

## Learning Together from Safeguarding Audits Mental Capacity

This briefing summarises the findings of a SAB **multi-agency audit** of safeguarding cases involving mental capacity issues

The briefing sets out the key findings, and learning points from the audit. Staff in all agencies are encouraged to read the briefing and discuss it in team meetings.

**Background:** Brighton & Hove Safeguarding Adults Board (SAB) conducted a multi-agency audit to assess how well staff in all agencies apply the **Mental Capacity Act Code of Practice**. The purpose of the audit was to:

- Assess the extent to which staff in all relevant agencies apply the principles of the Mental Capacity Act when assessing mental capacity and making best interests decisions.
- Establish the extent to which decision making is facilitated in a multi-agency context.
- Establish the extent to which leadership responsibility is clear when making decisions in people's best interests.
- Identify strengths and areas where development and improvement may be needed.

**The audit group** included representatives from:

- Brighton & Hove Health & Adult Social Care (HASC)
- Brighton & Sussex University Hospitals NHS Trust (BSUH)
- Sussex Partnership NHS Foundation Trust (SPFT)
- Sussex Community NHS Foundation Trust (SPFT)
- Brighton & Hove Community Learning Disability Team
- Brighton & Hove CCG
- West Sussex Clinical Commissioning Group (CCG)
- Sussex Police
- Safeguarding Adults Board (Lay member)

**The audit** looked at five cases which had involved a safeguarding concern where there were mental capacity issues and at least one other agency was involved.

- **A female adult with a terminal illness: Safeguarding concerns about neglect affecting her palliative care**
- **Concerns about a female adult with dementia and potential acts of neglect and psychological abuse by a family member**
- **A male adult with a learning disability and physical and mental health support needs. Concerns about his capacity relating to managing his medication**
- **A female adult with dementia living in a care home. Issues around disputed DoLs (Deprivation of Liberty Safeguards) decisions**
- **A female adult living in a nursing home. Concerns about self-neglect and issues relating to capacity and end of life wishes**

If you work with adults in Brighton & Hove with care and support needs, there may be specific actions & recommendations for your agency and your role. Please ask your manager, or contact your representative on the SAB. If you would like to read the full report please contact us at [SAB@brighton-hove.gov.uk](mailto:SAB@brighton-hove.gov.uk)



## The audit findings and recommendations

The audit identified a number of strengths and examples of good practice and some consistent themes. The main findings and recommendations are summarised below.

What was done well	What could be improved
<ul style="list-style-type: none"> <li>• Safeguarding concerns were raised appropriately by agencies.</li> </ul>	<ul style="list-style-type: none"> <li>• The audit identified some issues with the recording of mental capacity assessments and how this is quality monitored.</li> </ul>
<ul style="list-style-type: none"> <li>• There were good examples of effective multi-agency working.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need to raise awareness among some staff of the value of advance care planning in cases where degenerative disease progression may affect mental capacity.</li> </ul>
<ul style="list-style-type: none"> <li>• Making Safeguarding Personal was applied well in some cases and there was good involvement of family and friends.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need to review training in Primary Care on mental capacity assessments and best interests decision making.</li> </ul>
<ul style="list-style-type: none"> <li>• Person centred and patient approach to sensitive issues demonstrated by practitioners in complex and challenging cases.</li> </ul>	<ul style="list-style-type: none"> <li>• The audit raised the importance of accuracy and clarity of language in relation to mental capacity issues. For example:               <ul style="list-style-type: none"> <li>▪ There was a reference to an adult's 'best interests' when mental capacity had not yet been assessed.</li> <li>▪ A reference to 'assessment' without specifying the type of assessment.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Good use of advocacy in several cases.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need to raise awareness of the decision specific nature of mental capacity assessments.</li> </ul>
<ul style="list-style-type: none"> <li>• Good professional curiosity demonstrated and appropriate legal advice sought in cases where this was appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a need to raise awareness about the importance of involving the right professionals in mental capacity assessments, including clarity about who is the decision maker.</li> </ul>
<ul style="list-style-type: none"> <li>• Good consideration of the rights of adults under Article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life).</li> </ul>	<ul style="list-style-type: none"> <li>• Health staff may benefit from receiving up to date guidance in relation to DNAR (Do Not Attempt Resuscitation) orders.</li> </ul>
<ul style="list-style-type: none"> <li>• Good clarity of mental capacity assessments and best interests decisions in some cases.</li> </ul>	<ul style="list-style-type: none"> <li>• The audit identified the need to raise awareness of the Sussex multi-agency self-neglect procedures.</li> </ul>
<ul style="list-style-type: none"> <li>• Good application of the MCA and the principle of the less restrictive option when making best interests decisions.</li> </ul>	<ul style="list-style-type: none"> <li>• The audit identified a potential gap regarding a mechanism available for professionals to challenge each other or to escalate concerns.</li> </ul>

**The audit group has developed an action plan and will be working with the agencies involved to implement improvements. Progress will be monitored by the SAB Quality Assurance Subgroup.**

## The key learning outcomes

### Decision specific mental capacity assessments:

The audit reinforced the principle, made clear in the Mental Capacity Act that any assessment of capacity must be 'time and decision specific'. This means that:

- The assessment of capacity must be about the particular decision that has to be made at a particular time and is not about a range of decisions.
- If someone cannot make complex decisions, this does not mean that they cannot make other decisions. For example, someone may be able to make decisions about buying items to meet their everyday needs, but lack capacity to understand the consequences of not paying household bills.
- If there is more than one decision to be made then a mental capacity assessment should be completed for each decision.

