

Mental Capacity Act (2005) Subgroup

The impact of coercive control on mental capacity to marry

Cognitive challenges due to, for example, a dementia can increase vulnerability when they compromise a person's ability to intuit or make judgements about the behaviour and intentions of others.

This can become complicated when an 'other' suggests marriage, which might seem a genuine and attractive offer in the absence of knowledge that the motivation for the proposal is financial gain. When the person is also subject to coercive control, their capacity may be even harder to determine.

Legal challenges to 'predatory marriages' have been brought by families who contested their elderly parent's mental capacity to consent to marriage, and concerns expressed about the robustness of the capacity test for marriage undertaken by registrars.

The link below is a summary of one such case in which P's Article 8 Rights had to be 'balanced' with her safety and wellbeing, while recognising the impact of her partner's coercive and controlling behaviour on her mental capacity:

[Re BU \[2021\] EWCOP 54](#)

For additional information on: Predatory Marriage UK Reforming marriage laws and procedures to protect people with dementia, which is a campaign to put 'protection in place for all those who lack the mental capacity to marry', please visit: [Predatory Marriage UK](#)

For information about case law in relation to capacity to consent to marriage, see page 12: [Mental Capacity Guidance Note Relevant Information for Different Categories of Decision](#)

Guidance Note: Relevant Information for Different Categories of Decisions. Essex Chambers

Issue 3 – April
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In this issue

The impact of coercive control on mental capacity to marry | Page 01

MCA and 16/17 years old | Page 02

360 Assurance | Page 03

Mental Capacity Act Training Slides | Page 03

Derby & Derbyshire SAB: Practice Guidance | Page 03

Derby SAB SAR01: Executive Summary Report | Page 04

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Mental Capacity Act and 16-17-year-old

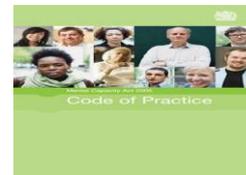
The Mental Capacity Act, (2005), applies to all people over the age of 16 years who may lack the capacity to make all or some decisions for themselves.

Capacity at 16 years

The moment that a young person wakes up on the morning of their 16th birthday, they are presumed to have the capacity to make their own decisions under the MCA



All those involved in supporting a young person are obliged to have regard to the MCA in all that they do in relation to that young person. If you work with young people who lack capacity and you are a professional and/or you are paid for the work you do, you have a legal duty to have regard to the MCA Code of



However, there are parts of the MCA that do not apply to 16-17 years. These are:

- Only people aged 18 and over can make a Lasting Power of Attorney, (LPA); [lasting power of attorney - GOV.UK](#)
- Only people aged 18 and over can make an advanced decision to refuse medical treatment

Making a will and advanced decisions

- The law generally does not allow people under 18 to make a will and the MCA confirms that the Court of Protection has no power to make a statutory will on behalf of anyone under 18
- Only people aged 18 and over can make an advanced decision to refuse medical treatment

Where the MCA Applies to Children under the age of 16

In most situations, the care and welfare of children under 16 will continue to be dealt with under the Children Act 1989.

There are, however, two parts of the MCA that apply to children under 16:

1. The Court of Protection can make decisions about a child's property or finances, (of can appoint a deputy to make these decisions),
2. if the child lacks capacity to make to make such decisions and is likely to still lack still lack capacity to make financial decisions when they reach the age of 18.

[Mental Capacity Act 2005 - Derby City Council](#)
[Mental Capacity Act: - GOV.UK](#)

360 Assurance

360 Assurance provides an internal audit and independent assurance to NHS organisations across the East Midlands and South Yorkshire.

In 2021-22, 360 Assurance are undertaking a specific project to support their clients' preparation for implementing the Liberty Protection Safeguards (LPS).

For additional information and resources, please visit: [360 Assurance](#).

Mental Capacity Act (MCA) 2005 Training Slides

Derby and Derbyshire Safeguarding Adults Boards Mental Capacity Act Subgroup undertook some work across partner agencies to identify what the barriers and obstacles are for practitioners in applying the Mental Capacity Act in practice.

Following analysis of the feedback, it was identified that one of the biggest barriers for practitioners is the language used in the legislation and in training, which made it harder for people to understand their role and responsibilities in relation to the Mental Capacity Act. As a result the Subgroup developed some [PowerPoint slides](#), using plain English, to help support understanding and learning about the Mental Capacity Act. These have been previously circulated, but we thought it would be helpful for them to be shared again.

These slides have been produced for partners across Derby City and Derbyshire to use and to embed as part of their internal MCA Training. Ideally the content of the slides could be used directly within your current training materials, or you may wish to provide it as an additional resource.

While use of the slides is not mandatory, we would hope that all partners take note of the use of plain English and the simplified messages in these slides, and that the content is recognised as being useful in breaking down some of the barriers to competent and confident application of the Mental Capacity Act, that our colleagues have shared with us previously.

Derby and Derbyshire Safeguarding Adults Boards Practice Guidance

On 13th January 2022, the [Derby and Derbyshire SABs Practice Guidance](#) document was updated with the following additional sections:

- Update on Counter terrorism to include self-initiated terrorism - page 23
- Update on Modern Slavery National Referral Mechanism with new contact details 'Hope for Justice' - page 44
- Chronologies has been added as part of the Minimum Standards for Recording section - page 101
- Office of the Public Guardian section has been added - page 108
- Transition and the Mental Capacity Act 2005 'Supporting decision making as a child enters adulthood' section has been added - page 126

Derby Safeguarding Adult Review (SAR01): Executive Summary Report

On 13th May 2021, Derby Safeguarding Adults Board published an executive summary report for a Safeguarding Adults Review: SAR01, concerning a Derby citizen we refer to as Samantha.

The Board asked related agencies to work together to consider what led to the circumstances faced by Samantha and the potential learning that could be taken forward as a partnership. The SAR is now complete and, in addition to a comprehensive report, it was agreed that an executive summary report outlining the background, findings, including good practice and next steps was required. Read the [SAR01 executive summary report](#).

The executive summary report will be used as a tool to understand cases of a similar nature and prompt discussion amongst practitioners. The review process does not conclude with the publication of the executive summary report and the Board will continue to oversee progress in relation to the recommendations of the SAR.

One recommendation was made in the SAR report which related specifically to MCA and is detailed below.

We would welcome thoughts from readers of this newsletter about how the Board can assist and support practitioners in this area. Any ideas or feedback can be sent to DSAB@derby.gov.uk to be included in ongoing discussions taking place within the MCA subgroup of the Derbyshire and Derby City Safeguarding Adult Boards.

- Recommendation: Derby SAB should seek assurance as to the extent that the Mental Capacity Act 2005 is being applied across the Derby Safeguarding Partnership.