

# Understanding Capacity, Consent and Protection from abuse.

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# Background

- Ms A came to the attention of Social Work Services in 2006, when the independent provider supporting her, advised her funds were depleted and she required assistance to continue with support.
- Ms A was a 60 year old woman who had a learning disability and was supported by her parent's until their death in 1991, a financial guardian subsequently took over this responsibility. The order was rescinded in 2008.
- Ms A had an on – off relationship with Mr B who also had a learning disability and was supported by SLC.
- 2014 Mr B was found unfit to plead to causing the death of Ms A and is currently detained at the State Hospital.

# Miss A

- Is this ASP
- What are the risks to the adult
- What are the challenges in practice for you?



# Law Legislation

# 'Adult at Risk of Harm'

Adults aged 16 years and over, who -

- are unable to safeguard their own well-being, property, rights or other interests, and
- are at risk of harm, and
- because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected

# Adults With Incapacity (Scotland) Act

- Adults over 16
- 2 part test



## 1) Incapable of

- Acting
- Making Decisions
- Communication Decisions
- Understanding Decisions
- Retaining memory of Decisions

# AWIA 2

## 2) By reason of

- Mental Disorder (Mental Illness, Personality Disorder, Learning Disability)
- Inability to communicate (which cannot be remedied) because of physical disability

# Capacity / Consent

- Does the person understand what happening to them
- Understand the implications and consequences
- Communicate their decision.
- Exercise choice and control



# Capacity Assessments

- Talk to the person, their views and wishes
- Multi professional approach
- All available and relevant information
- Include those who know the individual
- Take into account communicate skills

# Key Recommendations

- Ensure full understanding and compliance with ASP Procedures, recognise, refer and progress timiously
- Staff / managers training in understanding and management of both capacity and risk assessments
- Where abuse or violence present notify Police Scotland
- Formal risk/ capacity assessments to inform planning
- Recording (decisions taken-not taken) - defensible decision making
- Review commissioning services / arrangements

# Key Messages

- We can't predict the future
- Risk / Capacity Assessments
- Recording & Defensible Decision making
- Chronologies
- Multi professional working shares the knowledge, decision making and responsibility

Thank You

Any Questions?