



# Adult Safeguarding and Coercive Control

Dorset Mental Capacity Act Conference, 18<sup>th</sup> February 2020

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# Care Act 2014

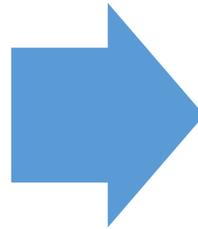
**The Care Act sets out local responsibilities and roles for protecting adults with care and support needs from abuse or neglect for the first time in primary legislation.**

**The duty applies to an adult who:**

**has needs for care and support (whether or not the local authority is meeting any of those needs)**

**is experiencing, or is at risk of abuse or neglect and**

**as a result of those care and support needs is unable to protect themselves from either the risk of, or experience of abuse or neglect.**



**Introduced the concept of  
'Making Safeguarding  
Personal'**

# Six Safeguarding Principles



**“A great judge once said, “all life is an experiment,” adding that “every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge” (see Holmes J in Abrams v United States (1919) 250 US 616 at pages 624, 630).**

**The fact is that all life involves risk, and the young, the elderly and the vulnerable, are exposed to additional risks and to risks they are less well equipped than others to cope with. But just as wise parents resist the temptation to keep their children metaphorically wrapped up in cotton wool, so too we must avoid the temptation always to put the physical health and safety of the elderly and the vulnerable before everything else. Often it will be appropriate to do so, but not always.**

**Physical health and safety can sometimes be bought at too high a price in happiness and emotional welfare.** The emphasis must be on sensible risk appraisal, not striving to avoid all risk, whatever the price, but instead seeking a proper balance and being willing to tolerate manageable or acceptable risks as the price appropriately to be paid in order to achieve some other good – in particular to achieve the vital good of the elderly or vulnerable person’s happiness.

**What good is it making someone safer if it merely makes them miserable?”**

Local Authority X v MM & Anor (No.1) (2007)

What is the offence of  
domestic abuse?

# Legal responses

landscape is complex and covered by a range of legislation...

**Common Assault & Battery**

(Criminal Justice Act 1988 s39)

**False Imprisonment**

(Common Law)

**Rape**

(Sexual Offences Act,  
1956, 2003, s1)

**Sexual  
Assault**

(Sexual Offences Act  
2003, s3)

**Harassment, alarm and distress**

(Public Order Act 1986 s4A, amended Protection  
of Freedom Act 2012)

**Threats to Kill**

(Offences Against the Person Act  
1861 s16)

**Stalking**

(Protection from  
harassment Act 1997  
s2A amended  
Protection of Freedom  
Act 2012)

**Ill treatment &/or wilful neglect of a  
person lacking mental capacity**

(Mental Capacity Act 2005, s44)

**Fraud**

(Fraud Act 2006)

# The cross-government definition of domestic abuse:

<https://www.gov.uk/guidance/domestic-abuse-how-to-get-help>

 GOV.UK

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Guidance

## Domestic abuse: how to get help

Find out how to get help if you or someone you know is a victim of domestic abuse.

Published 5 October 2018

From: [Home Office](#)

Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can include but is not limited to the following types of abuse:

- psychological
- physical
- sexual
- financial
- emotional
- Controlling behaviour is:
  - a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

# Coercive Behaviour – Government definition outlines the following:

- Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim
- Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour

# ‘Substantial adverse effect’ and ‘ought to know’

The phrase '**substantial adverse effect on usual day-to-day activities**' may include, but is not limited to:

- Stopping or changing the way someone socialises
- Physical or mental health deterioration
- A change in routine at home including those associated with mealtimes or household chores
- Attendance record at school
- Putting in place measures at home to safeguard themselves or their children
- Changes to work patterns, employment status or routes to work
- For the purposes of the offence A '**ought to know**' that which a reasonable person in possession of the same information would know - s.76 (5).



# Section 76 of the Serious Crime Act 2015 - Controlling or Coercive Behaviour in an Intimate or Family Relationship

<https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

**The new offence, which does not have retrospective effect, came into force on 29 December 2015.**

**An offence is committed by A if:**

- A repeatedly or continuously engages in behaviour towards another person, B, that is controlling or coercive; and
- At time of the behaviour, A and B are personally connected; and
- The behaviour has a serious effect on B; and
- A knows or ought to know that the behaviour will have a serious effect on B.

**A and B are 'personally connected' if:**

- they are in an intimate personal relationship; or
- they live together and are either members of the same family; or
- they live together have previously been in an intimate personal relationship with each other.
- There are two ways in which it can be proved that A's behaviour has a 'serious effect' on B:
  - If it causes B to fear, on at least two occasions, that violence will be used against them - s.76 (4)(a); or
  - If it causes B serious alarm or distress which has a substantial adverse effect on their day-to-day activities - s.76 (4) (b).

**For the purposes of this offence, behaviour must be engaged in 'repeatedly' or 'continuously'. It must have a 'serious effect' on someone and one way of proving this is that it causes someone to fear, on at least two occasions, that violence will be used against them.**

# Offence of Coercive and controlling behaviour does not cover -

the use of coercive control in other relationships that might be referred to as **safeguarding concerns** e.g. within setting such as hospitals, care homes, domiciliary staff working in the persons own home or bullying at work.

**S42-46 of the Care Act 2014 includes coercive control.** This means that a LA has a duty to make (or ask others to make) safeguarding enquiries and determine what action is needed to protect an adult at risk. This is triggered by '**reasonable cause to suspect**' that an adult with health and social care needs is experiencing coercive control (**where their needs prevent them from protecting themselves**).

