



# Hoarding

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# Overview:

- **Overview of Hoarding**
- **Practical Considerations**
- **Complexities**
- **Q & A**





# Hoarding: Overview



# Overlapping Issues with Housing Law

## Housing Issues

- ASB
  - Possession
  - Injunction
  - Closure orders
- 
- Rent arrears
  - Possession

## P's circumstances

- Hoarding
- Cuckooing
- Finances

## COP

- Cleaning
  - Clearing
  - Tenancy agreements
  - Residence
  - Contact
- 
- Deputy/Appointee

# MCA domains to consider

01

## Residence/Care/ Contact

- *LBX v K & Ors* [2013] EWHC 3230:
- [43] residence
- [45]: contact
- [48]: care
- Interim/long-term placements
- Restraint (transition)
- Cuckooing

02

## Entering & surrendering tenancy agreement

- *London Borough of Islington v QR* [2014] EWCOP 26
- [101]: entering
- [99]: surrendering
- Tenancy v licence agreement

03

## Managing items & belongings, including storage & disposal

- *Re: AC and GC (Capacity: Hoarding: Best Interests)* [2022] EWCOP 39
- Clearance
- Clearing

04

## Managing finances

- Rent arrears
- Appointee
- Deputyship

# Items & Belongings: Re: AC and GC (Capacity: Hoarding: Best Interests) [2022] EWCOP 39

## The relevant information [14]:

- (1) Volume of belongings and impact on the use of rooms
- (2) Safe access and use
- (3) Creation of hazards
- (4) Safety of building
- (5) Removal/disposal of hazardous levels of belongings

## Best Interests order:

- House-clearing and cleaning services;
- Permission to enter the property (legal representatives/LA etc),
- Disposal of items (perishable/hazardous);
- Storage of belongings

# Best interests Orders

- Managing belongings:
  - Exchange/trade old items with new items;
  - Withholding items unless an item is exchanged;
  - Exercise discretion to discard certain items;
  - Record presence of valuable items.
- Cleaning:
  - Permission for staff (agents) to enter room to clean it (define purpose)
    - Times staff can enter;
    - Purpose of entering.





# Hoarding: Practical Considerations





*“A trial of care at home is not without risk but, on the evidence before me, it is a manageable risk and one which should be taken to try to afford AC the opportunity of returning to her home, in improved circumstances, and with the hope and expectation that it will continue to improve in the coming weeks and months.”*

*Re: AC and GC (Capacity: Hoarding: Best Interests)  
[2022] EWCOP 39) at [38]*



# Plans: more is more!

## Transition plan

- Stages of transition
- Who
- Dates
- Belongings
- Contingency plans
- BI evidence
- Restraint

## Conveyance plan

- Restraint
- Deprivation of liberty
- MCAs
- Layout of car
- Breaks
- Contingency plans

## Clearance plan

- Stages
- Photographs
- Informing P
- List of belongings
- TP companies (disclosure)
- P's involvement
- Storage
- Annex to order

## Care plan

- List of restrictions
- Deprivation of liberty
- MCAs

*Always consider if a BIA should be undertaken, to support the plan(s)/restrictions*

# Expert Evidence

**Expertise**

**Hoarding  
Diagnosis**

**Remit of  
the Report**

**Letter of  
Instruction**

**S.1(3) &  
s3(1) MCA  
2005**

**Written  
Questions**

# Hoarding:





# Hoarding: Complexities



# Hoarding:





# 1. MANAGE CLIENT EXPECTATIONS

- Hoarding cases can be difficult and lengthy.

*‘Since 2017 the local authority environmental health department, working together with the mental health services, have been trying to find a solution to X’s hoarding.’ Proceedings were issued in 2021 and, ‘[s]ome two years on, despite strenuous and creative attempts by the local authority, X’s legal team and the court to bring about any change, the position largely remains the same’*

(A LA v X [2023] EWCOP 64)



# 1. MANAGE CLIENT EXPECTATIONS

- Think of practical solutions. It is social work practice not CoP legal principles that will help resolve these cases.
  - This can necessitate extra work for social workers. Help to manage case load internally.
  - E.g. when clearing a property where extreme/suicidal distress was caused by clearance, the SW had to take photos of specific hoard, visit P and ‘agree’ what could be disposed of, go into storage or kept at the property & do this weekly.



## 2. NON ENGAGEMENT WITH CAPACITY ASSESSMENT

1. No way to enforce engagement with a capacity assessment. Key is negotiation, persuasion and trying again and again.
2. A paper based assessment is a last resort assessment:
  - "assessment of capacity based on case notes is of necessity a relatively inadequate substitution for the complex assessments that occurs in a clinical interview"* (Wandsworth Clinical Commissioning Group v IA [2014] EWCOP 990 at paragraph 43)
  - a. In *LA v X* there was a section 49 report by a clinician who did not have any direct contact with P. Evidence treated summarily.

