- Safeguarding Vulnerable Dependent Drinkers:

Using legal frameworks to protect high risk, chronic dependent drinkers

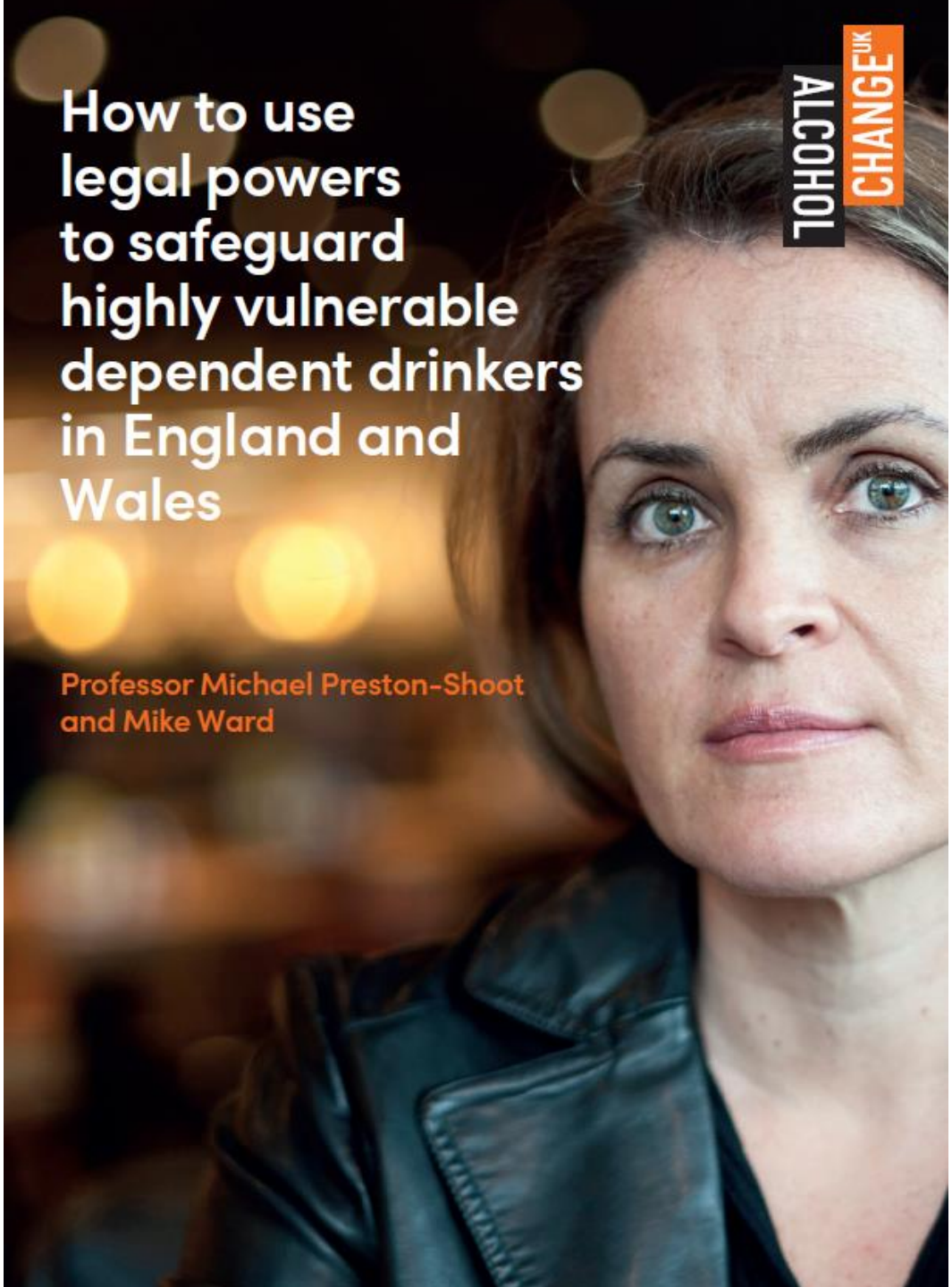
(England)

