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What does it mean “to have mental Capacity”

The Mental Capacity Act states that to have mental capacity for a specific decision at a specific time, a person must be able to understand the information relevant to the decision (including the reasonably foreseeable consequences of making or not making the decision at all); and retain that information (long enough to make the decision); and use or weigh that information (as part of the process of making the decision); and communicate the decision (whether by talking, using sign language or any other means).

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What is executive capacity?

Executive Capacity is about the ability to use or weigh information. The Code of Practice (para 4.21) notes: ‘For someone to have capacity, they must have the ability to weigh up information and use it to arrive at a decision. A person must accept the information and take it into account. A person may appear to be able to weigh facts while sitting in an interview setting but if they do not transfer those facts to real life situations in everyday life (executing the plan) they may lack mental capacity.’

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What might impact on a person’s ability to use and weigh information in making a decision?

- Phobia or fear.
- Mental Health disorders
- Delusion (misperception of reality)
- Brain Injury
- Neurological disorders
- Delirium
- Addictions

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Assessing

It is important to interview those with direct experience of the person’s real- world behaviour over a period of time such as friends, family and other professionals. Explore previous records around risk and unusual behaviour. Be curious about emerging patterns. Collecting evidence from wider sources other than interview is essential in exploring executive functioning. Check what other agencies have on record about risky behaviours or events.

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Frontal Lobe Paradox

‘Patients with frontal lobe damage can perform well in interview and test settings despite marked impairments in everyday life. This is known as the ‘frontal lobe paradox (Walsh 1085) or the ‘knowing doing dissociation’ (Teuber, 1964).’

Failing to take account of this when conducting Mental Capacity Act assessments can result in disastrous. Consequences for patients.’

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Interview-based assessments

Difficulties experienced by people with prefrontal cortex (PFC) damage manifest themselves more clearly outside an interview setting. Decrements in executive and adaptive functioning are often masked by preserved language and verbal reasoning skills, so that in individual may appear remarkably unimpaired. Most people affected are typically ‘able to describe what they should be doing in logical terms when asked in the abstract, but in practice, fail to use this knowledge to guide their actions.’

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Additional information

For more information on safeguarding Adults lacking mental capacity please check Luton Tri.X Local Resources and the Pan Bedfordshire Safeguarding space - <https://panbedfordshiresabs.trixonline.co.uk/>

