**Vulnerability, Mental Capacity and Self Neglect**

Self-neglect by adults who are vulnerable raises a fundamental conflict for professionals between fulfilling one’s duty of care and respecting the patient’s right to privacy, autonomy and choice.

The Mental Capacity Act (MCA) 2005 provides a legal framework under which there is protection from liability for intervening to bring about a person’s best interest where that person lacks mental capacity to give consent. MCA guidance about acting in a person’s best interest requires the person’s wishes and values to be taken into account, but allows for the possibility that wishes may be overridden in some circumstances. Best Interest decisions must be reasonable, necessary and proportionate in relation to a person’s right to privacy, autonomy and family life. The deprivation of liberty safeguards provide additional protection when interventions amount to detention or confinement.

Where a person has mental capacity to make a decision, there are limited legal frameworks under which it is possible to intervene without consent. These may include the Mental Health Act, environmental health powers or even, in extreme cases, the inherent jurisdiction of the court.

The Care Act 2014 replaced the term vulnerable adult with the term adult at risk. It also explicitly included self- neglect as a type of abuse that may be subject to safeguarding adult procedures. Concerns about self-neglect can be referred to safeguarding; however, the Care Act did not introduce any new compulsory powers of intervention. Empowerment and proportionality are key safeguarding principles.

Guidance and lessons taken from serious case reviews (now safeguarding adult reviews) suggest that where a person is at risk from self-neglect, it is important to assess their mental capacity for certain decisions (e.g. capacity to refuse support). Although an unwise decision cannot be used as evidence of lack of capacity, a series of unwise

decisions raise sufficient concern to justify an assessment. The assessor must conclude, on balance, whether any inability to understand or weigh up information is caused by an impairment of the mind. A conclusion that a person has capacity to make relevant decisions does not mean that there is no further expectation on professionals as regards their duty of care. Multi-agency risk management procedures should be used to consider whether any alternative support can be offered.

The work of Michael Preston-Shoot is now frequently cited in relation to self-neglect and capacity. Preston-Shoot points out that what is often absent from analysis is consideration of executive capacity. Executive capacity is not the same as executive brain function or mental capacity as described in the MCA 2005. The phrase refers to the ability to carry out decisions and intentions, especially in relation to one’s own welfare. It is therefore best practice to consider this ability in addition to mental capacity when a person is at risk from self-neglect.

Identifying that a person lacks executive capacity would not enable professionals to rely upon the legal framework of the MCA to intervene without consent to bring about a person’s best interest. While there is no separate legal framework for intervention without consent for someone who lacks executive capacity, identifying the deficit should inform risk management. It may be support can be adapted to address this concern.

All local authority safeguarding boards in the Devon area recognise and have policies relating to self-neglect. Further resources can be found at:

[For Plymouth](http://plysab.proceduresonline.com/chapters/p_risk_man_self.html) – see especially Appendix 3 Creative Solutions Forum

[For Torbay](https://www.torbayandsouthdevon.nhs.uk/uploads/adults-journey-self-neglect-initial-screening-tool.pdf)

[For Devon County Council](https://new.devon.gov.uk/devonsafeguardingadultsboard/policy)

If you would like advice relating to this briefing, please contact:

For Plymouth and NEW Devon - [D-CCG.SafeGuardPrimeCare@nhs.net](mailto:D-CCG.SafeGuardPrimeCare@nhs.net)

For Torbay and South Devon – [libbypotter@nhs.net](mailto:libbypotter@nhs.net)