‘Mental capacity’ assessments: Opening or slamming the door on support for people experiencing homelessness?

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Jess Harris & Stephen Martineau, King’s College London
on behalf of the study team

NIHR | Policy Research Unit in Health and Social Care Workforce

King’s College London

Today: discussing emerging findings from an English study

About the study

- Outline
- Definitions
- What prompted us
- Methods

Findings: practitioners

- Current practice
- Challenges
- What helps
- Where clarity required

Findings: lived experience perspectives

Question: should capacity be 'off switch' for service engagement?

Over to you: comments, questions, international perspectives

Outline of study

Title: **Use of the Mental Capacity Act 2005 (MCA) with people experiencing multiple exclusion homelessness (MEH) in England**
King's College London project page

Dates: 2023 - 2026

Funder: UK National Institute for Health and Care Research (NIHR) Health and Social Care Delivery Research (HSDR) Programme: Award ID: NIHR154668 (NIHR project page)

Purpose: Explore **practitioner approaches** to mental capacity assessments with people experiencing MEH and the **views of people experiencing MEH**.

Co-produce **Guidance & Tool** for practitioners; ultimately **improve understanding, support and outcomes for people experiencing homelessness and multiple disadvantage**.

What is Multiple Exclusion Homelessness (MEH)?

- **Multiple Exclusion Homelessness (MEH)** captures overlap between experience of **long term and repeat homelessness and other forms of multiple disadvantage**, including 'institutional care', 'substance use', street culture activities (Fitzpatrick et al. 2011).

- Negative experiences of statutory services / stigma / discrimination contribute to mistrust and **deter seeking / accepting help, increasing inequalities / exclusion**.

- **Factors and risks** which contribute to people ***becoming*** and ***remaining*** **homeless**, especially 'street homeless', also prompt **concerns about mental capacity**, including: **mental illness, acquired brain injury, autism spectrum disorder, learning disabilities, substance use and addiction, trauma and self-neglect**. Any might indicate we should explore if there is any impairment in decision making, particularly if **someone is at risk and not receiving or accepting support**.

- **In England, people die while homeless** mean age 45 years men; 43 years women (England & Wales; Office for National Statistics 2021). Homelessness is a social care, health and 'safeguarding' issue, not just a housing issue.

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What is Multiple Exclusion Homelessness? Jimmy's place

What is Mental Capacity Act 2005 (MCA)?

- **Scope:** legislation applies to **England and Wales**.
- **Aim:** to **empower us to make decisions for ourselves wherever possible** and protect us if we lack the capacity to make a decision; provides a framework that places our **'best interests'** at the heart of decision-making about us.

- **Application:** enables practitioners to decide if a person's **consent or refusal** to treatment, care or support should be taken at face value: **is this person able to make this decision?**

MCA Section 2 (1):

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**.

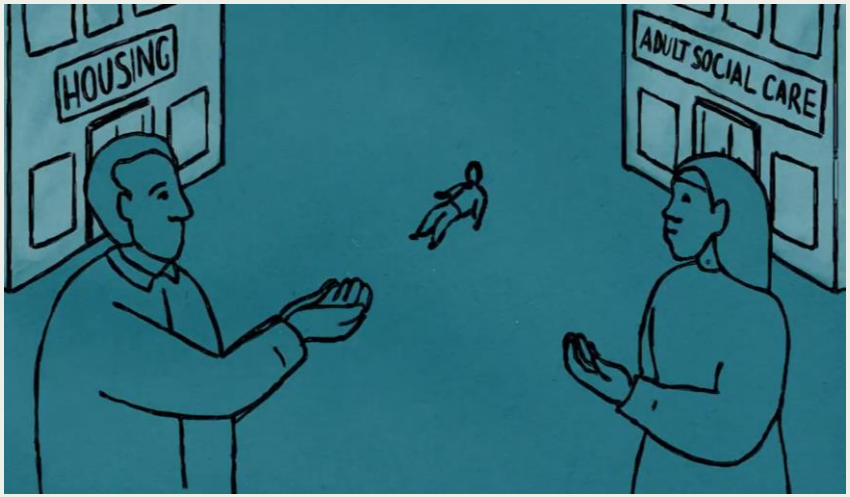
MCA Code of Practice:

Outside of court, a person who has assessed someone as **lacking capacity** with regard to a decision should have a **'reasonable belief'** that this is the case.

Why are we researching MEH and mental capacity?