# Wilful neglect & ill treatment

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There are already offences in respect of the ill-treatment and wilful neglect of patients receiving treatment for mental disorder (**s.127 Mental Health Act 1983**) and of those who lack capacity under the Mental Capacity Act 2005 (**s.44 Mental Capacity Act**).

However, there is **no equivalent specific offence in relation to those being cared for with full capacity BUT.....**

Offences contrary to sections 20 to 25 of the **Criminal Justice and Courts Act 2015** close this gap in existing legislation.





Two offences were created:

- **Section 20** - the "care worker offence" which applies to individuals; and
- **Section 21** - the "care provider offence" which applies to various prescribed bodies.
- Came into force on 13 April 2015.

Criminal Justice & Courts Act 2015

They apply -



to all formal healthcare provision for adults and children (under 18) in both the NHS and private sector, other than in specific excluded children's services and settings;



to all formal adult social care provisions, in both the public and private sectors, including where care is self-funded; and



to individuals and organisations paid to provide or arrange for the provision of these health and adult social care services.

# Domestic Abuse Bill



Bill has completed journey through parliament



Still awaiting new legal definition for Domestic Abuse – ? Will this include Economic Abuse?



## Focus on

- Partnership working
- Supporting children and Young People
- Coercive and controlling behaviour
- Prevention and Early Help
- Holding Perpetrators to account



Improving statutory agencies response to domestic abuse (new Statutory Guidance)

- Identify
- Assess
- Respond



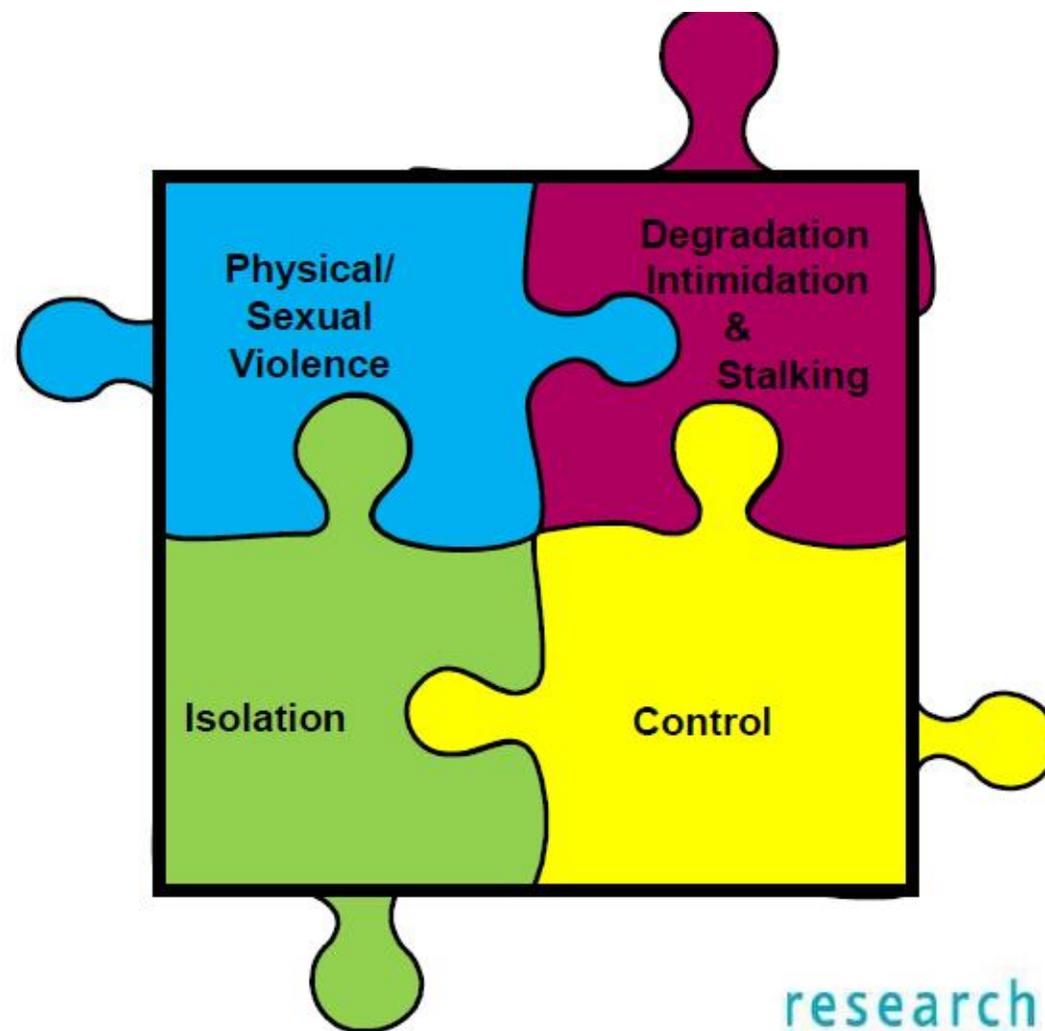
**New DA Commissioner is in place (Nicole Jacobs)**

- Audit role
- Provision and best practice
- Working with people who have experienced domestic abuse so their voices are heard





