

**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 7 (Police based)**

Ellie is 17, out of work. She has been taking cocaine for a few years now and that costs money that she simply doesn't have. She notices that Jack, a pensioner, who lives alone may want some company and 'befriends' him. Jack is attracted to Ellie and although surprised by her attention, is also flattered to have this company. Jack buys Ellie gifts and gives her money. No sexual activity is said to be taking place, it's simply a place that's warm and enables Ellie to socialise and take drugs with her mates. However, the money is becoming an issue as now. Jack is finding that he is not managing to balance his household bills like he used to do but doesn't want to find that his 'friend' disappears. The Police get a call from a neighbour who is concerned about the number of young girls going into his house.

### **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

### **Case specific guidance**

- The police should visit Jack and consider any capacity issues which may be impacting on his decision to engage with Ellie, and to establish whether any crime has been committed, ie reported theft.
- The police should consider making a referral to adult social services regarding possible financial exploitation so that advice and support can be provided to Jack around addressing his loneliness and keeping himself safe. The referral should be made with Jack's consent, or if the Police have determined that he lacks capacity then it could be made in his best interest.
- On the face of it, it appears Jack has capacity to decide about this "social contract" with Ellie – and is making an unwise decision as is his right under the MCA, and in line with his Article 8 rights (private and family life). The Police need to consider whether duress is impacting on Jack's capacity to consent and /or whether the offence of controlling or coercive behaviour under Section 76 of the Serious Crime Act 2015 applies.
- As Ellie is a minor, a child of 17 years old, a referral should be made to children's social care.

**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 service