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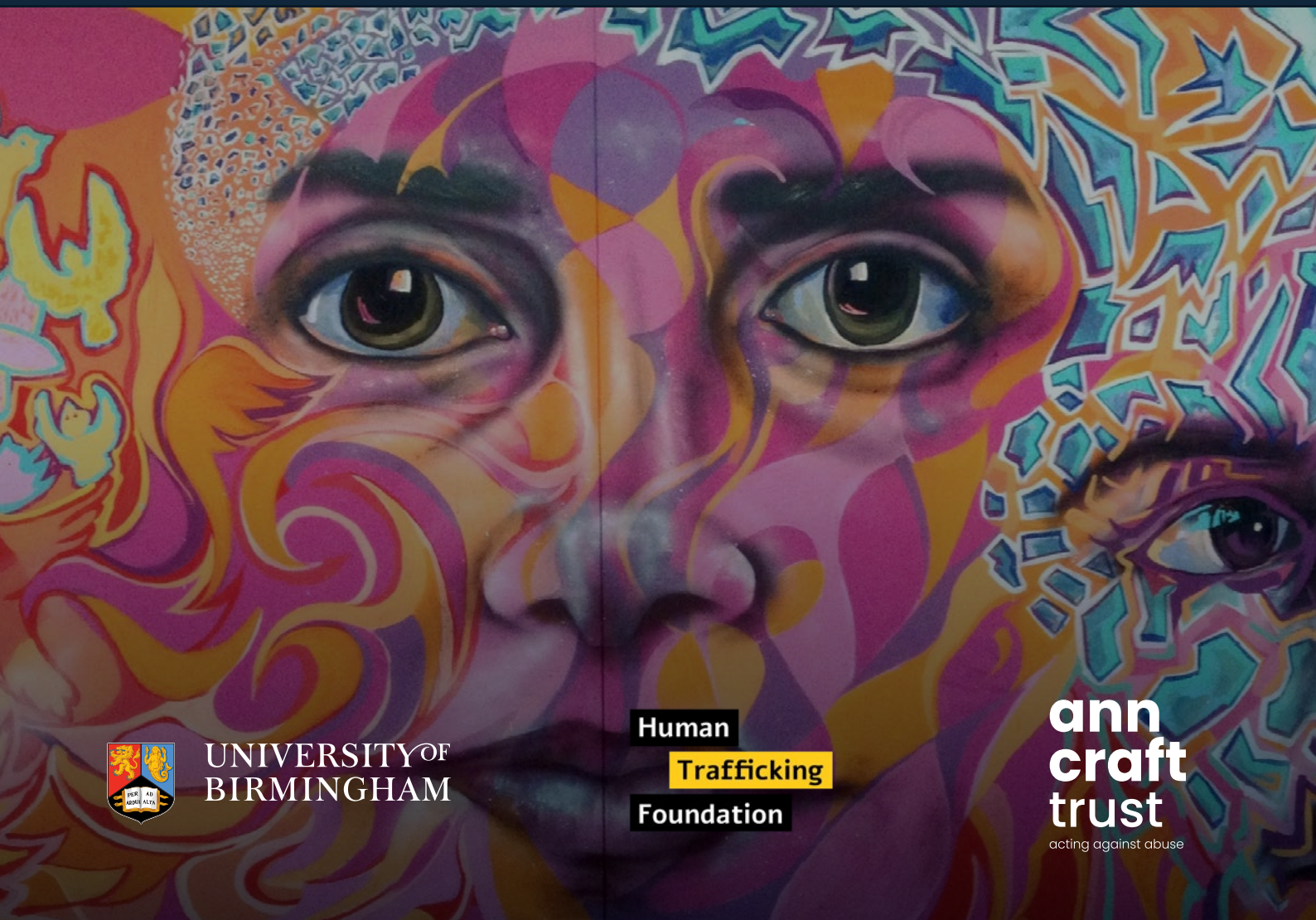
Exploring capacity in cases of suspected exploitation of people with cognitive impairment

A toolkit for practitioners



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Part 1: Introduction and overview

This guidance draws upon research into the intersection between cognitive impairment and exploitation funded by the Nuffield Foundation and undertaken by the University of Nottingham and the University of Birmingham between 2022 and 2025.

Our research included a wide-ranging review of literature, statistical analysis of data relating to adult safeguarding enquiries, surveys and interviews with practitioners, interviews with people who had lived-experience of cognitive impairment and analysis of 58 Safeguarding Adults Reviews. The full report of our study, alongside an easy read summary can be found at exploitationandci.org.uk

The problem: assessing capacity to consent in contexts of coercion

One key finding from our study was that the possibility or presence of coercion was not consistently taken into account when assessing whether vulnerable adults had capacity to 'consent' to situations that were abusive or exploitative:

- Sometimes capacity assessments were not undertaken in situations where they were required, meaning a holistic view of the person and their needs was not obtained.
- At other times capacity assessments were undertaken, but the possibility of coercion was not reviewed in assessing whether an individual is able to exercise genuine choice in their decisions.
- Interviewees and Safeguarding Adult Reviews showed us that capacity assessments were sometimes used as a 'gatekeeping' mechanism, to determine whether support services should remain engaged when adults appeared to be 'choosing' situations of exploitation.

These problems meant that adults at risk of, or experiencing exploitation sometimes did not receive appropriate safeguarding support. This toolkit aims to address some of the challenges faced by practitioners when they are dealing with these complex cases.

Who is this resource for?

This toolkit aims to provide advice and resources for professionals in England and Wales who are working with adults at risk of exploitation. It is aimed at health staff, social workers, police, care support staff, people working in housing and drug and alcohol services and other relevant services, recognising that assessing needs arising from exploitation is a complex process and may necessitate a multi-agency approach.

The guidance provided is not statutory guidance nor legal advice. It should be read in conjunction with your own professional guidelines and case law on adult safeguarding.

Structure of this toolkit

This toolkit consists of a number of discreet parts which can be referred to separately or read together.

1. This introductory section which introduces and sets out the scope of the toolkit
2. Cognitive impairment and exploitation. This section outlines commonly-encountered forms of impairment, how cognitive impairment may connect with other factors to increase exploitation risks, and when to consider a mental capacity assessment.
3. Mental Capacity Act: Principles and Practice
4. What else can impact on judgements about 'consent'? Exploring the impact of stigma and coercion.
5. I suspect exploitation – what next? Practical safeguarding actions to consider.
6. A set of case study examples, featuring different types of cognitive impairment and forms of exploitation, for use in reflection and training.
7. Types of exploitation and relevant legal instruments.
8. Further reading and useful resources on this topic.

