



**Safeguarding Adults
Executive Board**



SAEB Fire Safety Awareness Training

Mental Capacity and Risk – MCA Bite-Size Session (Slides 1–6)

Lynn Tan, Mental Capacity Act Lead, Bi-Borough, Adult Social Care

Key Findings

Learning from Fatal Fire Deaths and Professional Practice Challenges (Thematic Review, August 2023)



Lack of Fire Risk Prompts in Assessments

Current documentation does not guide practitioners to consider or manage fire-related risks effectively.



Fire Safety Not Fully Embedded in Practice

Greater emphasis is needed on integrating fire safety, particularly during transitions from hospital to community care.



Mental Capacity and Risk Awareness

Practitioners face challenges in assessing capacity where understanding fire/smoking risks requires higher-level cognitive insight and executive function.



Balancing Autonomy and Risk to Others

Respecting individuals' choices to smoke must be weighed carefully against the safety and wellbeing of others.



Safeguarding Adults
Executive Board



What is Executive Capacity?

Also known as “executive functioning” or “executive dysfunctioning”

“the ability to think, act, and solve problems, including the functions of the brain which help us to learn new information, remember and retrieve the information we’ve learned in the past, and use this information to solve problems of everyday life.”



Court of Protection

Cobb, J, in A Local Authority v AW [2020] EWCOP 24

When mental capacity assessments must look beyond words to actions

“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of the mind or brain” section 2(1) of the MCA

- MCA Section 2(1): Capacity depends on a decision at a specific time.
- Assess both 'decisional' and 'performative' capacity.
- Capacity assessments aren't limited to formal interviews.
- Focus on real-world application of decision-making.

Applying the Pyramid Model in Mental Capacity Assessments (useful at interview)

A Pyramid Model of Awareness typically has levels such as:



(Crosslon et al, 1989)

In mental capacity assessments you would apply this model by evaluating whether a person can:

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

JB v A Local Authority [2021] UKSC 52: has clarified that the ability to "use or weigh" information is a critical component of capacity and can be affected by executive dysfunction.

Summary and Key Messages



Key takeaways:

- ☐ Go beyond verbal capacity—can they act on decisions?
- ☐ Use MCA-compliant language when documenting assessments.
- ☐ The term “capacity” remains the appropriate legal term under the MCA.
- ☐ The term “material time” refers to that real-world decision point—not just when someone is sitting in a formal capacity interview.
- ☐ Executive function may support reasoning, but it’s not a legal substitute for capacity.
- ☐ The threshold for determining capacity is based on the balance of probabilities
- ☐ The MCA allows non-medical professionals to assess capacity, as long as they follow its principles and test.

Remember:

- Your role is to assess a person’s ability to make a specific decision at a specific time—not to diagnose.
- Always record your reasoning clearly, based on evidence.
- Avoid using the phrase “lacks executive capacity.” Instead, say:
“The person demonstrates difficulties in using or weighing relevant information due to impaired executive functioning, impacting their ability to make this decision.”

This language ensures compliance with the MCA and respects the individual’s rights.

Thank you for your time and attention

Accessing MCA Training & Support

- Visit the Learning & Development Hub site for a wide range of resources, including bite-size training on the Mental Capacity Act 2005 (MCA).
- If you don't have access to our Hub or wish to enquire about availability, contact the Learning & Development Team for guidance and session dates.
- To enrol in MCA training, go to the Learning Zone on SharePoint, or email: ascLearningandDevelopment@westminster.gov.uk
- For further MCA guidance, contact:

Lynn Tan | Mental Capacity Act Lead | Bi-Borough Safeguarding, QA & Workforce Development Team Email: lynn.tan@rbkc.gov.uk

SAEB Fire Safety Awareness Training Resources



Mental Capacity & Risk: MCA Bite-Size Session (Slides 1–6)

References, Further Reading & Useful Links:

[Multi-Agency Fire Safety Framework](#)

[Learning from Fatal Fire Deaths Briefing](#)

[Fatal Fires Thematic Review Overview Report](#)

[Learning from Fatal Fires webinar](#)

[Mental Capacity Act - Code of Practice](#)

[Mental Capacity Act \(MCA\) 2005 and Deprivation of Liberty Safeguards \(DoLS\) Resource Hub](#)

[Adult Social Care Learning and Resources Hub](#)

[Recording your assessment](#)

[Carrying-out-and-recording-capacity-assessments-Guidance-Essex-Chambers](#)

Sunderland City Council v AS and Others [2020] EWCOP 13: importance of real-world observation

Cobb, J, in *A Local Authority v AW* [2020] EWCOP 24: what is executive capacity ?

Executive Functioning and the Mental Capacity Act 2005: Points for Practice -(Community Care)

How to Use Legal Powers to Safeguard Highly Vulnerable Dependent Drinkers in England and Wales - (Alcohol Change UK)

