

# Mental Capacity & Adult safeguarding

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# Quick Poll to start

In the chat can you click on the link  
and answer the question

# Positive Practice

- The Theme for this year's safeguarding event is positive practice.
- In the chat can you type in a positive decision (big or small) you have made recently. Please respect confidentiality if using a case example.

# Aims of the Session

- Given we only have 90 minutes.....
- The presentation is concerned with mental capacity and safeguarding as it relates to adults.
- To revisit and consider the principles that underpin the Capacity Act and how these are relevant to safeguarding.
- To consider some of the themes identified in Adult Practice Reviews & Safeguarding Adults reviews, where they specifically relate to mental capacity.
- To consider the assessment of capacity and the two-stage test.
- To give thought to when particular behaviours or choices may indicate a capacity issue, a safeguarding issue, or both.
- From a practitioner's perspective to consider the importance of professional curiosity

# Format

The aim is to make this as interactive as possible.

We will do this through some or all of the following :-

Breakout rooms for case scenarios.

Quizzes and Polls

Use of the chat function

Asking questions of participants

Where possible If you can please keep your cameras on

Use the raise hand function in Teams if you want to ask a question.

# Context – Mental Capacity

- The Mental Capacity Act is designed to **empower** people to make decisions for themselves wherever possible and **protect** people who may lack capacity to make decisions.
- It covers a wide range of decisions and circumstances from everyday decisions to life changing matters.
- But legislation is not the whole story. The Act is supported by key practical guidance including a Code of Practice. Certain categories of people are required to have regard to the Code when acting on behalf of someone who may lack capacity to make a decision.



Mental Capacity Act 2005

## Code of Practice

# Quick Quiz On the Principles that underpin the MCA

Please click on the link in the  
chat.

# The 5 Statutory Principles -summary

1. Capacity is presumed *unless* it can be proved otherwise.
2. All practicable steps must have been taken without success before concluding someone lacks capacity.
3. A person is not to be considered as lacking capacity if their decision is unwise.
4. Where decisions are made on behalf of the person they must be done with *their* best interests in mind.
5. Can a less restrictive solution to the persons rights or freedoms be found before making a decision on their behalf.



# Context - Safeguarding

The Social Services and Wellbeing (Wales) Act (2014) puts Adult Safeguarding on a Statutory footing (Part 7). It provides amongst other things a definition of an adult at risk, requirements around who has a duty to report if they suspect an adult is at risk and also introduces Adult Protection and Support Orders .



The Wales Safeguarding Procedures ( 2019) provide further detail on the roles and responsibilities of those charged with safeguarding children and adults at risk of abuse and neglect



The legislation also introduces a provision of an Adult Protection Support Order (APSO).

# Quick poll on safeguarding

Please click on the link in the chat and answer the question

# So why is mental capacity a current theme for safeguarding practice?

- Richards & Mughal (2018) have said that the connection between safeguarding adults and the Mental Capacity Act is considerable and point out that there is a body of evidence that local authorities have tried to exert powers over individuals that they did not actually possess.
- The Thematic Review of Adult Practice Reviews in Wales ( 2025) found gaps in practitioners “awareness of” and “application” of the MCA.
- The second National Analysis of Safeguarding Adult Reviews in England likewise highlight assessment of capacity as a key development area,

# Key observations from the Thematic Reviews

The 2025 Thematic Review Of APR's looked at 25 reviews concluded between 2016 and 2022.

In nearly 2/3 of Reviews the subject was female.

Over half of the reviews related to people over the age of 60.

The most frequently cited vulnerability was mental health, followed by self neglect, physical health, substance misuse, learning disabilities.

In more than 80% of the cases reviewed the outcome was death.

# In terms of mental capacity

- Key observations were :-
- Gaps in practitioners' awareness of and application of the Mental Capacity Act.
- The need for refresher training and understanding of the legislation to ensure it is appropriately applied in safeguarding cases.
- The importance of assessing capacity particularly in cases of non engagement/ non-attendance.
- Advocacy services are critical particularly for individuals who may lack capacity.

# Any quick questions so far?

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Are there any questions on what we have covered so far?



In terms of for instance, the MCA principles; The Thematic review of APR's ; and the legal provisions for safeguarding adults in Wales.