All parts of the toolkit are available online at our project site, exploitationandci.org.uk.

We welcome feedback on these resources, please contact alison.gardner@nottingham.ac.uk if you would like to discuss any aspect of this work.

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Nuffield Foundation

Part 2: Cognitive impairment and exploitation

In this toolkit we use the term “cognitive impairment” as an umbrella term to cover conditions which affect every-day functioning and decision-making. The term also reflects wording in the Mental Capacity Act 2005 which refers to impacts on capacity due to an “impairment” of the mind or brain. However, we recognise that many people may use other terms to describe their circumstances, such as neurodiversity, difference, disability or illness.

What do people working with vulnerable adults need to know about types of cognitive impairment?’

Here we present some definitions for different types of impairment that vulnerable adults might experience. However, this list is not exhaustive. It is also important to note that assessments of mental capacity are decision and time specific and should be **functional**, rather than based on pre-existing clinical diagnosis **(see Part 3)**. Some people may also lack any formal diagnosis.

Sensitivity to how people identify should be borne in mind when investigating impairments and carrying out assessments.

For some people, impacts on mental capacity will be long term and stable. However, others may experience **fluctuating capacity** to make decisions.

Spectrum conditions – such as autism – can lead to **diverse impacts**. Many people with a diagnosis of autism will not consider themselves to have an impairment, and have advanced functioning ability in everyday life, meaning that risks for exploitation could be mitigated by education and raising awareness. On the other hand, other people with autism may need significant support in everyday life.

Issue	Definition
Dementia	Impairment affecting one or more of executive function, learning and memory, perceptual-motor function, language, complex attention, and social cognition (American Psychiatric Association, 2013).
Brain Injury	Acquired brain injury is when damage to the brain occurs during or after birth. This can be traumatic (from physical injury to the head) or non-traumatic (from an illness, such as meningitis). Brain injury may be undiagnosed and has been referred to as a ‘hidden disability’, that can impact on multiple areas of functioning (Headway, 2025).
Autism	Autism covers a broad-spectrum characterised by 1) differences or impairments around social interaction and communication, and 2) restrictive and/or repetitive behaviours including sensory differences (National Autistic Society, n.d.).
Mental health issues	Mental illness is “clinically significant disturbance in an individual’s cognition, emotional regulation, or behaviour” (World Health Organisation, 2022). It can cause issues with functioning in everyday life including distress and/or problems functioning in social, work or family activities, although these problems may be transient. Medication taken for mental health issues may also cause a cognitive impairment.
Substance misuse affecting decision-making	Substance misuse may have a transient effect on cognition when an individual is directly under the influence of drugs or alcohol (Bruijnen et al, 2019). Chronic substance use can also lead to clinical cognitive impairment through alcohol related dementia or acquired brain damage.
Learning disability	Learning disability is defined as a significantly reduced ability to understand new or complex information and learn new skills (impaired intelligence) with a reduced ability to cope independently (impaired social functioning). This would have started before adulthood, with a lasting effect on development (Department of Health, 2001).
Foetal Alcohol Spectrum Disorder	Foetal Alcohol Spectrum Disorder (FASD) is a term used to describe the permanent impacts on the brain and body of individuals prenatally exposed to alcohol during pregnancy, resulting in a spectrum of physical, neurological, emotional and behavioural regulation characteristics. Between 2 and 5 percent of the population is estimated to be affected (FASD Network UK, 2025).

Our research noted that in many cases, people who experienced exploitation had more than one form of cognitive impairment, often combined with other social risk factors. Evidence of previous trauma and adverse childhood experiences was also frequently observed.

How does cognitive impairment increase risks for exploitation?

Risks for exploitation arise not just from cognitive impairment, but from their social impacts (Gardner et al. 2024):

- Clinical factors associated with impairments could place people at higher risk of exploitation. For example, addiction to substances is frequently used as a means of debt-bondage and control.
- The social impacts of cognitive impairment may also increase risks. These include social isolation or harmful social networks, limited or absent family support, and the impact of social stigma, discrimination and hate crime.
- The impact of trauma through adverse life experiences should also be considered, remembering that this may not be recorded as a formal diagnosis of Post Traumatic Stress Disorder (PTSD).

Our research also showed that social stigma can sometimes also affect whether people with cognitive impairments are identified by safeguarding professionals as potential victims of exploitation, or viewed as responsible for their decisions. This is particularly the case for impairments relating to substance misuse. **See Part 4** for further considerations on this issue.

The complexity of these issues means that Mental Capacity Assessments and related safeguarding decisions should frequently involve multiple professionals and include extensive information gathering. **See Part 3** for Mental Capacity Assessment Principles.

Should I consider a Mental Capacity Assessment?

The Mental Capacity Act starts from a presumption of capacity. Section 3 sets out requirements of the Act and the Code of Practice. However, a capacity assessment may be considered where:

- The person’s behaviour causes doubt as to their capacity to make a specific decision
- Others have raised concerns about capacity
- The person lacks capacity for decisions in another area of their life
- The person repeatedly makes decisions that could cause a safeguarding risk
- The person is making decisions which are out of character
- The suspected victim is unwilling or unable to cooperate with safeguarding measures from services, as an assessment may open additional avenues for safeguarding.

Protecting and supporting rights

It is also important to note that most people want to, and are able to, live fulfilling lives (even where support is required). This includes forming relationships, working, and making mistakes or unwise decisions. Research has suggested that sometimes, people with impairments can be ‘overprotected’ to the extent they can come under a disproportionate amount of control (Franklin & Smeaton, 2017). Therefore, another important purpose of capacity assessments is to ensure that careful discussion, assessment, recording, and even court involvement take place before decisions are made on behalf of another.

See Part 3 for further details on Mental Capacity Assessments.

Part 3: Mental Capacity Act: principles and practice

Capacity can be assessed and tested using the principles of the Mental Capacity Act 2005 (MCA 2005).

Individuals may lack capacity to make a specific decision if they are unable to:

U – Understand
R – Retain or
U – Use/weigh up or
C – Communicate their decision

If someone is found to lack capacity in relation to a particular decision, other people may be permitted to make decisions on behalf of that person, so long as any such decision is made in the best interests of the person who lacks capacity. For example, family members or practitioners might decide that it is in a person's best interest to live in a certain place, even though the person themselves lacks the capacity to consent to such a decision.

