

## Recording process for mental capacity concerns

With immediate effect, the following process should be followed, alongside the requirements set out in the [Reception, Induction Checklist and Supplementary Guidance DSO](#), [Removal from Association and Temporary Confinement DSO](#) and [Managing Adults at Risk in Immigration Detention DSO](#) :

1. When a DET team member completes an induction interview and registers a concern regarding a person's mental health, particularly where such concerns relate to their ability to understand their immigration situation, the DET team member should record this concern on the DET induction template.
2. The DET team member should complete an IS.91RA Part C form detailing this concern and email this to 'Detained AAR Part C' Inbox, and 'DVAAT' Inbox copying the relevant detained case-working team, in addition to the local Compliance team, healthcare team, DEPMU and the contracted service provider.
3. Upon receipt, DVAAT will record this concern (including the name, ATLAS reference, potential mental capacity concern, date and any other relevant information) alongside other centralised AAR data.
4. Upon receipt, the responsible case-working team should review the detail in the form and record this concern on the 'casefile' for consideration at the next scheduled detention review (DCPR), or earlier, according to any further information that may be provided from the IRC regarding the person's vulnerability in line with the AAR policy. Where the detail of the Part C form represents a significant or material change in circumstances, such as a new risk factor, or a change in an existing risk, there should be a formal review of the case including consideration of the appropriateness of ongoing detention in line with the AAR policy.
5. Following circulation of the Part C, the DET team member will arrange a Multi-Disciplinary Team (MDT) meeting at the earliest possible opportunity; to include a member of the healthcare team, a member of IRC contracted service provider staff, DVAAT and a representative from the responsible case-working team. The purpose of the MDT will be to:
  - Discuss the concern; whether it has been acknowledged through interactions and general observations of their behaviour/demeanour.
  - Establish whether the healthcare team have noted any concern regarding their mental health which requires treatment and/or onward referral for a specialist assessment.
  - Confirm whether the person has legal representation.

- Confirm if initial DET concerns are reasonable/well-founded following contracted service provider and healthcare input.
- Set an action plan (where concerns are valid) – this may include, for example, establishing a Vulnerable Adult Care Plan (VACP), undertaking an ad-hoc detention review (where required), encouragement to seek legal advice etc. Or,
- Close the concern flag with DVAAT (where initial concerns are not considered valid, or are no longer relevant following MDT input)

The above process should also be followed if DET identifies a similar concern arising from any subsequent interaction after the induction stage, including on the service of immigration decisions, removal notice, removal from association etc.

The same process (steps 2 – 5) should be followed if mental capacity issues are identified by the contracted service provider or healthcare teams during their inductions, or any subsequent interaction with the individual. Should the contracted service provider or healthcare team identify such a concern, the IS91 RA Part C should be shared with those contacts listed in step 2, in addition to DETs. Whichever party has identified the concern (contracted service provider, healthcare or DET) should convene the MDT as set out in step 5. This should always be in coordination with DETs who will notify the responsible case-work team to arrange their attendance.

It is likely that where concerns regarding mental capacity are considered well-founded, especially where a mental health condition is confirmed by healthcare, this will require the completion of an ad-hoc detention review (DCPR), updating the AAR evidence level as necessary. In some cases, the evidence of vulnerability may satisfy AAR level 3. Where a decision is made to release the person, the responsible case-working team must follow the Vulnerable Releases SOP.

For some people, the lack of mental capacity may be a consequence of a serious mental health condition and may pose a risk to them or others. Where this is the case, the Home Office may rely on the healthcare team to consider whether action to apply a section of the Mental Health Act would be applicable. Where this is the case a transfer to a hospital or psychiatric intensive care unit under s48 may be appropriate.

Where the concern regarding mental capacity is considered well-founded and continues, but a decision is taken that detention is to be maintained, it is extremely important that the responsible case-working team can confirm that the person has legal representation. This will provide a legal avenue for immigration decisions to be appropriately challenged, notwithstanding the concerns that we may hold regarding the person's mental capacity.

Where a person for whom we have a well-founded concern regarding mental capacity is not legally represented, and that concern is supported by medical evidence directly related to the capacity issue (HC MHT treatment etc), the service and enforcement of immigration decisions which carry a right of appeal or avenue to respond with submissions, should not normally be progressed, until legal representation is obtained. Whilst this general rule should normally be applied, each case must be considered according to its circumstances.