

Capacity to provide immigration instruction

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Legal Organiser, Migrants Organise

23 November 2021

migrants
organise
migrants and refugees acting for justice

Agenda

- Introduction
- Mental Capacity Act
- Break
- What does this have to do with Immigration?

Introduction

The background features a white central area. On the left, there is a solid orange vertical bar. On the right, there are several overlapping, semi-transparent geometric shapes in shades of orange and yellow, creating a dynamic, abstract pattern. A thin, solid orange vertical line is positioned to the right of the word 'Introduction'.

Who are we?

We organise: we work with communities to act for change. We develop leaders to understand their power, their issues, and how to build actions for change.

We mobilise: we bring people to strategic actions and campaigns. We urge and support people to take action on the issues affecting migrants and refugees.

We mentor: we support and advise people, and connect people with others who can provide support and advice on the journey to integration. We connect people with others who can share knowledge, experience or friendship.

We train: we develop people's skills, confidence, experience and capacity to act. We use workshops, training sessions, action and experience to help people to develop.

We celebrate: we find and create platforms to recognise people. We celebrate migrants and refugees and their contributions.

Who are we?

Community Programme



Community Organising and Campaigns

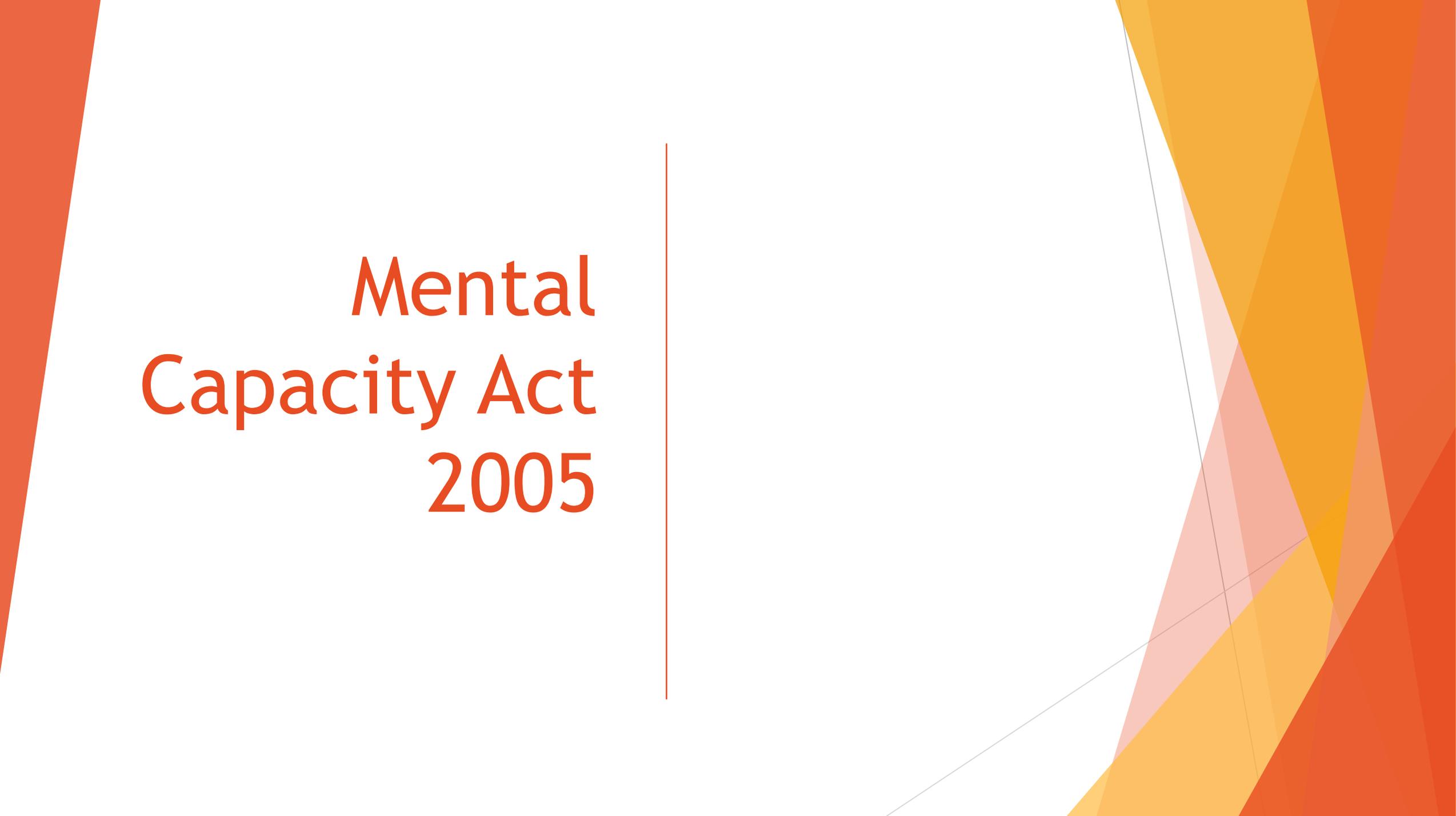


MMCA Project

Migrants Mental Capacity Advocacy (MMCA) Project

- Started in October 2017
- Appeal and pre-appeal stages
- Supported by a panel of pro bono professionals
 - Jennifer Blair - Immigration barrister No5 Chambers / HBF
 - Francesca Valerio - Director of Community Programme / Qualified social worker
 - Heike Langbein - Immigration / welfare adviser
 - Will Whitaker - COP and community care solicitor at Bindmans
 - Bijan Hoshi - lead lawyer at PLP / barrister at Garden Court
 - Bethan McGovern - immigration solicitor at Southwark Law Centre
 - Dr Johanna Herrod - NHS consultant neuropsychiatrist specialising in brain injury / capacity
 - Eleanor Sibley - COP and community care Barrister at Field court chambers / AIRE Centre
 - Elizabeth Cleaver - Mental Health Solicitor at Bindmans
 - Basmah Sahib - Mental Health Solicitor at Bindmans
 - Jill O'Leary - GP and Head of Medical Advisory Service at HBF
- Questions please email brian@migrantsorganise.org
- Referral has to go through the wider community programme referrals@migrantsorganise.org

Mental Capacity Act 2005

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Mental Capacity Act 2005

- Who does it apply to?
 - People over 16 in England of Wales
 - Not a complete code
- ▶ [\(Chatting, R \(On the Application Of\) v Viridian Housing & Anor \[2012\] EWHC 3595 \(Admin\) \(13 December 2012\) \(bailii.org\)](#)