The MCA provides a statutory framework both for people who lack capacity to make decisions for themselves and for those who have capacity, but want to make preparations for a time when they may lack capacity in the future. It also sets out who can take decisions, in which situations, and how to act if a capacity assessment is required.

It is advised that you refer to the Mental Capacity Act 2005 Code of Practice for more detailed guidance, this section provides an outline only.

Principles

The five statutory principles which underpin the legislation are:

1. A person must be assumed to have capacity unless it is established that they lack capacity.
2. A person is not to be treated as unable to make a decision, unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision, merely because they make an unwise decision.
4. An act done or decision made, under this Act for, or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The Mental Capacity Act Code of Practice test of capacity

There is a two-stage test for mental capacity which relies on both functional information (is the individual able or unable to make that specific decision) and diagnostic information (is the individual able or unable to make that decision because of an impairment of mind or brain).

The following questions can help you to assess an individual's ability to make a decision:

1. Does the person have a general understanding of the decision they need to make and why they need to make it?
2. Does the person have a general understanding of the likely consequences of making, or not making, this decision?
3. Is the person able to understand, retain, use and weigh up the information relevant to this decision?
4. Can the person communicate their decision (by talking, using sign language or any other means)? Would the services of a professional (such as a speech and language therapist) be helpful?

If any one of the above is absent, then the person lacks capacity to make that particular decision at that point in time.

It is also helpful to remember there are 3 elements to deciding an individual lacks capacity:

- Is the individual unable to make the decision?
- Do they have an impairment of mind or brain?
- Are they unable to make the decision because of this impairment?

In other words, anyone considering using powers under the Mental Capacity Act 2005 needs to be clear that the inability to make a decision is because of the impairment of the mind or brain (**see Part 2 on common forms of Cognitive Impairment**).

Fluctuating capacity and other diagnostic considerations

In some cases, establishing a potential form of impairment that could affect capacity around specific decisions may be relatively straightforward; for example, forms of brain injury and dementia constitute cognitive impairment and will be diagnosed following tests in clinical settings by specialist doctors.

However, issues like fluctuating capacity through substance use may bring particular challenges. While someone with substance use problems may be able to understand the consequences of a behaviour or decision, they may not be able to apply this understanding in the context of their addiction (see Safeguarding Adults Review, Newcastle, 2022). Decision-making ability may also deteriorate over time, meaning that a longitudinal perspective is useful (Safeguarding Adults Review, Surrey 2022). Involvement of expertise and a multi-disciplinary team are recommended when considering such decisions.

There may also be problems with establishing diagnosis of potential impairments, due to a previous diagnosis not clearly recorded, a lack of information sharing, or because a diagnosis has not yet been made. Sometimes, substance use can mask an underlying impairment, for example brain injury and dementia. Again, these cases benefit from a multi-agency approach.

Wider considerations

The individual's abilities and functioning needs to be considered in terms of their cultural, relationship and environmental context, and with reference to the individual's development and learning opportunities. It is therefore important to have a wide range of background information.

This can include (but is not exclusive to) the following:

- Individual, developmental and educational history
- SEND statements/ Education Health and Care (EHC) Plan
- Culture of individual and their family member
- Accommodation/living situation
- Support network including services provided
- Multi-disciplinary reports in all areas relevant to current functioning
- Mental health, physical health, formal diagnoses, substance abuse
- Cognitive and Adaptive functioning
- Communication skills and language needs
- Past and current vulnerability and risk.

This background information is particularly relevant when considering whether someone may be subject to **coercion**. **See Section 4** for further discussion of this issue.

In some cases, to fully assess capacity, an extended amount of time may be required and a multi-disciplinary assessment may be required.

Where substance misuse is a concern, a further capacity assessment may be completed after detox. While you may want to assess capacity at a time of day when someone is not using substances, if someone is under the influence of substances the majority of the time, this also needs to be considered.

If there is concern about the individual's safety and the need for immediate assessment and safeguarding action, it may not be possible to have an extensive conversation with the referrer or find out an appropriate range of information prior to the assessment. It is important to ensure that potential perpetrators of exploitation or other forms of abuse are not aware the assessment is taking place.

Have you supported the person to make informed decision?

You will need to consider if the person has been supported and empowered to make an informed decision themselves. Someone can be supported to have capacity, and there are ways of considering how you can do that when carrying out an assessment:

- Is the person clear on your role and remit? Do they have clarity on where their information will be shared?
- If the person is not from the UK, do they have an understanding of relevant systems in the UK?
- Is an interpreter needed?
- Is the person concerned about their immigration status? Do they understand their rights and access to potential support systems?
- Is the person aware of their options and alternatives should they decide to leave an abusive and exploitative situation? For example, access to accommodation and support services?
- Have you met with the person outside of the environment of potential abuse? For example, consider using a GP surgery or other independent space.
- Consider whether an independent advocate is needed at the assessment, and whether any other communication aids are needed – for example, use of an interpreter.
- Sometimes follow on questions are needed, for example: Can they explain what healthy friendship/relationship is?

Good practice in recording

All practitioners should follow the recording policy of their own agencies or organisations and those of Local Safeguarding Children/Adults Boards. Information should always be recorded in such a way as to not place either practitioners or victims and their supporters at any further risk of harm. Consideration should be given as to who has access to electronic files and if access needs to be restricted.

Particular attention should be paid to the ways in which electronic records are kept. It may be helpful for agencies to routinely record information such as impairment, impact of impairment, communication requirements, marital status of service users and whether they have children (living with them or not). Clearer and more consistent recording of this information makes it easier for agencies to plan for services and adequately meet the needs of people with lived experience holistically.

Recording needs to meet specific discipline guidelines and be in agreement with practitioner requirements of the NHS Trust, Local Authority or any other organisation involved. Each contact with the person, family member, support network and other practitioners relevant to the mental capacity assessment needs to be logged at the time in the relevant (electronic) recording system.

When conducting the assessment, thorough notes of all that is said and done, need to be taken. Verbal capacity questions and verbal responses should be recorded verbatim and any other action or behaviour should be recorded clearly. This will then form the data on which the written report of the assessment outcome is based.

