

## What is Executive Functioning?

**Executive functioning** refers to a set of mental skills that help individuals manage their thoughts, actions, and emotions to achieve goals. These skills are essential for planning, organising, problem-solving, paying attention, remembering instructions, and controlling impulses.

Key components of executive functioning include:

- **Working memory** – holding and using information in your mind over short periods.
- **Cognitive flexibility** – the ability to switch between tasks or adapt to new situations.
- **Inhibitory control** – the ability to resist impulses and distractions, and to think before acting.
- **Planning and organization** – setting goals, developing steps to reach them, and managing time effectively.
- **Self-monitoring** – tracking your own performance and adjusting behavior as needed.

Difficulties with executive functioning can affect everyday tasks like managing time, following instructions, or regulating emotions. These challenges are common in conditions such as ADHD, autism, brain injuries, and some learning disabilities.

## What Does the MCA Code of Practice Say?

The MCA is a vital aspect of the legal framework for social care professionals working with individuals experiencing executive functioning difficulties. Applied correctly, the MCA should empower and protect such individuals. But applying the MCA is often not straightforward, not least because practitioners are faced with making difficult determinations in situations where an individual's actions may be disconnected from their understanding. The MCA code of practice gives guidance on using or weighing information as part of the decision-making process. It states in paragraphs 4.21-4.22 that: "For someone to have capacity, they must have the ability to weigh up information and use it to arrive at a decision. Sometimes people can understand information, but an impairment or disturbance stops them using it. In other cases, the impairment or disturbance leads to a person making a specific decision without understanding or using the information they have been given. "For example, a person with the eating disorder anorexia nervosa may understand information about the consequences of not eating. But their compulsion not to eat might be too strong for them to ignore. Some people who have serious brain damage might make impulsive decisions regardless of information they have been given or their understanding of it." While the code does not use the term executive functioning, this is clearly what it has in mind in these paragraphs.

## The Capacity Assessment

Section 3(1) of the Mental Capacity Act sets out that a person is unable to make a decision if they are unable to:

- Understand the information relevant to the decision;
- Retain that information;
- Use or weigh that information as part of the process of making the decision; or - Communicate their decision;

The most relevant element when it comes to executive functioning is the ability to use or weigh the information. When working within the Mental Capacity Act, we also need to be mindful of the third principle and not treating the individual as lacking mental capacity because they have made an unwise decision/s.

However, particularly in executive dysfunction, it is often the risky or unwise decision or behaviour that trigger closer scrutiny of a person's capacity. Repeated unwise decisions where a person is telling you they would reach a different decision, may be an indication of difficulties with executive function. Therefore, a one-off assessment may not be sufficient; it may be necessary to demonstrate evidence of repeated occasions of an inability to bring to mind relevant information at the point it was necessary.

## Recording Decisions

It is important when a capacity assessment concludes that the person lacks capacity to make the decision, to record a clear explanation of how executive dysfunction relates to the functional tests of the MCA. An explanation will also be needed of how the best interests decision relates to the person's lack of executive functioning, for instance, setting out how the care plan helps to ensure that, as far as possible, the person can put into effect their stated intention.

## Key Messages from Case Law

There are a number of key messages that can be drawn from the case law relating to executive function. When it comes to capacity assessments:

- Always consider whether practicable support can be provided to someone experiencing difficulties with their executive functioning to enable them to make the decision in question.
- Difficulty with executive functioning is not, by itself, evidence of a lack of capacity. - Be aware that people with executive functioning difficulties may overestimate their skills and abilities and underestimate their need for care and support.
- You may need to consider not just what the person tells you about how they would make an informed decision but also whether this decision will actually be implemented in practice. - Look for evidence of past behaviour and whether this demonstrates an inability to put into effect their stated intention.
- You may need to consider whether the person understands that there is a mismatch between what they say they will do and how they act when face by concrete situations. - Consultation with others, such as family, friends and involved professionals, may be an important source of information about the person's ability to carry out their decision.
- Clinical input may be required when assessing executive functioning, for example, from a clinical psychologist. When it comes to best interests decision:
- Remember that the person's wishes and feelings often carry significant weight in the determination of best interests, and it is wrong in principle to discount the wishes, feelings, beliefs and values of people who lack the relevant capacity.
- Think about how risks might be managed in a safe way, rather than seeking to remove all risks at all costs. - Where relevant, it is permissible to take into account risks of harm to others when making best interests decisions.

## Resources

[Executive dysfunction | Headway](#)

[Decision-making and mental capacity](#)

[Executive functioning and the Mental Capacity Act 2005: points for practice - Community Care](#)

[Safeguarding-guide-final-August-2021.pdf](#)