

# Mental Capacity, Domestic Abuse and Older People



*Dewis Choice*

# Objectives

- Examine what we know about domestic abuse and mental capacity;
- Explore what is mental capacity and the factors that can impact on mental capacity;
- Discuss 'best interests' : indicators and how to make a decision;
- Responding to victim-survivors who lack mental capacity within the context of a domestic abuse situation;
- Review current working practices and highlight gaps in service provision;
- Suggest recommendations for training.



# Domestic Abuse

‘Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over, who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional.

Home Office (2013)



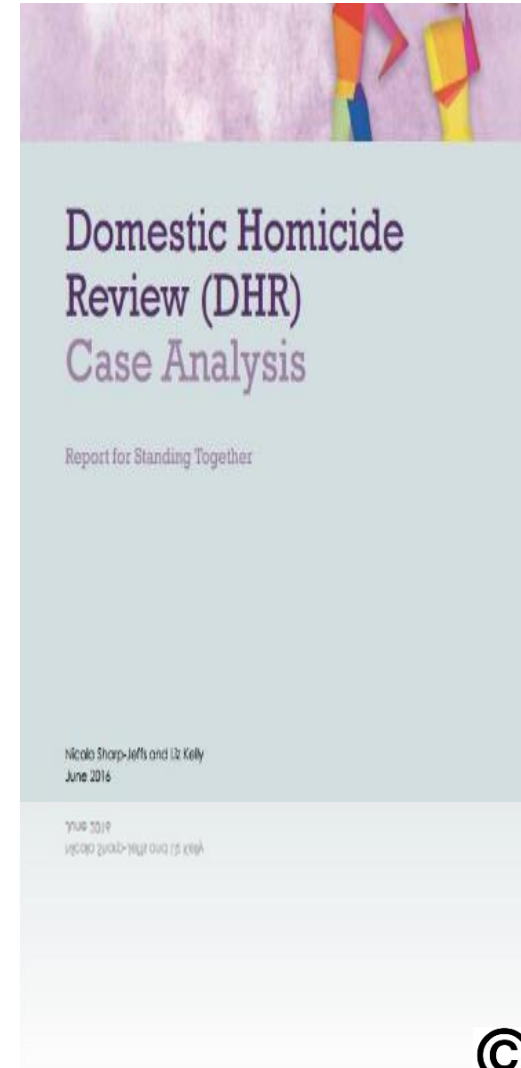
# Domestic Homicides

Annie Beaver, aged 81

Edith Gravener, aged 79

Betty Gallagher, aged 87

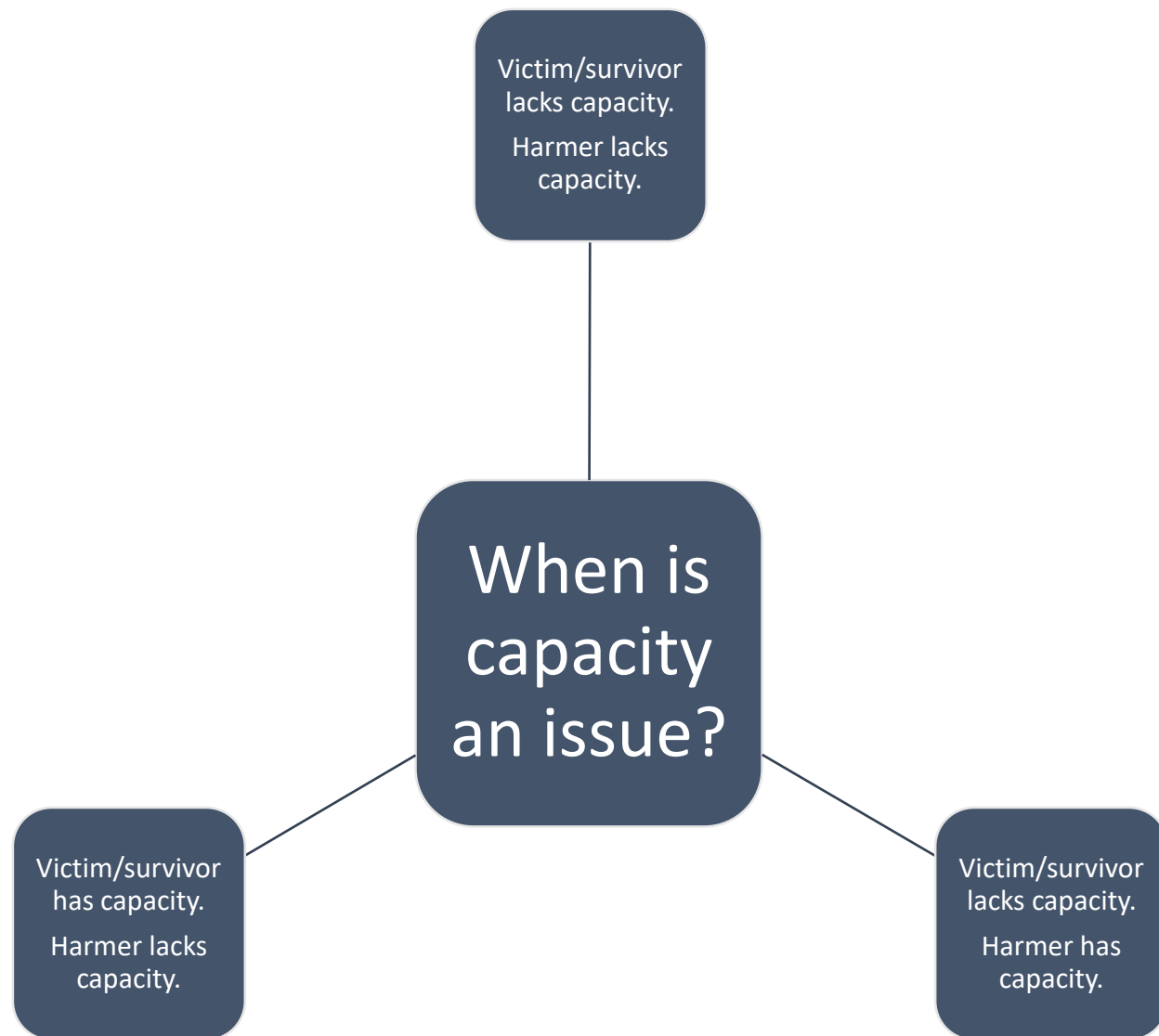
Ellen Ash, aged 83



# Domestic Abuse and Mental Capacity

- Limited research
  - Problems with prevalence rates
  - Indicators of abuse guised under normal signs of ageing
  - Concurrent abuse where many perpetrators engage in more than one form of abuse (Cooney et al. 2006)
  - High risk of sexual abuse in persons with cognitive impairment (Taitelman and Copolillo, 2002)
- Fractures and bruises that are not easily explained;
  - Malnourishment;
  - Poor personal hygiene;
  - Chronic pain;
  - Missed appointments or daily activities by mobile patients;
  - Symptoms associated with acute stress disorder and post-traumatic stress disorder  
Substance misuse
  - Depression
  - Social withdrawal





Capacity is relevant in a number of situations, for example