Course Slides 2021

Mike Ward

Aim

- In conjunction with Professor Michael Preston-Shoot, ACUK has developed national guidance which will:
- *Enable professionals in England (& Wales) to use legal frameworks to manage and protect chronic dependent drinkers.*



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Learning objectives

By the end of the course participants will be able to:

- Identify chronic dependent drinkers who require the protection and support of key legal powers
- Understand how the Care Act applies to this group
- Understand how the Mental Capacity Act applies
- Understand how the Mental Health Act applies
- Understand what interventions flow from action under these powers
- Understand what helps makes these powers work to their best effect

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Section 1

- **Introduction**
- **The client group and the gap**

Section aim

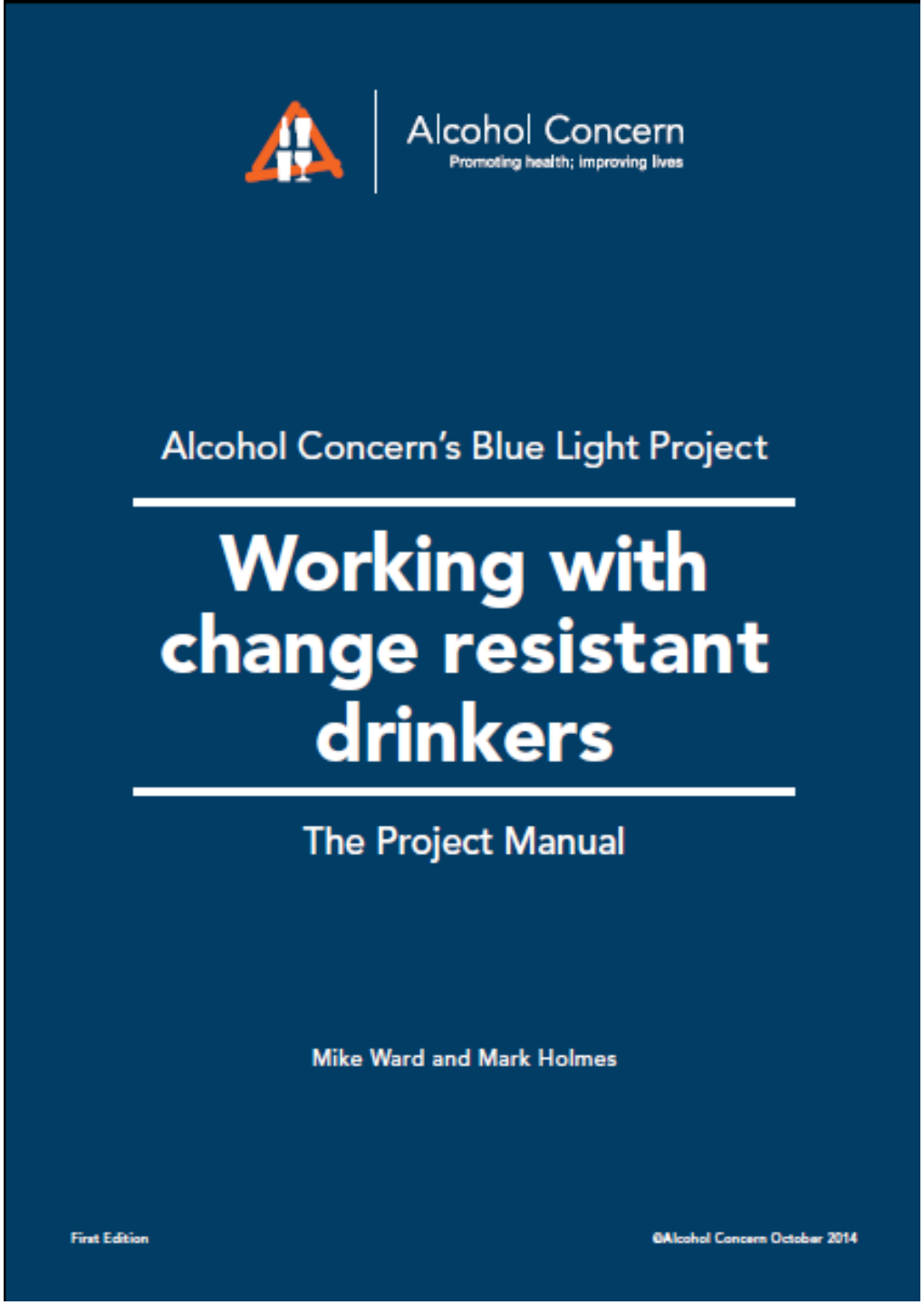
- *To look at the features of the clients who need the protection and support offered by these powers*
- *To highlight the gaps in the use of these powers*