All assessment material including handwritten notes (which can be scanned if necessary) should be stored securely and confidentially in accordance with NHS Trust and Local Authority policies and in full compliance with GDPR. The court may order to obtain this material.

We've completed the Mental Capacity Act assessment: what next?

If your finding is that an adult in a suspected situation of exploitation has capacity for a relevant decision, this does not detract from a responsibility to consider their safeguarding needs.

See Part 4 for wider considerations relating to 'consent'.

See Part 5 for suggested courses of action following a capacity assessment.

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 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.

Part 5: I suspect exploitation – what next? Practical safeguarding actions to consider

There are numerous safeguarding interventions available to help support and protect people at risk of exploitation. Many can be pursued regardless of whether an individual is judged to have capacity under the Mental Capacity Act 2005. This section summarises some of the main actions available to frontline practitioners:

- For an overview of actions available see the diagram at Figure 1.
- For more information on the supporting legal instruments, see Part 7.

Safeguarding

If an individual has some form of cognitive impairment and is experiencing, or at risk of, exploitation, then they are likely to be an adult at risk as outlined by the Care Act 2014. If someone has care and support needs, is at risk of abuse and is not able to protect themselves, under the Care Act 2014, this can trigger a Safeguarding Adults Enquiry to determine a course of action.

There may be local variations in the way that 'care and support needs' are interpreted. However, it is important to note the following points:

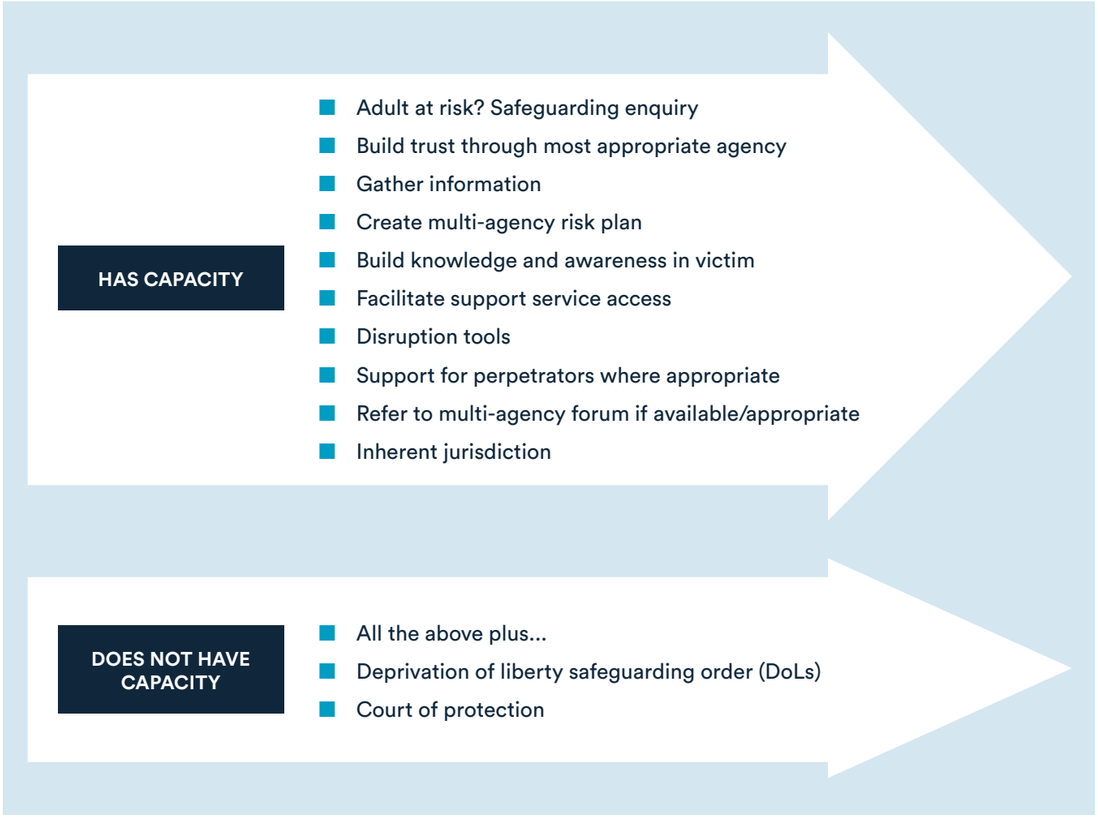
- In principle, this framework applies regardless of whether the person is in receipt of commissioned social care services, and/or whether the person has mental capacity.
- It is important to note that although the criteria rests on care or support needs, there may not be this support in place, and it does not mean the person needs to be eligible for a commissioned adult social care package from a local authority.
- Safeguarding enquiries can be undertaken without an individual's consent, if there are concerns about the person lacking capacity, or being subject to abuse such as control and coercion.
- Furthermore, even if an individual may not meet all the criteria for having care and support needs, a local authority and commissioned services still have a duty to engage in prevention of harm and collective responsibility to promote wellbeing.

See section 7 for further discussion of the Care Act 2014.

Building trust

It is important to build trust, to encourage engagement with support services. It might be useful to consider which agency or organisation is best to engage that person. Many of the interventions and actions addressed below are best undertaken from a position of support. The individual should be at the centre of safeguarding and planning.

Figure 1: Overview of safeguarding intervention



Source: Authors' illustration based on practitioner insights.

Information gathering

Gathering relevant information on the suspected victim and perpetrator may give further insight into the nature of the suspected exploitation, and lead to the discovery of other victims and/ or perpetrators. Information review may draw on a wide range of services including police, health and housing providers, but should always be carried out using relevant processes and governance. Establishing clear lines of communication and nurturing inter-agency relationships are vital.

A limited number of local authorities have specialist modern slavery and exploitation multiagency panels/ forums and/or specialist designated workers on modern slavery and exploitation. Refer to these specialist forums if appropriate and available.

Creating multiagency risk plans

Risk plans should be developed with the support of multiagency input. This might include soliciting reports and assessments from relevant supporting professionals, such as speech and language therapists. If risks cross administrative borders, consider involving services in other boroughs. The fire service, housing and environmental health may be able to contribute assessments on risks relating to property. Risks to others, including friends and family should also be considered. A Multiagency Risk Assessment Conference (MARAC) referral may be appropriate if there is a context of domestic abuse.

