

Which Agencies have Relevant Powers?

This briefing provides information for multi-agency practitioners in relation to gaining access to adults either to provide care or support or as part of the response when it is known or suspected that adults are experiencing, or at risk of, abuse or neglect. At the time of writing (Summer 2024), only **police** are legally allowed to enter premises without permission, in situations that meet very specific criteria. The **local authority** also has some legal options they can pursue where access to an adult is being denied; they have the option to apply to the courts to gain access in some circumstances. Where practitioners from **other agencies** have concerns they should first contact their manager or their agency safeguarding lead, for advice and, if necessary, support to determine whether a safeguarding adult referral is required or if concerns need to be shared on a multi-agency basis following the [Tiered Risk Assessment and Management \(TRAM\) Protocol](#). Whether it is

Mental Capacity Act

All practitioners should follow good practice under the MCA when speaking to the adult. Assume the adult has capacity unless proven otherwise. Always record that mental capacity has been considered when no formal MCA Assessment has been undertaken. If the adult is proven to lack capacity in relation to a decision, always speak to their representative(s) and act in their best interests. For more information about mental capacity see the [OSAB MCA Multi-Agency Policy and Procedures, Practical Guide to Assessing Capacity and Making Best Interests Decisions](#) and the [Mental Capacity Assessments Guidance - What Questions Should I Ask?](#)

Police Legal Powers

Power of the police to enter and arrest a person for an indictable offence: Section 17(1)(b) of the [Police and Criminal Evidence Act \(PACE\)](#) gives police the power to enter premises in order to make an arrest without warrant for an indictable offence. These are the most serious category of criminal offence and can only be dealt with in the Crown Court.

Power of the police to enter if there is risk to life and limb: Section 17(1)(e) of PACE gives police the power to enter and search premises without a warrant, in order to 'save life or limb' or prevent serious damage to property. However, it is not enough that the police should have a general welfare concern about an adult in order to use this power of entry, which may only be used in cases of emergency, not general welfare.

Common law power of the police to prevent, and deal with, a breach of the peace: There is a common law (i.e. not in legislation) power of entry to deal with a breach of the peace. It is in addition, and separate from, the powers in PACE. A breach of the peace occurs when harm is actually done, or likely to be done, to a person or their property in their presence. It also occurs when a person is in fear of being harmed through assault, affray, a riot or other unlawful disturbance. In such cases, an arrest can be made without a warrant. In general, this power of entry only applies in emergencies. It is therefore unlikely to be justified in the majority of welfare-related cases.

Difficulties Gaining Access

Reasons why it may be difficult to gain access include access to the premises being denied by someone (family, friends, or informal carers); access to the premises being given, but it not being possible to speak to the adult alone as others insist on being present; or the adult themselves (whether they are unduly under the influence of the person present) insisting that the person is present (in such cases, if the adult is known to have mental capacity, the issue of access in terms of the law does not apply). Where access is refused, attempts should be made to resolve the situation sensitively via negotiation through a professional relationship based on trust. If negotiation is unsuccessful, the local authority must consider whether denial of access is unreasonable and whether concerns justify intervention. This should involve a multidisciplinary discussion (e.g. with management, legal teams) about perceived concerns and risks, and potential outcomes of intervening or not. All discussions and considerations should be fully recorded including objective facts and professional assessment so that decision making is clearly based on objective fact, assessment of risk and proportionate action.

Proportionality

The use of any power to gain entry should be exercised proportionately, in relation to risk and the level of safeguarding concern. Emergencies involving significant risk may justify the use of legal powers where there is insufficient time to negotiate access, such as police entry to save life and limb. Adopting the principle of the least restrictive option ensures that interventions are necessary and proportionate. If the adult lacks mental capacity, consideration must be given to achieving their best interests using an approach which is least restrictive of their rights and freedom of action.

Legal Powers

The SCIE guidance '[Gaining access to an adult suspected to be at risk of neglect or abuse](#)' notes the following legal powers may be considered by the local authority to gain access to an adult experiencing, or at risk of, abuse or neglect.

If the adult has been assessed as lacking capacity in relation to a matter relating to their welfare: the Court of Protection has the power to make an order under Section 16(2) of the [Mental Capacity Act](#) relating to a person's welfare, which makes the decision on that person's behalf to allow access to an adult lacking capacity. The Court can also appoint a deputy to make welfare decisions for that person.

If an adult with capacity, at risk of abuse or neglect, is impeded from exercising that capacity freely: the inherent jurisdiction of the High Court enables the Court to make an order (which could relate to gaining access to an adult) or any remedy the Court considers appropriate (i.e. to facilitate the taking of a decision by an adult with mental capacity free from undue influence, duress or coercion) in any circumstances not governed by set legislation or rules.

Gaining Access to Support an Adult

Further Legal Powers

If there is concern about a mentally disordered person: Section 115 of the [Mental Health Act](#) (MHA) provides the power for an approved mental health professional (AMHP) to enter and inspect any premises (other than a hospital) in which a person with a mental disorder is living, on production of proper authenticated identification, if they have reasonable cause to believe that the person is not receiving proper care.

If a person is believed to have a mental disorder, and there is suspected neglect or abuse: Section 135 (1) of the MHA, states a magistrates court has the power, on application from an AMHP, to allow the police to enter premises using force if necessary and if thought fit, to remove a person to a place of safety if there is reasonable cause to suspect that they are suffering from a mental disorder and (a) have been, or are being, ill-treated, neglected or not kept under proper control, or (b) are living alone and unable to care for themselves.

Website: www.oldhamsafeguarding.org

Email: OldhamSafeguardingAdultsBoard@Oldham.gov.uk