- No prior research, but analysis of **Safeguarding Adults Reviews (SARs)** (when someone died homeless) shows **assessments not done or documented**.

- Our **research on adult safeguarding** found **'presumption of capacity'** and the freedom to make **'unwise decisions'** are often reasons given for services not to safeguard someone experiencing homelessness and high risk of harm.



- **What decisions might prompt concerns about mental capacity in this population?** Refusing health treatment or not remaining to receive it, rejecting social care, support or accommodation (eg, shelter in extreme weather), not saying 'no' to exploitative associates, managing money (eg, prioritising substance use over basic nutrition).

- **Concern:** someone unable to make a capacitous decision may not receive support in their '**best interests**', that could reduce their risk of harm. Intervention under MCA may not be considered, even where there is high risk of harm or death.

Why are we researching MEH and mental capacity?

A critical and delicate balance

The risk of welfare over-reach for individuals already traumatised by coercive life experiences, often institutional

'*Protection imperative*'

The risk of welfare neglect for individuals already facing inequalities and exclusion

*'… there is a risk that all professionals involved … **may feel drawn towards an outcome that is more protective** of the adult and … fail to carry out an assessment of capacity that is detached and objective.'* Baker J. in PH v A Local Authority & Z Limited [2011] England and Wales High Court 1704, para 16

Professionals' **assessments may be resource led, rather than needs led,** as found in evidence reported in 2014 by the UK House of Lords Select Committee on the Mental Capacity Act 2005 Mental Capacity Act 2005: post-legislative scrutiny, London: The Stationery Office Limited.

Mixed methods

- **Evidence review**: literature, law, Safeguarding Adults Reviews (SARs).
- **Interviews with national experts**: 13 participants; different disciplines and perspectives.
- **National practitioner survey**: 674 responses - across adult social care, health and homelessness services.
- **Fieldwork in three contrasting study sites**: face to face interviews with 32 people experiencing MEH; online interviews with 46 practitioners.
- **Co-producing Guidance & Tool**: piloting now in study sites.
- Publish / disseminate outputs 2026.

Findings? (emerging)

Survey findings: national concern about gaps in practice

9. In your experience, are there people in this MEH population who do not have their capacity assessed for decisions about health, social care or other needs?

