Good Question: interviewing for capacity to make decisions

Good Question is a way of inquiring about someone's understanding without intimidating them, confusing them about what they remember or 'contaminating' their recall with new or even false information.

As professionals, we often ask people to make difficult decisions so that we can help them with something important. These might be about medical or social care, legal matters, or even the implications of being a witness in Court.

Most of the time, we are able to give people the information they need and leave them to think about it. We might not always agree with an individual's decision but we have to accept it because we understand implicitly that they have capacity.

Sometimes, though, we need to ask someone who is mentally vulnerable to make a decision and then we need to check that they have capacity. If we don't do that, mistakes can be made and people who seem to understand might undergo procedures they never anticipated while others are excluded from the decision-making process because they didn't have a chance to communicate effectively.

Good Question is based on extensive research as an instrument for interviewing vulnerable witnesses, and we have modified it to include probes of understanding in addition to the facts someone needs to know.

In some countries, there is legislation about how we manage situations like this. The UK has the Mental Capacity Act (2005) and in the US there is a legal framework by which decisional competence is judged. These are both very good at making clear the criteria for capacity we should be looking for, but there are no guidelines for how to draw out that information.