The Four major tactics of  
coercive control - *Evan Stark*

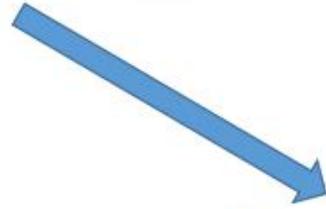


**women's aid**  
until women & children are safe

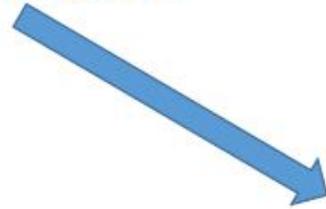
research  
in practice  
*for adults*

Coercive and Controlling Behaviour  
The Process

Conditioning



Dependence



Options, choices and  
ability to decide for  
themselves diminish  
further and further  
(Stark, 2007)



Entrapment

women's aid  
until women & children are safe

research  
in practice  
for adults

# Impact of coercive control

- Their everyday behaviour regulated.
- Coercive control creates invisible chains.
- The victim can become isolated from support.
- A persons independence will be taken away from them.
- It is designed to make a person dependent on the perpetrator.
- There is a sense of fear that pervades all elements of a victim's life.
- Experts like Evan Stark liken coercive control to being taken hostage. As he says: “the victim becomes captive in an unreal world created by the abuser, entrapped in a world of confusion, contradiction and fear.”



# Legal Responses – Civil responses

*Domestic Violence Protection Notices (DVPN's)*

*Domestic Violence Protection Orders (DVPO's)*

*Forced Marriage Protection Orders*

*Restraining Orders*

*Domestic Violence Disclosure Scheme*

*Non-Molestation Orders*

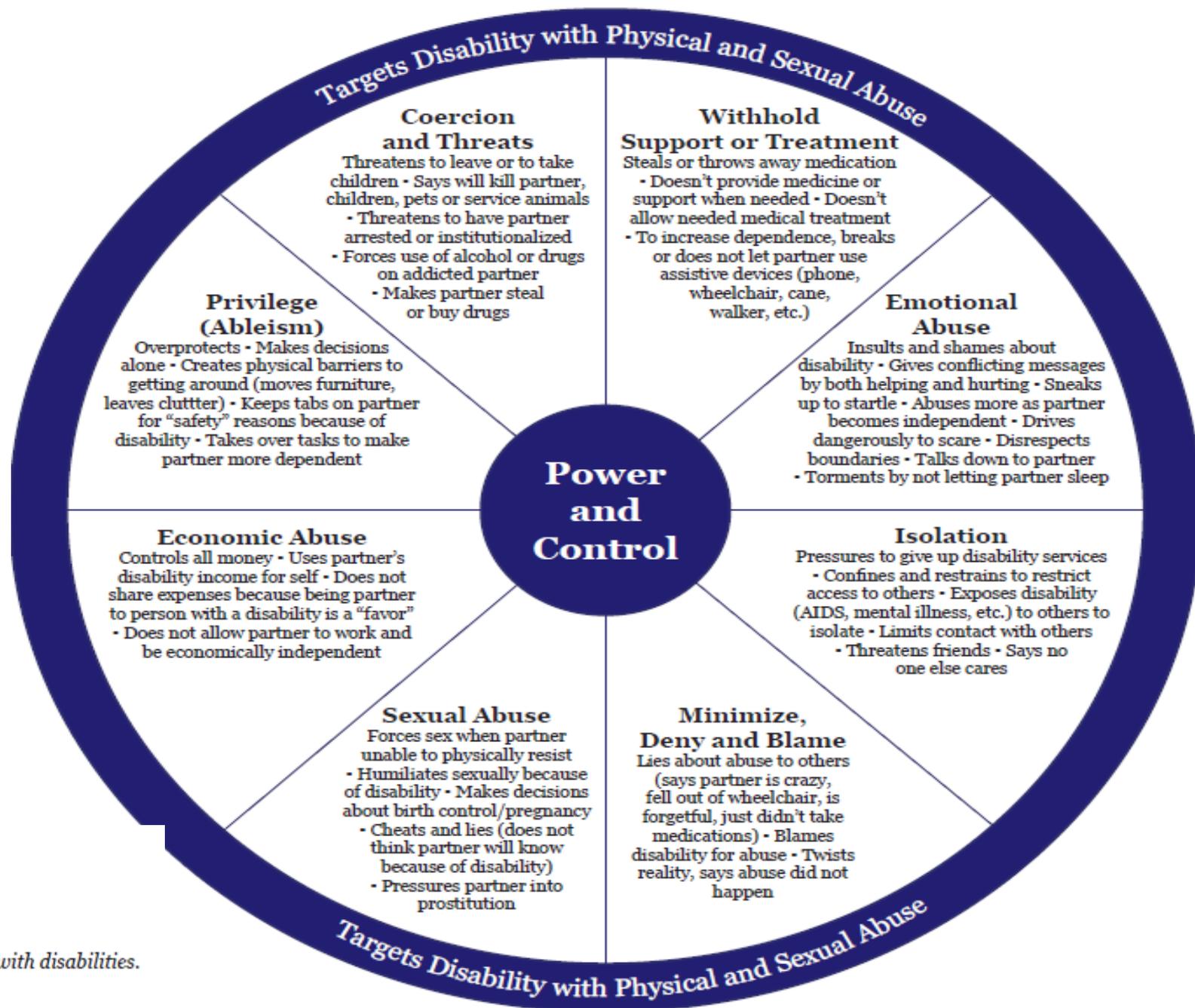


The Duluth Model (1981)

# What is Intersectionality?

- **Intersectionality** is about the interaction **between two or more forms** of discrimination.
- It is about how, racism, sexism, class, ableism etc. **create layers of inequalities**, vulnerabilities and dis/advantages, (for e.g. because of being **black** you are not listened to; and because you are **disabled** you are not believed).
- It also about how **services** can create inequalities, e.g. a victim of DA might be helped by one service because s/he is a disabled person, but refused a place in a DV refuge because they have a disability.