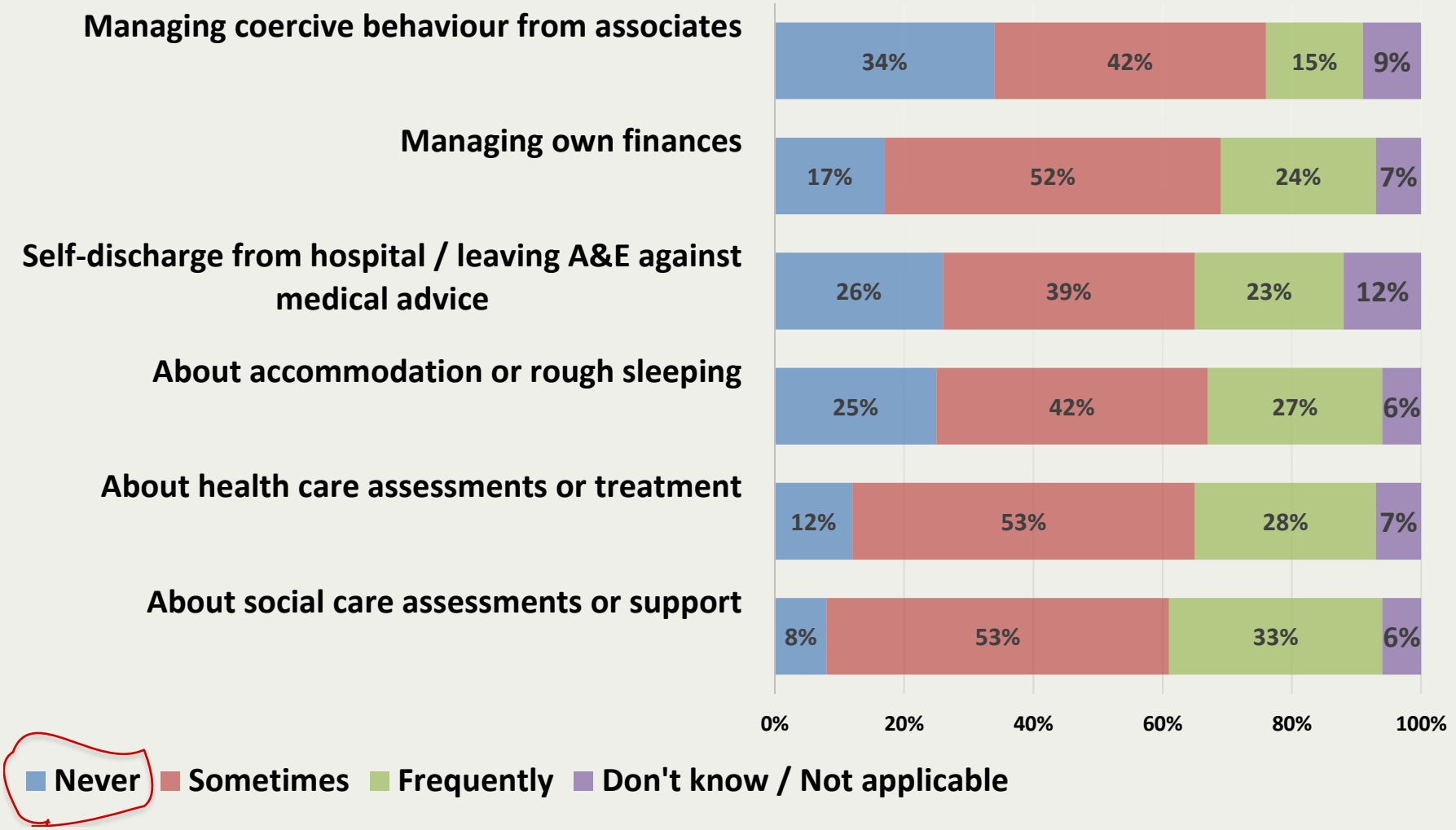
Responses: 674

10. If 'yes', in your view, is this lack of capacity assessments a concern?

Responses: 633

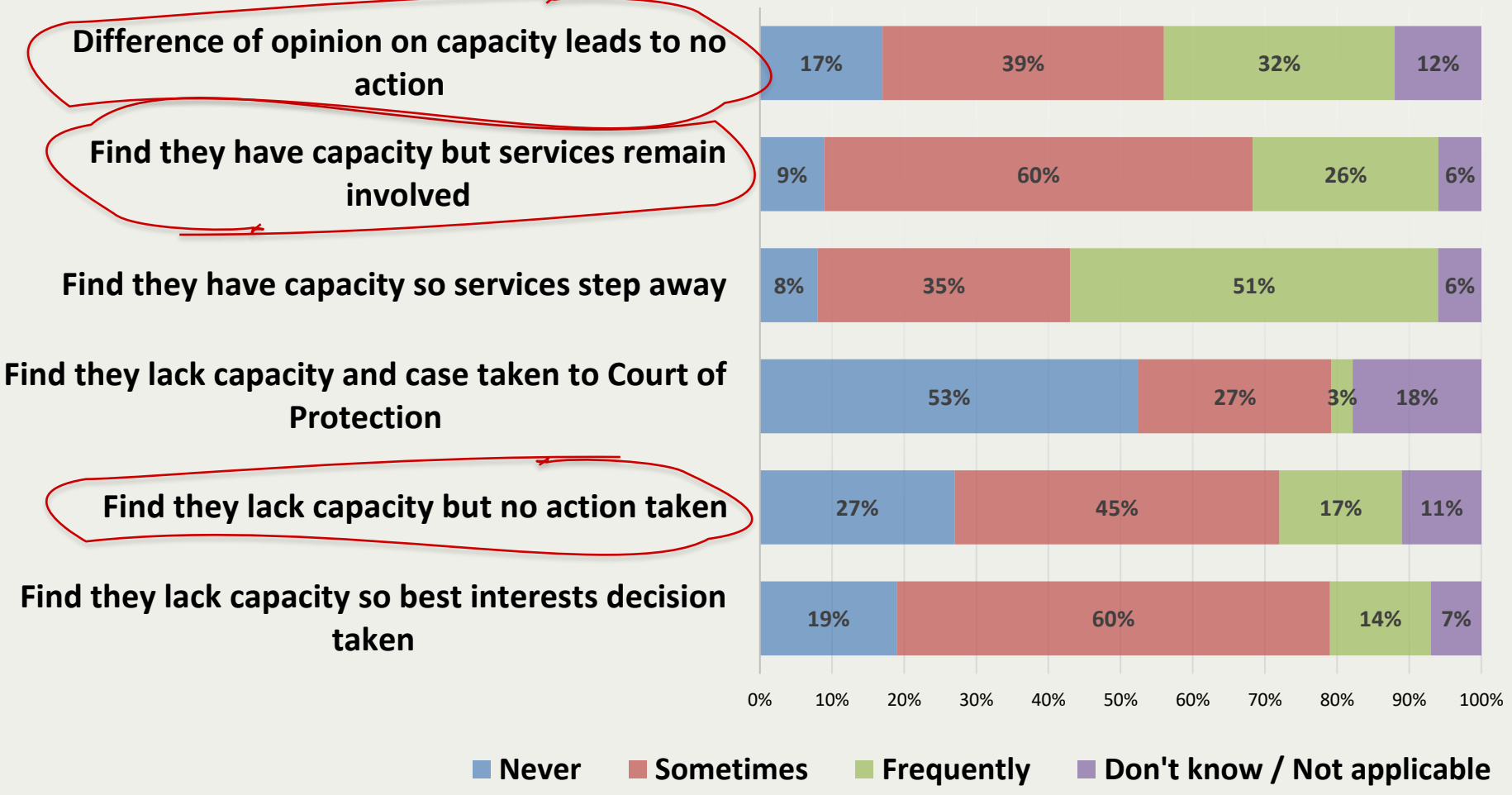
Around which decisions are they conducted?

