

The Blue Light project:

- Safeguarding Vulnerable Dependent Drinkers

April 2022

The project

- In conjunction with Professor Michael Preston-Shoot, and approximately 23 local authorities, ACUK has developed national guidance which:
- *Enables professionals in England (& Wales) to use legal frameworks to manage and protect chronic dependent drinkers.*



How to use legal powers to safeguard highly vulnerable dependent drinkers in England and Wales

Professor Michael Preston-Shoot
and Mike Ward

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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

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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

Nothing about alcohol harm
is inevitable. By working
together, we can better
protect those most in need.

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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

Legal literacy

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

Feedback

- *I've waited 20 years in my career as a social worker in this field, knowing what you've published but not knowing how to put it in to words, or how to evidence what I know from frontline practice that you guys have captured, in a easy to read, go to, working document.*
- *I've already had great results and prevented deaths because of this document.*
- *It is an absolute landscape changer on how we practice. It gives us a stronger social work voice to professionally challenge and be more assertive in advocating that will bring improved outcomes for our most marginalised citizens.*

Section 2

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

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

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.

Further assessment

It is easy to simply dismiss the drinker as:

- Unmotivated,
- In denial, or
- “Just a drunk”

The situation will always be more complex than that

Section 3

Legal powers

- At the end of the Blue Light pathway are a group of non-changing clients who require a more robust framework
- Professionals need a better understanding of the legal structures that can support and manage these very challenging clients.

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

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

- The Care Act 2014

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 ...

Nonetheless, local authorities have a duty to safeguard self-neglecting dependent drinkers.

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 may require safeguarding by local authorities.**
- **Self-neglect (and/or living with abuse and exploitation) should never be regarded as a “lifestyle choice”.**

- Mental Capacity Act 2005

The key question

- Do 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.**

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.

Contrast - Using or weighing information as part of decision-making

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.

- 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.

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.”

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.

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 about the impact of their drinking. 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.**
- **For many reasons assessing capacity in dependent drinkers is complex and should not be subject to simplistic judgements.**
- **Decisions may require multi-agency discussion and professional challenge.**
- **It is important to consider what is in the client's best interest.**

- 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 (the Act).”*

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”.

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.**

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

- We are going to address our concerns about the English legislation to the Government.
- The current consultation on the MCA Code of Practice

- mike.ward@alcoholchange.org.uk
- www.alcoholchange.org.uk