

Please note the content of this training scenario is correct as of September 2024. 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 12 (Children and Young People)

Case Example A

Sam is a 15-year-old living in a children's home. He is subject to a Care Order under the local authority.

Under the arrangements, staff know the whereabouts of Sam at all times; he is never left alone in the home; he is never left alone with other residents; he is subject to 1:1 staffing including during breaks at school; he is subject to constant observations by staff and has no free time when he is not observed; the external doors of the home are locked at night; the bedroom doors are alarmed at night to ensure privacy and to ensure that the whereabouts of all residents are known; the internal doors are locked if Sam's behaviour necessitates it.

Sam cannot leave the home unsupervised and cannot leave unaccompanied without permission; he is monitored at all activities outside of the home and is accompanied on all recreational and social events; he is not permitted any internet access and the use of his mobile telephone is restricted to four telephone numbers and he cannot travel alone on public transport.

Points to consider

Consider whether Sam can consent to the arrangements?

Sam is 15 years old and therefore the MCA does not apply to him. We would therefore look to consider his competence. There is not enough information here that would allow for consideration of Sam's competence to make decisions- we would need to consider if there was any impairment of the mind or brain, any learning disabilities, communication challenges, executive functioning. Are there contextual risks for Sam that would impact his decision making - e.g., coercion, exploitation?

If Sam is deemed competent and consenting, there would be no deprivation however it is important to note competence and consent do not always lead to compliance and therefore it would be prudent to seek legal advice.

Consider whether Sam is deprived of liberty?

Sam is under permanent supervision and control and experiences a number of restrictions including access to internet/contact with others.

The state is responsible for his confinement.

We do not have enough information (as above) to deem if Sam has competence to consent to his confinement – and zone of parental responsibility would not be reliable as the restrictions imposed in this case are significant. As Sam is subject to a care order – a legal application would be required.

Consider If Sam lacks capacity to consent to the arrangements; can anyone else consent on his behalf?

As Sam is 15 years old, subject to a care order and is confined, an application must be made to a court as neither the local authority nor parent can consent to the child's confinement. The Mental Capacity Act 2005 does not apply to those under 16 years; therefore, an application must be made for authorisation under the inherent jurisdiction of the High Court.

Case Example B

Amy is 17 years old and under the care of the Local Authority under section 20 of the Children Act 1989 due to an adoption breakdown. Amy has regular contact with her adoptive parents who continue to hold parental responsibility.

Amy is living outside of her originating area in a residential setting as she is a victim of high-risk child sexual exploitation. Amy has learning disabilities and has experienced a number of adverse childhood experiences and trauma.

Amy previously had the contraceptive implant fitted which she previously consented to, however has now advised her parents and residential carers that she wants the contraceptive implant removing as she wants to have a baby.

All professionals and her parents are very concerned that this would have an adverse impact on Amy and that if she were to have a child, there would be significant safeguarding concerns for both her and her baby.

There are additional concerns that Amy is being exploited and coerced by a 35-year-old male.

The social worker has contacted the sexual health clinic to advise that they should not remove the implant due to her vulnerabilities and requested staff at the residential home to not support her to make an appointment for removal of the implant. Parents are also in full support and agree with the social worker's recommendations.

Amy is very angry about this and states she can make her own decisions as she is now 17 years old.

Points to Consider

Can Amy consent to this procedure?

As Amy is 17 years of age – the MCA applies, and the 5 principles should be applied. Taking into account that Amy has some diagnosed learning disabilities and is a victim of high-risk exploitation, a capacity assessment would be required by the practitioner responsible for removing the implant.

This would involve assessing Amy's capacity to make the decision around the procedure itself- i.e., risk of infection, bleeding, effect on menstrual cycle, risk of pregnancy and consideration of alternative options available. This should include exploration of her decision making and any exploration of safeguarding concerns.

In view of Amy's learning disability, practitioners would need to ensure that all information was presented in the most appropriate format to meet Amy's needs. Does Amy's learning disability mean that even after all adjustments made, she is unable to consent?

Validity of consent would need to be explored in the context of exploitation and coercion- do we have concerns she is being coerced into the decision? If it is deemed that Amy's capacity to consent is impaired due to undue pressure/coercion from another e.g., a perpetrator of exploitation and there is sufficient evidence to support this – an application could be made to the High Court for a ruling to restrict the contact from such a person. Have we considered the impact of trauma and adverse experiences on Amy's executive functioning?

Can the social worker/parent provide consent/refuse consent on her behalf?

If Amy is assessed to have capacity, then the parent/social worker cannot consent to, or refuse, the procedure on her behalf.

If Amy is assessed to lack capacity in relation to this decision, then a best interest meeting would be required- which Amy's parents and social worker could be involved in. An advocate would be recommended to support Amy.

What evidence of enabling decision making has been provided and documented

All support/adjustments should be recorded in assessment documentation and records.
Has Amy been supported by an advocate?

Consider safeguarding processes and the principles of making safeguarding personal

Amy, at 17 years old, should receive a contextual safeguarding child protection response given she is under 18 years of age. She is vulnerable and is recognised as at high risk of exploitation- therefore the protections afforded under the legal framework of the Children Act 1983 should be enacted, with a trauma informed safeguarding response alongside her section 20 status.