5. Around which decisions do you find capacity assessments being conducted with the MEH population?



What are the outcomes of assessments?

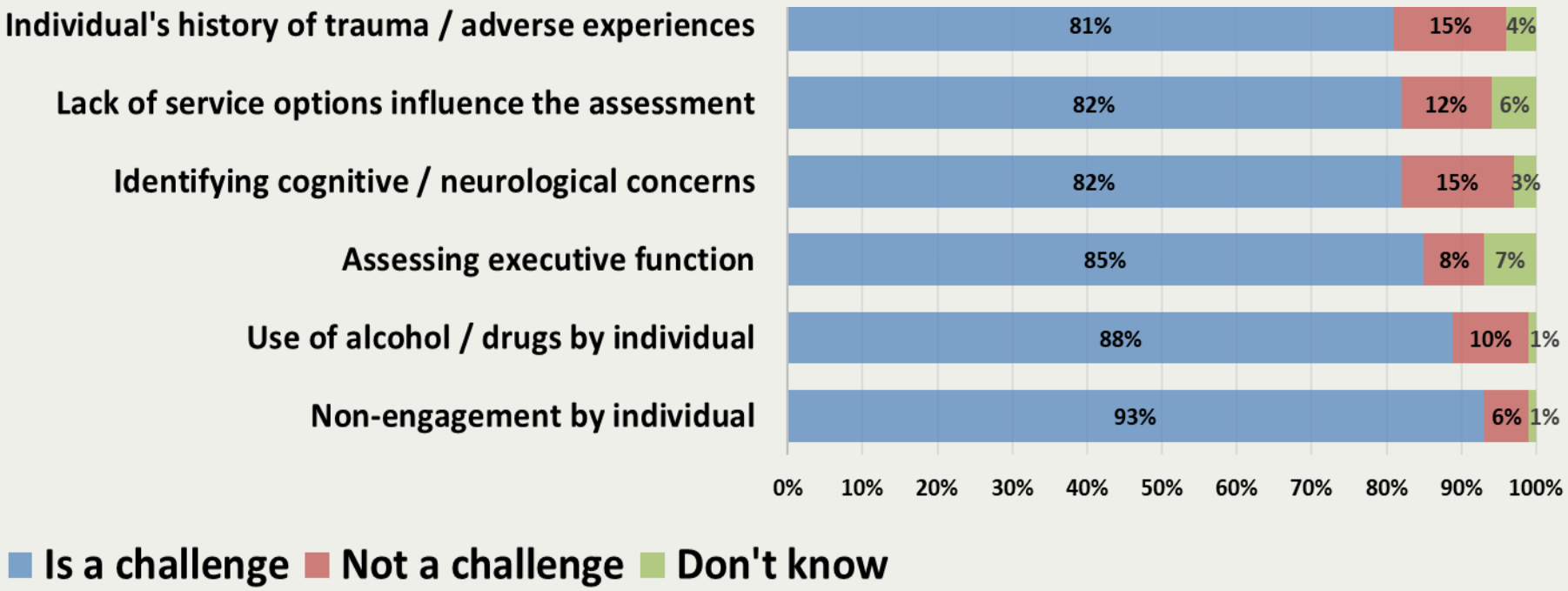
7. In your experience of cases, what are the outcomes from assessments with this MEH population in relation to the decision?