 - ▶ *Section 1(5) of the Act applies to ‘an act done, or decision made ... for or on behalf of a person who lacks capacity’.*
 - ▶ *Its decision-making criteria and procedures are designed to be a substitute for the lack of independent capacity of the person to act or take decisions for him or herself. They come into play in circumstances where a person with capacity would take, or participate in the taking of, a decision. In deciding not to press for the registration of Miss Chatting’s flat as a residential home for one person and in deciding (as they appear to have done) to agree to a novation of their section 26 arrangements for Miss Chatting so as to substitute Gold Care for Viridian, Wandsworth Borough Council were taking decisions that fell to them to take, with due regard for her welfare. They could rationally conclude that the decisions were compatible with her welfare. They did not as a matter of law require Miss Chatting’s assent to these decisions; no decision, or participation in a decision was involved on her part.”*

Mental Capacity Act 2005

- Why?
 - People have the right to live as they choose - article 8 private life ECHR
 - UN Convention on the Rights of Persons with Disabilities (UNCRPD)
 - "Author of their own lives"
- Far reaching impact
 - Capacity is time and decision specific
 - Also doesn't require a formal diagnosis of mental health condition - e.g. someone who is drunk can be said to lack mental capacity.

5 Main Principles - section 1 MCA

- ▶ A person must be assumed to have capacity unless it is established that they lack capacity.
 - ▶ In other words, a person cannot simply assume that another person lacks capacity, even if he suffers from conditions associated with lack of capacity such as dementia.
- ▶ A person is not to be treated as being unable to make decision unless all practicable steps have been taken without success to help him to do so.
 - ▶ This ensures that priority is given to help people make their own decisions about their lives.
- ▶ A person is not to be treated as unable to make decision merely because he makes unwise decisions
 - ▶ The ability to make decisions which might be imprudent is equally protected.
- ▶ An act done, or decision made, under this act on behalf of a person who lacks capacity must be done, or made, in his best interests
- ▶ Before an act is done or decision is made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Practical Significance - section 5

- Allow decisions to be made / assistance provided on a daily basis

Acts in connection with care or treatment

(1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if—

(a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and

(b) when doing the act, D reasonably believes—

(i) that P lacks capacity in relation to the matter, and

(ii) that it will be in P's best interests for the act to be done.

