



Keeping Adults Safe
in Shropshire
Board



Telford & Wrekin

Safeguarding
Adults Board

Safeguarding Adults Event 2018– Preventing Abuse in Shropshire and Telford & Wrekin

With

Professor Michael Preston-Shoot

Learning from SARs for best mental capacity practice



Shropshire Partners in Care
The Care Workforce Development Partnership

Event Objectives

- Identify best practice evidence from research and reviews when working with adults who self-neglect
- Identify what learning from SARs tells us for best mental capacity practice

We want you to use the reflective workshops to:

- Explain what you will do as a result of your learning from the event

Event Resources

Professor Michael Preston-Shoot was filmed talking about Learning from SARs for best mental capacity practice this is now available on YouTube via a link from the SAB websites:

Shropshire

www.keepingadultssafeinshropshire.org.uk/

Telford and & Wrekin

www.telfordsafeguardingadultsboard.org/sab/about



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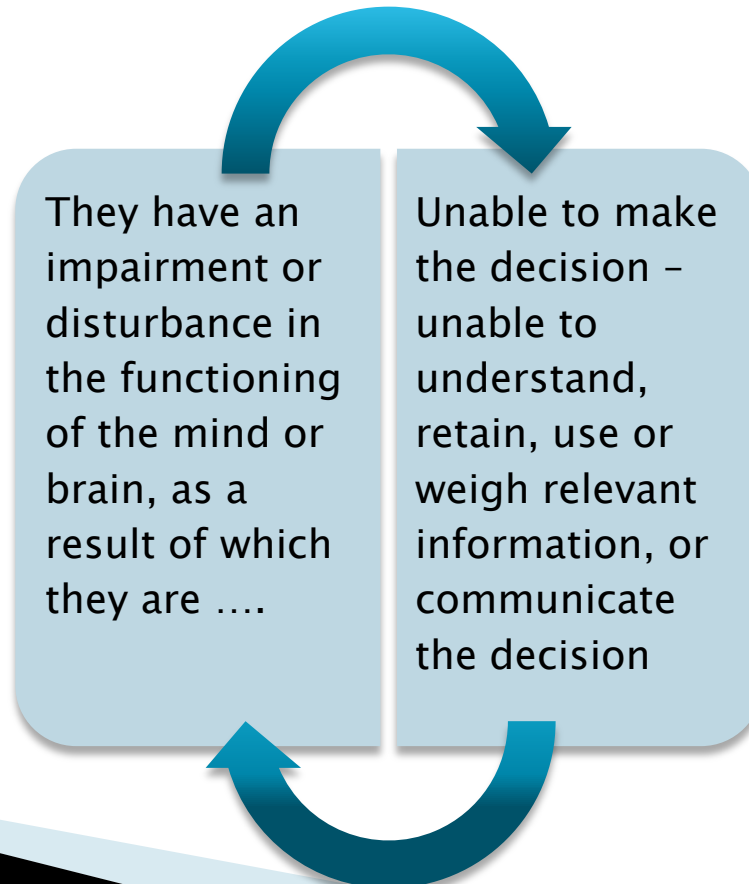