Amy

- Amy was found deceased on a mattress in a bedroom. The house was strewn with litter and rubbish, and rooms were piled high with possessions, with little room to walk. There was evidence of alcohol cans in both downstairs rooms. She was 50 years old.

- Of more concern is the acceptance by some professionals of the condition of the house, and the presentation and lifestyle of Amy.

Adult D SAR Lancashire 2018


Alcohol Concern
Promoting health; improving lives
Alcohol Concern's Blue Light Project
Working with change resistant drinkers
The Project Manual
Mike Ward and Mark Holmes
First Edition
©Alcohol Concern October 2014

Basic message

- **We should not write off people who do not want to change their drinking.**
- **There are things you can do to make a difference.**

- At the end of the Blue Light pathway there are clients who are not changing and whose vulnerability means that they require some more structured framework to manage their behaviour.


Learning from tragedies
An analysis of alcohol-related Safeguarding Adult Reviews published in 2017
June 2019
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Nothing about alcohol harm is inevitable. By working together, we can better protect those most in need.

Analysis of SARs published in 2017

- 41 reviews were found in total.
- In 11 alcohol was a problem for the adult being safeguarded.

Alcohol-Related SARs
Professor Michael Preston-Shoot's SAR analysis

- 57 cases (25%) where the principal focus was on a person with alcohol-related concerns
- Correlations with self-neglect and/or homelessness
- Examples of fire deaths involving alcohol abuse
- Impact of loss and trauma
- Additional 5 cases where someone in the person's environment was alcohol-dependent
- Highlights the importance of thinking family (domestic abuse, impact on children, understanding family and relational dynamics)
- One case of a paid carer being alcohol-dependent

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Angela Wrightson

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“Alcoholic Angie”

- AW was attacked and murdered in her home in December 2014. Two teenage girls, aged 13 and 14, were convicted of AW’s murder.
- She had a long history of chronic alcohol use, mental health problems and vulnerability and had been identified as having multiple care and support needs, and many agencies and professionals had had involvement with AW going back some years.
- *Diagnosed with an Emotionally Unstable Personality Disorder. AW was considered to have a dual diagnosis.*

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AW

- *In 3 years, over 1000 recorded direct contacts with mental health and alcohol services, ambulance, hospital.*
- *472 reported incidents to the police.*
- *Incidents relating to 175 offences, mostly while intoxicated. An Anti-Social Behaviour Order (ASBO) and a legal order was made on 16 July 2009 for a period of three years, meaning it was a criminal offence for AW to buy alcohol or attempt to buy or obtain alcohol from a licensed premise…*

Myths & misconceptions

- *Myth One: When we saw her, she was very clear that she didn't have a problem and didn't want help, so there is nothing we can do.*
- *Myth Two: She is not vulnerable, she is choosing to live like this* or *she likes living like this.*
- *Myth Three: He is not vulnerable / self-neglecting because he has mental capacity.*
- *Myth Four: He has capacity, there is nothing we can do.*

- Professionals need a better understanding of the legal structures that can support and manage these very challenging clients.

Section 2

- **Moving forward**
  - **Principles**

Section aim

- *To set out nine principles that should inform work with this client group*

Nine Principles

Empowerment

1.Responses to this client group should be built on the recognition that there are things that we can do to help these clients.

2.The response to chronic dependent drinkers should be non-discriminatory. Chronic dependent drinkers have an equal right to protection from harm as other client groups. Services should not be denied or responses adjusted because of disapproval of their lifestyle or the workload they may require.

