

## What is capacity?

Capacity is an individual's ability to reason, make decisions and consider choices, express views and receive and understand information. To be able to legally consent requires that an individual understands the nature, implications and consequences of their decisions.

An individual may be deemed to have capacity in one set of circumstances and not another. Judgements about capacity to consent are made for a particular decision, at a particular moment in time, in particular circumstances.

## What legislation is there around capacity?

The Adults with Incapacity (Scotland) Act 2000 generally presumes that adults are capable of making personal decisions and of managing their own affairs. This Act gives "doctors the principle responsibility in deciding whether an adult is incapable

of making particular decisions or taking specific actions". However, a doctor should base their decision on information from all those who know the individual well.

## How does capacity relate to Self-directed Support?

An individual without capacity may have an appointed Guardian or Power of Attorney who can make decisions about Self-directed Support on the individual's behalf.

However, when going through the SDS process, an individual who is not deemed to have capacity in all sets of circumstances should still be supported to have the opportunity to "play a full part in their

assessment, to understand the various choices available to them and to decide how and what ways they would like to arrange their support": this is according to the Statutory Guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013 . Supported decision-making mechanisms are designed to facilitate this.

### Self Directed Support Scotland Contact us:

 0131 475 2625

 [info@sdsscotland.org.uk](mailto:info@sdsscotland.org.uk)

 [www.sdsscotland.org.uk](http://www.sdsscotland.org.uk)

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## What are supported decision-making mechanisms?

Supported decision-making puts the individual at the centre of the decision-making process. Everyone has a right to choice and control. Even when it is unclear whether an individual can make decisions for themselves, it is important that they are supported to express their preferences and wishes. This is most often done by involving those who know the individual well.

### Circles of Support

When decisions about care and support need to be made, an individual with complex support needs may make use of a 'Circle of Support'. This is a small network of people who know the individual well. The circle may include a balance of parents, friends and professionals; at the heart of the discussions should be the individual's preferences and wishes.

### Independent Living Trusts

A Trust is a legal structure that forms a framework of decision-making around an individual with high support needs. It consists of a group of Trustees (if possible, chosen by the individual) and is governed by a Trust Deed that sets out the responsibilities of the individual and the Trustees.

The Trust Deed will also include detail on liability. A Direct Payment can be made via a Trust. In this scenario, the Trustees will manage the aspects of the support package which the individual cannot or does not want to take on: this may encompass employment of Personal Assistants.

## Where can I find more information on capacity in relation to Self-directed Support?

The Office of the Public Guardian (OPG) provides information and guidance with regard to Powers of Attorney and Guardianship Orders:

[www.publicguardian-scotland.gov.uk/index.asp](http://www.publicguardian-scotland.gov.uk/index.asp)

To find what SDS support is available in your local area, search our database:

[www.sdsinfo.org.uk](http://www.sdsinfo.org.uk)