1. Consent or refusal to involvement of statutory or third sector.
2. Consent or refusal in financial matters.
3. Consent or refusal to intimacies.
4. Consent or refusal to medical examination.



# Risk Factors

## *Characteristics of the older person with dementia / capacity issues*

Dementia is itself a factor (Dyer et al., 2000)

Socio-demographics – younger age, lower income, gender

Prior victimisation (Flowers, 2000).

History of family violence

Vulnerable and socially isolated

## *Characteristics of the carer*

Health related factors-Depression, anxiety, alcohol abuse

Lower self-esteem (Pillermer & Sutor, 1992)

Caregivers gender did not increase likelihood (Downes et al., 2013)

Feelings of powerlessness; jealousy or fear of being abandoned (Flowers, 2000)

## *Carer-recipient relationship*

Reciprocal nature of abuse (Coyne et al., 1993).

Quality of relationship prior to onset of dementia (Homer and Gilleard, 1990)

Poor current relationship

Premorbid abuse of the carer by older person with dementia (Coyne et al., 1993)

## *Care environment*

More involved caring – hours spent and duration, volume of caregivers tasks

Shared living arrangement (Pillermer & Sutor, 1992)

Dysfunctional coping strategies (Shaffer et al., 2007)

Lack of support and feelings of social isolation (Compton et al. 1997)

Less initial domiciliary care (Cooper et al., 2010)

# Access to Justice Findings (2012)

- Majority of cases capacity was not assessed;
- Older people not included in decision-making;
- Under use of an Independent Mental Capacity Advocate (IMCA);
- In two-thirds of all relevant cases, criminal or civil justice options were not discussed.