Learning from SARs for best mental capacity practice

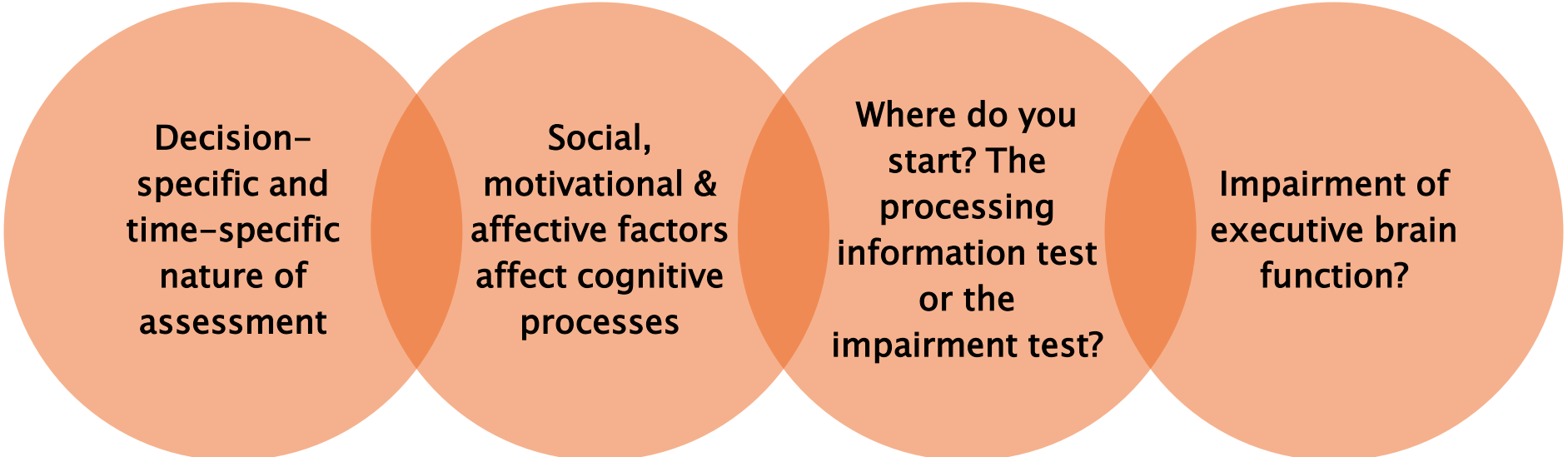
Autonomy and duty of care; rights and risks

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 in self-neglect



Decision-specific and time-specific nature of assessment

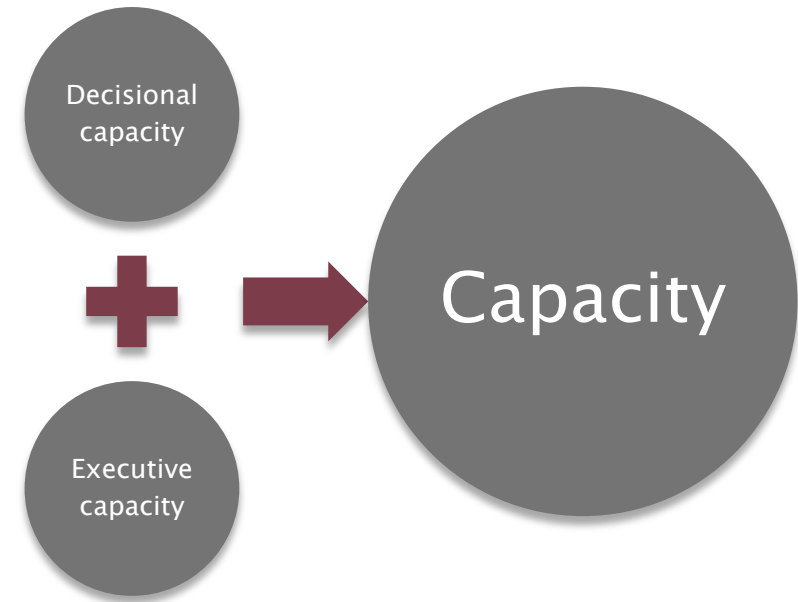
Social, motivational & affective factors affect cognitive processes

Where do you start? The processing information test or the impairment test?

Impairment of executive brain function?

Mental capacity in the self-neglect literature

- ▶ Involves
Not only
 - the ability to understand and reason through the elements of a decision in the abstract
- But also
 - the ability to realise when a decision needs to be put into practice and execute it at the appropriate moment – the ‘knowing/doing association’
- ▶ Frontal lobe damage may cause loss of *executive brain function*, resulting in difficulties:
 - understanding, retaining, using and weighing information in the moment, thus affecting
 - problem-solving, enacting a decision at the appropriate point



A more nuanced understanding

Decision-making difficulties may be masked by

Articulate use of language; verbal reasoning skills; high perceived self-efficacy

Decision-making “good in theory, poor in practice”

Capacity assessment to take account of

Articulate and demonstrate models; the person in context; real world behaviour

GW v A Local Authority
[2014] EWCOP20

Competing moral imperatives



A key dilemma: competing imperatives

Respect for autonomy

- ▶ Right to make decisions others think unwise (MCA 2005)
- ▶ Limits to the power of the state (Magna Carta, the unwritten constitution)
- ▶ ECHR articles 5 and 8
- ▶ Policy context of personalisation & making safeguarding personal