# Assessing capacity- the 2- stage test



The law defines what it means to lack capacity for the purposes of the MCA as follows :-



*a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or the brain.*

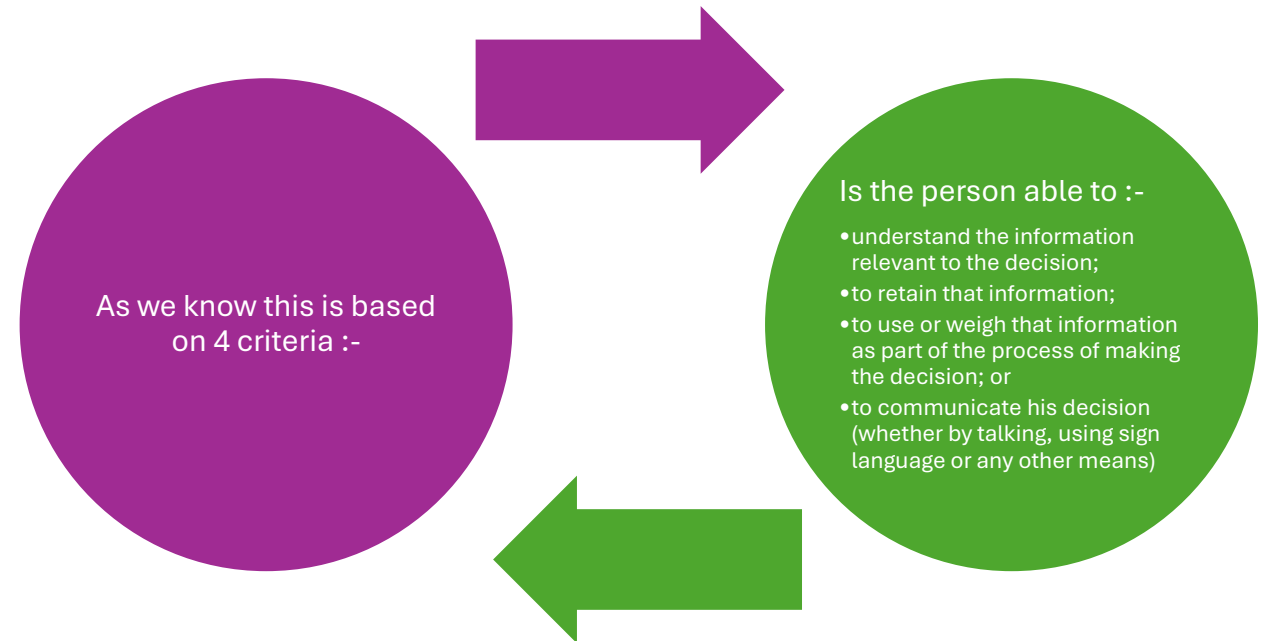


In 2021, the Supreme Court in *A Local Authority v JB* concluded that the decision maker should **start with** whether the person is able to make the decision and if they cannot.... to then move on to considering if that is because of an impairment or disturbance in the functioning of the person's mind or brain?



NB. This definition is in direct contradiction to the guidance in the Code of Practice. The latter has been redrafted ( in 2022) and although yet to be published it adopts the JB approach. The Courts have since said the guidance in the case of JB should be followed.

