

Please note the content of this training scenario is correct as of September 17. 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 5 (Police based)

Mrs Anderton went to visit her mother who resides in a care home. Whilst there, she witnesses the Care Staff go into a residents room and after some time they come out locking the door behind them, effectively locking the resident inside. After a few minutes, she hears a man's voice behind this locked door who is shouting to be let out, as he has shopping to do and he wife wants him home. This goes on for a long time and the voice behind the door sounds upset, which in turn upsets Mrs Anderton and her mother. Once Mrs Anderton returns to her own home she calls the police to report the poor treatment by the Care Staff on one of their residents.

Questions

What would you do?
What legal implications might there be?
What do the procedures tell you?

Trainers notes

Practice guidance

- 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
- This could be a crime under s44 MCA, ill treatment and wilful neglect – locked doors in a care home are always a safeguarding concern. It could be false imprisonment, or an unlawful deprivation of liberty.
- The Criminal Justice and Courts Act 2015 may also be applicable:
 - 20 Ill-treatment or wilful neglect: care worker offence**
 - (1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.
 - 21 Ill-treatment or wilful neglect: care provider offence**
 - (1) A care provider commits an offence if—
 - (a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual,
 - (b) the care provider’s activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and
 - (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.
- The police should consider a joint unannounced visit with social services safeguarding to establish if residents are locked in their rooms.
- Before a joint visit the police would need to raise a safeguarding alert- and should advise Mrs Anderton to report this to herself to social services as well.
- There is possible a crime of misconduct in a public office, if the care staff are deemed to be public office holders. In *R v Whitaker* (1914) KB 1283 the court said: 'A public office holder is an officer who discharges any duty in the discharge of which the

public are interested, more clearly so if he is paid out of a fund provided by the public.' [http://www.cps.gov.uk/legal/l to o/misconduct in public office/#a02](http://www.cps.gov.uk/legal/l%20to%20o/misconduct%20in%20public%20office/#a02)

- The Police should ask the manager/carer in charge if a DOLs Authorisation is in place and what is authorised by asking to see a copy of the authorisation
- The police could consider a third party referral to the supervisory body regarding unlawful DOL.
- The police should ask the manager/carer in charge if a DOLs authorisation is in place. If there is an authorisation in place detail of the content and degree of restriction should be established.
- The Fire and Rescue Service should conduct a safety plan inspection. All service users should have a personal emergency evacuation plan (PEEPS) in place which should be in the individual's file.
- The Local Authority and or health commissioners of the service should consider a contract review visit and should consider CQC involvement as the regulator.

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