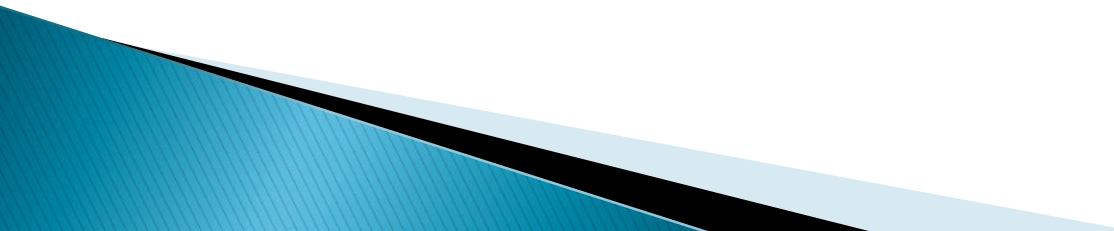
Duty of care

- ▶ The state has a duty to protect citizens from foreseeable harm
- ▶ Extreme self-neglect compromises wellbeing & human dignity – “surely someone could/should have done something”
- ▶ ECHR articles 2 and 3
- ▶ Others may be at risk

The core dilemma

“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 welfare 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 it is making someone safer if it merely makes them miserable?”** MM (An Adult)[2007]

The story of Manuela Skyes

- ▶ An older person with dementia, prone to falls and self-neglect
 - ▶ Application by Westminster City Council to Court of Protection for a DoL to keep her in a nursing home
 - ▶ Application opposed by Manuela and her nephew
 - ▶ What is in her best interests? To return her home with a care package where she is at risk but happy, or to deprive her of her liberty so that she is safe?
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The tricky concept of lifestyle choice

Is it really autonomy when:

- ▶ You don't see or recognise how things could be different for you?
- ▶ You don't think you're worth anything different?
- ▶ You never made a conscious choice to live this way but found yourself there without knowing how you got there?
- ▶ Your executive functioning is impaired?

"I used to wake up in the morning and cry when I saw the sheer overwhelming state... My war experience in Eastern Europe was scary, but nothing compared to what I was experiencing here."

"Well I don't know to be honest. Suddenly one day you think, 'What am I doing here?' "

"I put everyone else first – and that's how the self-neglect started."

Building an evidence-base – the contribution from SARs

- ▶ Wandsworth SAB – WWF
- ▶ Barking & Dagenham SAB – Lawrence
- ▶ Waltham Forest SAB – Andrew
- ▶ Islington SAB – Ms BB & Ms CC
- ▶ Plymouth SAB – Ruth Mitchell
- ▶ Gloucestershire SAB – Hannah
- ▶ Worcestershire SAB – RN
- ▶ Isle of Wight SAB – Mr W
- ▶ North Yorkshire – Mrs A

Wandsworth – WWF (2017)

- ▶ A widow living alone with diagnosed multiple sclerosis. She holds strong views about the support she is prepared to accept but some care workers have developed very effective working relationships with her. Her deteriorating ability to mobilise and increasing difficulties with swallowing, transfers and hand movements has had a significant impact on her mood and ability to go out. It has become progressively difficult for her to smoke safely and there have been several small fires when she has dropped lighted matches or cigarettes, sustaining serious burns, aggravated by the emollient creams that are applied to treat skin problems. She refuses to stop smoking or to light cigarettes only when friends, family or care workers are present.
- ▶ **Findings** – willingness to commission agencies with specific expertise; multi-agency communication; challenge of balancing risk reduction approach with rights of adults with capacity to make choices; fire risk not part of risk assessment and management.

North Yorkshire – Mrs A (2018)

- ▶ Older person who refused treatment for a fracture sustained whilst being assisted with personal care; she made clear decisions about her own care and support
- ▶ Impact of the experience of an earlier hospital stay
- ▶ Several assessments of mental capacity and some professional/family challenge; good GP practice noted regarding home visits, capacity assessments and questioning
- ▶ **Findings** – over-reliance on others' capacity assessments, failure to record decision being assessed, need for improved communication between agencies involved in her care, need to involve family members more in discussion of care plan, absence of section 42 enquiry referrals and investigations
- ▶ **Recommendations** –person-centred work must review autonomy against professional standards (discuss safeguarding concerns with service user)and risk assessment; an agency must take the lead in facilitating multi-agency discussions to provide the best care possible; clear processes for escalating concerns and handling complaints