Awareness raising

Support the person who is affected to build awareness and knowledge around exploitation and/or abuse and healthy relationships. If there is a context of domestic abuse, this may be done through programs run by the Violence Against Women and Girls (VAWG) sector, such as 'The Freedom Program' (Craven & Fleming, 2008). This knowledge may empower someone to take action against a potential exploiter.

It is however important to remember that, should someone decide to take action against an exploiter or relocate as a result of awareness raising, they may come under increased risk as a perpetrator attempts to regain control. Therefore, safety planning should also be considered during awareness raising.

Facilitate service access

Support the person to access services and resources that could help keep them safe. Serious case reviews suggests that substance abuse and mental health services, and secure housing are particularly important to people experiencing exploitation. Advocacy particularly and peer-support groups can also assist in building confidence and strategies to avoid exploitation.

Disruption tools

Disruption actions should take account of where the abuse is happening, and which agency is best-placed to disrupt it. It is important to understand powers of various agencies when planning disruption. There are disruption toolkits available, including NWG network's disruption toolkit on adults and children, and the UK Home office child exploitation disruption toolkit (See also Part 8: further reading and resources).

It may be necessary to work with the criminal justice system to build a criminal case or put restrictions on perpetrators, such as Multi-Agency Public Protection Arrangements or Trafficking Prevention Orders. If a suspected perpetrator or victim is on probation, consider enforcement of conditions, and potential breaches. If law enforcement or other agencies carry out an intervention, it is important to also include follow up appointments, to help monitor the situation.

Support potential perpetrators, if appropriate

Potential perpetrators can be supported if they also have risk factors and conditions that impact on their capacity. There may be cases where both a potential perpetrator and victim have impairments or capacity affected in some way, for example through coercive control. In the case of criminal exploitation, exploiters may in turn be exploited by others; for example, a drug dealer caught taking over someone's home may be exploited themselves. Some of the disruption tools outlined above may also serve to safeguard perpetrators, and perpetrators themselves may need a safeguarding referral.

Potential victims' safety and wellbeing should, however, always be prioritised.

NRM referral

In cases of suspected Modern Slavery, you can also consider a referral to the National Referral Mechanism (NRM), which can provide access to services such as safe-housing, subsistence support, mental health support and legal support. Referrals can only be made by 'first responders' (including the Police and Local Authorities, as well as specific NGOs) but should be compiled by individuals with appropriate training. You must have an adult's consent before referral to the NRM.

The NRM may not be the most appropriate means of support if the individual can already access public funds and services, as NRM support sometimes involves moving and being separated from other support networks. It also involves sharing personal case details with the Home Office, which may have implications for other Home Office processes such as Asylum applications. Time should be taken to discuss the implications of NRM referral with those being referred to ensure they are fully understood.

Inherent jurisdiction

If the above options have been explored (or are not feasible) and there is a very high risk of harm, consider the 'inherent jurisdiction' (or power) of the High Court (Essex Chambers, 2020). This provides power to make interventions against someone's wishes to protect them, even if the person has capacity. However, it is a complex process that can take time.

If someone does not have capacity to make a specific decision

If someone does not have capacity to make a specific decision, all the above actions should also be considered. It should always be considered that someone may regain capacity or be supported to do so. If someone does not have capacity however, there are additional measures that may be taken:

Court of Protection

The Court of Protection was created under the MCA 2005 to make decisions for those who lack capacity to make that decision. It follows the principles of the MCA 2005. They can appoint deputies to make decisions on financial matters, give people permission to make one-off decisions, make decisions about lasting powers of attorney and decide if someone can be deprived of their liberty under the MCA 2005. If there is no diagnosis, more information needs to be gathered, or someone is not willing to engage with a capacity assessment, interim orders may be sought from the court. However, cases may be complex and take a long time to decide outcomes, so referees need to bear this in mind.

[1] https://gov.uk/courts-tribunals/court-of-protection

Deprivation of Liberty Orders

Deprivation of Liberty Orders (DoLs) may be considered in limited circumstances if someone is in a care home, hospital or sheltered accommodation – with differing processes needed for the latter. Safeguarding Adults Reviews note that DoLS assessments were sometimes missed, meaning people are deprived of their liberty unlawfully. It is important to apply for an order if seeking to compel someone to remain in a care home or sheltered accommodation.

For case study examples **see Part 6**.

Part 6: Case studies

These case studies are fictional, but arise from research on cases of exploitation found in Safeguarding Adults Reviews. They are provided as a tool to assist with training and reflective practice. Each case is followed by some suggested points of learning/reflection, but you are encouraged to consider your own observations.

Case study: Dora

Dora is a young woman living independently in the community. She often struggles with leaving the house, perhaps in part due to having autism and a learning disability. She is supported by her mother who visits her home most days.

Dora likes to use dating sites to talk to men online. This concerns her mother, but she is supportive of Dora making her own choices and does not want to be controlling. A man who Dora has been talking to online says he wants to marry her and invites her to visit him in his country, which the UKFO advises is unsafe to travel to. Following discussing her concerns with Dora - who is determined to travel and get married - her mother refers her to adult social care.

Following assessment, a worker determines that Dora does not have capacity to freely decide to travel to the country in question as she did not understand the implications of the decision. The local authority applied to the Court of Protection for permission to keep Dora's passport, restricting her travel for a limited time. Dora is extremely upset at the decision but with support is encouraged to use dating sites in a safer way and develops new interests, becoming involved in a local community garden.

Considerations

- While Dora has the right to choose her own relationships, in this case, the action of travelling to another country could put her at risk.
- Taking away Dora's ability to travel freely is a restrictive measure that affects Dora's rights, so this was a decision that needed to be heard in the Court of Protection.
- The Court of Protection made the least restrictive measure – while Dora was able to continue talking freely to who she chose to, she was not able to travel.
- As the potential perpetrator was abroad, there was little that could be done to investigate and potentially restrict the perpetrator.

Case study: Mike

Mike had a difficult childhood, and as an adult he developed an unhealthy relationship with alcohol and used illegal substances including both marijuana and cocaine. Mike often experienced low mood, and was diagnosed by his GP as being depressed.

Neighbours complained of loitering and drug use around his building, and multiple people were seen to be leaving and entering the flat. The police were called multiple times by neighbours who dispersed those outside. Police were called by a neighbour who was concerned that Mike was 'being taken advantage of'. The police undertook a welfare check, however Mike was reluctant to allow them to gain entry and there appeared to be others in the flat. He did not seem coherent and was angry at the police. They left without entering the property and he was referred to adult social care due to concerns about his wellbeing.