Test of Capacity - what is “capacity”?

▶ Section 2(1) MCA:

For the purposes of this Act, 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 brain.

- Not about mental health conditions - it’s about ability to make a specific decision at a specific point in time
- PC & NC v City of York Council [2013] EWCA Civ 478:
 - a capacity assessment is an inquiry on “the matter” at the the material time, taking into account the specific facts of a particular decision

~~“X lacks capacity”~~

“X lacks capacity to decide ...”

Test of Capacity - Who should assess?

- ▶ Para 4.38 of the MCA Code of Practice - capacity should be assessed by the person who is directly concerned with the individual at the time the decision needs to be made. They are called the decision-maker

For most day-to-day decisions, this will be the person caring for them at the time a decision must be made. For example, a care worker might need to assess if the person can agree to being bathed. Then a district nurse might assess if the person can consent to have a dressing changed.

- ▶ Para 4.42 of the MCA Code of Practice

More complex decisions are likely to need more formal assessments (see paragraph 4.54 below). A professional opinion on the person's capacity might be necessary. This could be, for example, from a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker. But the final decision about a person's capacity must be made by the person intending to make the decision or carry out the action on behalf of the person who lacks capacity - not the professional, who is there to advise.

Test of Capacity - When should it be assessed?

- ▶ Reasonable belief that there is a lack of capacity to make a particular decision.
- ▶ *Remember: Assumption of capacity* + if capacity can be encouraged, then the person has capacity

Test of Capacity - How to assess capacity?

Section 2(1) MCA

For the purposes of this Act, 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 (**functional test - section 3 MCA**)
- ▶ because of an impairment of, or a disturbance in the functioning of, the mind or brain. (**diagnostic test**)

Test of Capacity - How to assess capacity?

- ▶ **Functional test:** a person is able to make the decision made at the time it needs to be made depends when he is able to:
 - ▶ **Understand** the nature, purpose and consequences of a particular decision.
 - ▶ **Retain** relevant information long enough to use or weigh it - this can in practice be a short period of time. For example, someone with dementia can be lucid for only 10 minutes but that is sufficient for him to make decision.
 - ▶ **Use or weigh** information given to make a decision
 - ▶ **Communicate** the decision made by whatever means possible, including using signals or assistive technology
- ▶ **Diagnostic Test:** The failure to make a decision has to be caused by an impairment or disturbance of the mind or brain.
 - ▶ In many cases those who assess capacity will be relying upon a clinician to provide a diagnosis.
 - ▶ It has to be noted the impairment or disturbance is not exhaustive and can include medical conditions causing confusion, drowsiness, concussions and the symptoms of drug and alcohol abuse.

Test of Capacity - How to assess capacity?

- ▶ What if a person can't understand / weigh / retain / communicate an information but it's not caused by an impairment or disturbance of the mind or brain?
- ▶ What circumstances would lead to this?

Test of Capacity - How to assess capacity?

- ▶ PC & NC v City of York Council [2013] EWCA Civ 478
 - ▶ Is the person unable to make a decision? (i.e. functional test) If so:
 - ▶ Is there an impairment or disturbance in the functioning of the person's mind or brain? If so:
 - ▶ Is the person's inability to make the decision because of the identified impairment or disturbance?
- ▶ Order is slightly different in the MCA code of practice: Stage 1 is diagnostic, stage 2 is functional

Test of Capacity - How to assess capacity?

- ▶ Why the difference?
 - ▶ (a) There is a danger that you will mentally ‘tick off’ the presence of an impairment or disturbance and then will not sufficiently question whether that impairment or disturbance is actually causing the inability to make the decision
 - ▶ E.g. undue influence does not result in lack of capacity
 - ▶ (b) Linked to this, there is also a risk that the structuring perpetuates the discriminatory approach to those with mental disorders, as it essentially loading the capacity assessment against them by ‘pre-filling’ the first element of the test. In other words, it makes it - subconsciously - easier to move from thinking ‘this person has schizophrenia’ to concluding ‘this person lacks capacity to make [X] decision.’