West Berkshire – Mr I (2016)

- ▶ Alcohol related death at home
- ▶ History of abuse, mental ill-health and physical disability
- ▶ Assessed as having decision-making capacity regarding receipt of care
- ▶ Positive findings – case discussed at risk enablement panel; welfare checks by police, commitment of care staff, mental health specialists consulted, legal options considered
- ▶ **Learning** – concerns about self-neglect not escalated; risk assessment not updated; impact of workloads; supervision does not address complexity; lack of exploration of mental capacity; lack of familiarity with available procedures; key meetings not minuted; risk averse rather than empowering practice

SAR findings

Too accepting of
“lifestyle choice &
insufficient
professional curiosity

Mental capacity and
risk assessments
insufficiently robust

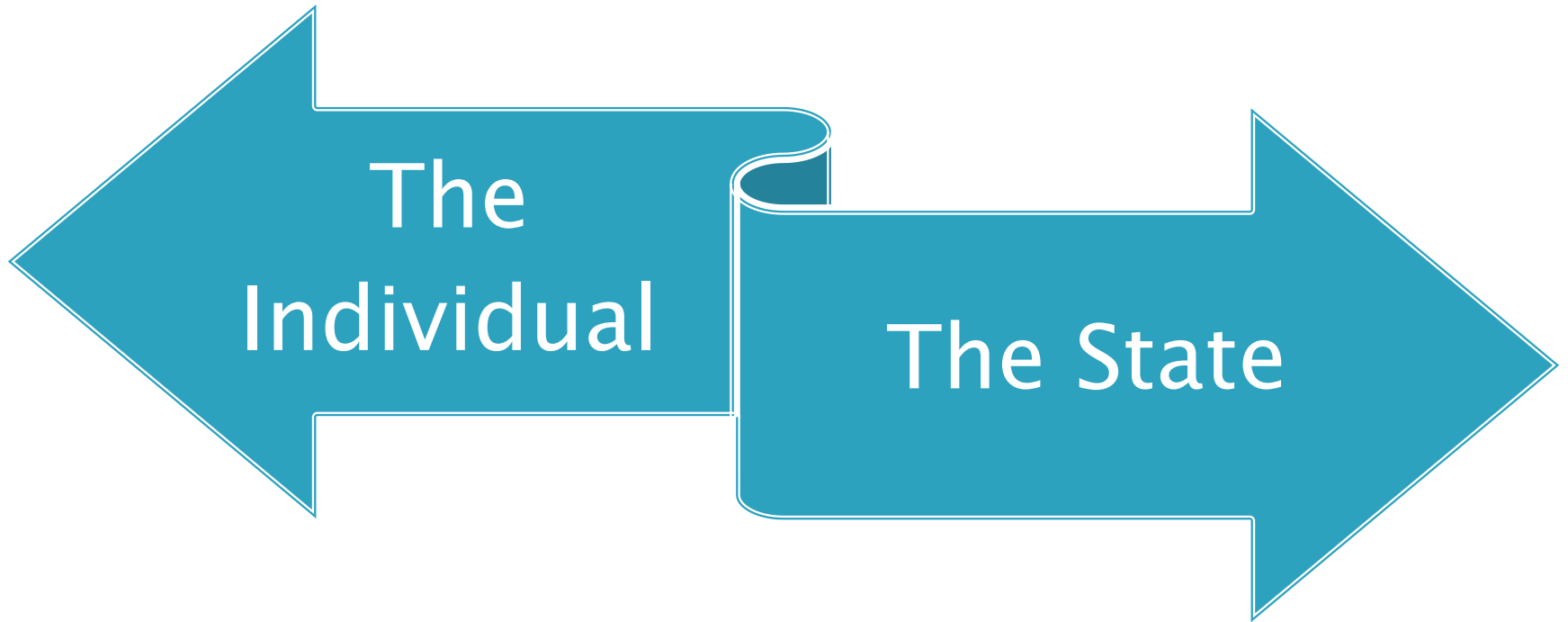
Delays in raising
safeguarding concerns
or commencing
Section 42 enquiries