Principles

Proportionality

3. The use of coercive legal frameworks with this client group should be a last resort, and ideally rarely, after all other approaches have been exhausted.

Principles

Protection

4. Agency management systems and managers must support a positive and assertive approach to this client group.

Principles

Partnership

5. A multi-agency approach will be required for an effective response. Safeguarding is everybody's business.

6. Wherever possible actions and decisions should involve the client.

Principles

Accountability

7. A governance framework is required for the management of this area of need, an identified local body such as the Safeguarding Adults Board or Health and Wellbeing Board should ensure that this client group is being well managed.

Principles

Prevention

8. The future management of this client group should be informed by safeguarding adult reviews (SARs) and other serious case reviews.

9. The development of responses to this client group should identify unmet need for this client group and report this to commissioners.

Section 3

- ***It's Their Choice***
- **Barriers to change**

Section aim

- *To challenge the idea that this client group are **choosing** a chaotic or self-neglecting lifestyle*

- **These are not just “unwise decisions”**
- **This client group face very real barriers to change and engagement**

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Exercise

- What factors could pose a barrier to change and engagement for a chronic dependent drinker?

Understanding barriers to change

The perfect storm of physical conditions

- Depression
- Alcohol related brain damage
- Alcohol related brain injury
- Physical health problems e.g. fatigue due to liver disease
- Confusional states e.g. liver disease, pancreatitis and urinary tract infections
- Sleep disorders
- Nutrition
- Foetal Alcohol Damage
- …and they are dependent.

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Checklist of barriers 2

- Anxieties about how they will appear to others e.g. do they smell or are they dirty?
- Previous negative experience with services
- The targets set are unrealistic
- Fear e.g. of fits, of falling, of failure, of change
- Financial problems – debt and benefit problems
- Lack of a clock, watch or diary
- Peers / family subversion / abuse
- Inability to access services

Prejudice

- …stereotypes associated with substance dependency and anorexia play a role in traditional patterns of blame. The mental picture of a person with anorexia is likely to be a well-mannered young woman; while the mental picture associated with alcohol dependency is likely to be a dishevelled older man… the stereotypes evoked may well influence judgements about blame. (Craigie 2018)

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Further assessment

It is easy to view this group of drinkers as:

- “Choosing their lifestyle”
- “Liking living in a chaotic and dirty setting”

The situation is much more complex than that

Section 4

- **Legal powers: international comparison**

Section aim

- *To compare the situation in England with practice in other countries*

European Convention on Human Rights

- This possibility is specifically allowed in the *European Convention on Human Rights*. Article 5 on the *Right to liberty and security* states that:
- *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- *(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

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Swedish Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents Act (1988- present)

Its aims are to:

- To immediately stop a destructive way of life;
- To motivate patients to seek further treatment, if such a process is required;
- To overcome addiction and hence achieve a better lifestyle.

Under the act, social workers are obliged to force a person into treatment (civil commitment), if they match the criteria in the Act:

- If the individual is risking his/her psychological health on purpose or by helplessness;
- Destroys the prospect of his/her future due to substance misuse;
- Risks the security of him/herself or intimate associates;
- Necessary intervention is not possible on a voluntary basis.

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NSW Australia

- The Drug and Alcohol Treatment Act 2007 which came in to force in September 2012.

- The New South Wales, Australian experience of involuntary treatment. Here is Glenys Dore talking to their experience

  http://www.youtube.com/watch?v=DA_3uou6nyQ&index=2&list=PLSEhy70YpU5tZyaoHxz5UTuOUyJokMdFD

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Criteria under 2007 Act

- Severe dependence; AND
- At risk of serious harm; AND
- Likely to benefit from treatment but refuses; AND
- No less restrictive treatment available.

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Typical client

- 59 year old man
- Calling emergency services when intoxicated, crying, physical pain, threatening suicide
- 114 ED presentations (56 in past 6 months)
- Severe alcohol problem
- Living in squalor

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Evidence of effectiveness - Australia

Of 40 detained alcohol patients:

- 10% died
- 25% relapsed
- 60% were abstinent (18) or had improved
- 5% not known.

