

Maximizing autonomy whilst minimising risk



Please put all
microphones on
MUTE



If you would like
to ask a question,
please use the
CHAT function



RESPECT the stories
you hear and protect
the identity of adults at
risk through
CONFIDENTIALITY



Take care of your
own
WELLBEING
throughout this
session



Balancing obligations: Respecting capacitous decision where the adult at risk's ability to keep themselves safe is likely to fluctuate is extremely complex!

In the Care Act the safeguarding function sits alongside a general duty to carry out functions in a way that promotes an adult's wellbeing. The 'wellbeing principle' includes a focus on personal dignity, choice and control, but there *'is no hierarchy, and all should be considered of equal importance when considering 'wellbeing' in the round'*.

Equal weight should be attributed to duties to protect health and against abuse or neglect. Ultimately, the duty to protect life (protected under article 2, Human Rights Act 1998) requires all public bodies to do whatever is within their legal powers where risk is real and imminent to act to reduce risk.

S42 requires us to evaluate the adult's 'ability to protect themselves' rather than the capacity to make decisions, but partner's powers to intervene are governed by legal obligations and ethical considerations. A useful [guide to a 'just approach'](#) advocates embracing uncertainty, by planning ahead.

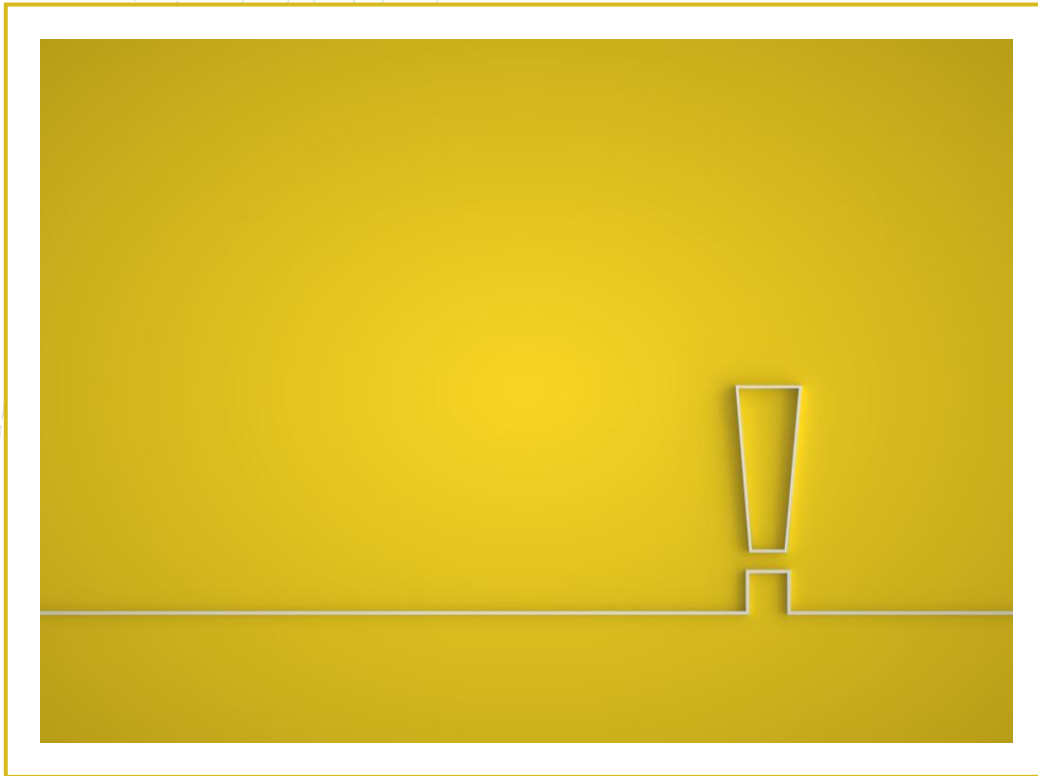
Learning from SARs

- [Alison SAR](#): Alison died in a fire, having declined offers of support from district nurses and social care. Her partner, Debbie, was in receipt of a care package. The review explored how locally we understand fluctuating capacity and executive functioning. This is critical when the adult at risk is living with addiction.
- [Brian SAR](#): Had experience of multiple disadvantage (homelessness, physical, mental health issues and substance misuse). He suffered a serious assault, was hospitalised but died shortly after discharge.
- [Eric learning review](#): identified gaps in support planning for older adults at risk of domestic abuse and carer neglect.