# People with Disabilities in Partner Relationships



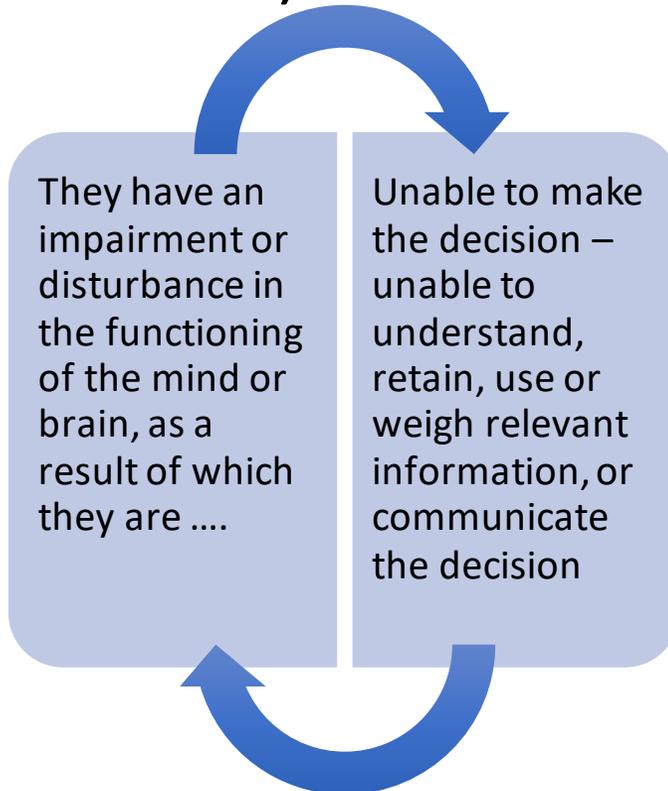
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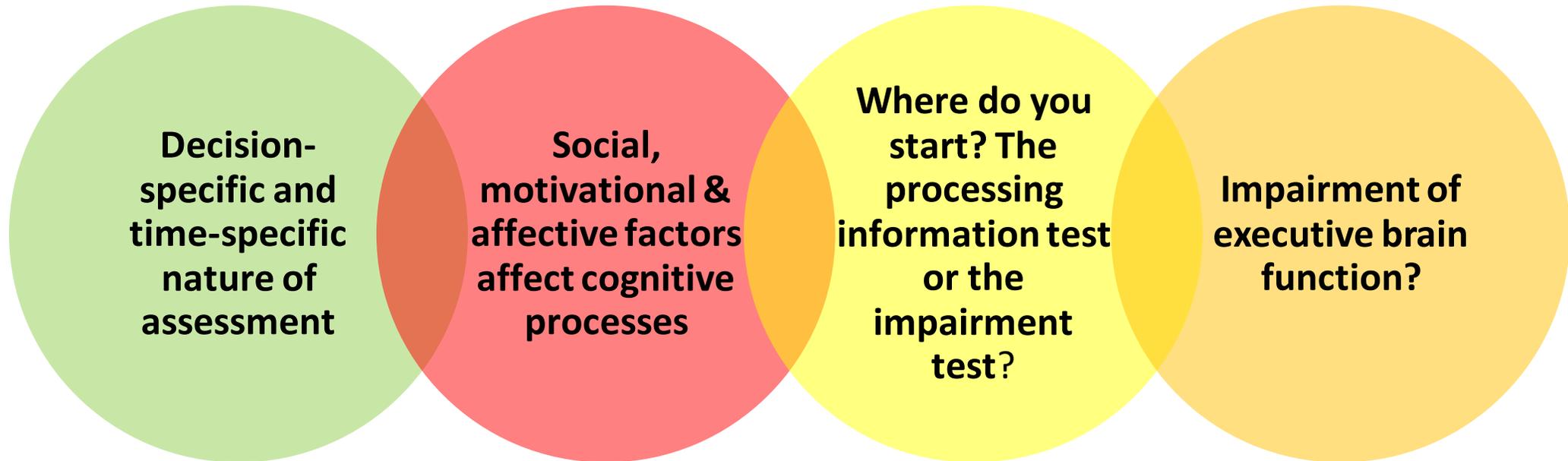
with in-depth input from people with disabilities.

# Mental capacity: a reminder

- Capacity is **decision specific** and **time specific**
- A person lacks capacity if (at the time the specific decision has to be made):