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Other countries

- New Zealand
- USA
- Switzerland
- France
- Germany

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Section 5

- **Legal powers: England**

Powers 1

Containment Powers For Substance Misusers

- The Care Act 2014 (England)

- Mental Capacity Act 2005
  (including DOLS and LPS)

- Mental Health Act – 1983/2007

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Powers 2

- Human Rights Act
- Anti-Social Behaviour powers
  - ❑CBOs and Civil Injunctions
  - ❑ASB community trigger
  - ❑Closure Orders
- ATR – Alcohol Treatment Requirement / Probation Orders with Conditions of Treatment
- Environmental Health legislation

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- The Care Act 2014

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Does it apply to dependent drinkers?

- YES - The Department of Health and Social Care has stated that: *To meet the national eligibility threshold… local authorities … must consider…if the adult has a condition as a result of…* (among others)…*substance misuse or brain injury.*
- A formal diagnosis is not required to prove eligibility; but
- Care and support needs are required.

Care Act Statutory Guidance - Neglect

The Care Act requires that each local authority must:

- *make enquiries, or ensure others do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to stop or prevent abuse or neglect, and if so, by whom.*

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Self-neglect

- The Act places a duty on local authorities to *protect people from abuse and neglect*. This includes *those who self-neglect*.

These duties apply equally to:

- *adults with care and support needs*
- *whether those needs are being met ,*
- *whether the adult lacks mental capacity or not.*

Self-neglect

- SCIE describes self-neglect as *an extreme lack of self-care*, and says *that it… may be a result of other issues such as addictions*.

However:

Andrew SAR (Waltham Forest)*It is not routine or shared practice to accept that chronic alcohol misuse is a form of self-neglect...This directly affects the response by professionals ...*

Local authorities have a duty to safeguard self-neglecting dependent drinkers.

But safeguarding is everybody's business.

Exploitation & coercion

- They may also be victims of abuse and exploitation by others.
- The need to protect abused drinkers has not always been recognised.
- AW SAR: *AW's drinking put her at risk of exploitation…. This did not result in a safeguarding alert at the time, although there was ongoing financial exploitation.*

SARs

- Section 44 of the Care Act requires the local Safeguarding Adults Board to undertake a Safeguarding Adults Review (SAR) where an adult with care and support needs has died and the SAB knows or suspects that the death resulted from abuse or neglect. Reviews can provide important evidence about how to manage this client group.

Summary

- **The Care Act 2014 applies to people with alcohol problems.**
- **Dependent drinkers with care and support needs have a right to assessment under the Act and, if they meet certain criteria, the right to a care package.**
- **Dependent drinkers who are vulnerable, abused or self-neglecting require safeguarding by local authorities.**
- **Self-neglect (and/or living with abuse and exploitation) should never be regarded as a "lifestyle choice".**

Summary

- **Safeguarding alerts should be submitted to the local authority about such cases.**
- **Local authorities have a duty to make enquiries, or cause others to do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect.**
- **An enquiry should establish whether any action needs to be taken to stop or prevent abuse or neglect, and if so, by whom.**
- **A Safeguarding Adult Review should be undertaken by the Safeguarding Adults Board in cases of serious failure to support a vulnerable person.**

Section 6

- Mental Capacity Act 2005

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Section aim

- *To explore how the Mental Capacity Act can support and protect this client group*

Mental Capacity Act 2005

- Provides a statutory framework for people who lack capacity to make decisions for themselves... It sets out who can take decisions, in which situations, and how they should go about this.

Mental Capacity Act 2005

- A person who lacks capacity means a person who lacks capacity to make a **particular decision** or take a **particular action** for themselves **at the time the decision or action needs to be taken**.

Two dynamics

- Supporting the development of a plan that is in someone's best interest
- Preventing someone being dismissed as *having capacity*

The key question

- Are there circumstances under which chronic dependent drinkers lack the capacity to make decisions about e.g. their care, treatment or living conditions?

The two part mental capacity test

Stage 1: Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?

