

**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 6 (Police based)**

Janet lives alone and is 52 years old. She had a very severe stroke a few years ago. She receives care from numerous carers who call throughout the day and night. Her son calls the police this morning, as he notices that she has fingertip bruising on both arms and also a cut around her left eye. He informs the police that as a result of the stroke, it left his Mother unable to walk and with a personality disorder, although he cannot elaborate more than that, saying that she has good days and bad days but he wants to report that he feels that she has received an assault from her carers. Her son has Power of Attorney, so he can look after her house hold bills on behalf of his mother

### **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
- Having impairments following a stroke does not necessarily impair mental capacity. So following this allegation of assault, police should seek to clarify by speaking with Janet and determining whether she either consents to this being reported as a crime and /or safeguarding alert. Principle 2 of the MCA should be implemented to assist Janet.
  - If it is deemed that Janet lacks capacity to consent to the sharing of information then best interest decision making should be undertaken, although the need to raise a safeguarding alert to protect others will take priority.
  - A home visit would likely be required to gather all the relevant evidence/information.
  - Consideration should be given to the possibility of domestic abuse perpetrated by the son.
  - The police should consider whether or not Janet has capacity to account for the alleged assault. The police should consider whether there is a public interest duty to share concerns with other agencies (including the care provider) due to possible risk to other vulnerable people from carer/s.
  - Having POA for property and affairs does not give son powers to decide about personal welfare matters on her behalf.

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