A social worker visited him and found evidence of self-neglect and other people being at the flat. The social worker had concerns around Mike's capacity to make decisions whilst under the influence of alcohol and drug use.

A capacity assessment found he had the capacity to take decisions over his finances and care. When questioned about those who visited his flat, he was reluctant to discuss this. With his consent, he was referred to adult mental health care, a community-based substance use charity and his GP who reviewed his medication for managing his mental health. The local authority also organised a deep clean of his flat.

He struggled to keep appointments with adult mental health care, but was able to build a positive relationship with his substance use worker. He confided to his substance use worker that as he was attempting to stop using substances, he had asked the visitors to stop coming to his flat, but they had refused. The worker explained to him that he could be exploited, and discussed his options, including a partial closure order or being rehoused. He requested to be rehoused, as he said the visitors were from the immediate area. He was also unwilling to cooperate in any criminal investigations against the potential perpetrators. With the support of the council, he was rehoused in another area where he was able to continue to address substance use.

Considerations

- Those experiencing criminal exploitation may fear the potential perpetrators and be reluctant to support criminal investigations. This may manifest at times as disengagement or hostility towards support services.
- Mike may have had fluctuating capacity due to substance use but a capacity assessment was only completed at a time when he was not using substances.
- Although Mike was assessed as having capacity, agencies remained engaged with him to raise his awareness of potential exploitation.
- Those with complex needs such as Mike may need community-based flexible services in order to build trust with a worker.
- By supporting Mike to address his substance use, he was empowered to make more informed decisions.

Case Study: Jessica

During her lifetime Jessica was given multiple psychiatric labels, including ADHD and Borderline Personality Disorder. At the age of 15, she began staying out late with other girls, and was known to be having sex with a number of older men. Her mother felt unable to stop this. In this time, she also developed a substance use issue and could lash out at others. She was identified as a potential victim of child sexual exploitation, and was supported.

However, when she turned 18, she stopped being eligible for the service she was accessing. By this time, she had developed a heroin addiction, and disclosed a number of times that she was unable to inject heroin herself and that this was done by men around her, including those who she considered to be boyfriends. She came into contact with adult mental health services and substance use services, but would quickly be discharged from services due to lack of engagement. She was known as a 'sex worker' to services.

Violence Against Women and Girls services worked with her to raise awareness around domestic abuse and sexual exploitation, and referred her to adult safeguarding due to concerns about mental health. However, she was assessed as not meeting the eligibility criteria, as she did not have daily support needs and had capacity to make her own decisions, and it was recommended that she continue with mental and substance use support.

Jessica was found deceased with evidence of a sexual assault in her home at the age of 22. Staff supporting Jessica over the years found her case extremely distressing.

Considerations

- Jessica was the victim of multiple crimes, including domestic abuse, child and adult sexual exploitation and sexual assault. However, her continual apparent defence of her perpetrators led services to believe that she had the capacity to consent and there was little to be done.
- Her use of heroin might have alerted workers to the idea her capacity could fluctuate. While it would have been difficult to make this decision, and it would have required further input, this could have been noted.
- Workers are right to acknowledge the possibility of consensual sex work. However, sex work in exchange for basic needs – food and shelter, or substances someone is addicted to, is termed 'survival sex' which adult safeguarding reviews suggest has a rather different nature to 'consensual' sex work (Teesside, 2022).
- While Jessica had substance use issues from a young age, the association with heroin use with survival sex suggests that it was deliberately used by perpetrators as a means of control. It can also further discredit and further stigmatise victims. This would further impede her ability to consent to sex work.
- The VAWG workers supporting her had a comprehensive insight into coercive control and gender-based violence, however they were unaware of the issues of capacity and felt unable to raise concerns with adult social care, who they rely on for safeguarding.
- It is important to empower an individual to make decisions through awareness raising work, but in this case it did not help.
- There are high stakes in assessing capacity in such cases, and professionals felt the weight of such decisions. Professionals should be aware in cases such as this, it is not the responsibility of one frontline worker, and capacity is not always an 'all or nothing' answer.
- Jessica could have been a candidate for inherent jurisdiction as many professionals were concerned that her life was at risk. This would be the result of a High Court decision. It could have resulted in closure orders, restraining or trafficking orders against her perpetrators.
- An additional way of safeguarding Jessica would have been to build a criminal case against her perpetrators, as multiple crimes were being committed.

Case Study: Rosa

Rosa, a woman in her twenties, was discovered living in poor conditions, in a shed at her extended family's farm, after passers-by alerted police. She had a significant learning disability, and police conducted enquiries through her uncle, as Rosa did not speak English and an interpreter could not be located. The police were concerned by the Uncle's story as to why she was living in the shed and case was suspected to be one of modern slavery or forced labour.

Rosa was placed in emergency accommodation by the council. Two capacity assessments undertaken by social workers found that she did not have capacity to make decisions around care, finances, or associations. Rosa was frightened and attempted to leave the emergency accommodation. She was prevented from leaving and the adult safeguarding team recommended referral to the NRM. A discussion of potential future plans and options for Rosa took place, which included repatriation to her EU country of origin, or finding her more suitable permanent accommodation.

When her assigned social worker was on leave, the team manager took over her case and decided, after consulting with higher management, that Rosa should be repatriated immediately as it was in her best interests. The team manager accompanied her to the airport with a staff member from the emergency accommodation. Frontline staff subsequently raised concerns about how the case was handled, and one staff member instituted whistleblowing procedures.

Considerations

There were multiple issues concerning capacity in this case:

- It was not appropriate to conduct initial enquiries through a family member as Rosa appeared to be mistreated, and potentially exploited by her family.
- An independent advocate should have been appointed for Rosa to advocate on her behalf.
- When she was prevented from leaving sheltered accommodation, this could have breached her rights, as there should have been an application for a DoLS.
- A decision as significant as repatriation should have been subject to further consideration in multidisciplinary meetings, which should have included an advocate for Rosa. Such a decision may have necessitated going to the Court of Protection.
- Decisions should be made in the best interests of the individual and should include their views where possible, rather than the best interests of services.

Case Study: Louise

Louise is in her 60s, she has a moderate learning disability and lives independently in the community with six hours support per week from a day centre . . . She lives in her own home, that she inherited from her mother. She is in receipt of universal credit and her younger brother is able to give her extra financial support and manages her benefits as an 'appointee', including paying the day centre from a direct payment.

