

Alcohol Use and the Mental Capacity Act: Pre-reading

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Useful links and reading

- ▶ [How to use legal powers to safeguard highly vulnerable dependent drinkers | Alcohol Change UK](#)
- ▶ [Care and support statutory guidance - GOV.UK](#)
- ▶ [Mental-capacity-act-code-of-practice.pdf](#)
- ▶ [Mental Health Act 1983 \(code of practice\)](#)
- ▶ [How Addiction Hijacks the Brain's Survival Circuits—A Neuroscience Breakdown](#)
- ▶ [How to screen | Diagnosis | Alcohol - problem drinking | CKS | NICE](#)
- ▶ [Alcohol use disorders identification test \(AUDIT\)](#)
- ▶ [How To Safely Taper Off Alcohol downloads \(SADQ.pdf\)](#)
- ▶ [Severity of Alcohol Dependence Questionnaire \(SADQ\) Calculator](#)
- ▶ [Shades of grey: choice, control and capacity in alcohol-related brain damage | BJPsych Bulletin | Cambridge Core](#)

Context - Safeguarding Adults Reviews

- ▶ A Safeguarding Adult Review (SAR) is a multi-agency statutory review designed to determine what the relevant agencies and individuals involved may have done differently to avert harm or death.
- ▶ For these lessons to be widely and correctly learned, it is necessary to determine what may be known from each person's death and for agencies to understand what happened in each case.
- ▶ This webinar has come from the learning from SAR Robert.

Safeguarding Adults Review - Robert (2023)

- ▶ Robert, a white British male, died at the age of 53. He lived with his partner Michelle, Robert did not have children of his own but considered Michelle's two children as his.
- ▶ During Covid-19 Robert struggled with the transition of working from home, missing the routine. Michelle asserted that Robert's subsequent doubts over his capability to carry out his responsibilities were unwarranted.
- ▶ Robert started consuming an excessive amount of alcohol in August 2022, and this escalated in October 2022
- ▶ SWAST attended his home on numerous occasions due to falls from excessive alcohol consumption, they observed that he was intoxicated and had sustained numerous face injuries, expressing a wish to die.
- ▶ Robert attended hospital on numerous occasions also.

- ▶ Despite regular contact with emergency services, Robert was not identified as someone who was self-neglecting or who had possible care and support needs and was not referred through to Adult Social Care.
- ▶ His partner Michelle was not offered support or identified as someone caring for Robert and the pressures this put on her and their life.
- ▶ Michelle had taken respite at her sister's home three weeks before Robert's death and returned every three days; she confirmed they had not separated.
- ▶ Robert's employer visited him at home eight days before his death and informed Swindon Borough Council of a safeguarding adult concern around his self-neglect, alcohol misuse, and suicidal risk.
- ▶ Michelle discovered the body of Robert in their home in January 2023.



Recommendations:



- ▶ Recommendations were made around a number of themes including:
 - ▶ ‘Professional Curiosity’,
 - ▶ Interaction between alcohol & safeguarding law, particularly ‘self-neglect’
 - ▶ Legal literacy - understanding around ‘unwise decisions’ and the MCA
 - ▶ The interaction between alcohol dependence and mental health
 - ▶ The need for multi-agency working and convening of professionals meetings.
- ▶ Conclusion
- ▶ Each agency considered the current presentation in isolation. Michelle had voiced her worries; but, she did not obtain assistance, there were no recommendations for Robert to have a Care Act Assessment. Michelle was not identified as a carer and Robert not identified as someone self-neglecting.

Assessment of Mental Capacity

- ▶ A standard process for assessment
- ▶ Example assessment



MCA assessment checklist

Preparation

What is the decision to be made?

What information does the person need?

Am I best placed to make the assessment?

Should we involve someone else to help the person reach the decision?

What is the best time (and place) for the assessment?

