

Please note the content of this training scenario is correct as of December 2022. It is up to individuals using the scenario to confirm if there have been any subsequent changes in case law or guidance requiring inclusion prior to use.

Scenario 1 (Police based)
The Police receive a call at 05:00hrs from Andrea who is a care worker in a Residential Adult Care Home. Andrea informs the call taker that she has found Alice, who is 84 years old, in a state of undress. Alice is found in her room, lying on top of her bed in a distressed condition, saying that Eddie (who is another resident 78yrs old) has come into her room earlier on this morning, pulled the bedding from her and pushed his hand up her night dress and 'hurt' her. When she shouted at him to get out, he laughed at her and said he would come back tonight when the girls are busy. Alice appears to be in pain and Andrea the Care Worker has asked to check on Alice's condition but she will not allow anyone near her and is getting more and more agitated. There are no managers currently working and Andrea wants to know what to do, as she has other people to care for but she can't manage the situation with Alice. She tells the receiving officer, "I don't suppose you can help me as neither have capacity."
Questions
What would you do? What legal implications might there be? What do the procedures tell you?
Trainers notes
<p>Practice guidance</p> <p>First action and continuing action – Make sure everyone is safeguarded</p> <p>Whenever the police or other professionals are required to follow the Mental Capacity Act, they should have regard to the MCA Code of Practice which has statutory force, in particular the five statutory principles:</p> <ol style="list-style-type: none"> 1. A person must be assumed to have capacity unless it is established that they lack capacity. 2. A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success. 3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision. 4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests. 5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action. <p>The police could use a standard tool as an MCA checklist to aid decision making, and document that decision making is MCA compliant</p> <p>The Human Rights Act 1998 which underpins the Mental Capacity Act, states that Public Authorities must act in accordance with the European Convention of Human Rights. These rights have been incorporated directly into domestic law via the Human Rights Act and therefore can be enforced in any proceedings in any UK court. The key Human Rights to be considered in these scenarios are:</p> <p>Article 5 – Right to Liberty and Security. Everyone has the right to liberty and security of persons.</p>

Article 8 – Right to Respect for Private and Family Life. Everyone has the right to respect for his private and family life, his home and his correspondence. Compliance with the MCA therefore provides the police and other professionals with protection from liability due to potential breach of a person's human rights

The police (and other professionals) should try to engage the vulnerable adult whose capacity or mental health may be compromised by

- Ensuring they have necessary information in a format they can understand
- Checking out that they do understand options and consequences of their choices
- Listening to their reasons for mistrust, disengagement, refusal and their choice
- The above three points may need to be a conversation over time i.e. “not a one off” as long as there is no immediate risk of harm
- Repeating all the above if risk to their health/safety increases
- Considering who e.g. family member, advocate, other professional may help the adult and you in these conversations and be relevant in assisting with assessment and/or support
- Involving attorneys, receivers, the person's representative if they have one
- For an adult with fluctuating capacity, if possible establishing a plan when they are capacitated which determines what they want to happen when they lack capacity
- Checking whether adult has made an Advance Directive when involved with significant decisions, re. Health
- Involving the person in meetings where possible

- A crime has been reported therefore police must respond regardless of the Care Worker's opinion of Eddie's capacity – important to maintain assumption of capacity regardless of diagnosis.
- Eddie, the alleged person to have caused harm, appears to demonstrate premeditative behaviour which is an indication of capacity about his alleged actions; again the police must assume capacity unless they establish lack of capacity.
- There is a potential crime of Wilful Neglect under the MCA (s44) – due to suggested lack of staffing and lack of management.
- The Criminal Justice and Courts Act 2015 may also be applicable:

20 Il-treatment or wilful neglect: care worker offence

(1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.

21 Ill-treatment or wilful neglect: care provider offence

(1) A care provider commits an offence if

(a) An individual who has the care of another individual by virtue of being part of the care provider's arrangements ill-treats or wilfully neglects that individual.

- There could also be a crime of misconduct in a public office, if the care home manager is deemed to be a public office holder. In *R v Whitaker* (1914) KB 1283 the court said: 'A public office holder is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.'
- http://www.cps.gov.uk/legal/I_to_o/misconduct_in_public_office/#a02
- The police would need to complete a Connect Crime Investigation, tagging an interest to the MASH.
- The care home would need to report a safeguarding to the local authority (allegation of sexual abuse), ideally establishing Alice's ability to consent to this, but would still need to report as other residents are also potentially at risk.
- Multiagency strategy meeting to be called to develop an immediate protection plan to protect Alice from Eddie – Police to advise on this over the phone, e.g. keeping

residents separated/monitored. There should also be a protection plan in respect of Eddie.

- The victim could also have capacity about the incident and could be a reliable witness.
- If the care worker has reasonable belief that Alice lacks capacity to consent to medical attention they are the decision maker to determine a best interest's response (e.g. Dr/ambulance).
- Police could use a standard tool as an MCA checklist to aid decision making and if the outcome is they have a reasonable belief either party lacks capacity regarding decisions about the incident they should make appropriate referrals, and can demonstrate in their recording that their action were MCA compliant. Police cannot make a formal assessment of capacity - however they should be making an informal assessment at all incidents and seek support if they believe the person lacks capacity.
- Eddie is also potentially a risk to others and would therefore need to have a protection plan put in place by the care home to protect Eddie from potentially committing a crime and to protect other residents from risk.

Useful link: <https://mentalhealthcop.wordpress.com/> A Blog by a serving police inspector who began blogging in a personal capacity because he'd had "more than my fair share of policing & mental health incidents on the frontline of British policing". He talks about the Mental Capacity Act as well as mental health on his blog. He is now involved in producing [National Policy](#) for the police service.

NB In all cases above where the person lacks capacity in relation to a safeguarding investigation and planning, a referral to IMCA (Independent Mental Capacity Act Advocate) should be considered under the Local Authority's duty to instruct