What creates challenges for assessments?

13. In your experience, do any of the following create challenges for capacity assessment with this MEH population?

The six greatest challenges identified by practitioners:



Challenges: considering & conducting assessments (1/3)

Complexities and disputes in assessment process

- **Assessing fluctuating capacity and executive function contribute to uncertainty:**

*'We don't know enough about the science of what brains do … **Sometimes it looks like people have decided not to do something, but they just can't do it**'* **JH5 Neuropsychologist**

*'Often **ongoing arguments** between* [services]*… **prevents any actual beneficial assessments** being completed and the **applicant is left unsupported**'* **Survey respondent**

- **'Masking' of needs due to environment, or uneven impairments, not identified by assessments that are only verbal, in one setting, or at one time:**

*'The thing that **we find really frustrating** is: **"Well, this person is eating their three meals a day, they've showered"** … **That lack of awareness of how artificial environments are, when you assess someone's capacity or someone's function** … **This person was laying in their faeces and urine before coming into hospital** … **we know exactly what's going to happen as soon as they leave** … We see with people with traumatic brain injuries and with alcohol-related brain injuries … **good language memory and language abilities, so they can mask quite well**'* **SM7 Inclusion Health Doctor**

Inaccessible client/patient information across the system

- **In 'acute on chronic' cases, assessments without history more likely to find capacity** (eg refusing care) **and step away, not knowing long-term pattern of behaviour and risk:**

*'**Unless you really understand the context of the risk, it's very hard to risk assess**, which is really what capacity, at that point, is'* **SM5 Psychiatrist**

Challenges: considering & conducting assessments (2/3)

Concerns about some practitioner attitudes

- **Preconceptions / stigma contribute to failure to identify self-neglect / organisational neglect, to fully assess mental capacity and risks to individual, particularly where substance use is present:**

*'One of the big things is getting over **individuals' personal prejudices or judgement calls'*** **SM3 Lawyer**

*'A **lack of understanding that there's issues underneath the substance misuse**… or **whether people are able to control those**'* **SM7 Inclusion Health Doctor**

*'There's this **merging between a homeless person who's self-neglecting** and just thinking … **'that's what homeless people look like'**'* **SM1 Social Worker**

A stretched workforce

- **At times, lack of skills, knowledge, confidence but also numbness / burnout:**

*'People with very complex needs who may not comply with treatment … **may be seen as a low value activity** … **I don't feel terribly bad if they decide to go** (leave Hospital Emergency Department)'* **JH2 Doctor**

*'Colleagues who are not homeless specialists say, "**Oh, homelessness is a choice**" … **Numbness** … We don't want to think about how awful it must be … that's how we keep ourselves sane'* **SM5 Psychiatrist**

Challenges: considering & conducting assessments (3/3)

Resource constraints within systems

- **Can affect assessments and their outcome because of lack of service options / funding if there is a finding of 'incapacity' for a decision:**

*'**People should not be coming to a different conclusion based on there not being a provision**… [but] if there isn't anything for that person then **what can you do?'*** **JH6 Speech and Language Therapist**

*'Everybody is so protective of their budgets … **anything borderline, they may say, "No, somebody doesn't lack capacity", because they haven't got resources**'* **SM3 Lawyer**

Does MCA 'fit' thinking about supporting MEH populations?