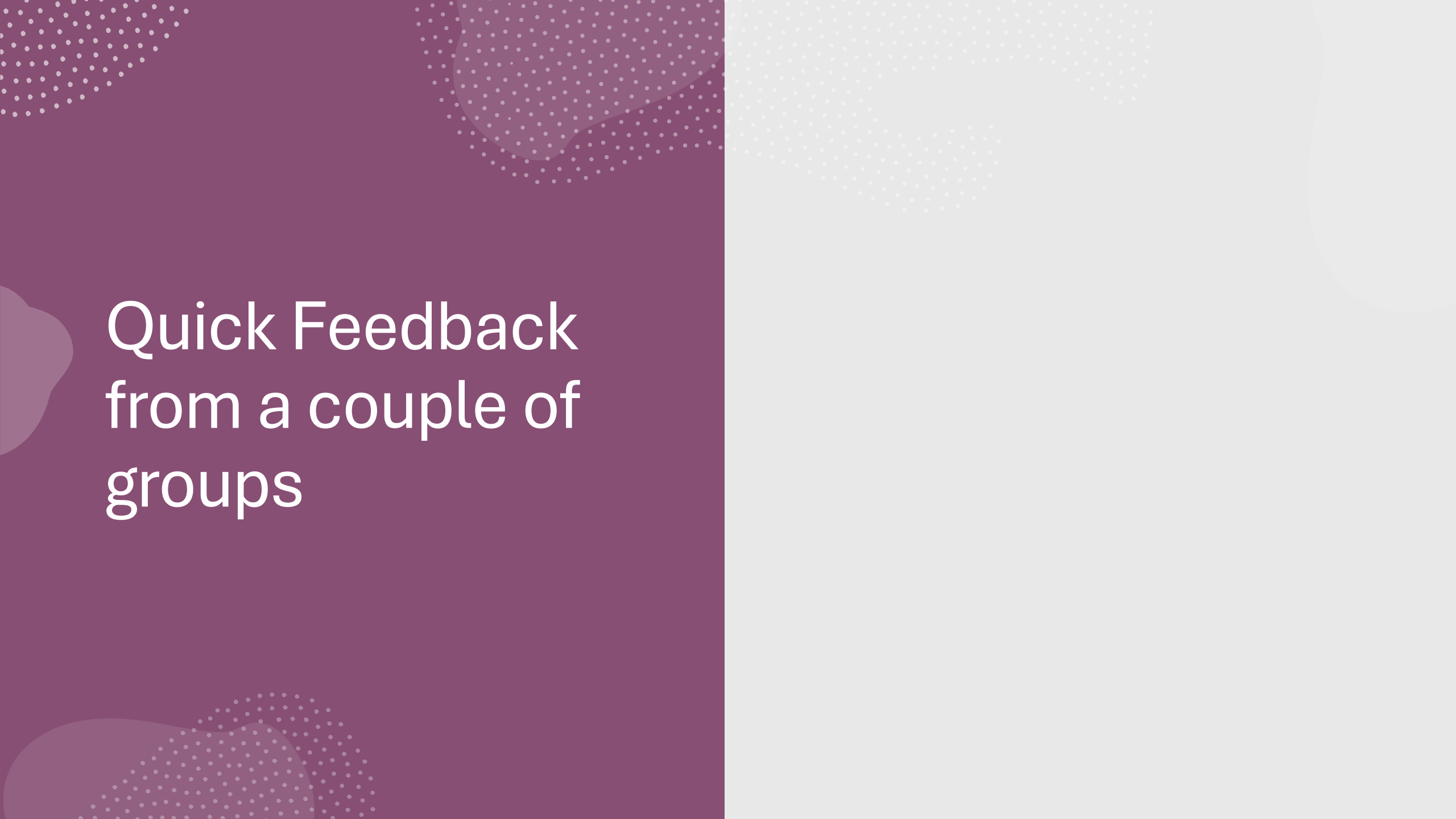
# Is the person able to make the decision ?





# Case Study 15 minutes.

- In your Breakout Rooms, consider the attached case study and answer the questions that are shared with you.



# Quick Feedback from a couple of groups

# Professional Curiosity

- The following Group exercise is from a Review commissioned by Norfolk Safeguarding Adults Board.
- In their guidance document on Professional Curiosity Norfolk SAB have said
- *“Professional curiosity is having the capacity and communication skill to explore and understand what is happening with an individual or family. It is about enquiring deeper and using proactive questioning and challenge. It is about understanding one’s own responsibility and knowing when to act, rather than making assumptions, or taking things at face value.”*

# Barriers to Professional Curiosity



# Case Study

## 15 minutes

- A Safeguarding Adults Review was established in 2015 to review the circumstances that led up to the death of Mrs B at the age of 84.
- Background information
- Mrs B was married to Mr B who was resident in a care home at the time of his wife's death. The couple had raised 4 Children, whose level of support to them fluctuates for different reasons.

## Some useful resources

- [39 Essex Chambers Guidance Notes: Carrying out and Recording Capacity Assessments and Relevant Information – updated! – Mental Capacity Law and Policy](#)
- [Insight & Capacity - Autonomy Project](#)
- [Lucy Series | The Small Places](#)