

Mental Capacity and Domestic Violence and Abuse

A close-up photograph of a person's open palm, facing the camera. The palm is light-skinned and has the words "MY LIFE: MY CHOICE" written on it in bold, black, hand-drawn capital letters. The text is arranged in four lines: "MY", "LIFE:", "MY", and "CHOICE". A silver ring is visible on the ring finger. The background is a soft, out-of-focus green and white gradient.

MY
LIFE:
MY
CHOICE

The Home Office (March 2013) defines domestic abuse as:

'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.'

The Statutory Guidance issued under the Care Act 2014, states that adult safeguarding 'means protecting an adult's right to live in safety, free from abuse and neglect'.

Safeguarding duties apply to an adult who:

- has needs for care and support (whether or not the authority is meeting any of those needs)
- is experiencing, or is at risk of, abuse or neglect
- as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect'

Some victims of domestic abuse may lack capacity to take certain decisions for themselves. They will need additional help to support and empower them within a legal framework:

The Mental Capacity Act 2005.

The Mental Capacity Act contains a range of safeguards and legal approaches, which could be used to support people experiencing domestic abuse.

The five key principles of the Act must be applied:

- start from the assumption that a person is able to make their own decisions, and has the capacity to make the specific decision in question
 - ensure you make every effort to enable the person to make the decision themselves
- making a decision that you consider to be unwise or eccentric does not necessarily mean the person lacks capacity to make the decision in question
 - anything done for or on behalf of a person who lacks capacity must be done in their best interests
 - if acting on behalf of a person who lacks capacity, weigh up the intervention to ensure that you act in a way which interferes as little as possible with the person's rights and freedoms.

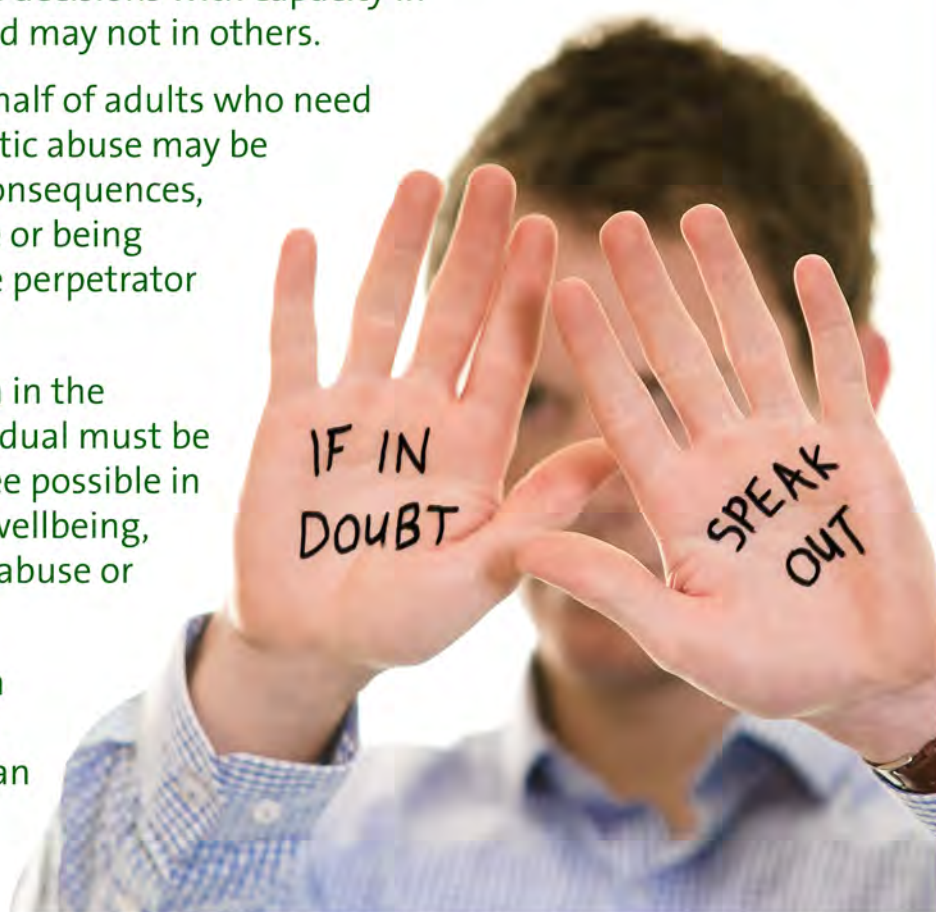


Professionals need to be clear as to the question being asked and recognise that individuals may be able to make decisions with capacity in response to certain questions and may not in others.

Decisions taken with and on behalf of adults who need safeguarding because of domestic abuse may be serious and have far-reaching consequences, including leaving a family home or being restricted from contact with the perpetrator and other family members.

Where a decision must be taken in the person's best interest, the individual must be involved to the maximum degree possible in making plans about their own wellbeing, including their protection from abuse or neglect.

The Care Act (2014) says that an independent advocate must be engaged if a person's needs mean they may have substantial difficulty taking part in such decisions.



An unwise decision or a decision taken under duress?

Assessing capacity can be particularly challenging in domestic abuse situations, where the person is cared for by, or lives with, a family member or intimate partner and is seen to be making decisions which put or keep themselves in danger.

Skilled assessment and intervention is required to judge whether:

- such decisions should be described as 'unwise decisions'
- which decisions the person has capacity to make
- whether decisions are not made freely, due to coercion and control

For example, a decision to continue to live with an abusive partner might be a free and informed decision based on a full understanding and appreciation of the risks and the alternative courses of action, including support available.



A decision not to leave may also be based on a realistic fear of the behaviour the perpetrator has threatened if the victim were to disclose abuse or try to leave the relationship. Research shows that women are at most risk of serious harm from the perpetrator when they are leaving the abusive relationship.

Case law has clarified that there is scope for local authorities (using the principle of inherent jurisdiction) to commence proceedings in the High Court to safeguard people who do not lack capacity, but whose ability to make decisions has been compromised because of constraints in their circumstances, coercion or undue influence.

A principle of the Mental Capacity Act is that a person only has full capacity if they have access to all the relevant information about the decision they are making.

If, after considering the options carefully, you believe they are not free to make decisions then it is time to make a defensible decision about the next steps.

The information in this leaflet is taken from Adult Safeguarding and Domestic Abuse – A guide to support practitioners and manager (second edition, 2015).

For further information please read the leaflet in full - It is available from:
<https://www.local.gov.uk/sites/default/files/documents/adult-safeguarding-and-do-cfe.pdf>

For further reading and case studies please also refer to RIPFA:
<https://coercivecontrol.ripfa.org.uk/case-studies/>

