

## Mental capacity | defining an unwise decision



Whenever I teach around the practicalities of assessing mental capacity, the notion of unwise decisions vs incapacitous decisions is always raised.

I invariably ask two questions:

“Has everybody heard of the term ‘unwise decision’?” and

“Can anyone give me a definition?”

The first question is always met with a resounding “Yes”, the second with a deafening silence. Everybody is able to give examples of what they consider to be an unwise decision, for example smoking, but defining it seems to be another matter.

### So what defines an unwise decision?

An unwise decision is basically a decision that someone else arrives at, that is different to your decision but based on the same evidence. The classic example is smoking. Everyone knows that there is an alleged link to cancer but some people choose to smoke and others don't. Neither option is illegal (subject to certain caveats) – just opposite ends of the spectrum.

But what makes smoking (or not smoking) ‘unwise’ as opposed to ‘incapacitous’? There are two key things we look for when assessing whether a decision is unwise and they are:

- 1) a logical and consistent series of steps in their thought process that takes them, step-by-step, from the evidence to their outcome and
- 2) the person's ability to weigh-up the risks involved in the decision that is being made, including the consequences of making or not making that particular decision.

### A significant challenge

Let's use a different example to illustrate this (please note all identifiable information has been changed). As part of my previous role as Manager of Liaison Psychiatry I was the lead assessor for suicidal patients. It is important to remember that it is not illegal to commit suicide.

I remember one gentleman, a 48 year old engineer who had had a stroke and lost the use of his right sided limbs. He was an only child and both his parents were deceased and he had no extended family. He had a very small circle of friends and in his own words “I lived for my job”. Due to his loss of movement he was no longer able to work as an engineer. He told me that he believed he had nothing left to live for.

His job was his world, he had no real friends and no family. He felt he had had “a good innings” but now wanted to “retire from this life”. He rationalised that even though I could tell him “life might get better”, that he might find another job he loved equally as much or that he would learn to live with his disability – he might not. He argued I had no way of knowing how his life might pan out and that he was happy that he had lived a full and meaningful life to this point in time and didn't feel the need to try and prolong it on the ‘off-chance’ that things might change for him.

We discussed the fact that if he attempted suicide and it failed he could end up worse than he was. This he acknowledged but felt that this was a chance he was willing to take. In the end, I felt he was able to demonstrate a logical and consistent series of steps to his thought process. He was able to evaluate the risks involved and the consequences of making/not making that decision.

I believed he had mental capacity, there was also no evidence of mental illness and so I had to let him go. He died shortly after.

## Conclusion

Hopefully, this level of decision is one that you will never have to make but I believe it illustrates the point well. So whether it is Miss Miggins gifting £3m to the proverbial Cats Home or someone making the ultimate decision about their life, the principles remain the same. Is there a logical and consistent train of thought, are they able to evaluate risk and have they considered the consequences of action/inaction? If the answer is 'Yes' it is an unwise decision, if the answer is 'No' you'd best tell the cats' home not to start building that extension just yet.

*This article was prepared by Tim Farmer of TSF Consultants. Tim is a registered mental health nurse and specialises in the field of mental capacity. TSF Consultants is an associate member of the Brain Injury Group.*

Contact Tim on [tf@tsfconsultants.co.uk](mailto:tf@tsfconsultants.co.uk)

[www.tsfconsultants.co.uk](http://www.tsfconsultants.co.uk)



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