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## CSAB MCA week of action: Day 1 Presumption of capacity

Cumberland Council sent this bulletin at 19-06-2023 08:00 AM BST

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The banner features the Cumbria Safeguarding Adults Board logo on the left, which includes a stylized 'X' made of blue and purple lines and the text "Cumbria Safeguarding Adults Board". In the center, the text "5 minute briefing" is written in large, bold, blue font. Below this, a green horizontal bar contains a white Twitter icon and the handle "@cumbriasab". On the right side, there is a large, stylized 'X' made of blue and purple lines. The date "19th June 2023" is printed in the bottom right corner.

Cumbria Safeguarding Adults Board

**5 minute briefing**

[@cumbriasab](#)

19th June 2023

## Introduction

Welcome to Day 1 of our MCA week of action. During the week we will be sharing resources and learning aimed at improving the application of the Mental Capacity Act 2005.

You can also visit our ['learning zone' on the CSAB website](#) for further information and resources.

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## Principle 1: Presumption of capacity

[The Mental Capacity Act](#) contains five key principles, which must be applied at any time when the Act is being used for individuals who lack capacity.



It is useful for practitioners if they consider the principles in chronological order; principles 1 to 3 support the process before or at the point in identifying if someone lacks capacity. Once this has been ascertained, principles 4 and 5 support the subsequent decision-making process.

Principle 1 states that every adult has the right to make their own decisions – unless there is proof that they lack the capacity to make a particular decision when it needs to be made. This has been a fundamental principle of the common law for many years and it is now set out in the Act. It is important to balance people's right to make a decision with their right to safety and protection when they can't make decisions to protect themselves. But the starting assumption must always be that an individual has the capacity, until there is proof that they do not.

Professionals should also refer to the [Mental-capacity-act-code-of-practice](#)

For more information watch this short MCA overview [video](#)

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## Executive Dysfunction & the MCA



Executive dysfunction is not a new concept. There is no single definition of executive dysfunction, it is complex and an impairment of the frontal lobe section of the brain. Testing for executive dysfunction can be difficult as cognitive tests done by medical practitioners can in some cases miss the executive impairment.

Individuals with executive dysfunction will struggle with complex decisions however, as a professional you can help by breaking down information, structuring the decision making environment and using professional curiosity.

**Executive dysfunction does not mean a person lacks capacity. It is important practitioners understand the impairment to inform robust capacity assessments which promote autonomy for the person.**

The National Capacity Act Forum have hosted a series of webinars exploring a range of topics in relation to the MCA. You can access the slides and recording of the webinar, Executive Dysfunction & MCA [here](#).

**The webinar is a must watch for those professionals assessing mental capacity to understand the impact of executive dysfunction on a person so you understand how they could be impacted by any impairments and the impact this has on decision making.**

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## Principle 1 - Assume capacity 'lunch and learn' join today

Today's lunch and learn session will explore what is meant by the term “executive dysfunction” and what practitioners need to take account of when assessing capacity.

The session will also cover how to plan for a capacity assessment and example questions to ask. Today's session will commence at 12.30pm aiming to finish by 1:15pm. [Click here to join the session](#)

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### Further learning resources

CSAB are sharing learning resources for practitioners for personal development and can also be useful during team meetings and/or supervision sessions.

#### Social Care Institute for Excellence

SCIE have produced a whole series of short learning videos for practitioners based on the 5 principles of the MCA. Watch [here](#)



#### MCA easy read guide

You can access an MCA easy read guide and summary [here](#)

#### GP guide to capacity and consent to treatment

[You can watch the short video here.](#) The video uses Jean's story, to illustrate how GPs can assess mental capacity to consent to treatment. Jean has dementia and needs medical treatment.

#### CQC guidance for providers

[CQC Regulation 11](#), requires that care and treatment of people using services must only be provided with the consent of the relevant person. For more information read Capacity & Consent from CQC [here](#).

#### Legal advice and guidance

39 Essex Street Chambers has developed an unrivalled set of resources for those seeking to apply and understand the Mental Capacity Act 2005, as well as to understand the place of mental capacity within the law more generally. There is a dedicated MCA section of the website which gathers together sets of resources which you can [access](#).

#### Edge Training Ltd resources

There are a series of briefings and information sheets intended to support practitioners working with the MCA. This includes case law updates, guidance and templates find out more [here](#)

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### Get in touch!

For more information please contact us:

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