An impairment or disturbance in the functioning of the mind or brain may include:

- **the symptoms of alcohol or drug use.**

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Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?

4.14 A person is unable to make a decision if they cannot:

1. understand information about the decision to be made
2. retain that information in their mind
3. **use or weigh that information as part of the decision-making process**, or
4. communicate their decision.

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Using or weighing information as part of the decision-making process

4.22 ***For example, a person with the eating disorder anorexia nervosa may understand information about the consequences of not eating. But their compulsion not to eat might be too strong for them to ignore.***

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- Legal judgement

London Borough of Croydon -v- CD [2019] EWHC 2943 (Fam)

- CD: a 65 year old man who suffers from a range of medical problems; he has a psychiatric background characterised by depression, he suffers from epilepsy and complications arising from chronic alcohol abuse. Diabetes and physical disabilities.

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CD

- Frequent incidents of falling in his flat,
- Non-concordant with medication,
- Severe self-neglect,
- Inability to manage his personal care, activities of daily living, his health and wellbeing.
- Home environment deteriorated to a stage that a care agency were unable to access the flat for fear of cross contamination and infection.
- Frequently called the London Ambulance and Police… he attended A&E regularly.
- CD lives alone and he has limited positive support network, he socialises with friends in the same block of flats who equally have alcohol misuse problems."
- Unable to safely complete most activities of daily living without help from his carer."

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CD

- The judge ruled that CD lacked capacity in relation to decisions concerning his care.
- Made orders about actions to be taken in his best interest.

The real challenge

The repeated cycle of:

- lack of capacity
- hospital
- detox
- capacity
- home

Executive Capacity

- *…the concept of "executive capacity" is relevant where the individual has addictive or compulsive behaviours. This highlights the importance of considering the individual's ability to put a decision into effect (executive capacity) in addition to their ability to make a decision (decisional capacity). Therefore, for an individual such as AW the assessment of mental capacity is unlikely to be as straightforward as a simple yes or no.*

Angela Wrightson SAR

The Code of Practice supports this stating that:

4.30 Information about decisions the person has made, based on a lack of understanding of risks or inability to weigh up the information, can form part of a capacity assessment – particularly if someone repeatedly makes decisions that put them at risk or result in harm to them or someone else.

To think about when assessing repeated lack of capacity

- Frontal lobe injury is common in drinkers.
- People may present as coherent in assessment
- But have very limited impulse control

To think about when assessing repeated lack of capacity

- Kindling
- Is this in the client's *best interests*?

Summary

- **The Mental Capacity Act 2005 applies to people with mental impairments due to the symptoms of alcohol or drug use**
- **The compulsion associated with an addictive behaviour can be seen as over-riding someone's ability to use information. This can imply a lack of capacity.**

Summary

- **Executive capacity should be included explicitly in assessments, linked to the person's ability to use and weigh information.**
- **Mental capacity decisions with this client group will need to be marathons not sprints.**
- **They will take time and require multi-agency discussion and professional challenge.**

Summary

- **If uncertain whether and how to proceed in a person's best interests, the case should be presented before a judge, with care and safeguarding plan options.**

Section 7

Using the Mental Capacity Act and the Care Act

Section aim

- *To explore what will help make the two key legal powers work in practice*

- The Care Act and the Mental Capacity Act do not define *what happens next.*
- They provide a framework which can support care planning.

Exercise

What are the key **structural** elements and **content** of a good care plan for a vulnerable dependent drinker?

Structure

- Ensure that all work with complex clients is built on a multi-agency approach.
- Agencies and their staff need to build positive relationships with other workers involved with the client.
- Workers will need to be persistent in arguing for the most appropriate response.
- Workers will need to be prepared to challenge other professionals.

Structure

- Agencies need to be willing to escalate concerns and make complaints.
- Good recording is required.

Structure

- A thorough assessment will be required and this may require persistence and joint working to find an appropriate opportunity.
- This may require multiple meetings.
- However, assessment should not become a barrier to beginning to build a relationship with a client.
- Undertake a comprehensive risk assessment, especially in situations of service refusal.