# Challenges of mental capacity assessment.....



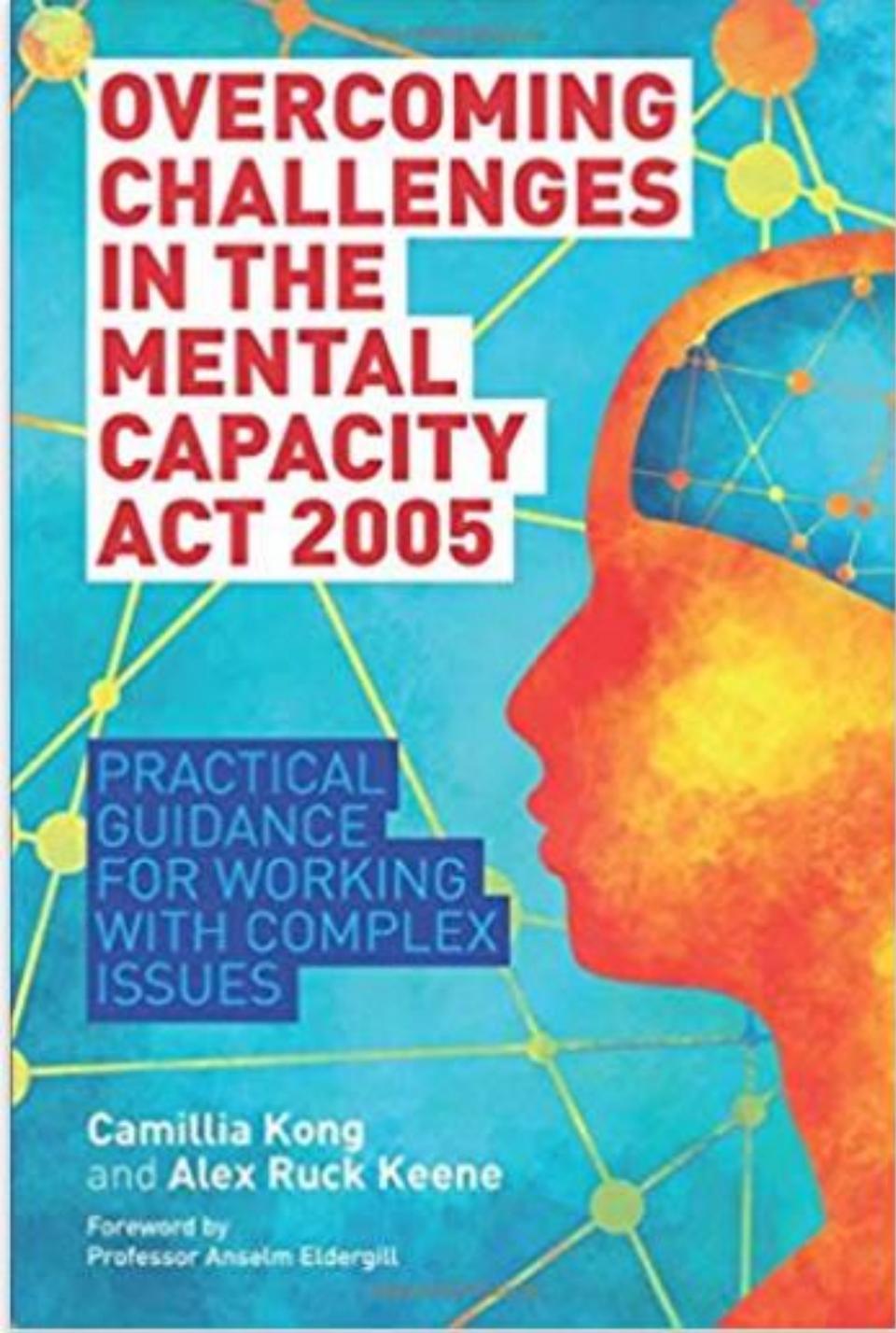


# Mental Capacity – key question

- Does the adult at risk from Domestic Abuse/ Coercive Control have the mental capacity to make relevant decisions about their safety and the support they want?

# Making decisions about capacity in context of coercion (<http://coercivecontrolipfa.org.uk>)

- The LA, and the Court, are the person's '***servant, not their master***'.
- Must ensure the person is empowered to make their own decisions wherever possible, and where not possible, use the **less restrictive option**.
- The person does not have to prove to a professional they have capacity.
- Remember '**causal nexus**' – the inability to carry out 4 steps necessary to make a decision **must** be clearly demonstrated as being because of the impairment or disturbance in the functioning of the mind or brain (consider environment and social factors affect on executive functioning) .
- **Do everything practicable** to empower someone to make their own decisions (Principle 2).
- Seek legal advice



**OVERCOMING  
CHALLENGES  
IN THE  
MENTAL  
CAPACITY  
ACT 2005**

**PRACTICAL  
GUIDANCE  
FOR WORKING  
WITH COMPLEX  
ISSUES**

**Camillia Kong  
and Alex Ruck Keene**

Foreword by  
Professor Anselm Eldergill

*‘The cliff edge  
towards  
paternalism’.*

# Inherent Jurisdiction

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- In extreme cases, where there is a risk to life and where all other legal and support avenues have been exhausted, an application can be made to invoke the inherent jurisdiction of the High Court.
- Courts will always strive not to undermine the Principles outlined in the Mental Capacity Act.
- Intervention must be **necessary and proportionate**.
- Seek support and advice your legal team!



# DL v A Local Authority & Others [2012] EWCA Civ 253

- “in my judgment... the **inherent jurisdiction can be exercised in relation to a vulnerable adult who**, even if not incapacitated by mental disorder or mental illness, is, or **is reasonably believed to be**, either (i) under constraint or (ii) **subject to coercion** or undue influence or (iii) for some other reason deprived of the capacity to make the relevant decision, or **disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.**”
- Per Munby J in *A Local Authority v (1) MA (2) NA and (3) SA* [2005] EWHC2942, at paragraph 77
- The local authority sought to invoke the court’s inherent jurisdiction to protect the parents whom it claimed lacked capacity as a result of duress and undue influence brought to bear by DL. The family court judge granted an interim injunction, restraining his behaviour towards his parents, care staff and other professionals, under the **court’s inherent jurisdiction in respect of his mother** and under **section 48 of the Mental Capacity Act 2005** in respect of his father.
- High Court Judgement upheld the decision



# Southend on Sea v Meyers [2019] EWHC 399 (Fam)

<https://www.bailii.org/ew/cases/EWHC?Fam/2019/399.html>

97 year old man

Living with son in an 'unhealthy co-dependence' in a 'death trap' bungalow.