Best interest checklist

Section 4 MCA - focuses on the procedure. Person must consider “all relevant circumstances”

Lays down things which are and are not appropriate to be taken into account when arriving at best decision

- ▶ **Appropriate**
 - ▶ “must take into account” wishes and feelings, beliefs and values, other factors if P were able to make decisions
 - ▶ Consult / take into account views of people who support / has relationship with P - family members, friends, support workers, etc.
- ▶ **Not Appropriate**
 - ▶ Person’s age or appearance
 - ▶ P’s conditions or aspect of his behaviour which

Court of Protection

Creation of statute - MCA 2005

Role of COP:

- ▶ Decide whether a person has capacity to make a particular decision for themselves
- ▶ Make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decisions
- ▶ Appoint deputies to make decisions for people lacking capacity to make those decisions
- ▶ Decide whether a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) is valid, and
- ▶ Remove deputies or attorneys who fail to carry out their duties

2 types of decisions / deputy : Property and affairs vs Health and Welfare

Question?

What does this
have to do with
immigration?

The background features abstract geometric shapes in shades of orange and yellow, primarily on the right side. A thin vertical line is positioned to the right of the text.

Case study

- ▶ *Elayne is a Nigerian woman who has lived in the UK for more than 14 years. She was brought into the UK by her sister, and undertook domestic work - sometimes she says she was forced to do this. She claimed asylum years ago and was referred to the National Referral Mechanism (NRM) as a possible victim of trafficking. Both applications failed because she was unable to answer questions clearly at interview.*
- ▶ *Elayne has previously been diagnosed with schizophrenia but she's not receiving any medical input at the moment.*
- ▶ *Elayne believes that she is a British citizen and, therefore, constantly insists to all of her support workers that she only requires assistance with obtaining benefits, accommodation, and a national insurance number so that she can work (which it is not clear she would be well enough to do).*
- ▶ *Elayne currently lives with her sister again. The situation however is unclear as Elayne is often very reluctant to disclose information relating to her sister. She has mentioned repeatedly, however, that her sister is deeply unhappy that she is still staying with her without paying rent.*
- ▶ *Elayne has expressed that she would want to one day go back to Nigeria to visit her family (but there are some concerns about how safe this would be for her). Elayne says she is destitute.*

3 competing interests

- ▶ A local authority v JB [\[2020\] EWCA Civ 735](#)
- 1. The first is the principle of autonomy. This principle lies the heart of the Mental Capacity Act 2005 and the case law under that Act. It underpins the purpose of the UN Convention on the Rights of Persons with Disabilities 2006, as defined in article 1:
- 2. The second is the principle that vulnerable people in society must be protected. As this court observed in [B v A Local Authority \[2019\] EWCA Civ 913](#) (at para 35):
- 3. There is, however, a third principle that arises in this case. The Mental Capacity Act and the Court of Protection do not exist in a vacuum. They are part of a wider system of law and justice.

Autonomy

- ▶ Immigration decision can be a very personal decision
- ▶ Being “trafficked” by your own family
- ▶ Elayne also still wants to go back to Nigeria
- ▶ There might be other ramifications in country of origins, e.g. might give rise to further risk of persecutions in country of origin
- ▶ If it's change in nationality, this might create other problems: certain countries don't allow dual nationality, might cause issues relating to inheritance

Protecting Vulnerable People

Priti Patel urged to justify claim that most boat migrants are not real refugees

Peers question home secretary's basis for saying 70% of people on small boats are 'economic migrants'



Priti Patel has been asked to justify or withdraw her claims. Photograph: Michael Mayhew/Allstar

There are calls for **Priti Patel** to withdraw or justify claims she made before parliament that most people who travel to the UK in small boats are not genuine asylum seekers.

Two Labour peers, David Blunkett and Shami Chakrabarti, have also questioned whether the home secretary has evidence that backs her claim that “70% of individuals on small boats are single men who are effectively economic migrants”.

Theresa May interview: 'We're going to give illegal migrants a really hostile reception'

Poker players say everyone has a tell, a little tic that gives away their feelings about the hand they are playing. For Theresa May, it's the eyes. Ask her a question she finds tricky — or just impertinent — and her eyes narrow briefly: catlike and wary.



Theresa May, Home Secretary Photo: Geoff Pugh

By James Kirkup, and Robert Winnett

10:00PM BST 25 May 2012

The Home Secretary chooses her words with feline delicacy too, painfully aware that in her position a few stray words or a rash promise could be suicidal.

The safety-first approach has served her well so far. Despite a few scrapes, after two years in the job her position is secure — or at least, as secure as anyone can be in Whitehall's most dangerous department.