## 2. NON ENGAGEMENT WITH CAPACITY ASSESSMENT

### 3. A remote video assessment may be an option:

*'Can capacity assessments be undertaken by video when it is established that P is happy to do so and can be "seen" alone? Suggested solution: In principle, yes. The assessor will need to make clear exactly what the basis of the assessment is (i.e. video access, review of records, interviews with others, etc.) Whether such evidence is sufficient will then be determined on a case by case basis' (BP v Surrey [2020] EWCOP 17).*



## 2. NON ENGAGEMENT WITH CAPACITY ASSESSMENT

4. Telephone calls may also be an option: in *LA v X* the assessor used telephone calls.
5. Giving P control can help engagement: Give P the ‘choice’ of expert. Directions that P could chose the expert from a list of three with CVs provided and short telephone call.
6. Use treating clinicians who might be able to draw on past experience with P and/or already have a therapeutic relationship: in *LA v X* the main capacity evidence came from P’s treating psychiatrist.



### 3. ASSESSING CAPACITY TO MAKE DECISIONS RELATED TO HOARDING

#### KEY PROBLEM:

1. P is articulate and one off superficial assessments determine P has capacity

BUT

2. there is a longstanding severe hoarding problem.

#### KEY QUESTION: is there a mismatch?

1. Does P give coherent answers to questions/agrees to clear the property/agrees to allow access but never does?
2. Is it clear from their actions that they are unable to carry into effect the intentions expressed in those answers?

## 3. ASSESSING CAPACITY TO MAKE DECISIONS RELATED TO HOARDING

### Assessment Focus 1:

1. Use clearly documented evidence of the repeated mismatch over the years as part of the relevant information.
  - Take a longitudinal approach to the assessment.
  - Draft detailed chronology to assist the assessor/judge.
  - Undertake the assessment in stages and/or repeat assessments.



### 3. ASSESSING CAPACITY TO MAKE DECISIONS RELATED TO HOARDING

#### Assessment Focus 2:

1. Is P aware of their own deficits?
  - I.e. is P able to use and weigh (or understand) the fact that there is a mismatch between their ability to respond to questions in the assessment process and their ability to act when faced by concrete situations.
2. Need to expressly bring to P's attention the mismatch to explore whether they understand there is a mismatch.

### 3. ASSESSING CAPACITY TO MAKE DECISIONS RELATED TO HOARDING

*‘X is unable to use and weigh the relevant information regarding her residence, in particular the impact of her actions on the tenancy agreement she has and the risks on her continuing to be able to reside there unless there is any change. The evidence from the local authority establishes that. **It sets out the repeated attempts by the housing and environmental services, over many years, to gain access to the flat, which X consistently and persistently thwarted.**’ (LB A v X)*

### 3. ASSESSING CAPACITY TO MAKE DECISIONS RELATED TO HOARDING

*‘Over an extended period of time, lasting over 5 years, X has been unable, due to the severity of the symptoms of her mental disorder, to use and weigh the information that she needs support to a sufficient level to enable her to engage in any meaningful way with that support. **The evidential foundation for this rests on the detailed involvement of AB between May 2022 to March 2023.** Their structured, staged, creative and cautious plans demonstrated their flexibility. X was unable to engage in any meaningful way with this holistic approach, including the therapeutic support offered.’ (LB A v X)*



## 4. SUICIDAL RISK IN THE COURT ROOM AND BEYOND

1. P had history of suicidal ideation/attempts and violence to others and a comorbid diagnosis of Emotionally Unstable Personality Disorder. She stated she would kill herself and/or harm others if an interim order to remove her from her home was granted.
2. LA organised: (a) court security in court room; (b) private ambulance attended court to convey P from court to care home; (c) separate rooms for ambulance staff/P in court building; (d) with CMHT and HTT to have a monitoring plan in place for that night and the next few days; (e) with care home for regular checks that evening/night.



## 5. HOUSING ASSOCIATION AS LANDLORD

### When to assess subject matter capacity:

*‘The presumption of capacity is important; it ensures proper respect for personal autonomy by requiring any decision as to a lack of capacity to be based on evidence. Yet the section 1(2) presumption like any other, has logical limits. **When there is good reason for cause for concern, where there is legitimate doubt as to capacity** [to make the relevant decision], the presumption cannot be used to avoid taking responsibility for assessing and determining capacity. To do that would be to fail to respect personal autonomy in a different way..’ (Royal Bank of Scotland Plc v AB 5 [2020] UKEAT 0266\_18\_2702.)*

## 5. HOUSING ASSOCIATION AS LANDLORD

### Securing the co-operation of the local authority:

1. Third party disclosure orders for social care (and health) records.
2. Recitals inviting LA to undertake Care Act assessments/care and support plans/set out proposals for alternative accommodation.
3. Vigorously pursuing the possession claim to put pressure on LA to secure alternative accommodation.
4. Invite the local authority to make a CoP application and stay possession proceedings (on the basis the current property is not an option on the table).



Any  
Questions





# Thank you

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