

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 4 (Police based)
<p>Jim has dementia and is cared for by his wife Lillian at their own home. Lillian wakes around 2am and finds that the front door is open and Jim has gone. She rings the police and reports him missing.</p> <p>Jim is found wandering in his night clothes at the side of a busy road.</p>
Questions
<p>What would you do?</p> <p>What legal implications might there be?</p> <p>What do the procedures tell you?</p>
Trainers notes
<p><u>Practice guidance</u></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 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> <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.</p> <p>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</p> <p>The police (and other professionals) should try to engage the vulnerable adult whose capacity or mental health may be compromised by</p> <ul style="list-style-type: none"> ➤ 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
- Police should assess Jim's mental capacity and his understanding of where he is and whether he can consent to them taking him home. If he can consent and is taken home, police should ascertain whether he needs additional support at home and whether his wife /carer Lillian can make any necessary referrals.
 - If the police have a reasonable belief that Jim lacks capacity to consent to being taken home (or anywhere else appropriate) then they would need to make a best interests decision, and use the least restrictive approach e.g. gentle persuasion. The police could use a standard tool as an MCA checklist to aid decision making, and document that decision making is MCA compliant. MCA section 6.4 consider least restrictive option and any restriction must be necessary and proportionate to prevent harm.
 - If restraint is required to convey Jim this would need to be in his best interests and proportionate to the risk of harm to him. 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 proportionate response to the seriousness of the risk of harm.
 - If Lillian does not appear to be willing or able to make appropriate referrals the police would need to complete a PVP report (Protecting Vulnerable People) and/or a safeguarding alert.
 - The Local Authority would need to ensure that assessments under the Care Act are offered, including a carer's assessment for Lillian.
 - The Local Authority would may also need to consider whether Jim is being deprived of liberty by Lillian and /or any proposed care package , i.e. lacking capacity to consent to the care arrangements and under continuous supervision and control, and not free to leave. The LA may need to consider an application to the Court of Protection to authorise the deprivation of liberty

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.

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

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