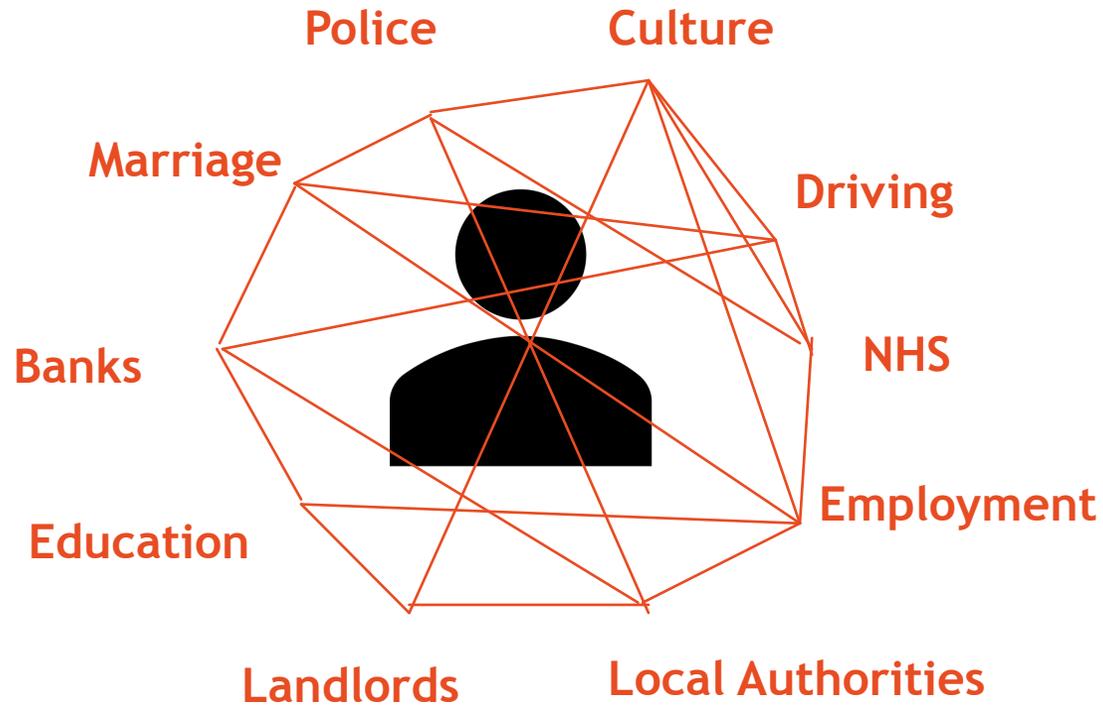
Immigration

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[James Kirkup »](#)
[Robert Winnett »](#)

