



Safer Seven

On:

Mental Capacity Act: Executive Functioning



Dudley Safeguarding
People Partnership

1. Introduction

Executive function is an umbrella term used to describe a set of mental skills that are controlled by the frontal lobes of the brain. When executive function is impaired, it can inhibit appropriate decision-making and reduce a person's problem-solving abilities.

Professionals assessing capacity in this patient group are faced with a number of obstacles that make determination of capacity more challenging. This can have significant implications because failing to carry out a sufficiently thorough capacity assessment in these situations can expose a vulnerable person to substantial risk.

2. What can affect a person's ability to use and weigh information in making a decision?

Certain disorders of the mind or brain are more widely recognised to be associated with executive dysfunction and include acquired brain injury, dementia, delirium, learning disability, attention deficit and hyperactivity disorder (ADHD) and autism.

However, many other mental disorders can be associated with executive dysfunction including schizophrenia, depression, anxiety, and personality disorders. Acute intoxication with drugs or alcohol is also an impairment of the mind or brain.

3. Indicators of possible executive impairment

The person may show the following signs:

- Unable to translate intention into action
- 'Full of promises' and plausible
- Apathetic
- Inability to initiate, plan and sequence activities
- Struggling with new situations (better with familiar)
- Behaviour is aimless, impulsive, and fragmented
- Unable to monitor and evaluate their own actions
- Unable to think flexibly or abstractly
- Less able to adapt to change
- Black and white thinking style
- Lack of a filter in social situations

4. Impulsive and Unwise Decision Making

Impulsivity is a good example of a behaviour that can affect decision making and is often observed in those with executive dysfunction.

Deciding when an impulsive decision is pathological and indicating a lack of capacity can therefore pose a challenge to the assessor.

In unwise decision making, the person is fully aware but consciously disregarding or giving less weight to certain facts relevant to the decision. In executive impairment, the person cannot access and integrate the correct pieces of information and use them in a meaningful way to make the decision.

5. Re-assess and take a more holistic approach

Mental capacity law emphasises the need to balance, protecting a person who lacks capacity from harm against, allowing the person to make their own decisions wherever possible.

In these particular cases it is good practice to regularly re-assess capacity to ensure that a person has the opportunity to learn and grow despite the effects of their executive impairment. With the benefit of additional practicable steps (Principle 2 of the MCA) the person may well be able to improve their decision-making capacity.

Also, repeated assessments help to get a better sense of any repeated mismatch between the person's words and actions.

6. Key take away points

- Executive impairment can affect decision making capacity.
- It is often overlooked, resulting in potential exposure of a vulnerable person to risk.
- It can be very difficult to assess the effect of executive impairment on mental capacity for a number of reasons - repeated assessment of capacity, supported by collateral information and real-life functional assessment are recommended.
- If you have concerns that a person's executive functioning may be affecting their decision-making capacity, it is probably worth seeking a specialist opinion from a psychiatrist or psychologist.

7. Further information:

[DSPP Webpage on MCA](#)

[How to use legal powers to safeguard highly vulnerable dependent drinkers](#)

[Acquired brain injury and mental capacity](#)

[Learning disability, autism, mental health, and mental capacity](#)

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