Conduct the assessment

Clarify the decision to be made

Provide the information

Use an open question style

Presume capacity, support to reach decisions, do not exclude merely on basis of unwise decisions

Assess the four functional domains (understand, retain, use & weigh, communicate)

Consider whether there is an underlying impairment of mind or brain which causes deficit in any functional domain

Conclude the assessment – if you conclude the person lacks capacity:

Are we sure this is in the person's best interests?

Is there a less restrictive means of achieving the desired outcome?



Example assessment: preparation

What is the decision to be made?

- ▶ Example: Whether the person would like to be admitted for a period of residential rehabilitation to support with recovery from and learn skills to deal with problems arising from alcohol related brain damage.

Prepare information on

- ▶ The nature of the decision (CoP* 4.16) - describe the rehab in full
- ▶ The reason why the decision is needed (CoP 4.16) - describe the effects of ARBD and the treatments available
- ▶ The likely effects of deciding one way or another, or making no decision at all (CoP 4.16) - include likelihood of relapse and associated outcomes
- ▶ Has information been given on all the alternatives? (Describe community options if available.) (CoP 3)

CoP = Code of Practice

Example assessment: preparation

Am I best placed to make the assessment?

- ▶ Do I have a good enough understanding of ARBD?
- ▶ Do I have a good enough understanding of the rehab including the treatment programme, but also its location, kind of accommodation, private or shared room etc.
- ▶ Should I involve someone with more specialist knowledge?

Should we involve someone else to help the person reach the decision?

- ▶ Might involving a family member, an advocate or someone else the person knows well and trusts help?

Preparation: Time and place of the assessment

- ▶ Are there times of the day when the person's understanding is better? (Code of Practice 4.36) E.g. when neither intoxicated nor withdrawing
- ▶ Are there locations they may feel more at ease? (Code of Practice 4.36)
- ▶ Can the decision be put off until the circumstances are different and they may be able to make the decision (Code of Practice 4.36)



Conduct the assessment: Support to reach the decision

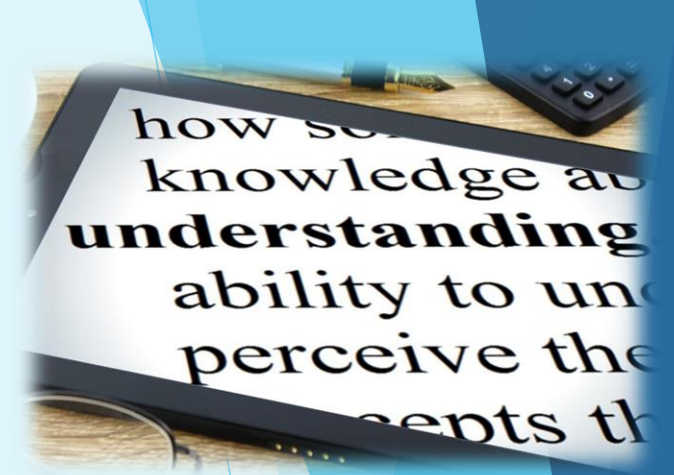
Use the most effective form of communication for that person (CoP 4.17)

- ▶ Use **simple language**. Where appropriate, use pictures, objects or illustrations to demonstrate ideas (CoP 3.10)
- ▶ Speak at the **right volume and speed** (CoP 3.10)
- ▶ Break down difficult information into **smaller points** that are easy to understand. Allow the person time to consider and understand each point before continuing (CoP 3.10)
- ▶ It may be necessary to **repeat information** or go back over a point several times (CoP 3.10)

Be as flexible as possible as to how the information is provided

- ▶ A person with anxiety or depression may find it difficult to reach a decision about treatment in a group meeting with professionals. They may prefer to read the relevant documentation in private (CoP 4.18)
- ▶ Someone who has brain injury might need to be given information several times (CoP 4.18)

Understand the information



Check that he grasps the nature and purpose of residential rehabilitation

- ▶ Can he describe what rehab is
 - ▶ e.g. “a place to live for a while to get help for my drinking and memory problems”
- ▶ Can he understand why it’s being recommended for him?
 - ▶ Verify that he understands the key details: that it’s a residential program (living away from home for a period), with structured support to manage ARBD and sobriety, and any major aspects like duration or rules.
- ▶ If he cannot do so initially, provide simple, relevant information and then check again for understanding.
- ▶ If he misunderstands, gently correct and then ask him to explain back in his own words.