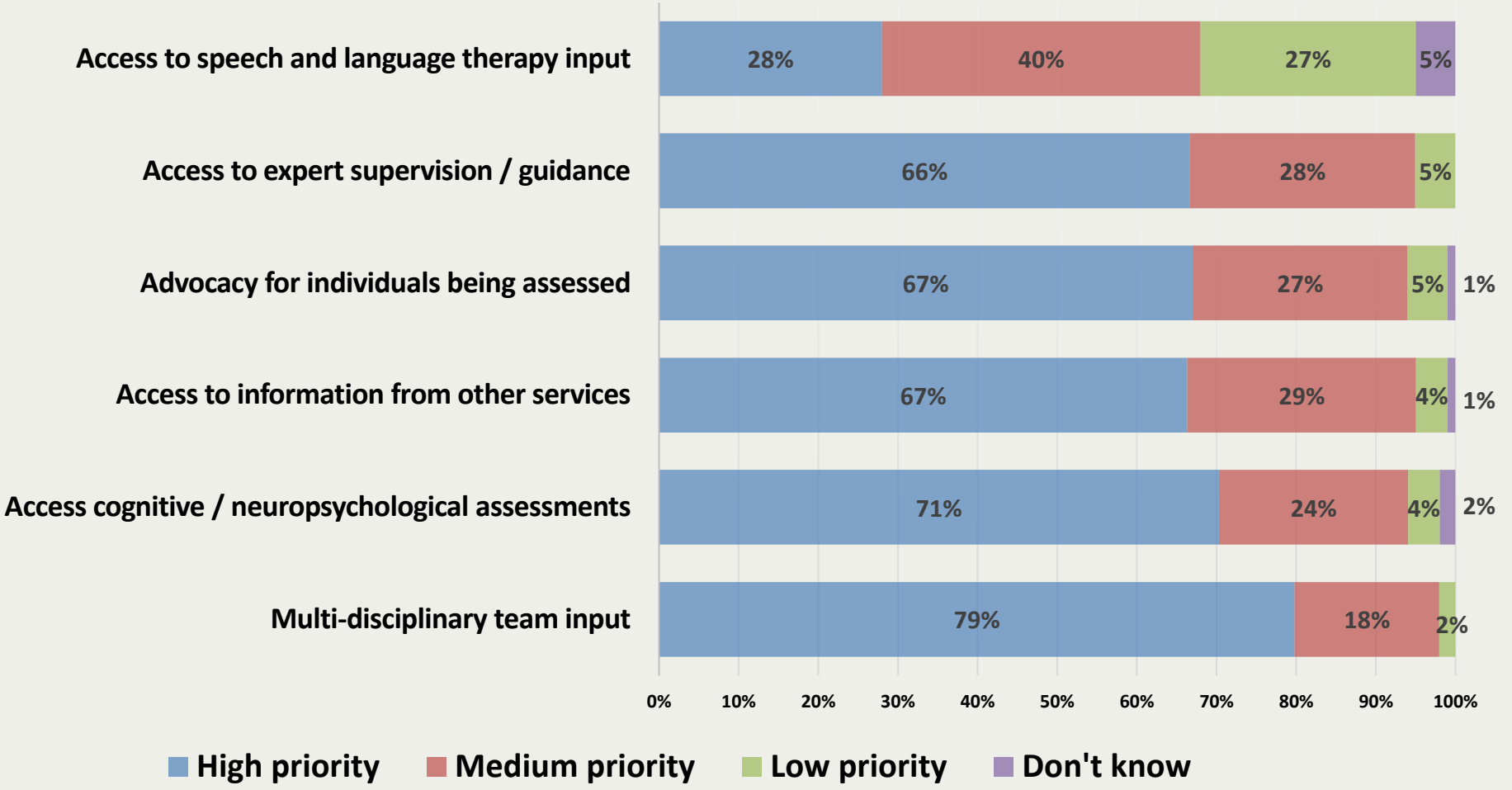
- **Some reflected MCA's spirit of empowerment (not intervention), and focus on one decision at one time, can be poor fit with complex support needs:**

*'When the Act was written, **it wasn't imagined that we'd be trying to do these really complex legal processes in these really muddy, messy situations … Our** [MEH] **population … hasn't had enough support, this person has had presumptions made that they're doing fine, when they're not**, for lots of complicated reasons'* **JH5 Neuropsychologist**

*'You will see these **highly idealized theoretical situations being posited** … Were Joe Bloggs not to have issues with addiction, and were he to not be in the circumstances he is now, **then he would have capacity; therefore he has capacity**'* **Survey respondent**

What would help ensure good assessments?

19. What do you think would help to ensure 'good' capacity assessments with this MEH population?



What would help ensure good assessments? (other)

19. What do you think would help to ensure 'good' capacity assessments with this MEH population?

Not just 'professional' multi-disciplinary input but (frontline) expertise sharing:

*'**Expertise sharing,** rather than the elitist attitude of 'Well, I'm the expert so I know more than you and **I won't listen to you**'*

Understanding the complex history / interaction of all 'interplaying issues':

*'Often capacity assessments are **not adapted appropriately** … **collateral information is not sought** after, and conclusions are unhelpfully **based on single conversations which give an inaccurate picture**'*

*'Comprehensive training around the **issues and barriers such as fluctuating capacity, substance misuse and interplaying issues**, such as someone with LD, ADHD, autism, trauma, health issues, mental health issues, substance misuse and executive functioning'*