Health seriously deteriorated – dehydration, malnutrition and risk of sepsis through pressure sores.

'Constant intimidating behaviour' from son.

Unable to secure any carers – sons aggressive outbursts and Mr Meyers uncooperative and disengaging behaviour.

Cont.....

Crisis point- social worker found Mr Meyers naked from waist down, surrounded by flies, food, clutter, blood, faeces.

House had no furniture, sleeping on wooden slats, no heating, hot water.....glass removed from patio door leaving Mr Meyers exposed to the cold.

Social Worker concerned Mr Meyers was at extreme risk but he refused to go to a care home.

LA made urgent application to court.

Mr Meyers **temporarily lacked the capacity to take decisions** regarding his general welfare, (despite having a realistic understanding of poor state of property and dangerous, erratic behaviour of the son), because of the disabling effects of dehydration and UTI.

Hayden J therefore required an order to be drawn up to reflect the objective that:

*Mr Meyers be prevented from living with his son, either in the bungalow or in alternative accommodation. I do not compel him to reside in any other place or otherwise limit with whom he should live. For the avoidance of any doubt, Mr Meyers may live in his own bungalow, with an appropriate package of supportive care, conditional upon his son's exclusion from the property. This, to my mind, is the desirable outcome to this case. In this way I restrict Mr Meyers's autonomy only to the degree that is necessary to protect him, a measure which I have concluded is a proportionate interference with his Article 8 rights. As I have analysed above, it is the dysfunctional relationship between Mr Meyers and his son that serves to occlude his decision-making processes, concerning where and with whom he should live. The real issue is whether the framework of an order, giving effect to this, constitutes a deprivation of liberty at all. I am clear it does not.*

A Dorset case

# Case Study

- **Discuss in small groups your thoughts regarding the initial information provided.**
- **Who you might speak to?**
- **What action might you consider taking?**

# INVISIBILITY OF OF OLDER PEOPLE

**STOP TO VIOLENCE. STOP TO VIOLENCE.**  
VIOLENCE AGAINST WOMEN

**1 in 3 abused**  
Around the world, 1 in 3 women has been beaten, sexually abused or otherwise abused in her lifetime.

**1 in 20 raped**  
As well as one in 20 women experiencing sexual forms of assault, 1 in 20 is the age of 15.

**2 a week,**  
in the UK, 2 women are raped. In a matter of hours.

Violence Against Women – Vi...  
medium.com

About Violence Against Women - Restored ...  
restoredrelationships.org

The Consequences of Violence against ...

Violence against women: One

**683,280**  
**STOP**  
**NO! 16%**  
**3 times Why Me?**  
**Every 2 Minutes**  
**1 out of 3**  
**6 times**

**I said No..**

©4tSC

**DRINKING IS NOT A CRIME. RAPE IS.**

It doesn't matter what she's wearing, how much she's had to drink or whether you've kissed... sex without consent is rape. If she's too drunk to consent, assume she hasn't given it.

**#NoConsentNoSex** **GREATERT MANCHESTER POLICE**

**Crime Victim**  
Dan Brown

Crime victims: the lonely struggle ...  
euronews.com

crime victim: Amazon.co.uk...  
amazon.co.uk

Crime victim payouts axe...  
dailymail.co.uk

## Elderly Victimization and Fear of Crime in Public Spaces

Vania Ceccato, Roya Bamzar

First Published March 29, 2016 | Research Article | Check for updates

<https://doi.org/10.1177/1057567716639096>

# CAMPAIGNS AND PROGRAMMES



**In sickness  
and in health  
not in violence  
or abuse.**

**It's never too late to escape a lifetime  
of domestic abuse. Call 0800 066 5555**

Sunderland Partnership  
All together Sunderland!  
VERA BAIRD POLICE & VIOLENCE COORDINATOR



**WHAT DOES IT TAKE TO GET PEOPLE TALKING ABOUT DOMESTIC ABUSE?**

A picture of a celebrity with fake bruises may seem like a cheap trick but at least you noticed her. It's the 500,000 plus British women that are abused by their partners every year who go unnoticed. The thing is, real victims rarely show their bruises, or indeed these emotional scars. All too often they don't even admit that there is a problem. But domestic abuse is not something that should be kept quiet. Which is why we want you to act now: admit it's a problem, call it by its name and then talk to someone. Contact [womenaid.org.uk](http://womenaid.org.uk)

women's aid **act**



In the old days he hit me  
but I didn't tell anyone. Now he  
controls me by taking away my medicine.  
He says I'm lucky to have him.

If someone controls you psychologically, financially, emotionally, sexually or physically, this is **not** ok. Domestic abuse can happen to anyone, of any age.

**KNOW**  
it's not too late.

If you or anyone you know is experiencing domestic abuse we can help. Call our confidential advice service, Camden Safety Net on 020 7974 2526.

For more information visit [camden.gov.uk/know](http://camden.gov.uk/know)

 Camden

There are fewer than 100 beds in 20 refuges or safe houses for male victims in the UK, compared with 7,500 for women.