In Immigration



Protecting Vulnerable Person



Legal Aid Cuts

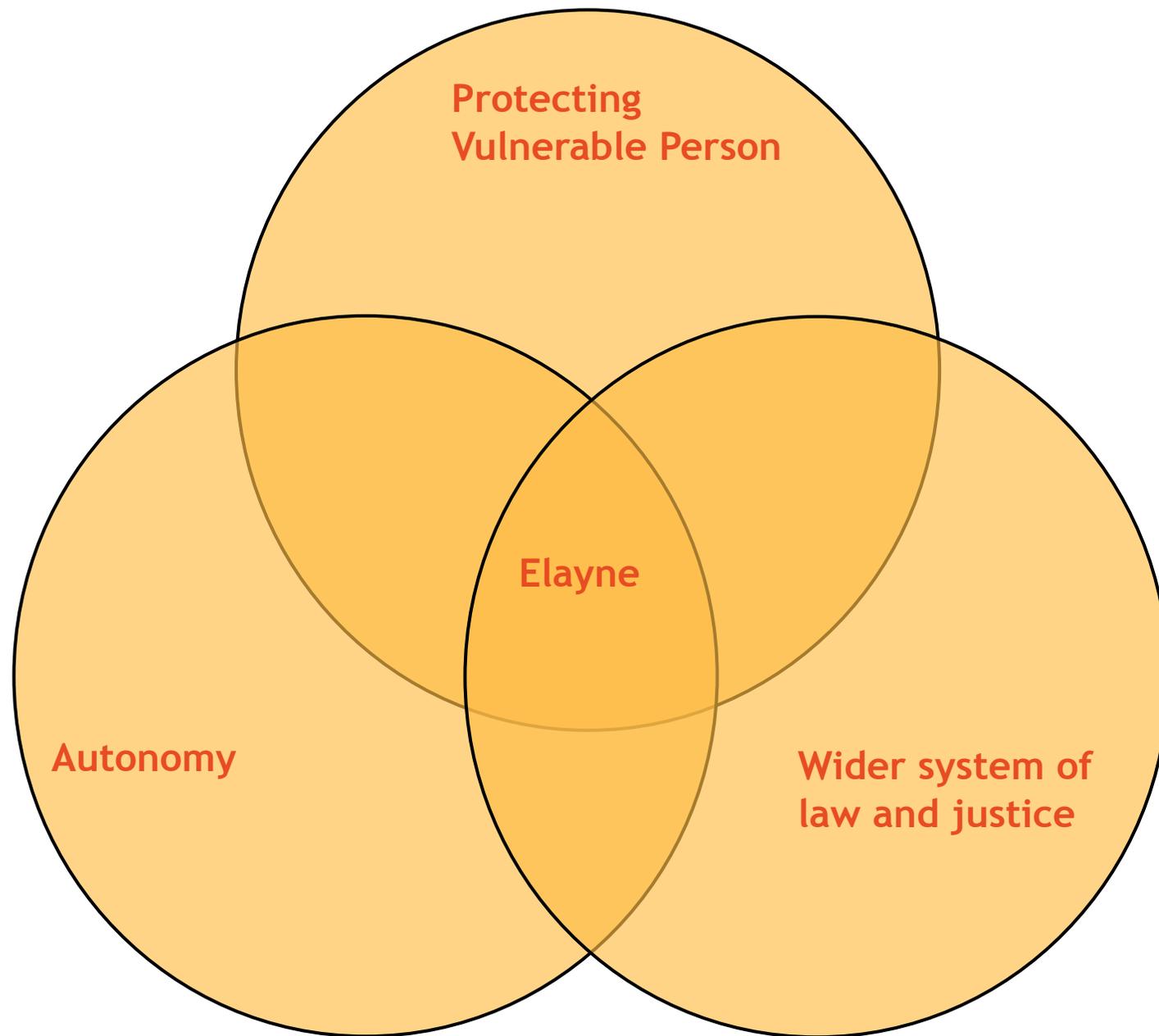
Lack of safeguards
for vulnerable
individuals

Indefinite detention
system

Stricter immigration
rules (e.g. appendix
FM)

Wider system of law and justice

- ▶ Access to justice → systems needs to be accessible for individuals, regardless of disabilities
- ▶ Immigration control / state sovereignty
- ▶ Criminal justice system
- ▶ Legal and professional obligations
- ▶ GDPR



Going back to Elayne

- ▶ *Elayne is a Nigerian woman who has lived in the UK for more than 14 years. She was brought into the UK by her sister, and undertook domestic work - sometimes she says she was forced to do this. She claimed asylum years ago and was referred to the National Referral Mechanism (NRM) as a possible victim of trafficking. Both applications failed because she was unable to answer questions clearly at interview.*
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- ▶ *Elayne has expressed that she would want to one day go back to Nigeria to visit her family (but there are some concerns about how safe this would be for her). Elayne says she is destitute.*

1. As someone who is supporting / working with Elayne, what are some of the immediate concerns that come to mind?

Immediate concerns

- ▶ Destitution - does she have enough money for food and other essential needs? Is she at risk of becoming street homeless
- ▶ Trafficking - is she still being trafficked by her sister?
- ▶ Mental health support - is she receiving one?
- ▶ Immigration - she doesn't have any immigration status
- ▶ Community Support - Does she have anyone around her?
- ▶ Care needs - can she take care of herself?

2: What are some of the things that you would want to do “for or on behalf of” Elayne

Things you want to do “for or on behalf of” Elayne

- ▶ Destitution
 - ▶ You might want to apply on her behalf some destitution grants
 - ▶ You want to make an application for alternative housing on her behalf
- ▶ Trafficking
 - ▶ You might want to make a re-referral for her to the NRM
- ▶ Mental health support -You might want to register her with a GP, and then ask the GP to refer her to a mental health service
- ▶ Immigration -
 - ▶ You might want to help her get advice from an immigration adviser
 - ▶ And/or help her make an application to the Home Office
- ▶ Care needs - can she take care of herself?
 - ▶ You might want to refer her to social services.