Failure to escalate
concerns to senior
managers

No agreed strategies
to continue to engage

Poor record keeping of
decision-making

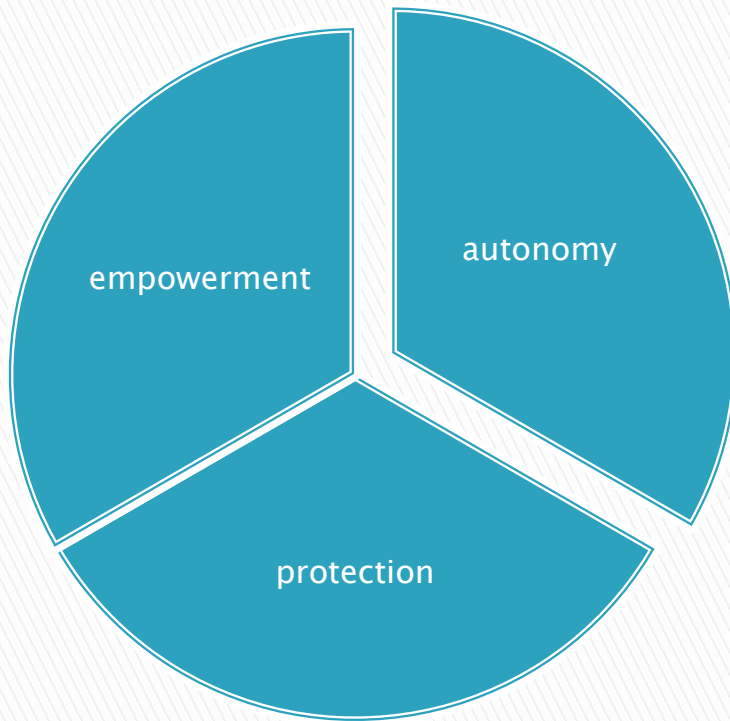
Rights and risks – competing viewpoints on who decides



Values implicit in legislation and practice

- ▶ “People should have autonomy in the decisions they make about their lives.”
 - *(choice, autonomy, self-determination, MCA 2005)*
- ▶ “Sometimes people do not make sound decisions and need protection from harm or others need protection from them.”
 - *(best interests, welfare, Mental health and sexual offences legislation, Court of Protection, Inherent Jurisdiction)*
- ▶ “Sometimes people need help to take control over decisions about their lives.”
 - *(partnership, empowerment, individual budgets, advocacy)*

Who decides – by reference to what values?

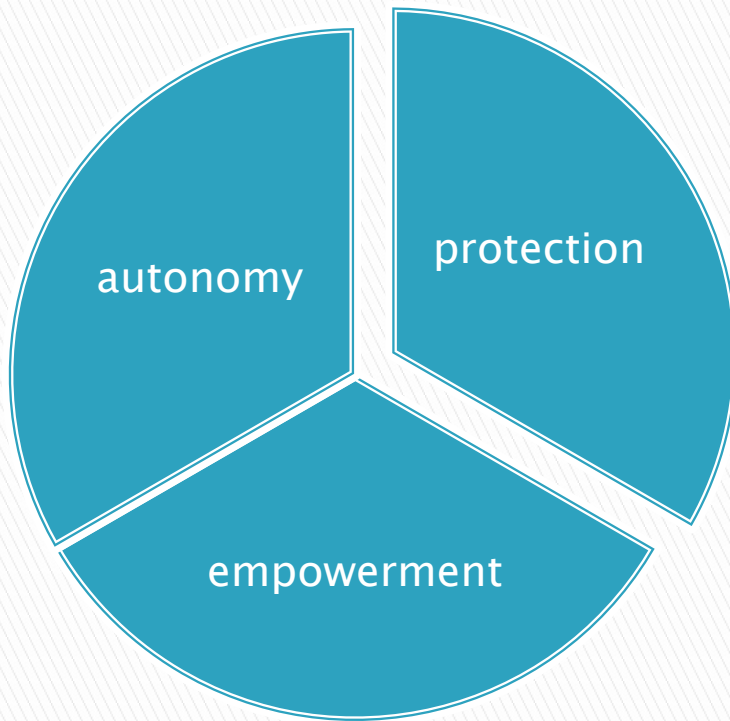


- ▶ Empowerment & protection get mixed up. It is often difficult to tell the difference. So, we will respect people's wishes and choices.

Conflict between two positions ...

Is avoided by prioritising a third

Who decides?