Common themes for organisational learning and practice emerged from all three cases in respect of multi-agency risk management, including information sharing. Remember the duties to cooperate and ensure continuity of care is not limited to s42 duties, so it is possible (and preferable) to pull together MDT meetings before safeguarding issues arise. A 'team around the adult approach' is proven to be most effective in reducing risk and needs and protecting staff wellbeing!

The [H&F SAB website](#) provides links to useful practice guides re fire safety, PiPoT, [multi-agency working](#), self-neglect and understanding discriminatory abuse. It also details referral information for [local multi-agency risk panels](#).

Learning from Case law



London Borough of Tower Hamlets v PB [2020]
EWCOP 34

Mr Justice Hayden held that the fact PB seriously overestimated his ability to keep his alcohol use under control was not enough to establish a lack of capacity.

He warned that not every addict in some degree of denial can be regarded as incapacitous.

He also explained the requirement to be able to understand the “reasonably foreseeable consequences” of a particular decision does not mean that the relevant person must accept the professions’ view that they will not be able to control their drinking.

Autonomy and safety: A balancing act



Legal framework

Civil remedies and criminal sanctions need to reflect Mental Capacity Act principles, but also be responsive to impact of duress, coercive control or undue influence



Therapeutic approaches

Recovery-focused outcomes
Unpicking 'disguised compliance' or 'dis-engagement'
Impact of trauma, adverse childhood experiences

Making Safeguarding Personal- What good looks like

- Pan London safeguarding adults policy places the adult at risk at the centre; it expects us to actively involve the person as an expert in their own life from the start. So, with the adult and anyone caring/ they ask to be involved, explore the likelihood and severity of harm. Consider all available option and their preferences.
- Risk tools should only complement professional judgement. Work collaboratively and dynamically to understand risk and underwrite safety- building trust with adult's social network, recognise protective value of increased choice and develop techniques to detect and obstruct abuse.
- Guard against placing undue confidence on ability of adults or their informal support networks to care effectively and protect against unintended victim blaming. See [Eric learning review](#)
- Build contingency into safety plans - ensuring this is a shared responsibility between professionals and the adult!

Top tip:

Carefully record the assessment of capacity.

Set out your rationale for believing the adult could safely protect themselves and, if they refused necessary care, why you believed it would be unsafe to seek additional legal powers to compel them. But first explore across partner agencies what legal powers might be relevant.

This will enable you to demonstrate actions/ inaction was lawful and reasonable in circumstance!

- *I am not satisfied that it would be in the best interests of AA to compel her return to HV against her wishes, even for the laudable aims of rehabilitation support: LB Islington v AA [2018]*
- *The freedom to choose for oneself is a part of what it means to be a human being. Heart of England v JB [2014]*
- *The right to life and the state's obligation to protect it is not absolute and the court must surely have regard to the person's own assessment of her quality of life' Re M [2013]*

National policy, best practice guidance and more info:

- Care and support guidance:
<https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>
- <https://nationalnetwork.org.uk>
- <https://www.39essex.com/information-hub/mental-capacity-resource-centre> (and subscribe to the newsletter)
- <https://capacityguide.org.uk/practical-legal-guidelines/>
- <https://www.mentalcapacitylawandpolicy.org.uk/wp-content/uploads/2024/04/Uncertainty-Policy-Lab-Final.pdf>
- <https://www.39essex.com/sites/default/files/Mental-Capacity-Guidance-Note-Best-Interests-December-2021.pdf>
- [*LB Islington v AA* \[2018\] EWCOP 24 \(Senior Judge Hilder\)](#)
- [*Heart of England v JB* \[2014\]](#)