Assessment by 'neutral' trusted assessor (not 'gatekeeper') or an expert panel:

*'**Assessment conducted by a neutral agent** in the situation who has a good understanding of the Mental Capacity tests, who will document their reasoning and accept accountability'*

*'Developing an **expert champion** in this decision-making space would be a really good role … A **capacity / ethical panel** … might **support development of assessment and decision making** in the MEH population …* [and] ***oversight and guidance** for complex cases'*

What would help? Clarity in national guidance

- **Addiction / substance use**

*'**Is addiction an impairment for the purpose of the MCA?** Not intoxication, but the addiction … **I don't think the law is clear**'* **Survey respondent**

*'**We treat addictions very differently to how we treat eating disorders**… in some ways quite similar of a compulsion … **it's very unclear and it's always a bit of a minefield**'* **3-B9 Social Worker**

- **Trauma**

Of significant childhood trauma: *'…for a non-medical professional it's very easy to look in and say, "**Of course she doesn't have mental capacity**", because there's making 'unwise decisions' and then there's not being able to do anything else because your past experiences have formed you to such an extent that you now don't know how to do anything else. That's not within quite the **rigid psychiatric boundaries of MCA** and so **there is no way she'd ever be assessed as lacking capacity, but I can't see how she has got capacity**'* **SM3 Lawyer**

- **Severe depression / suicide ideation**

*'I used to work in addictions and **there's an awful lot of passive suicidality around** … It has to be quite marked … to say someone doesn't have capacity because of it … **Maybe we should more than we do, but then it would be impractical**'* **3-B1 Psychiatrist**

- **Executive function**

*'It's definitely something that **has the propensity to be misunderstood or maybe misinterpreted** because it's thrown around so much and because it is kind of a **tricky thing to define'*** **2-A15 Psychologist**

Lived experience participants

- **Interviews with 32 people; face to face, mainly in hostels**

Age	
18-25	2
26-35	6
36-45	15
46-55	5
56-65	4
66+	0
Total	**32**

Gender	
Female	12
Male	20
Non-binary	0
Other	0
Total	**32**

Ethnicity	
Black or Black British	5
White British	24
Gypsy, Traveller or Romany	2
White Other	1
Total	**32**

Homelessness experiences	
Hostel	28
Street sleeping	26
Sofa surfing	21
Bed in exchange for sex	7

	Physical Health	Mental Health	* Cognitive	** Care & Treatment	Violence & Abuse (as an adult)	Substance Use	*** Street Culture
YES	23	30	25	23	19	30	23
NO	9	2	7	9	13	2	9

*** Memory problems, Brain injury, ADHD / ADD, Dyslexia, Autism Spectrum Disorder, Learning Disability.**

**** Prison, Young Offenders Institution, 'In Care' (looked after by local authority), Mental Health Inpatient.**

***** Shoplifted, Begged, Sex work.**

- **Not included: those that can't engage with research / not engaging with services.**

Lived experience perspectives (1/3)

- **Very few participants familiar with the MCA. Asked advice on a scenario of refusing support, as well as asking their own experiences:**

Should services respect somebody's decision to say, "*Go away, leave me alone*" or should they intervene?

I think intervene. *Because I've took a few overdoses and ended up back in the hospital, right, and I often woke up with someone sitting next to me … I've attempted suicide and stuff, I couldn't be left alone, you know, so I would have that person there that would explain things to me, "This is what happened to you, this is why you're here, but we're going to stay with you" … **like someone cares enough** …*

[But] *you wake up and you don't know where you're at, and you want to get out of there, and you're trying to call the nurse, like, "Why am I here?" and you're ringing the bell and no one's coming, you know? Then **you get anxious** … **I get agitated, and I just want to leave** … I've pulled that* [canula] *out with where blood is squirting and I've just left … **and I feel withdrawal's coming on**, you know? …*

So, you're saying when you're really at the height of your addiction – *Nothing matters.*

So, who is making decisions about your health?
No one.

3U-A2 Female

Lived experience perspectives (2/3)

- **Asked about substance use, addiction, choice, and decision making:**

***'You just self-medicate**. You just keep yourself in your own **numb little box**'* **1U B3 Male**

*'The **only thing you're thinking about is getting that drug**. You're not thinking about anything'* **1U B1 Male**

***'Resisting, that's easier said than done**. You can have the best intentions, but they are addicting in your brain, I need, I want, it's just always there … I've seen people like that and you think, "Oh God, somebody please help". It's either death if they carry on … they don't want to help themselves obviously because **some people are … too far gone**'* **1U B6 Female**

*'I had an addiction to heroin … I'm clean at the moment. I'm staying that way and I am the happiest I've being in ages … but **I struggle with my addictions** …*

How would you feel if somebody deprived you of your liberty and stopped you getting drugs?

