

**Please note the content of this training scenario is correct as of December 2023. 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 3 (Police based)**

Gwen has lived in the same house for over 60 yrs. She is now 83 and has never asked for support in all that time. She keeps herself to herself and that's how she wants to be. She goes out for her pension to the corner shop once a week and at that time, buys her food for the week ahead. On the last visit to the shop, Gwen is stumbling around, looks unclean and when she gets to the counter; she is confused about why she is there. Gwen left the store with no food and her purse is left at the till. The shop keeper rings the police as he is concerned about her but cannot leave the shop to follow.

Police attend the home of Gwen to return her purse and check on her welfare. Gwen answers the door but refuses them access. It's clear to the officers that something is wrong, as they see that her hallway is piled high with newspapers and boxes, leaving only a narrow walkway for Gwen to walk through. There is an unpleasant smell coming from the property but Gwen still refuses to discuss anything further. She appears to understand why they are there and just asks them for her purse (although confused as to why they have it) and to leave her alone.

### **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 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

- The police, having identified there is a potential issue with self-neglect/ability to self-care should explore with Gwen additional support such as contacting a family member/friend, a referral to GP and a referral to social care. In doing so the police should ascertain her capacity to decide to seek this help for herself, remembering principle 2 of the MCA ‘taking all practicable steps to help the person make the decision themselves’, and principle 3 of the MCA ‘not assuming incapacity simply because an individual makes an unwise decision’.
- Police could use a standard tool as an MCA checklist to aid decision making and if the outcome is they have a reasonable belief that Gwen lacks capacity to seek help they should make appropriate referrals and demonstrate in their recording that their actions were MCA compliant.
- The scenario suggests an acute change rather than a gradual decline so an acute medical reason for change in behaviour would need to be excluded.
- Sections of the Mental Health Act 2007 may be applicable in cases of self-harm or self-neglect where the person is also suffering from a mental disorder. In 2007 the term personality disorder, which is often present in cases of self-harm now comes under the definition of “mental disorder”.
- Section 135 Mental Health Act 1983 provides the authority to seek a warrant authorising a Police Officer to enter premises if it is believed that someone is suffering from a mental disorder, is being ill-treated or neglected or kept otherwise than under proper control anywhere within the jurisdiction of the court, or being unable to care for himself and is living alone in any such place. This allows the Police Officer with a Doctor and approved Mental Health professional to enter the premises and remove the person to a place of safety for a period of up to 72 hours with a view to an application being made under part II of the Act, or other arrangements for their treatment or care. A place of safety may include a suitable registered care home.

1. Section 47 National Assistance Act 1948, gives powers to remove a person without consent to a suitable place for assessment and care for up to three months. There

must be a genuine public nuisance implying hazard due to a person's unsanitary living arrangements. For a Section 47 order to be granted the person has to be; suffering from grave chronic disease; aged and infirm; physically incapacitated; be living in unsanitary conditions; unable to devote to themselves or not receiving proper care. Section 47 does however raise ethical issues for practitioners and the language is now considered to be discriminatory. The law commission have recently queried whether Section 47 should be removed from statute and a consultation exercise is currently in place to examine this issue.

2. Sections 31-32 Public Health Act (1984) Section 31 indicates that the occupier of a premises can be required to "cleanse and disinfect" the premises and to disinfect or destroy any unsanitary articles. If the occupier fails to comply, the local authority can take the necessary action and charge the occupier for doing so. Section 32. The local authority can "cause any person to be removed to any temporary shelter or house accommodation provided by the authority", with or without their consent using reasonable force if necessary.
3. Section 135 Mental Health Act 1983 provides the authority to seek a warrant authorising a Police Officer to enter premises if it is believed that someone is suffering from a mental disorder, is being ill-treated or neglected or kept otherwise than under proper control anywhere within the jurisdiction of the court, or being unable to care for himself and is living alone in any such place. This allows the Police Officer with a Doctor and approved Mental Health professional to enter the premises and remove the person to a place of safety for a period of up to 72 hours with a view to an application being made under part II of the Act, or other arrangements for their treatment or care. A place of safety may include a suitable registered care home.
4. Police could use a standard tool as an MCA checklist to aid decision making and if the outcome is they have a reasonable belief that Gwen lacks capacity to seek help they should make appropriate referrals, and demonstrate in their recording that their actions were MCA compliant.
5. Human Rights Act 1998  
Public authorities must act in accordance with the Convention of Human Rights, which has been enacted directly in the UK by the Human Rights Act 1998 and therefore can be enforced in any proceedings in any court.

In many cases self-neglect will be dealt with by the Local Authority under usual case management arrangements and are regarded as safeguarding in its broadest sense. Where the risk to the safety and wellbeing of a vulnerable adult and/or others are becoming more critical a more formal Adult protection approach will be required.

#### Engage the Adult

- Ensure they have necessary information in a format they can understand
- Check out that they do understand options and consequences of their choices
- Listen 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
- Repeat all the above if risk to their health/safety increases
- Consider 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
- Always involve attorneys, receivers, person representatives if the adult has one
- Where an adult has fluctuating capacity it may be possible to establish a plan when they are capacitated which determines what they want to happen when they lack capacity
- Check whether adult has made an Advance Directive when involved with significant decisions, re. health Involve adult in meetings where possible

**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

Police Officers must address immediate and on-going safeguarding issues. They must submit a Connect Crime or non-crime investigation as appropriate, tagging the MASH into their report.

In all cases of Vulnerable Adults Police must try and obtain consent from the person to share information with other agencies. Failing to do so may mean the appropriate agency doesn't receive the necessary information.

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

<https://adultpswnetwork.files.wordpress.com/2017/03/reflections-at-the-heart-of-social-work.pdf> An e-book collection of blogs from Social Workers, illuminating live issues and practice. The Blog 'Someone to Safeguard' by Rob Mitchell is particularly relevant to this Scenario