Note how the concept of Mental Capacity then becomes relevant

- ▶ Destitution / homelessness: Applying for housing for her
 - ▶ What if Elayne refuse to move out of her sister's place? Does she have capacity to decide her residence?
- ▶ Trafficking : referring her to the NRM
 - ▶ What if she doesn't understand what trafficking means even after you explain?
 - ▶ Is it "okay" to still refer her - particularly considering it might be perpetrated by her own sister? Will that have any impact of Elayne?
 - ▶ Regardless, if she doesn't understand, *can* she even still be referred into the NRM?
- ▶ Mental health support: Registering her with a GP
 - ▶ If Elayne refuse to go? Can you provide her details still?
- ▶ Immigration - Making an application for her
 - ▶ What if she refuses to do this as she is British - can you still make the application for her?
- ▶ Care needs : Referring her to social services
 - ▶ What if she doesn't understand what social services do / what the Care Act is, can you still refer?

Section 5 MCA'05

Acts in connection with care or treatment

(1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if—

(a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and

(b) when doing the act, D reasonably believes—

(i) that P lacks capacity in relation to the matter, and

(ii) that it will be in P's best interests for the act to be done.

- ▶ Covers: Registration with GP, referring to social services

What about immigration application?

3 questions

- ▶ How do you assess the relevant capacity?
 - ▶ Does Elayne have capacity? She definitely wants to stay in the UK, but she also wants to be able to go back
- ▶ Is it covered by section 5 of the MCA?
 - ▶ Will a third party be protected from liability if they were to make an application on behalf of an incapacitous migrant?
 - ▶ E.g. will this equate to giving immigration advice? Criminal offence if not properly accredited
- ▶ Is it acceptable by the Home Office?

1. How do you assess capacity?

- ▶ Start with the decision that needs to be made: what does the person need to decide / to do?
 - ▶ Capacity is not medical diagnosis
 - ▶ Capacity is not fitness to provide evidence / statement

Definition of asylum applicant

327. Under the Rules, an asylum applicant is a person who, in person and at a designated place of asylum claim, either:

- (a) makes a request to be recognised as a refugee under the Refugee Convention on the basis that it would be contrary to the United Kingdom's obligations under the Refugee Convention for them to be removed from or required to leave the United Kingdom, or
- (b) otherwise makes a request for international protection. "Application for asylum" shall be construed accordingly.

327A. Every person has the right to make an application for asylum on their own behalf.

327B. A designated place of asylum claim is:

1. How do you assess capacity?

- ▶ What are then the information relevant to this decision?
 - ▶ What is “refugee” / “international protection”
 - ▶ The difference between this route and other routes
 - ▶ The risks it carries and process that needs to be gone through
 - ▶ Relevant entitlements that might be relevant, e.g. NASS, Overseas Charging

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1. How do you assess capacity?

- ▶ Go through the functional test, and show process. Could she
 - ▶ Understand
 - ▶ Retain
 - ▶ Weigh
 - ▶ Communicate; the decision to make a request to be recognised as a refugee or for international protection
- ▶ Show your working
 - ▶ Detailed attendance notes
 - ▶ Verbatim answers help - careful when working with interpreters
 - ▶ COP3 form for guided capacity assessment.
- ▶ Tips:
 - ▶ Mental capacity is a key
 - ▶ Safeguarding duty is not doing something for on behalf of someone
 - ▶ Use COP3 form - google
 - ▶ Focus on the decision that needs to be made, i.e. “the matter”, and
 - ▶ Remember that immigration law is very complex!

1. How do you assess capacity?

MCA - A-Z

"CAPACITY ASSESSMENT IS NOT
SOME KIND OF SCIENTIFIC PROCESS
WHERE CAPACITY IS 'MEASURED';
IT'S A SOCIAL INTERACTION -
OFTEN WITH HUGELY HIGH STAKES
FOR THE PERSON BEING ASSESSED."

1. Do you need a medical assessment?

Who should assess capacity?

- 4.38 The person who assesses an individual's capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made. This means that different people will be involved in assessing someone's capacity to make different decisions at different times.
- For most day-to-day decisions, this will be the person caring for them at the time a decision must be made. For example, a care worker might need to assess if the person can agree to being bathed. Then a district nurse might assess if the person can consent to have a dressing changed.
- 4.41 For a legal transaction (for example, making a will), a solicitor or legal practitioner must assess the client's capacity to instruct them. They must assess whether the client has the capacity to satisfy any relevant legal test. In cases of doubt, they should get an opinion from a doctor or other professional expert.
- 4.42 More complex decisions are likely to need more formal assessments (see paragraph 4.54 below). A professional opinion on the person's capacity might be necessary. This could be, for example, from a psychiatrist, psychologist, a speech and language therapist, occupational therapist or social worker. But the final decision about a person's capacity must be made by the person intending to make the decision or carry out the action on behalf of the person who lacks capacity – not the professional, who is there to advise.
- 4.43 Any assessor should have the skills and ability to communicate effectively with the person (see chapter 3). If necessary, they should get professional help to communicate with the person.