**The best outcomes in the cases audited were achieved when staff completing capacity assessments were clear about the decision the adult needed to make.**

### Who should assess capacity?

The MCA Code of Practice (Chapter 4) advises that the person who assesses an individual's capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made. This means that different people will be involved in assessing someone's capacity to make different decisions at different times.

For most day-to-day decisions, this will be the person caring for them at the time a decision must be made. For example, a care worker might need to assess if the person can agree to being bathed and a district nurse might assess if they can consent to have a dressing changed. If a doctor or healthcare professional proposes treatment or an examination, they must assess the person's capacity to consent. In settings such as a hospital, this can involve the multi-disciplinary team (a team of people from different professional backgrounds who share responsibility for a patient). But ultimately, it is up to the professional responsible for the person's treatment to make sure that capacity has been assessed.

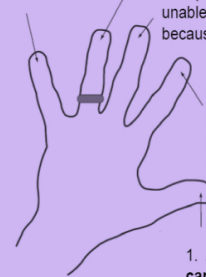


More complex decisions are likely to need more formal assessments. A professional opinion on the person's capacity might be necessary. This could be, for example, from a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker. But the final decision about a person's capacity must be made by the person intending to make the decision or carry out the action on behalf of the person who lacks capacity – not the professional, who is there to advise.

See the [MCA Code of Practice](#) for more guidance.

## MCA - 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.



scie  
social care  
institute for excellence

## Balancing the rights of individuals and the safeguarding duty – case study

The MCA is designed to protect those who cannot make decisions for themselves, and is underpinned by human rights principles which aim to ensure its provisions are applied in a way that respects human rights.

One of the cases audited concerned a woman who lacked capacity to make decisions about future contact with a close relative who was suspected to be the cause of neglect and emotional abuse. The professionals involved had to carefully weigh up the risks of continuing access and the negative emotional effects of restricting access to a member of her family.

- Legal advice was sought in relation to Article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life).
- A best interests meeting was held and a best interests decision was made that a decision on contact between the adult and her relative would have to be made by the Court of Protection.
- Independent advocacy was arranged and the views of other family members were taken into account.
- Protective measures were agreed including a care package which achieved a less restrictive option and ensured a relationship important to the adult could continue.

**For further information in relation to this briefing or if you would like a copy of the full audit report, contact George Coleby, Quality Assurance & Learning Development Officer at:**  
[george.coleby@brighton-hove.gov.uk](mailto:george.coleby@brighton-hove.gov.uk)  
07712 236676

## The importance of record keeping

The audit highlighted the importance of good record keeping in relation to mental capacity assessments and best interests decisions.

However assessments are recorded, it is important to ensure that they are evidence-based. Good standards of recording within mental capacity assessments include the following considerations:

- ✓ Stating clearly the specific decision that is being assessed.
- ✓ Identifying the salient and relevant details the person needs to understand in relation to the decision.
- ✓ Ensuring that full details of all the options available to the person are set out.
- ✓ Demonstrating what steps were taken to promote the person's involvement and ability to decide.
- ✓ Evidencing each element of the assessment
- ✓ Recording actual questions as they were asked, and factually recording the detailed responses given by the person and also any non-responses. (Recording yes/no answers without supporting detail is unlikely to be sufficient)
- ✓ Ensuring that professional opinion is distinguished from fact, and that opinions made are supported by factual evidence.

## Independent Mental Capacity Advocates (IMCAs)

The role of the IMCA is to represent the person without capacity in discussions to work out whether the proposed decision is in the person's best interests. The service is a legal right for people over 16 who:

- Lack mental capacity (assessed) to make key decisions
- Do not have an appropriate family member or friend to represent their views

An IMCA **must** be involved if:

- the decision to be made is a decision about serious medical treatment or
- a long-term change of accommodation needs to be made

Where an adult lacks capacity in relation to their understanding of a safeguarding concern and their ability to consent to a safeguarding enquiry, consideration should be given to involving an IMCA if the adult has no one else suitable to support them.

For more information about advocacy services in Brighton and Hove, visit <https://www.pohwer.net/brighton-and-hove>



The audit raised the importance of clarity of language in relation to mental capacity issues – see the examples on page 2.

The [MCA Code of Practice](#) (page 280) contains a list of key terms used in the Code or the Act, and direction to where further guidance can be found in the Code.

## Further information and guidance

[Sussex Safeguarding Adults Policy and Procedures](#)  
[Sussex multi-agency Self-neglect procedures](#)  
[Using the Mental Capacity Act in the Community](#)

[Mental Capacity Act Code of Practice](#)  
[SCIE MCA guidance](#)  
[Care Quality Commission guidance](#)  
[POhWER](#) - for information about the IMCA service and other advocacy services)  
[Brighton & Hove Learning Gateway](#)