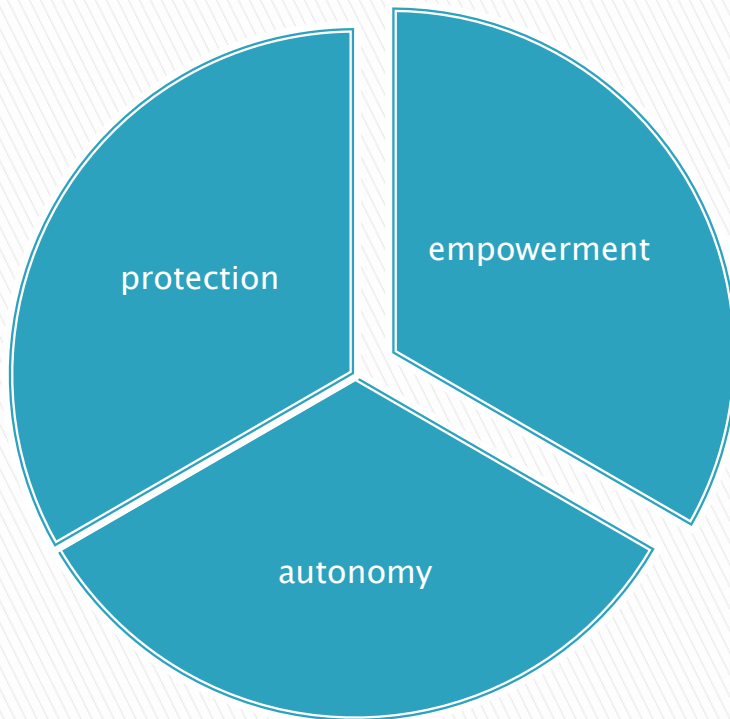


- ▶ If we intervene in people's lives, that limits their autonomy, but it is justified in their own interests.

Conflict between two positions ...

Is avoided by prioritising a third

Who decides?

