use it in practice?

---

- Involving service user.
- To inform person's understanding of risks and benefits so they can make choices.
- Enable them to make their own decisions (wise or unwise).
- Enables practitioners to explicitly state their views and opinions.
- Shows contentions and allows robust reflection.
- Offers reassurance to other practitioners about protection and helps prevent risk-averse practice.
- Quick check list or in-depth process in circumstances where there is conflict or challenge.
- Informs assessment process.

### How might it help you?

---

- Prevent risk-averse practice.
  - Clarify thinking behind Mental Capacity Act, particularly when there is disagreement.
  - Shows all choices explored.
  - To help service user and family reflect on options.
  - Transparent decision-making process.
  - To increase confidence in decision-making.
  - Helps to standardise practice – equity.
  - Learning for other colleagues and students.
  - Helps to ensure all steps and options are recorded and weighed.
  - Provides evidence that service user has been consulted and informed.
  - Provides audit trail.
  - Can share with multi-disciplinary team to show you have considered views.
  - Can be used as evidence in court.
- 
- 

## Further reading

CC v KK and STCC [2012] EWHC 2136 (COP)

Research in Practice for Adults (2013) *What is the Mental Capacity Act 2005? Customer Guide*

Research in Practice for Adults (2013) *What are the Deprivation of Liberty Safeguards? Customer Guide*

---

# Making good decisions

## Capacity tool

### 1. What is the decision about?

	2. Options		Benefits		Risks - including likelihood and severity of risks		Critical reflection on differing perspectives on risks and positives	
--	------------	--	----------	--	--	--	--	--

	Location (if relevant)	Support that would be made available	3. Assessor's view	4. Person's own view	3. Assessor's view	4. Person's own view	5. Self-awareness: Assessor's reasons for their view	6. Empathy: Person's reasons for their view
--	------------------------	--------------------------------------	--------------------	----------------------	--------------------	----------------------	--	---

Option A								
----------	--	--	--	--	--	--	--	--

Option B								
----------	--	--	--	--	--	--	--	--

Option C								
----------	--	--	--	--	--	--	--	--

### 6. Conclusion – Does the person have capacity?

Signature of assessor:		Date:		Signature of person:		Date:	
------------------------	--	-------	--	----------------------	--	-------	--