***Like someone cared** … A lot of people don't think people care, and they don't drag themselves out of it because **they don't think there's anything to drag themselves out of it for**, but there is'* **1U B7 Female**

Lived experience perspectives (3/3)

- **Asked about substance use, addiction, choice and decision making (cont):**

*'**At the end of the day, it's your choice** … I used to blame for my drinking was childhood trauma … But it's so complex, is addiction and mental health … **I fully understand what we need to do to get people out of it, to help and support people, but you've got to be ready yourself** …"I'm rock bottom … I can't go any further except six foot under the ground," and I was at that point where **I just wanted a hole to open up, and jump in it and die**'* **1U B9 Male**

*'The fact that you had to do that in the first place, just **to get away from the reality thing**, you've obviously **gone through some sort of trauma**'* **3U-B5 Male**

*'Me personally, **with my drug addiction*** [heroin/crack] ***my health is on a back burner** … I'm very ill … it's hard, it's time consuming. You lose everything, your friends, your family, your self-dignity … **Services need to engage with people with their drug addiction a lot more carefully** … Being on this stuff … **it destroys you**'* **3U-A4 Female**

Some (male) talked about 'choice', also choosing numbness over 'reality', that some people are 'too far gone' to be able to make choices – an absence of 'making decisions'; references (female) to needing someone else to 'care'.

Back to critical and delicate balance

Risk
welfare over-reach

Risk
welfare neglect

Reduces autonomy:

'Trauma's happen, someone's taken control of their life against their wishes and done something to them, and we come along and say, ***'That was so bad, I'm going to take control of your life and do something to you'****… You have to be so careful not to be* ***just doing the same thing, in a business suit****'*

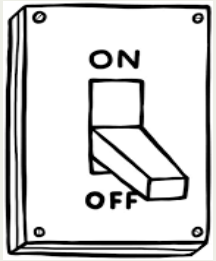
3-B8 Social Worker

Prevents earlier intervention:

'They were refusing to go to hospital because they wanted crack, basically, and ***their addiction had overridden their ability*** *to act in an appropriate way …* ***We had to wait for them to become too unwell*** *– they couldn't refuse any longer – and then admitted them'*

SM7 Inclusion Health Doctor

Should capacity be 'off switch' for service engagement?



Formulating support beyond the question of capacity

Whilst we try to inform better understanding and assessment of mental capacity in England, **should statutory service engagement end when there is a finding of mental capacity in a person's decision to reject services, despite high risk of harm or death?**

*'… **having capacity and therefore 'there is nothing more that can be done'**, that definitely comes into play, which **we would disagree** with …'* **3-A1 Homelessness Social Work Lead**

'ON / OFF' approach does not fit our emerging research evidence:

of **practitioner uncertainty and disputes** around establishing a **'reasonable belief'** in mental capacity assessments; of calls for more **multidisciplinary, longitudinal, cognitive assessments**; for considering potential of **neutral assessors / expert panels** for oversight in this complex area.

*'… **if you say someone has capacity** …**no one is really going to act** in the current climate, unless something is extremely black and white, that's the problem … **Our team's response would be** … **it doesn't matter whether they have capacity or not, in a way we'll do the same thing**. So, **unless you're at a point where you're doing something extremely interventionist** … we just have to help …'*
3-A1 Homelessness Social Work Lead

Back to the debate we need in England about whether Mental Capacity assessments are opening or slamming the door on support for people experiencing homelessness and multiple disadvantage. What can we learn from international perspectives?

Thanks. Comments? Questions?

Thanks: To our research participants and Lived Experience Advisory Group for their time and insights.

Research Team: Jess Harris, Stephen Martineau, Kritika Samsi, Alex Ruck Keene KC (Hon) (King's College London), Michelle Cornes (University of Salford), Bruno Ornelas (Collaborative Safeguarding Hub), Stan Burridge (Lived Experience Lead), Sam Dorney-Smith, (University College London), Sophie Koehne (Pathway homeless health charity), Nathan Davies (Queen Mary University of London).

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Photo 'Jimmy's place': Stephen Martineau

Homelessness webinar series: here

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