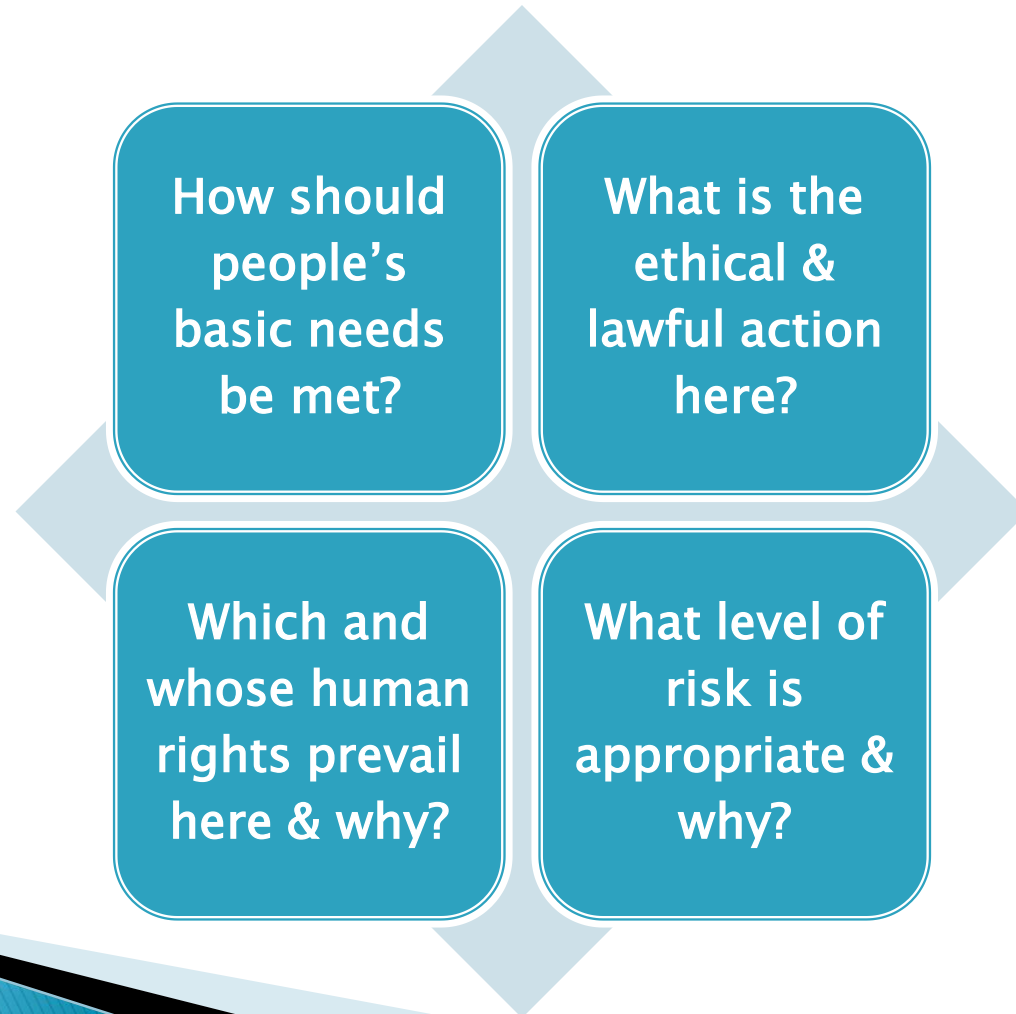


- ▶ If people do what they want, they may place themselves at risk, so we will be involved to help them make good decisions in whatever areas they can.

Conflict between two positions ...

Is avoided by prioritising a third

Towards a resolution of conflicting imperatives – judgement and professional discretion



Recommendations

Multi-agency risk management meetings (what do we mean by autonomy, risk etc)

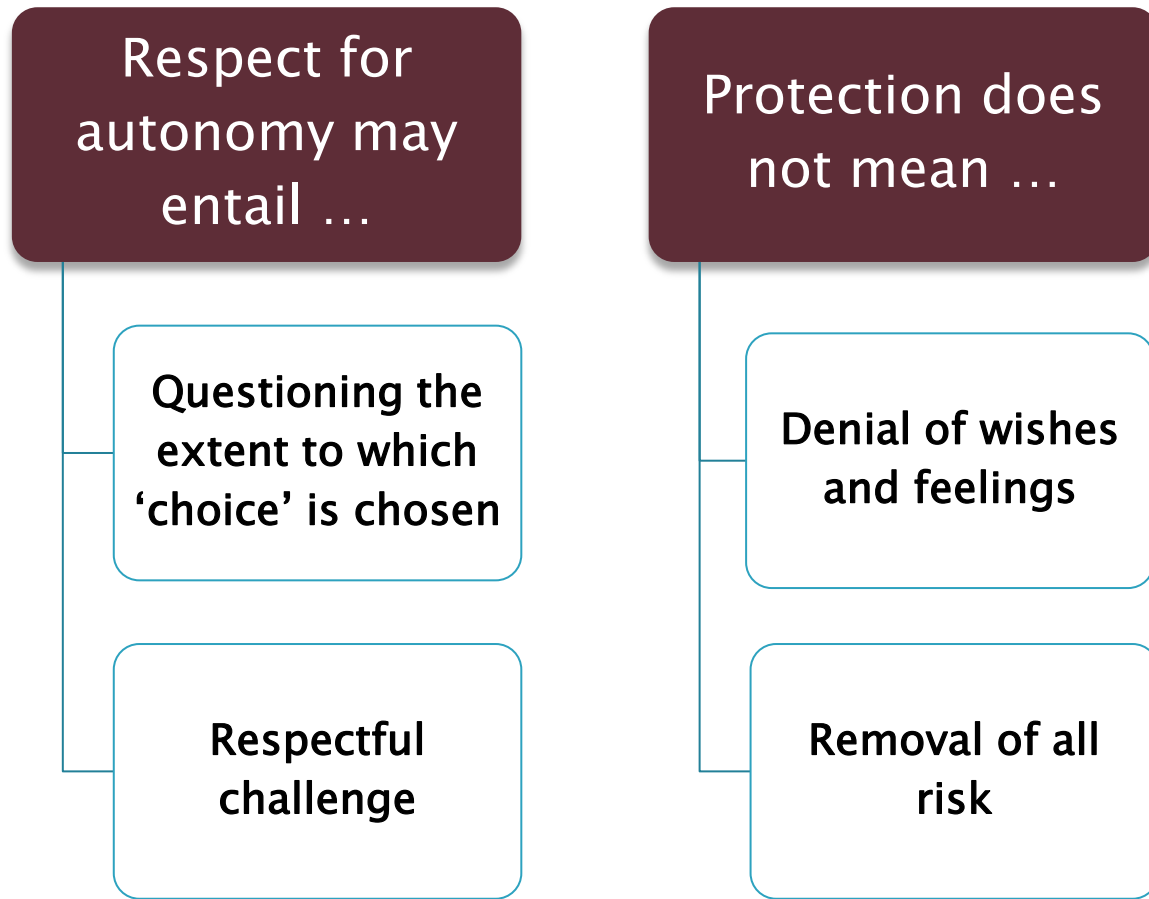
Legal literacy – consider all legal options

