



Member Documentation

# Guidance on Consent, Mental Capacity and Best Interests

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# Introduction



Consent, mental capacity, and best interests decisions are closely connected and fundamental to professional audiology practice. This guidance aims to clarify the approaches required to ensure that decisions involving clients are made ethically, legally, and in alignment with best practices. The starting point is determining whether a client is capable of making an informed decision on a specific issue. This capacity will dictate the subsequent steps to be taken.

This guidance should be read in conjunction with BSHAA's [Record Keeping Guidance](#) and [Professional Practice for Hearing Aid Dispensers](#).

Both documents provide essential context for understanding and implementing the principles outlined here.



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# Key Principles

## Informed Decision-Making

A decision is only considered informed if the following two conditions are met:

1. **Provision of Relevant Information:** The person must receive all information pertinent to the issue or decision.
2. **Capacity to Process Information:** The person must be able to understand, retain, and weigh the information to make a decision.

## Understanding Informed Decisions

An informed decision involves evaluating the benefits and advantages against the disadvantages, risks, and costs. For example:

- Deciding to undergo a hearing assessment typically offers clear benefits with minimal risks.
- Choosing a specific hearing aid may involve a more complex weighing of benefits (e.g., improved functionality) against higher costs.

The ability to make informed decisions varies based on the individual and the complexity of the issue at hand.

### Case Study Example

Scenario: An elderly patient with mild cognitive impairment requires hearing aids but seems

# Consent

## The Importance of Consent

Consent is required for:

- Examination (which may involve physical touching, without which it could constitute assault).
- Treatment (which similarly requires explicit agreement).

## Valid Consent

Consent is valid only if:

1. The person is given all relevant information.
2. The person can understand, retain, and weigh the information.

Consent may be given orally or in writing. For significant procedures or treatments, written consent is advisable to avoid disputes.

## Limitations of Consent

No one can give consent on behalf of another person unless authorised by law (e.g., through a valid Power of Attorney).

- Parents giving consent for children are exercising their parental responsibility.
- If a person lacks the capacity to consent, decisions must be made in their best interests (outlined below).

# Mental Capacity

## Defining Mental Capacity

A person has mental capacity if they can:

- Understand the information relevant to the issue.
- Retain the information long enough to make a decision.
- Weigh the information to arrive at a decision.
- Communicate their decision.

## Age Considerations

- **Adults:** Presumed to have capacity unless there is evidence to the contrary.
- **Under 16s:** Assessed on a case-by-case basis, as there is no presumption of capacity.
- **16 and 17-Year-Olds:** Presumed to have capacity to consent to treatment unless proven otherwise. Their consent cannot be overridden by a parent.

### Time-Specific and Decision-Specific Nature of Capacity

Capacity can vary based on temporary or permanent factors, including physical health, mental health, and the complexity of the decision.

## Assessing Capacity

To assess mental capacity, practitioners should:

1. Provide the information relevant to the decision.
2. Evaluate whether the individual understands and weighs the information.

# Best Interests

## Acting in Best Interests

If a person lacks capacity to make a decision, practitioners must act in their best interests. This involves:

- Considering the individual's past and present wishes and feelings.
- Consulting with close family or others involved in their care.
- Balancing the benefits and risks of potential actions.

## Role of Next of Kin and Attorneys

- **Next of Kin:** Do not have an automatic right to make decisions.
- **Power of Attorney:** Attorneys must act within their legal authority and in the individual's best interests. Practitioners remain responsible for determining whether actions align with professional standards and best interests.

## Defining Mental Capacity

1. **Determine Capacity:** Assess the client's ability to make the specific decision.
2. **Provide Information:** Ensure all relevant benefits, risks, and alternatives are explained clearly.
3. **Document Consent:** Record the process and outcome of obtaining consent.
4. **Make Best Interests Decisions:** If capacity is lacking, follow the best interests framework and document all considerations.
5. **Seek Advice When Needed:** For complex cases, consult senior colleagues or legal professionals.

# Practical Steps for Practitioners

## Defining Mental Capacity

01



### Determine Capacity

Assess the client's ability to make the specific decision.

02



### Provide Information

Ensure all relevant benefits, risks, and alternatives are explained clearly.

03



### Document Consent

Record the process and outcome of obtaining consent.

04



### Make Best Interests Decisions

If capacity is lacking, follow the best interests framework and document all considerations.

05



### Seek Advice When Needed

For complex cases, consult senior colleagues or legal professionals.

# Case Study Example

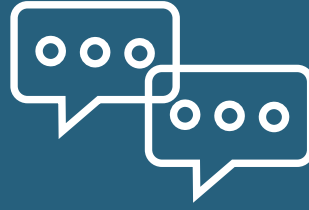
**Scenario:** An elderly patient with mild cognitive impairment requires hearing aids but seems confused about the options presented.

- **Capacity Assessment:** The practitioner provides simple explanations about the hearing aid options. The client struggles to weigh the benefits and costs.
- **Involving Family:** The practitioner consults the client's daughter, who explains her father's previous preferences.
- **Best Interests Decision:** The practitioner selects a hearing aid, balancing functionality and affordability, whilst recording the rationale.

## References

1. **Mental Capacity Act 2005:** [Mental Capacity Act 2005](#)
2. **BSHAA Record Keeping Guidance:** [Record Keeping Guidance - FINAL 14.11.2024 by Alex Gardner - Flipsnack](#)
3. **BSHAA Professional Practice for Hearing Aid Dispensers:** [BSHAA HADs Document 2024 01.11.2024 by Alex Gardner - Flipsnack](#)
4. **HCPC Standards of Proficiency (2023):** [Hearing aid dispensers | The HCPC](#)
5. **Office of the Public Guardian:** [Office of the Public Guardian - GOV.UK](#)





## Queries & Questions

BSHAA has taken all reasonable steps to ensure that the information in this guide is accurate and up to date.

BSHAA does not accept any liability for any errors or omissions, or for how it might be interpreted or used.

The Society welcomes comments on this document or if you have any questions or queries, please contact us through:



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