# Elements of consent/refusal

Real consent –  
adequate  
information  
provided

Made of the  
persons own free  
will

Capacity to  
consent





# Mental Capacity Act 2005



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 or her 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 or she 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 or her 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 Statutory Principles – s.1 MCA 2005



# Capacity – MCA 2005

(1) ... a person lacks capacity in relation to a matter if at the material time he is *unable to make a decision* ...in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter whether the impairment or disturbance is permanent or temporary.

(3) A lack of capacity cannot be established merely by reference to-

(a) a person's age or appearance, or

(b) a condition of his or her, or an aspect of their behaviour, which might lead others to make unjustified assumptions about his capacity.

A person is unable to make a decision if he or she is unable-

- (a) to understand the information relevant to the decision,
- (b) to retain that information,
- (c) to use or weigh that information as part of the process of making the decision, **or**
- (d) to communicate his decision (whether by talking, using sign language or any other means).



Capacity and best interest decisions should always be reviewed and where necessary revised.

“... an impairment of, or a disturbance in the functioning of, the mind or brain.”

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conditions associated with some forms of mental illness

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dementia

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significant learning disabilities

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the long-term effects of brain damage

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physical or medical conditions that cause confusion, drowsiness or loss of consciousness

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delirium

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concussion following a head injury, and

---

the symptoms of alcohol or drug use.

It does not matter whether  
the impairment or  
disturbance is permanent or  
temporary.



# Best Interests – s.4 MCA 2005

Best  
Interests

The text 'Best Interests' is written in a playful, hand-drawn style. 'Best' is in light blue and 'Interests' is in pink. There are four colorful smiley faces (orange, yellow, green, and red) scattered around the text.

Consider

- (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
- (b) if it appears likely that he or she will, when that is likely to be?



# Best Interests – s.4 MCA 2005

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- c. Permit and encourage so far as reasonably practicable, the person to participate, or to improve their ability to participate, as fully as possible in any act done for them and any decision affecting them.
- d. Where the decision relates to life-sustaining treatment he or she must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about their death.

# Best Interests – s.4 MCA 2005



Be aware of coercion – are their past and present wishes and feelings genuine?

Consider, so far as is reasonably ascertainable—

- e. the person's past and present wishes and feelings (and, in particular, any relevant written statement made when they had capacity),
- f. the beliefs and values that would be likely to influence their decision if they had capacity, and
- g. the other factors that they would be likely to consider if able to do so.



## Best Interests – s.4 MCA 2005



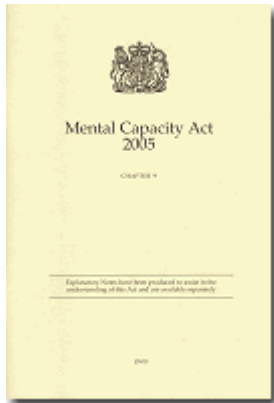
Be aware of coercion – are their views genuine?

It may be necessary to ignore or give little weight to the views of other.

Take into account, if it is practicable and appropriate to consult them, the views of—

- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
- (b) anyone engaged in caring for the person or interested in their welfare,
- (c) any donee of a lasting power of attorney granted by the person, and
- (d) any deputy appointed for the person by the court, as to what would be in the person's best interests.

# What should practitioners do?



MCA 2005 is the template for decision making

The basis on which capacity assessments and best interest decisions are made and the basis upon which they can be challenged and defended.

Capacity and best interest decisions are professional judgements made within the framework of the MCA 2005.

Similar facts do not mean identical decisions – everybody is different.

# Gap in Services

- Use of the Domestic Abuse, Stalking and Honour based Violence Risk Indicator Checklist (DASH RIC)
- Carer's assessment and provision of support
- Assessing capacity – ongoing need to re-assess decision specific, time specific
- Person-centred approach
- Change in environment
- Initial recognition- recognising early signs and getting the person assessed

# Training

- Embedding mental capacity into domestic abuse services
- Integrating SSWB A and VAWDASV
- Presumption of capacity, need to address the issue of capacity
  
- Choice project- further research and opportunities to engage

# Contact Information



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