Understand the *consequences* of the decision



- ▶ What positive or negative outcomes does he expect if he **accepts admission** and completes the program?
- ▶ What does he think could happen if he **refuses** rehab and goes home?
- ▶ Does he realize what might happen if he **makes no decision** or delays?

Indicators:

- ▶ Of sufficient understanding: For instance, he might say *“If I go, maybe I can get better at managing things”* and *“If I don’t, I could start drinking again or get worse.”*
- ▶ Of insufficient understanding: If he **cannot articulate any outcomes** or has a very unrealistic understanding e.g. *“I’ll be completely fine at home because nothing is wrong”*
- ▶ People with ARBD can be **suggestible** - they might echo what they think we want to hear. To counter this, **ask open questions** in different ways and ensure his answers are *consistent and in his own words*, not just yes/no responses.

Retain the information

- ▶ Can he **repeat back** or **recognize the main information** (perhaps with minimal prompting)?
- ▶ **Short-term retention can be sufficient** - being able to hold the information long enough to decide is what counts
 - ▶ If his memory is so impaired that he cannot keep track of the conversation at all or continually forgets what the decision is about during the assessment, that would undermine his capacity.
- ▶ *Support strategies:* Use techniques to aid retention - **write down simple bullet points** of the pros and cons for him; use repetition. If these aids help him maintain the info long enough to choose, that satisfies the retention requirement.

Use and weigh the information



Check he is not parroting back facts but **appreciates how they apply to him**

Ask him to describe, in his own words, **why one option might be better or worse**
e.g. rehab v community-based options

- ▶ Encourage him to weigh in **important personal factors**, such as his health, independence, relationships while comparing the options
- ▶ It may help to **prompt him to support him demonstrating his weighing of information**: *“What are you thinking about as you decide? What matters most to you - getting help to improve or staying in your own place?”*
- ▶ **Grossly illogical or one-sided reasoning** that ignores obvious risks would be a reg flag - for example, if he insists *“I’ll be fine at home alone - nothing bad will happen”* or if he cannot articulate any reason for his choice

Communicate the decision

- ▶ Unlikely to need aids for communication in this scenario
- ▶ Allow him time to find words, as ARBD can cause word-finding difficulty or tendency to lose track of thought.



Executive capacity

Can he 'talk the talk but not walk the walk'?

- ▶ If there is a **repeated pattern** of him stating an intention (e.g. "Yes, I'll stay in treatment") and then doing the opposite (leaving the next day) **without a coherent explanation**, this may indicate he *was not truly using or understanding information* in making the original decision.
- ▶ Look for him to **acknowledge his past difficulty** following through and to describe how he would *manage to stick with* his decision this time.
- ▶ A concerning sign would be if he **cannot give any reason** ("I don't know why I left, I just did") *and* cannot formulate any plan to avoid repeating it.
- ▶ Check if he can discuss these risks - e.g., "What would you do if you start feeling like you really want a drink while in rehab? How would you handle that?"



Avoidance of Sanctions



AVOIDANCE of SANCTIONS

- ▶ Make sure to follow the 5 statutory principles and the two-stage test of capacity
- ▶ Base your assessment on the balance of probabilities and make your decision in good faith. You will be judged by whether your decision is considered 'reasonable'.
- ▶ Involve others (colleagues, family, IMCAs)
- ▶ Document your findings clearly
 - ▶ The decision in question
 - ▶ Evidence for the 1st stage test
 - ▶ Evidence for the 2nd stage test
 - ▶ Outcome of the capacity assessment with brief summary
 - ▶ Next steps including how best interests decisions will be made
 - ▶ Involve family, carers, IMCAs as appropriate
 - ▶ Consider less restrictive options
 - ▶ Arrange best interests meetings