

Colleagues,

In recent years we have incorrectly closed many investigations for offences committed within mental health units or when a suspect is believed (or known) to suffer from mental health issues.

The reason that officers have given for these closures are that the suspect 'does not have capacity'.

They have made this assumption without a medical professional doing an assessment or determining a person's 'capacity'.

It cannot be said that someone simply 'lacks capacity' for anything/everything they do, as 'capacity' itself is decision specific. Therefore, an individual may lack 'capacity' in certain areas of their life – such as hygiene, finances, medication, sexual relationships etc – but have full 'capacity' in other areas, such as their offending behaviours.

Whilst we are starting to see vast improvements in this area, we are still closing many investigations on the basis that the suspect 'does not have capacity'.

In reality, the majority of crimes reported from mental health settings or involving suspects with mental health issues are committed by individuals who do have the 'capacity' to understand and control their actions when committing criminal offences.

The question is not really of someone's 'capacity' per se, as this question alone can confuse matters. It is specifically around the individual's 'capacity' in relation to their offending behaviour and their ability to control their actions at the time of the offence.

Therefore, each case must be judged on its individual merits and not closed based on an officer's perception of mental illness or purely because someone is detained in hospital under the Mental Health Act.

With lower-level offences, understanding a suspect's 'capacity'/their ability to control their actions is crucial in deciding whether or not it is in the public's interest to proceed with the case.

However, a suspect's 'lack of capacity' or inability to control their actions becomes less relevant with more serious cases. For example, someone who is genuinely psychotic who commits murder whilst significantly unwell may still be charged, taken to court and found guilty. They may be given a hospital order (Section 37 or Section 37/41 of the Mental Health Act) rather than a mainstream prison sentence, but they will be held accountable for their actions.

We therefore should not close investigations citing a 'lack of capacity' without this being confirmed by a suitably qualified person, and even in cases where it is suspected/believed/known that the suspect did 'lack capacity' and lacked control over their actions, it may still be necessary to pursue matters through the criminal justice system, depending on the severity – and potentially the frequency – of the offending.

Further training is being delivered in this area on the current cycle of Response training days.

Emergency incidents

Another area of policing where the term 'capacity' is mentioned is when dealing with emergency incidents, where it may be necessary to take immediate action for individuals who are assessed as lacking the 'capacity' to make decisions for themselves in relation to their own care and treatment.

This can apply when dealing with...

- Victims of serious assaults
- Casualties of major incidents
- Individuals with serious injuries who decline medical aid
- People attempting and threatening suicide.

The Mental Capacity Act 2005 gives a legal framework for providing such care and treatment, and therefore officers may be required to contain, control and potentially restrain an individual who is deemed to lack 'capacity' whilst awaiting further input or direction from health and/or social care professionals.

It is the MCA that protects officers when they have taken reasonable steps to assess someone's 'capacity' and then acted in the reasonable belief that the person lacks 'capacity', and when taking actions that are in the person's best interests and least restrictive.

Our officers naturally undertake assessments of people's 'capacity' in many emergency situations, without necessarily realising they are doing so or that they are potentially operating under the legal framework of the MCA.

Whilst various professionals from other disciplines will be trained to a higher level with regards to assessing an individual's 'capacity', it is crucial that officers recognise their important role in emergency/potentially life-threatening incidents and that the need to take action can be time critical.

Further training is also being delivered in this area on the current cycle of Response training days, but if any officer or staff member requires further guidance on this topic, check out the 'Mental Capacity Act 2005 Training' PowerPoint presentation on the Document Centre.

Police Sergeant Andrew McGinty, Mental Health and Dementia Coordinator