

Briefing: Mental capacity, alcohol and other drug use: Information for social workers

Introduction

Mental capacity decisions require social workers to practice with the competing imperatives of protecting vulnerability and enabling informed decision making. Very often this challenge is made more complex by the role of alcohol and other drug use. While intoxication does not mean loss of capacity, complexities arise where the cycle of use (including dependence) can impact on behaviours, decision making and the ability to weigh information about best interests. Drug and alcohol use and dependency can also lead to either temporary impairment via intoxication or long term acquired brain injury/illness. If alcohol and other drug use is present it might complicate the process of assessing capacity and may extend the time required to do it social workers are well placed to play a key role in a response to this situation, this includes, challenging societal stigma and professional assumptions around lifestyle choices and applying the appropriate legal frameworks to meet need.

How is Mental capacity related to alcohol and other drug use?

There are a number of relationships between mental capacity and alcohol and drug use.

Mental health presentations, including those of capacity and dementia, can often be confused or interchanged in assessment and diagnosis with those of intoxication or substance use impairment. Active alcohol or drug use is often cited as a barrier to accessing mental health services. Alcohol and other drug use can become a means of coping with declining mental and physical health, loneliness and isolation, and other socio-economic factors. Using to cope can also include responding to a loss of capacity. Significant and prolonged alcohol and drug use is often a contributing factor to mental health decline, including intensified emotions, anxiety, fear, loss of capacity and development of brain damage. This is often further compounded by the complex and often adverse reactions between the use of prescribed medications and other alcohol and drugs

The distinction between alcohol and or drug acquired brain injury and cognitive impairment can be complicated. Both injury and impairment affect capacity. Brain injury is acquired through cerebrovascular (blood flow to the brain) problems or traumatic brain injury. Cognitive impairment is that of alcohol/drug related dementia, Korsakoff's Syndrome or Wernicke's Encephalopathy; and while in some instances, abstinence may lead to some improvement, and coping behaviour can be supported, conditions are also often irreversible.

What does this mean for social workers?

For social workers, these relationships require attention to ensuring that dynamic assessment conversations take place, which have regard for the range of possible complex interactions and explanations for presenting behaviour. Assessments often lead to social workers having to work with others in decision making, and this often involves balancing the rights of individuals against any perceived risk, juggling different ethical and values dilemmas, and being clear about the legal

frameworks. Sometimes this is made more difficult where individuals appear to be making entitled and legal, but what appear to others (carers, families, and professionals) as informed unwise decisions. Sometimes the vulnerability of those with impaired capacity can lead to them being abused and exploited by others, and this can include things such as; use of tenancy (cuckooing), misappropriation of funds and pressure to engage in illegal activity (prostitution, shop lifting etc) in the context of alcohol and illicit drug use. It can often impair their activities of daily living, looking after themselves, their home, having care needs recognised in law.

How to respond?

People who use substances are often reluctant to engage with services and may also live chaotic life styles which make this engagement more difficult. Existing services are frequently not resourced to provide the level of intensive support that might have a significant impact on their wellbeing. Like much social work, the key skills here are about the building of empathic and trusting relationships and establishing a comprehensive picture through the assessment process. Working with and through the complexities of understanding the functions, nature and consequences of someone else's alcohol and drug use and its relationship with any capacity considerations takes time. It will further frequently require liaison and co-working with a range of other professionals. However, it also requires caution in assuming that the issue is primarily a health rather than social one and or the support is purely that of medical interventions rather than sustained long term social support.

What can UK governments and policy makers do?

An overarching governance policy or framework which addresses, the dangers of this group of vulnerable people falling through "the gaps" as a consequence of societal & service exclusion would go some way to preventing avoidable deaths. Alongside a strong commitment to tackling stigma and discrimination via training and education within the workforce which reinforces the notion of "no wrong door" for those entering services regardless of the circumstances.

What is mental capacity?

The Mental Capacity Act 2005, covering England and Wales, provides a statutory framework for decision making for people over the age of 16, who are incapable of making decisions for themselves. A person who lacks capacity means a person who lacks capacity to make a particular decision or take a particular action for themselves, at the time the decision or action needs to be taken, because of an impairment of, or a disturbance in the functioning of, the mind or brain. Drug or alcohol dependency is not identified as an impairment or disorder; however dependency can be associated with certain forms of mental disorder, this mental disorder can arise from drug or alcohol use or withdrawal, all of which can impact mental capacity. Section 4(3) requires a decision-maker to consider whether it is likely that the person will at some time have capacity in relation to the matter in hand and if it appears likely that they will, when that is likely to be. If it is possible to put off the decision until the person can make it for themselves, then this is what should happen, in an emergency this may not be possible.

Mental capacity assessments

Regard must be given for individuals ability to:

- Have a general understanding of the decision and why they need to make it and the likely consequences of making/not making this decision.
- An ability to understand, retain, use, and weigh up the information relevant to the decision
- An ability to communicate their decision by any means, including non-verbal

Consideration must be given to:

- All practicable help should be offered to enable decision making
- No to mistake any lack of mental capacity for an unwise decision
- Any decision(s) made on behalf of a person who lacks capacity must be done, should be made in their best interest
- Any intervention for someone who lacks capacity should be the least restrictive option

A key clinical feature of alcohol and drug use is active risk taking in spite of an awareness of the potential harmful consequences. However a lack of mental capacity over this awareness can help to distinguish an unwise decision from an incapacitous one.

Key case examples

London Borough of Tower Hamlets v. PB [2020] EWCOP 34

TB v KB and LH (Capacity to Conduct Proceedings) [2019] EWCOP 14

NHS Foundation Trust v. X [2014] EWCOP 35 Cobb J

Links to key resources with specific information:

Mental Capacity Act Overview	Mental Capacity Act - NHS (www.nhs.uk)
Legal powers to safeguard highly vulnerable dependent drinkers	Safeguarding-guide-final-August-2021.pdf
How drugs and alcohol can affect your mental health	How drugs and alcohol can affect your mental health - Mind
Alcohol and drug misuse prevention and treatment guidance	https://www.gov.uk/government/collections/alcohol-and-drug-misuse-prevention-and-treatment-guidance
Dementia, Alcohol and other drugs use in later life and other evidence reviews	https://www.researchinpractice.org.uk/adults/topics/people-living-with-dementia/
Alcohol and other Drug Use: The Roles and Capabilities of Social Worker	basw_25925-3.pdf
Working with change resistant drinkers	The-Blue-Light-Manual.pdf

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