Louise is friendly with a volunteer, Rob, in the day centre, a man in his thirties, who also has mild learning disabilities. Rob and Louise become close and he offers to give Louise extra help, doing a weekly shop for her. He confides to Louise that he is homeless, and she invites him to stay as a lodger. Rob continues to help with occasional tasks, and does not pay rent.

After some time, Rob says he is struggling financially and suggests that Louise need not continue at the day centre and could pay him from her care budget instead. Her brother does not agree to this and is concerned that Rob could be exploiting Louise. When a worker discusses this with Louise, she says that Rob is kind to her, makes her happy, and that they are in a relationship. The worker finds that Louise has the capacity to consent to make decisions around her care, but will continue to need support to manage her benefits. The day centre worker discusses the issue with Rob and Louise who say they miss the day centre and feel isolated, but wish to continue living with each other.

The day centre staff and social worker liaise with Rob and Louise to develop a care plan that takes Rob's support of Louise into account, so that Louise can attend the day centre and Rob can volunteer and claim a carer's allowance. Louise's brother accepts this and continues to manage her finances, but that all will agree to monitor the situation with Rob and Louise closely.

Considerations

- This highlights the complex nature of 'every day' potential exploitation we often encountered in our research. In this case, the potential perpetrator also has a disability.
- It demonstrates the complexity of how direct funding for care can cause vulnerability, as it is another pot of funds to manage, and could potentially be misappropriated.
- Capacity must be considered as decision and time-specific; while Louise needs help managing her benefits, she is able to make decisions about care and who she associates with.
- Multi-agency working and communication is important when considering capacity and actions around potential exploitation. In this case, it involved a small day centre, rather than a statutory service.
- If Rob had been found to be exploiting Louise, decisions around safeguarding would have to be referred to the court of protection.
- This example shows the complexities of family relationships. While Louise's brother was concerned she was making an unwise decision by allowing Rob to move in and forming a close relationship together, she had the capacity to make that decision.
- It demonstrates the importance of educating and empowering people to make decisions. Through support, a new care plan and finances was developed.
- It shows the importance of remaining engaged even after the immediate matter was resolved.

Part 7: Types of exploitation and key legal/regulatory instruments

There are many different forms of exploitation, the descriptions below cover some of the most frequently-reported forms that arise in relation to people with cognitive impairment.

Financial exploitation

Financial exploitation occurs when one or more people, either opportunistically or premeditatedly, unfairly manipulate another person for profit or personal gain, including money or goods. Financial exploitation may range from regularly taking advantage of someone else's money or property, to appropriating someone's benefits, or marrying someone specifically to gain control of their finances (predatory marriage). Another common sign and/or result of financial exploitation can be debt. It can co-exist with domestic abuse and 'mate crime' between intimate partners, family members and friends. It may also co-exist alongside other forms of exploitation, particularly sexual exploitation and cuckooing.

Criminal exploitation

Criminal Exploitation is the act of manipulating or abusing power over someone for personal gain or criminal purposes. It can take many forms including forcing adults and children to move drugs and money; forced stealing or begging and benefit frauds.

Signs that someone could be exploited include apparent lack of any significant income from their potential involvement in criminal activities. While young males are often thought of being the typical victims of criminal exploitation, older people and people with health issues may be exploited for their access to prescription medication and welfare benefits.

Cuckooing or home takeover

Cuckooing is often associated with criminal exploitation and occurs when someone's home is taken over through deception or coercion and used for criminal activities. A warning sign is if there are frequent lodgers, anti-social behaviour and multiple visitors.

Mate crime

Mate crime is when someone is exploited by another person who is posing as a friend. It has no formal definition in law.

Sexual exploitation

Sexual exploitation is when someone uses another person sexually for their own benefit or profit, which may include producing intimate images for profit or gain.

Distinctions between 'consensual' sex work and commercial sexual exploitation can be complex, but considerations could include whether someone is getting reasonable income from their participation in sex work, whether their work is being controlled by another person, and any additional risk factors or vulnerabilities.

Forced labour/labour exploitation

Forced labour is direct compulsion to work for another person, compulsory labour is indirect compulsion to work for another person. In both cases, compulsion means the work is not offered voluntarily and is exacted under the menace of a threat or penalty. This includes psychological means of exerting control including humiliation, threats and insults or isolating a victim. Both forced and compulsory labour cover any work or service.

Labour exploitation is a wider spectrum of abuses which does not include threats or direct/indirect compulsion. It may however include very low wages or poor health and safety.

People with cognitive impairment often struggle to access employment opportunities and are therefore vulnerable to offers of work in the informal economy where labour abuses and exploitation are more common.

Exploitation in law

Exploitation affecting adults is not currently well-defined in English law. The following table summarises some relevant areas of legislation along with applications and some key limitations.

Legislation	Application	Limitations
Modern Slavery Act 2015 Modern Slavery: statutory guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and non-statutory guidance for Scotland and Northern Ireland (accessible version).	Human trafficking, slavery, servitude and forced or compulsory labour. Crown Prosecution Service guidance makes it clear that consent of a person (whether an adult or a child) does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.[1]	Prosecutions under the Modern Slavery Act are contingent on gaining a 'Conclusive Grounds' decision that someone has been a victim of modern slavery. This has a high evidential standard, may take a long time (average times to decision currently being in excess of 600 days)[2] and depends upon the individual consenting to enter the National Referral Mechanism. Statutory guidance includes multiple indicators for forced and compulsory labour, but these tend to focus on coercive means that abusers may use to extract labour. They do not encompass wider factors that limit individuals' choices and ability to access non-exploitative work, such as homelessness, discrimination, a lack of training or skills, or the local labour market.
The Care Act 2014 English Care and Support Statutory Guidance	If someone has care and support needs, is at risk of abuse and is not able to protect themselves they may be an 'Adult at Risk' under the Care Act 2014. Local authorities have a duty under section 42 of the Act to make enquiries if they believe an adult is experiencing abuse or neglect. If a person does not consent to a safeguarding enquiry and there is a concern about their mental capacity, a cognitive impairment, or control and coercion, consent may be overridden so the enquiry can progress with the aim of risks and vulnerabilities being fully understood. The Care Act lists ten forms of abuse, including modern slavery, financial abuse, sexual abuse and domestic abuse among others. These abuses may include or co-occur with exploitation. However, exploitation itself is not clearly defined in the Act.	There is local divergence in the definition of an 'adult with care and support needs' under the Care Act 2014. The criteria to raise a safeguarding adults concern with the local authority is relatively low, as follows: Do you have reasonable cause to suspect that the adult: a) has needs for care and support (whether or not the authority is meeting any of those needs) and b) is experiencing, or at risk of, abuse or neglect? However, thresholds for section 42 safeguarding enquiries can vary across areas. The lack of distinct categories for exploitation within the Care Act 2014 has also led to calls for this to be clarified in statutory guidance (Preston-Shoot et al, 2024).
Domestic Abuse Act 2021	The Domestic Abuse Act includes economic abuse, which relates to any behaviour having a substantial adverse effect on someone's ability to acquire, use and maintain money, or obtain goods and services. It defines coercive control 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.'	The Act applies only to 'personally connected' people – intimate partners, or former intimate partners, or other family members cohabiting at the time of the abuse. This leaves a potential gap in the law in relation to abuse-like behaviours between those who are not personally connected.

