

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 2 (Police based)

Betty lives in her own home in a small bungalow. There is a warden who lives in a similar house a few doors away. Betty has a history of calling for help/ assistance to the Warden most days and it's always found that really she just wants company. Tonight, around 6pm she makes her hot drink and walks through the kitchen towards her lounge but Betty falls and hits her head on a kitchen cupboard and knocks herself unconscious. Some time passes and she wakes but finds herself in considerable pain both from her head and her hip but somehow manages to crawl across the floor to the phone. It is now 9pm, she's in real pain. The phone is answered by the Warden, Betty finds that her words are coming out slurred and she is unable to say what's happening. The person at the other end of the phone says, 'Not you again!' and puts the phone down. No one comes to Betty's assistance and in the morning she is found, still on the floor, in a very poor physical state by her daughter. As well as calling for an ambulance her daughter asks for the police to be informed. Betty is later found to have a broken hip and had suffered a mild stroke.

Questions

What would you do?
What legal implications might there be?
What do the procedures tell you?

Trainers notes

Practice guidance

First action and continuing action – Make sure everyone is safeguarded

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:

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.

The police could use a standard tool as an MCA checklist to aid decision making, and document that decision making is MCA compliant

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:

Article 5 – Right to Liberty and Security. Everyone has the right to liberty and security of persons.

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
- Although Betty appears normally to be of 'sound mind' she may lack capacity due to a possible head injury and therefore there is possibly a crime of Wilful Neglect under the MCA (s44) by the warden who has a duty of care in her role.

- There is possible a crime of misconduct in a public office, if the warden 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/l_to_o/misconduct_in_public_office/#a02
- The police would need to complete a Connect Crime/non-crime Investigation and tag an interest to the MASH.
- Should Betty need conveyance by ambulance to hospital and there is doubt about her ability to consent, an assessment of capacity will be required, and a best interests decision made by the paramedics should she lack capacity.
- If restraint is required to convey Betty to hospital this would need to be in her best interests and proportionate to the risk of harm to her of not attending hospital. MCA Section 6 (4) places clear limits on the use of force or restraint by only permitting restraint to be used where this is necessary to protect the person from harm and is a proportionate response to the seriousness of the risk of harm.
- Once Betty is in hospital consideration may need to be given for a Deprivation of Liberty (DoLs assessment)