

Part 4: What else can impact on judgments about ‘consent’?

Exploring the impact of coercion, trauma and stigma

If a person is found to have functional capacity, and does not have an impairment, it does not necessarily mean that exploitation is simply their ‘choice’. It is important to consider whether coercive control or wider factors may be a factor in decision-making. There is support from Safeguarding Adults Reviews for questioning professional presumptions about ‘unwise choices’:

“Mental capacity assessments should explore rather than simply accept notions of lifestyle choice. This means applying understanding of executive capacity and how adverse childhood experiences, trauma and ‘enmeshed’ situations can affect decision making” (Bedfordshire & Bedford, 2022)

While legal powers under the Mental Capacity Act can only be sought if an individual is unable to make a decision due to an impairment or disturbance of the mind or brain, alternative safeguarding strategies may be possible (see Part 5 for further details).

Coercive control and consent

It is important to assess whether coercive control is being employed by a potential perpetrator. Coercive control is defined under the Domestic Abuse Act 2015 as ‘a pattern of behaviour – defined by at least two occasions – which causes fear of violence or distress which has adverse effect on everyday life of the victim’.

People with cognitive impairment who experience exploitation may be constrained by perpetrators in many ways, including isolation from others, monitoring communications, threats of violence and restrictions on movements (Gardner et al., 2024). In such cases, people may be aware they are being

controlled, but prevented from seeking help. They may also appear hostile to engagement with support services, sometimes out of fear of repercussions.

Coercive control may also be subtle and complex. People often know their exploiters socially, as friends, family members, carers or social networks and may rely upon their perpetrator for social, emotional and practical support (Gardner et al., 2024). Sometimes relationships may be established by a perpetrator making apparently kind or generous gestures in processes described as ‘grooming’. Although this process is well-recognised in relation to children, it is often not considered in relation to adults.

Impact of trauma and adverse experiences

As noted in Part 2, many people who have experienced exploitation also have experience of adverse childhood experiences and significant trauma. They may have past or current experience of other forms of abuse, including self-neglect:

- Such experiences can contribute to the development of circumstances that may be **functionally** impairing, such as substance use, mental health issues and the effects of traumatic brain injury sustained from violent abuse and assault.
- The above may also lead to **social** disadvantage: for instance, someone may have low self-esteem and lack a blueprint for a positive relationship, believing that exploitative relationships are normal, and they are undeserving of love and respect.

It is important to note that victims are often **targeted** by exploiters due to such potential risk factors; **these risk factors do not lead individuals to seek out or actively choose to enter into exploitative relationships or situations**. This is important to bear in mind to avoid putting the onus and responsibility on victims for their situation.

Such risk factors will not usually constitute an impairment or inability to consent in the framework for capacity assessments. Yet they are important aspects to consider when planning for care and support; for example, mental health support, awareness and education can build confidence, help overcome prior trauma and empower victims to make decisions that align with their best interests.

Avoiding stigmatisation

Professionals need to be cautious about ‘deterministic’ approach, whereby multiple risk factors inform presumptions about vulnerability. For instance, there has been research demonstrating that many survivors of domestic abuse feel they have been ‘re-victimised’ by services through stigmatisation, for example coming under increased surveillance by child protection services (Watson, 2017).

On the other hand, it is important not to disregard such contexts and their potential impact on ‘choice’; the notion that individuals are simply making ‘unwise choices’ if they seem unwilling or unable to leave an exploitative relationship can also be stigmatising. In such cases it is important to consider strategies to remain engaged with the individual to provide safeguarding support, even if they appear hostile to support from services.

See Part 5 for further advice on safeguarding strategies.