<https://www.somersetlive.co.uk/news/somerset-news/domestic-violence-against-men-somerset-100092>

<https://www.39essex.com/wp-content/uploads/2019/10/Mental-Capacity-Guidance-Note-Inherent-Jurisdiction-October-2019.pdf>

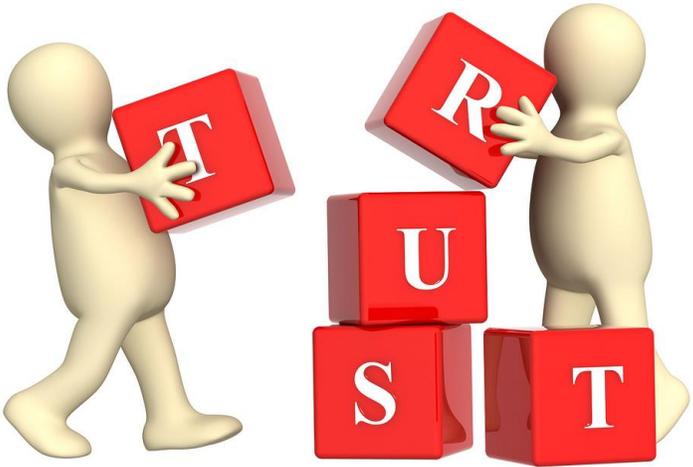


**GUIDANCE NOTE: USING THE INHERENT  
JURISDICTION IN RELATION TO ADULTS**

October 2019



# Critical skills and support



<https://www.scie.org.uk/safeguarding/adults/practice/sharing-information>

# Safeguarding adults in practice

- Safeguarding adults
- Introduction
- Safeguarding practice
  - Safeguarding Adults Boards
  - **Sharing information**
    - Key messages
    - Introduction
    - Barriers and solutions

## Safeguarding adults: sharing information

**Published: January 2015 | Last updated: January 2019**

This guide is part of a range of products to support implementation of the adult safeguarding aspects of the Care Act 2014. Sharing the right information, at the right time, with the right people, is fundamental to good practice in safeguarding adults but has been highlighted as a difficult area of practice.

- Publications
- Training and events
- Case Law Summaries
- Delivery Programme
- Podcasts
- CQC resources map
- Open access learning resources
- Research and Policy Updates
- Professional Capabilities Framework
- Professional standards for occupational therapy

LOCATION: [HOME](#) / [RESOURCES](#) / [OPEN ACCESS LEARNING RESOURCES](#) /

## Coercive control: Learning Resources

Coercive control is the underlying feature of domestic abuse and is an offence in law. These [open access learning resources](#) provide information and guidance on how to recognise and respond to coercive and controlling behaviour in intimate or family relationships.



[Five case studies](#) describe situations of controlling and coercive behaviour with learning activities, sample assessment and safety plans, tools to support effective practice, and a [resource library](#) with further information and guidance about social work in cases of coercive control.

The materials were commissioned by the Chief Social Worker's Office at the Department of Health commissioned the materials, which were developed by Research in Practice for Adults and Women's Aid.

**Aimed at:** Commissioners, Frontline practitioners, Senior leaders, Senior practitioners, Social workers, Strategic leads and Team leaders.

**SEARCH**

SITE  PUBLICATIONS

KEYWORD

SELECT TOPIC (OPTIO...

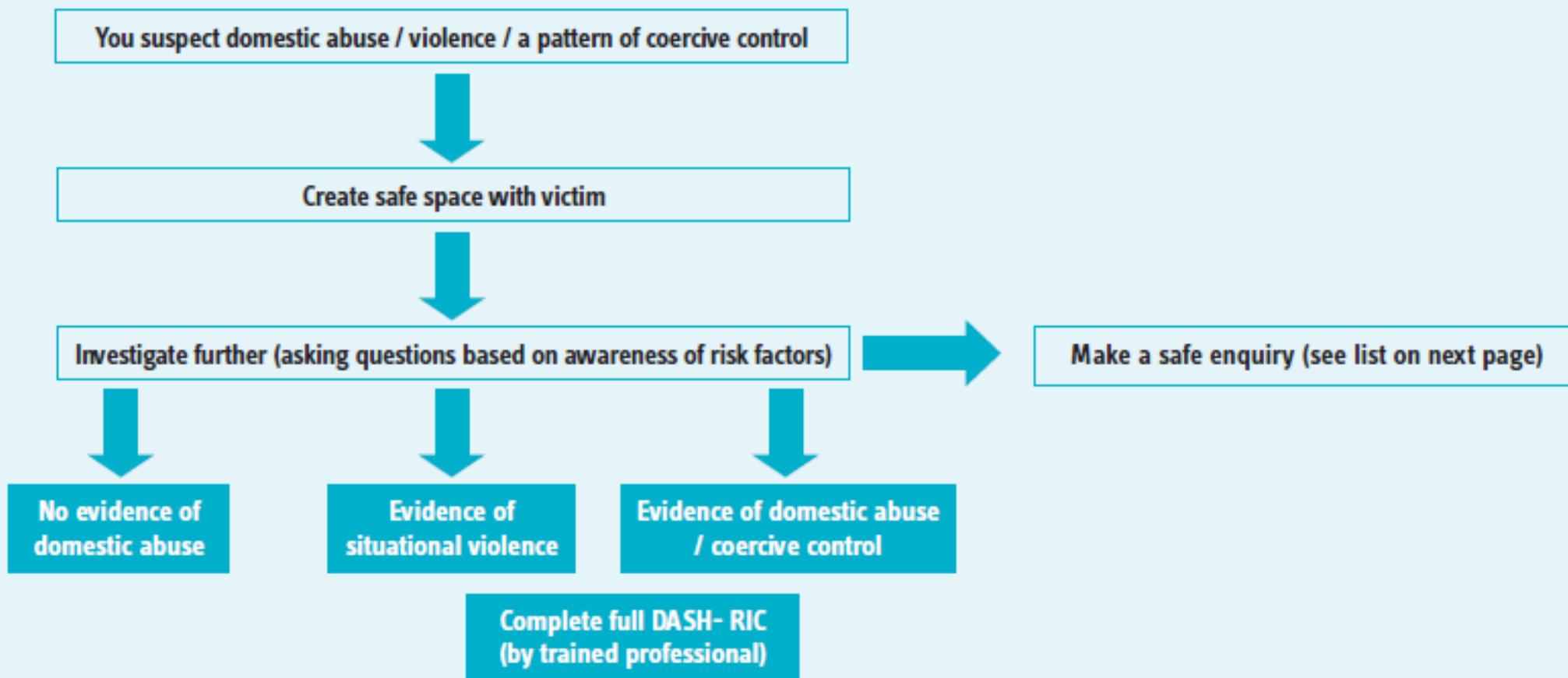
SELECT TYPE (OPTION...