Record of decision-making, having evaluated options

Persistent offers of support & respectful challenge (caution about case closure)

Updated risk & executive capacity assessments (including how beliefs & experiences shape wishes)

Consider mental health, risk to others and dignity

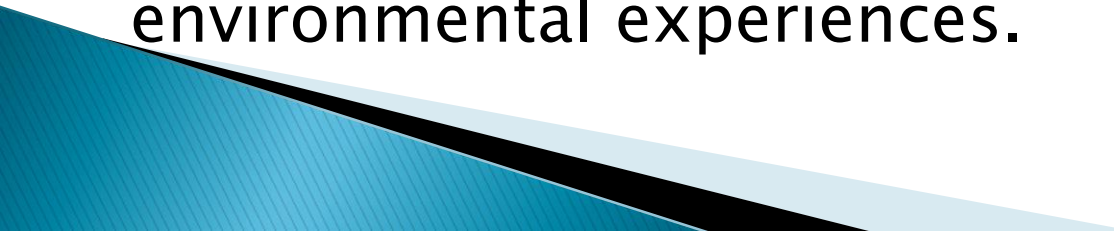


- This can require persistence rather than time-limited involvement that looks to achieve 'independence' before all else: respect for autonomy does not mean abandonment
- The policy and organisational context strongly influence the feasibility of relationship-based approaches

Resolving the tension


- ▶ Personalisation is an approach offering both opportunities and constraints, depending on how it is implemented
- ▶ Practice requires a facilitated approach based on dialogue and interaction, informed by the purposes of health and social care and of law
- ▶ The separate, parallel agendas of safeguarding and choice (Fyson & Kitson 2007) can be blended
- ▶ It does not have to be the case that “*care and protection*’ is the booby prize if people can’t exercise ‘*choice and control*’” (Barnes 2011: 160)

Returning to the SARs

- ▶ We might maximise the potential for independent living for as long as possible but ensure that harm does not befall.
 - ▶ We provide resources to promote autonomy where capacity is established and promote safety for incremental risk-taking elsewhere.
 - ▶ We should scrutinise our assumptions.
 - ▶ Acceding to choice and determining capacity should not result in abandonment and compound vulnerability
 - ▶ We should learn with service users/patients. – their choice, autonomy and capacity may be enhanced or compromised by personal, relational and environmental experiences.
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In Shropshire, and in Telford and Wrekin

► Reflecting on this presentation

- What is working well within agencies and across your partnerships? What are the strengths in single and multi-agency working on cases where autonomy and duty of care/protection tensions arise, where rights and risks may conflict?
 - Where do we need to improve? Where are the vulnerabilities in our systems and practices?
 - On what should the Safeguarding Adults Boards therefore be focusing?
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References

- ▶ Braye, S. and Preston-Shoot, M. (1994) 'Partners in community care? Rethinking the relationship between the law and social work practice.' *Journal of Social Welfare and Family Law*, 16 (2), 163–183.
- ▶ Braye, S., Orr, D. and Preston-Shoot, M. (2017) 'Autonomy and protection in self-neglect work: the ethical complexity of decision-making.' *Ethics and Social Welfare*, 11 (4), 320–335.
- ▶ Mackay, K. (2017) 'Choosing to live with harm? A presentation of two case studies to explore the perspective of those who experienced adult safeguarding interventions.' *Ethics and Social Welfare*, 11 (1), 33–46.
- ▶ Preston-Shoot, M. and Cornish, S. (2014) 'Paternalism or proportionality? Experiences and outcomes of the Adult Support and Protection (Scotland) Act 2007.' *Journal of Adult Protection*, 16 (1), 5–16.
- ▶ Preston-Shoot, M. (2018) 'Learning from Safeguarding Adult Reviews on Self-Neglect: Addressing the Challenge of Change.' *Journal of Adult Protection* (2018), 20(2), 78–92.

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