[1] https://www.cps.gov.uk/legal-guidance/modern-slavery-and-human-trafficking-offences-and-defences-including-section-45

[2] https://www.gov.uk/government/statistics/modern-slavery-nrm-and-dtn-statistics-end-of-year-summary-2024/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2024#national-referral-mechanism-decisions

Legislation	Application	Limitations
Sexual Offences Act 2003	Crimes in the Sexual Offences Act 2003 that are or could be relevant to sexual exploitation of adults includes: ☐ Trafficking for sexual exploitation; ☐ Paying for sexual services from a prostitute who has been coerced; ☐ Controlling prostitution for gain, including use of mental and physical coercion; ☐ Causing or inciting prostitution; ☐ Sharing or threatening to share an intimate film of photograph; ☐ Keeping a brothel used for prostitution; ☐ Sexual contact with someone who cannot consent	Trafficking-related crime is now often addressed under the Modern Slavery Act 2015. There is a lack of clarity in regard to adults engaging in exploitative relationships or sex work that appears to be consensual. In contrast to the case of children under 16, there is no equivalent offence for 'grooming' of adults. The nature of pornographic content and its distribution has changed with social media, smart phones and user-generated content easily uploaded to multiple forums. This issue will potentially be addressed in relation to children in the Crime and Policing Bill 2025 but use of control and coercion in creating explicit content for gain is not yet clear when it comes to adults.

Legislation is continually being updated. At the time of writing, a Crime and Policing Bill is under consideration in Parliament, which will make both Child criminal exploitation and cuckooing (of children and adults) a criminal offence. However, the extent of application and any limitations of this legislation are not yet finalised.

Additional powers and intervention tools

It can be seen from the table above that adults with cognitive impairment may sometimes fall outside frameworks for intervention, and struggle to gain access to justice.

This is particularly the case for exploitation such as cuckooing and financial abuse, when adults may have some form of vulnerability (whether this relates to a cognitive impairment or wider issues) and exploitation is originating outside the family unit, but they have capacity for relevant decisions and not assessed to be an 'adult at risk' or have care and support needs under the Care Act 2014. If adults are perceived to be 'consenting' to exploitation, this can be a further barrier, unless the abuse is severe enough to be considered modern slavery.

However, authorities have a range of additional tools and options available to them. Some of these are detailed in Part 5.

A useful guide to intervention tools and powers has been published by the Network Working Group: 'Criminal, Civil and Partnership Disruption Options for Perpetrators of Child and Adult Victims of Exploitation'. www.safeguardingchildren.co.uk/Resources/nwg-child-exploitation-disruption-toolkit

Support across the four nations

Across the four UK nations the legal frameworks for addressing exploitation, victim support entitlements, and safeguarding structures have some significant differences. The table below provides some examples of how England, Wales, Scotland, and Northern Ireland define and respond to adult exploitation, highlighting both commonalities and points of divergence.

Aspect	England	Wales	Scotland	Northern Ireland
Key Legislation	Modern Slavery Act 2015 Care Act 2014 Mental Capacity Act 2005	Modern Slavery Act 2015 Social Services and Well-being Act 2014 Mental Capacity act 2005	Human Trafficking and Exploitation Act 2015 Adults with Incapacity Scotland Act 2000	Human Trafficking and Exploitation (criminal Justice and Support for Victims) Act 2015 Mental capacity act (Northern Ireland) 2016 Adult Protection Bill 2025 (currently in progress).
Victim Support under NRM	30 day minimum support period.	30 day minimum support period.	Statutory minimum 90 day support.	Statutory minimum 45-day support (extendable)
Definition of exploitation in MSHT legislation	Section 6 Another person uses or attempts to use the person for a purpose within paragraph (a),(b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that— (a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and (b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose.	As in England	Section 8 Another person uses or attempts to use the person for any purpose within subsection (7)(a), (b) or (c), where—(a) the person is—(i) a child, or (ii) an adult whose ability to refuse to be used for a purpose within subsection (7)(a), (b) or (c) is impaired through mental or physical illness, disability, old age or any other reason (a "vulnerable adult"), and (b) a person who is not a child or a vulnerable adult would be likely to refuse to be used for that purpose.	Part 1 – attempting to use a child, vulnerable adult, family member or a person who is subject to a position of trust to provide services or benefits of any kind, having chosen them on the grounds that they are a child or a vulnerable adult etc. and that a person who was not a child, vulnerable adult, etc. would be likely to refuse to be used for that purpose.

See Part 8 for further reading and useful resources.

Aspect	England	Wales	Scotland	Northern Ireland
Vulnerable adult in MSHT legislation	Section 6 Regard may be had—(a) to any of the person's personal circumstances (such as the person being a child, the person's family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons.	As in England	Section 8 an adult whose ability to refuse to be used for a purpose within subsection (7)(a), (b) or (c) is impaired through mental or physical illness, disability, old age or any other reason.	Section 25: "vulnerable adult" means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or exploitation is significantly impaired through physical or mental disability or illness, old age, addiction to alcohol or drugs or for any other reason.
Safeguarding Structures	Local Safeguarding Adults Boards	Regional Safeguarding Boards Human Trafficking MARACs	Adult Protection Committees Inter-Agency Referral Discussions (IRDs)	Northern Ireland Adult Safeguarding Partnership and local partnerships. Adult protection Bill 2025 will bring increased statutory powers.

Part 8: Further reading and references

Resources

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