**SEARCH**

### BULLETINS



## What to do if you suspect domestic abuse or a pattern of coercive control





## Making a safe enquiry

### Ensure confidentiality and safety by making sure you:

- > are alone with the person
- > can't be interrupted and have sufficient time
- > only use professional interpreters
- > don't pursue the conversation if the person lacks capacity to consent to an interview unless you've already arranged an advocate
- > record the person's response (but not anywhere that the perpetrator may have access to)

### Give opportunities to disclose by explaining your reasons for enquiring into domestic abuse, for example:

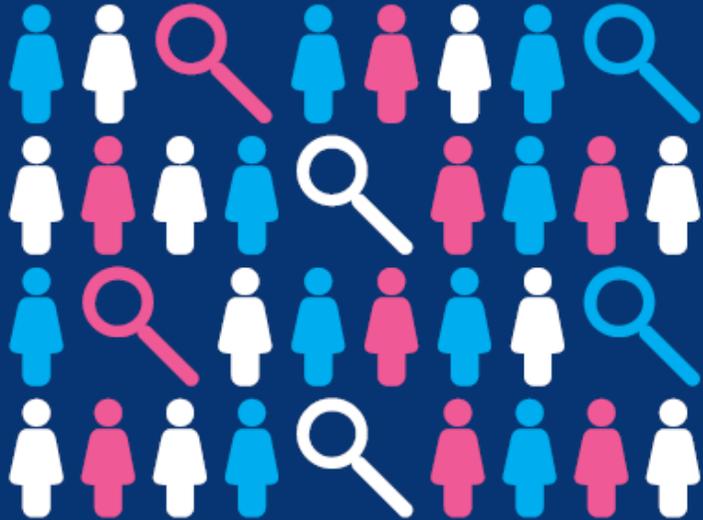
- > explaining it is common and lots of people experience it, so it's normal for you to be asking
- > explaining it's not just about physical violence, and is underpinned by controlling and coercive behaviour.

### Explain the limits of your confidentiality

#### Ask direct questions, for example:

- > Has anyone close to you made you feel frightened?
- > Does anyone close to you bully you, control you or force you to do things?
- > Has anyone close to you ever hurt you physically (hit, pushed, choked you?)
- > Has anyone prevented you from getting food, clothes, medication, glasses, hearing aids or medical care?
- > Has anyone prevented you from being with people you want to be with?
- > Has anyone forced you to sign papers against your will?
- > Has anyone talked to you in a way that made you feel ashamed or threatened?
- > Has anyone taken money belonging to you?

## Safe Later Lives: Older people and domestic abuse

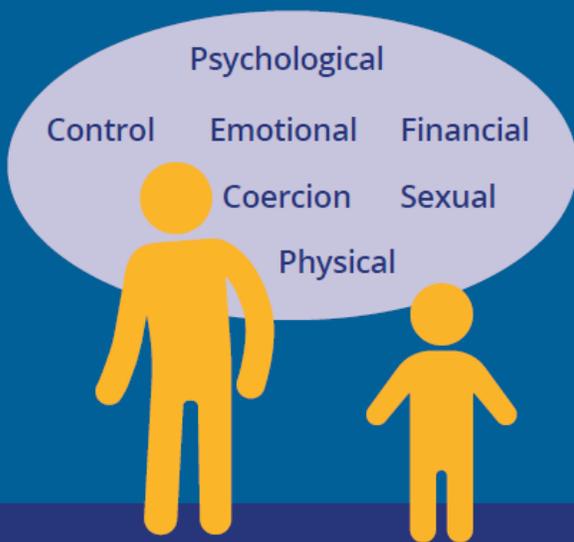


<http://safelives.org.uk/sites/default/files/resources/Safe%20Later%20Lives%20-%20Older%20people%20and%20domestic%20abuse.pdf>

# Recognising and responding to domestic violence and abuse

A quick guide for social workers

QUICK GUIDE



*Social workers can help people to talk  
about domestic violence or abuse, to  
know they are not alone and to  
feel that they will be believed*

<https://www.nice.org.uk/about/nice-communities/social-care/quick-guides/recognising-and-responding-to-domestic-violence-and-abuse>