

7. Capacity Assessments

Where there are concerns about capacity, supported decision making and potential AWI measures need to be explored as part of risk management.

A capacity assessment regarding a specific decision should be requested as soon as possible from a medical professional (e.g. GP/Psychiatrist) to help inform the safety plan and identify if AWI measures like Guardianship are needed.

1. Assume Capacity

The starting point for assessing someone's capacity to make a particular decision is **always** the assumption that the person has capacity.

The burden of proof will fall on the person who asserts that capacity is lacking.

2. Supported Decision-Making

A person should not be treated as unable to make a decision unless **all practicable steps** to help them to do so have been taken without success.

The person must be given **all relevant information** they need to make a decision.

6. Decisional and Executive Capacity

The concept of 'executive capacity' is relevant when assessing capacity, for example, where the individual has addictive or compulsive behaviours.

Consider the individual's ability to put a decision to safeguard themselves into effect (executive capacity) in addition to their ability to make a decision (decisional capacity).

5. Ability to Safeguard in Adult Support and Protection

An inability to safeguard oneself is not the same as an adult lacking mental capacity.

Distinction is needed between an adult who lacks the skills to make a decision, and is unable to safeguard themselves and one who is deemed to have the skills, means or opportunity to keep themselves safe, but chooses not to.



3. Adults with Incapacity Act

The **Adults with Incapacity Act (AWI)** applies to individuals over the age of 16 who lack legal capacity to make some, or all, decisions about their lives.

'Incapacity' is defined as including those who are unable to:

- Act on decisions
- Make decisions
- Communicate decisions
- Understand decisions
- Retain memory of decisions

4. Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection Act criteria for deciding if someone is an adult at risk of harm **makes no reference to capacity**.

For the purposes of this Act, capacity should be considered on a contextual basis around a specific decision at a specific time (e.g. capacity to choose between staying in a nursing home or moving home with all reasonable support) and not restricted to an overall clinical judgement or a generalisation (e.g., capacity to choose where to live).

