**Document Review**

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**Considering executive function in mental capacity assessments**

This one-minute guide is aimed at supporting health and social care professionals who already have a good knowledge and understanding of the Mental Capacity Act 2005, and Code of Practice.

In mental capacity assessment it is important to consider whether people can put decisions into effect – i.e., can they “execute” decisions. This has become a familiar theme in [Safeguarding Adult Reviews nationally](https://www.local.gov.uk/publications/second-national-analysis-safeguarding-adult-reviews-april-2019-march-2023-executive) and, locally, the [Elaine SAR](https://safeguardingadults.co.uk/learning-research/nysab-learning/sar-elaine/) has recommended this be included in mental capacity training.

This is particularly important with people with acquired brain injury and people with addictive or compulsive behaviours. The [*Carol SAR*](https://nationalnetwork.org.uk/SCIE%20Library%202015-2018/17%20Teeswide%20Carol%20Overview%20report%20June%202017.pdf)from Teeswide SAB says:*…the concept of “executive capacity” is relevant where the individual has addictive or compulsive behaviours. This highlights the importance of considering the individual’s ability to put a decision into effect (executive capacity) in addition to their ability to make a decision (decisional capacity).*

The question is how can practitioners put this into action in their day-to-day work? This will vary from decision to decision, but three points are useful.

* Are you considering the person's history of decision-making when taking a current capacity decision? This is supported by paragraph 4.30 of the current Code of Practice. *Information about decisions the person has made, based on a lack of understanding of risks or inability to weigh up the information, can form part of a capacity assessment – particularly if someone repeatedly makes decisions that put them at risk or result in harm.*
* Are you considering whether the person can show you that they can take a decision and not just tell you? [Guidance from 39 Essex Chambers](https://www.39essex.com/sites/default/files/2023-03/Mental%20Capacity%20Guidance%20Note%20Capacity%20Assessment%20March%202023.pdf) (the leading barristers’ chambers on mental capacity): states that: *You can legitimately conclude that a person lacks capacity if they cannot understand or ‘use and weigh’ the fact that they cannot implement in practice what they say in assessment they will do.* This is likely to require multiple meetings with the person.
* Are you discussing the capacity assessment with, and considering information from, other agencies. The assessment of “executive capacity” will be greatly assisted by “triangulating” information about the person with colleagues, including those from other agencies who know the person. This will require time and professional discussion, especially in the context of repeated capacity decisions about the same person.

This is a complex area of decision-making and if in doubt this should be escalated to managers, legal departments and ultimately the court.

**Useful resources**

* [Decision-making and mental capacity](https://www.nice.org.uk/guidance/ng108/resources/decisionmaking-and-mental-capacity-pdf-66141544670917)
* [How to use legal powers to safeguard highly vulnerable dependent drinkers | Alcohol Change UK](https://alcoholchange.org.uk/publication/how-to-use-legal-powers-to-safeguard-highly-vulnerable-dependent-drinkers)
* [Executive-Functioning-and-Mental-Capacity-Guide-Compressed.pdf](https://www.safeguardingsolihull.org.uk/ssab/wp-content/uploads/sites/2/2024/08/Executive-Functioning-and-Mental-Capacity-Guide-Compressed.pdf)
* [Mental Capacity Act 2005 Code of Practice, including the Liberty Protection Safeguards](https://assets.publishing.service.gov.uk/media/62962d1f8fa8f50395c0a054/draft-mental-capacity-act-code-of-practice.pdf)

**Other useful resources / training**

Alcohol Change UK. (September 2021). How to use legal powers to safeguard highly vulnerable dependent drinkers. [How to use legal powers to safeguard highly vulnerable dependent drinkers | Alcohol Change UK](https://alcoholchange.org.uk/publication/how-to-use-legal-powers-to-safeguard-highly-vulnerable-dependent-drinkers)

Community Care. (2020). When mental capacity assessments must delve beneath what people say to what they do. https://www.communitycare.co.uk/2020/10/28/mental-capacity-assessments-must-delve-beneath-people-say/

NICE. (2028). Decision Making and Capacity. [Decision-making and mental capacity](https://www.nice.org.uk/guidance/ng108/resources/decisionmaking-and-mental-capacity-pdf-66141544670917)

Solihull Safeguarding Adults Board. (June 2024). Executive Functioning and Mental Capacity. [Executive-Functioning-and-Mental-Capacity-Guide-Compressed.pdf](https://www.safeguardingsolihull.org.uk/ssab/wp-content/uploads/sites/2/2024/08/Executive-Functioning-and-Mental-Capacity-Guide-Compressed.pdf)