2. Is this Covered by Section 5?

- ▶ Unclear. Project's position is no
- ▶ It might be different applications will be different, e.g. compare between asylum and private routes
- ▶ Welfare order under section 16 of the MCA to authorise the third party to make an application on behalf of P
- ▶ Email us, or contact Bindmans, Simpsons Millar, or Irwin Mitchell

3. Is it acceptable by the Home Office?

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3. Is it acceptable by the Home Office?

Case study 6 – KDS

KDS is a 47-year-old woman from Gambia who came to the UK in 2005. She subsequently obtained a number of limited leave to remain covering the period from 2006 to 2016. KDS has an acquired brain injury, is HIV positive with HIV encephalopathy, end stage renal failure and epilepsy. She requires antiretroviral treatment and has dialysis three times per week for four hours. Not having this treatment would be fatal and even with a care package in place through social services, she is regularly admitted to hospital. Her last leave expired in 2016 and she became an overstayer, and has been supported by social services under the Care Act since then. It is the view of social services that there would be considerable and life-threatening risks to KDS were she to return to Gambia, breaching her rights under article 3 of the ECHR. They also believe that she lacks mental capacity to make an immigration application to regularise her status.

Social services tried to help resolve her immigration status by obtaining a private immigration solicitor. They then wrote to the Home Office regarding the issue, but were advised that, because of her lack of capacity, she would not be able to submit an immigration application – no other reasonable adjustment was offered.

3. Is it acceptable by the Home Office?

Dear Brian,

Following our conversation last week regarding this case, I've discussed with colleagues what is within the realm of the possible for us to be able to assist, but unfortunately, as ... previously indicated we are unable to assist unless there is an active Asylum claim in the system.

I appreciate what you have discussed with me as the barriers to this process, however the advice I have received from colleagues is that we are unable to provide immigration advice – this must come from an immigration lawyer.

The advice you received that a claim cannot be made on the basis on the medical condition is, as far as I understand, in relation to an Asylum claim. There are other routes which can be applied for which would allow for the consideration of this. It is possible for [client] to make an asylum claim based on other grounds.

As I discussed with you over the phone, the Safeguarding Team's remit is those who have an asylum claim; making referrals to the appropriate services etc.

Unfortunately the best information which I can give to you is to speak again with an immigration lawyer, and also to review the information on the Migrant Help website regarding Asylum: <https://www.migranthehelpuk.org/advice-and-guidance>

Apologies that we are unable to assist with this any further.

Kind regards,

3. Is it acceptable by the Home Office?

Applications made on behalf of an adult with mental capacity issues and/or care or support needs

Some adult applicants with care or support needs may have been signposted to sources of support to assist them to make their application. These include the Settlement Resolution Centre, Assisted Digital and [grant funded voluntary and community organisations](#).

Other adults with care or support needs, and adults with mental capacity issues, may need someone to make the application on their behalf. The Home Office can accept an application made on someone's behalf by an appropriate third party in a range of circumstances.

Applications can be made on someone's behalf by for example:

- [a person with power of attorney for the applicant](#)
- [a deputy appointed by the Court of Protection in England and Wales](#)
- [a person with an intervention or guardianship order made in Scotland](#)
- [a controller appointed by an order made by the High Court in Northern Ireland](#)
- [a legal guardian](#)
- [another appropriate third party, for example, a friend, relative, carer, social worker, support worker or legal representative](#)

If the person has the mental capacity to consent to an appropriate third party making an application on their behalf if they are unable to apply themselves, their consent must be sought.

If the person's mental capacity fluctuates, then their consent must be sought, when they are able to give it, for an appropriate third party to make an application on their behalf if they are unable to apply themselves.

In all cases concerning lack of mental capacity, you must be satisfied that the person acting on behalf of the individual either or both:

- has the authority (in the general sense of permission or consent) to do so
- is acting in the best interests of the individual

Question?