Structure

- Undertake a detailed exploration of the person's wishes, feelings, views, experiences, needs and desired outcomes.
- Take time to address the impact of adverse experiences, including issues of loss and trauma. It also should explore repetitive patterns.
- Maintain contact so that trust can be established, even when the person is not engaging in planned interventions.

Content

- ACUK's Blue Light project manual will be the best guide to the types of practical intervention to be used. These will include harm reduction, dietary approaches and motivational interventions that work with these clients.

What works 1

Outreach is the best evidenced intervention

- Surrey evidence
- Wigan, Notts, Salford, Lincs

- ACTAD - £1 spent on assertive outreach can save £3.42

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What works 2

- It takes time

What works 3

- Multi-agency groups (*Team around the person)*
- e.g. Medway, Northumberland, Sandwell and Gloucester

- *The best approach is assertive outreach guided by a multi-agency group*

What works 4

- *We cannot overstate the importance of diet*

Diet

- In the long term, vitamin B1 (thiamine) deficiency can result in alcohol related brain damage

- Simply drinking without food increases the risk of liver disease

Water

- The risk of dehydration exists which causes confusion and lethargy.
- Lack of water can worsen liver disease
- Ice cubes in a drink to reduce the impact
- (Coffee and liver disease)

What works 5

- A body of evidence exists that family or carer involvement in care planning can help improve engagement and increase the likelihood that a care plan will succeed.

- However, family members may also need protection and support

What works 6

- Structure

What works 7

Use a **motivational interviewing** approach

Motivational Interviewing: Preparing People to Change Addictive Behaviour – William Miller & Steve Rollnick, 1991

3rd Edition was published in 2012

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Key techniques

- Rolling with resistance

&

- Promoting self belief

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What works 8

- Develop an engagement plan –
- Think through how you can keep the person engaged.
- Discuss with the client what is to be done if they disengage.

Advance directives

- *An interesting example of efforts to improve engagement comes from Engage Merton. They ask all new clients to write themselves a letter which will be kept on file and sent if the person drops out of treatment. The letter is encouraging the person him or herself to keep going or try again. Other services use a postcard.*

What works 9

- Are they smoking as well as drinking and, therefore, increasing the risk of oral cancer?
- E-cigarettes

What works 10

Home Safety

Do they have a smoke alarm fitted?

Beyond smoke alarms

- Sand buckets
- Cooking
- Heating

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What works 11

Money

- Sort out benefits / finances
- Appointeeships
- Jamjar accounts (credit union)
- Improve bank account safety
- Pin numbers

What works 12

- If necessary make a **referral** to local alcohol services

But

- Signposting is not enough!!

- We need a “warm introduction”

Incentivise engagement with services

- In some cases substance misusers have been offered gifts and vouchers to engage with treatment services. This is costly and problematic but may be seen as an option with some high risk cases.

- Incentives work but…

Incentives

- e.g. offering complementary therapies.
- Clothing
- Food
- Travel costs

Section 8

- The Mental Health Act 1983 and 2007 amendments

The 2007 Mental Health Act

- *"Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above."*

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The 2007 Mental Health Act

- A mental disorder is “any disorder or disability of the mind”

- This includes “Mental and behaviour disorders caused by psychoactive substances”.

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The Government's *2015 Mental Health Act Code of Practice*

- **"Dependence on alcohol or drugs**
- 2.9 Section 1(3) of the Act states that dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of the definition of mental disorder in the Act.
- 2.10 This means that there are no grounds under the Act for detaining a person in hospital (or using other compulsory measures) on the basis of alcohol or drug dependence alone.

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The Government's *2015 Mental Health Act Code of Practice*

- 2.11 Alcohol or drug dependence may be accompanied by, or associated with, a mental disorder which does fall within the Act's definition. If the relevant criteria are met, it is therefore possible, for example, to detain people who are suffering from mental disorder, even though they are also dependent on alcohol or drugs. This is true even if the mental disorder in question results from the person's alcohol or drug dependence.

The Government's *2015 Mental Health Act Code of Practice*

- 2.12 The Act does not exclude other disorders or disabilities of the mind related to the use of alcohol or drugs. These disorders – eg withdrawal state with delirium or associated psychotic disorder, acute intoxication, organic mental disorders associated with prolonged abuse of drugs or alcohol – remain mental disorders for the purposes of the Act.

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Potential action

- Section 2 – Assessment (hospital detention for assessment up to 28 days) - A 28 day period of detention would provide an almost ideal framework for assessing whether the person's behaviour was the result of alcohol dependence alone, or whether it had some other origin e.g. cognitive impairment.
- Section 3 – Treatment (hospital detention for treatment for an initial period of up to six months).

Alternative pathways

- Considering on a case by case basis whether specific clients can be managed within the existing mental health service structure
- Purchasing appropriate facilities from the private sector
- Gathering evidence on unmet need to justify commissioning services in the longer term.

Summary

- **The Mental Health Act (2007) defines a mental disorder as “any disorder or disability of the mind”.**
- **The Act’s definition of a mental disorder includes “Mental and behaviour disorders caused by psychoactive substances”.**
- **It is possible to detain someone under the Act if they have disordered mental functioning due to their chronic drinking.**

Summary

- **Such actions are likely to be rare and current practice does not make much use of this option.**
- **It would need to be a last resort and represent the least restrictive option now available to meet the person's treatment needs.**
- **Models of interventions in detained settings are available in other countries.**

Section 9

- Other Powers

Section aim

- *To explore other legal frameworks that can support and protect this client group*

Other powers

- Human Rights Act 1998
- Anti-Social Behaviour powers
  - CBOs and Civil Injunctions
  - ASB community trigger
  - Closure Orders
- ATR – Alcohol Treatment Requirement / Probation Orders with Conditions of Treatment
- Environmental Health legislation

The Human Rights Act 1998

- Article 2 – the right to life
- Article 8 – to protect the physical or moral integrity of the individual (especially but not exclusively) from the acts of other persons

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- The Anti-social Behaviour, Police and Crime Act 2014

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ASB Powers

– Criminal Behaviour Orders &
– Civil Injunctions

The *civil injunction* is a civil order issued by the courts and the *criminal behaviour order (CBO)* is available on conviction of any offence.

– ASB community trigger
– Closure Orders

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Positive requirements

- These orders not only allow courts to ban behaviours (e.g. drinking in a particular location), but also allow the imposition of *positive requirements* which will help encourage permanent change.
- These powers are appropriate for people whose ASB is due to alcohol problems
- The requirements can include treatment-type interventions, e.g. to receive *support and counselling* or attend *alcohol awareness classes.*
- Breaching a CBO or a Civil Injunction can lead to imprisonment or a fine or both.
- **These powers have not been well used nationally.**

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The Criminal Justice Act 2003

- Alcohol Treatment Requirements. These are effectively probation orders with conditions of alcohol treatment and mirror two other similar orders Drug Rehabilitation Requirements and Mental Health Treatment Requirements.

Examples of Environmental Health Legislation

- **Public Health Act 1936** - Contains the principal powers to deal with filthy and verminous premises.
- **The Public Health Act 1961** - Section 36 Power to Require Vacation of Premises During Fumigation
- **Housing Act 2004** - Allows the local authority to carryout risk assessment of any residential premises to identify any hazards that would likely cause harm and to take enforcement action where necessary to reduce the risk to harm. If the hazard is a category 1 there is a duty by the LA to take action. If the hazard is a category 2 then there is a power to take action.
- **Building Act 1984 Section 76:** - Available to deal with any premises which are in such a state as to be prejudicial to health.
- **Prevention of Damage by Pests Act 1949**:- Local Authorities have a duty to take action against occupiers of premises where there is evidence of rats or mice.
- **Fire and Rescue Services Act 2004 –** this defines the circumstances under which a fire officer can enter premises and the powers they have on entry.

Glenys Dore again…

- It is easy to allow people “to die with their rights on”.
- Sometimes we need to “deny autonomy to create autonomy”.

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And finally…

- Is there anything else you need or want from today's training?

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