Mental Capacity Act and safeguarding

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What is safeguarding?

- *"Safeguarding means protecting an adult's right to live in safety, free from abuse and neglect.* ***It is about people and organisations working together*** *to prevent and stop both the risks and experience of abuse or neglect, while at the same time making sure that the adult's wellbeing is promoted including, where appropriate,* ***having regard to their views, wishes, feelings and beliefs in deciding on any action. This must recognise that adults sometimes have complex interpersonal relationships and may be ambivalent, unclear or unrealistic about their personal circumstances."***

- Department of Health (May 2016), *Care and Support Statutory Guidance*, p230 para 14.7

Who is an adult at risk?

The safeguarding duties apply to an adult who:

- *has needs for care and support (whether or not the local authority is meeting any of those needs) and;*
- *is experiencing, or at risk of, abuse or neglect; and*
- *as a result of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.*

(Care Act 2014, Regulation 14)

Safeguarding and carers

- Circumstances in which a carer (for example, a family member or friend) could be involved in a situation that may require a safeguarding response include:
- **a carer may witness or speak up about abuse or neglect;**
- **a carer may experience intentional or unintentional harm from the adult they are trying to support or from professionals and organisations they are in contact with; or,**
- **a carer may unintentionally or intentionally harm or neglect the adult they support on their own or with others.**

Safeguarding Adult Reviews

- Under section 44 of the Care Act 2014, the Local Safeguarding Adult Board (SAB) must arrange a safeguarding adult review "when an adult in its area dies as a result of abuse or neglect (whether known or suspected) and there is concern that partner agencies could have worked more effectively to protect the adult".
- SAR can also be instigated if an adult has experienced significant harm due to partner agencies not working together

SARs Cont.

- The purpose of a safeguarding adult review is primarily to:
- Provide useful insights into how organisations are working together to prevent and reduce abuse and neglect of adults
- Promote effective learning and improvement action to prevent future deaths or serious harm occurring
- Identify lessons and examples of good practice where this might be applied in future situations

Who?

Age 16 +

Impairment of, or disturbance in the functioning of the mind or brain

Dementia, learning disability, brain injury, mental health, autism, confusion, substance misuse, unconscious

Where?

Anywhere a health or social care decision is made

home, hospital, GP, care home, day centre, dental practice

Mental Capacity Act

Which decisions?

All health & social care & financial acts/decisions

washing, dressing, nursing care, domiciliary care, day care, helping someone take part in education or social activities, housing support, providing accommodation, medical treatment, diagnostic tests, allied health therapies, emergency care

The Test of Capacity [Section 3]
Time and **Decision** specific

Practicable steps

Understand the information relevant to the decision
Nature + Purpose + reasonably foreseeable consequences [risks]
Simple terms and basic language

Retain the information
only long enough to make the decision

Use/weigh the information as part of the decision making process
Believe, take account of the information

Communicate the decision
Any form of communication – does not have to be verbal
[Saying 'No' is communication!!!]

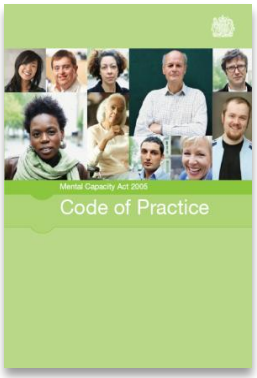
Test for Capacity - continued

Balance of probabilities – what is more likely than not? Assessor must have a 'reasonable belief' about the outcome.

Who can make the assessment? **Anyone**

Who in a team? The person with authority to make the decision/ delivering the care
Examples: Flu vaccination in care home
Placement in care home
Learning disability and dental care

Test for Capacity - continued



Care plans – Code of Practice [6.25] "*The preparation of a care plan should always include an assessment of the person's capacity to consent to the actions covered by the care plan, and confirm that those actions are agreed to be in the person's best interests.*"

How often to test capacity? A judgment has to be made depending on the decision/acts and how much the persons capacity fluctuates

Record keeping – *"Professionals should never express an opinion without carrying out a proper examination and assessment of the person's capacity to make the decision."* Code of Practice [MCA 4.52]

Implied consent?

Code of Practice [MHA 23.32] *"By definition, a person who lacks capacity to consent does not consent to treatment, even if they co-operate with the treatment or actively seek it."*

Remember…

- Does the person have an impairment or disturbance in the functioning of their mind or brain? If not the person will not lack capacity within the meaning of the MCA 2005.
- Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to? The impairment or disturbance of their brain must affect the person's ability to make the specific decision at that particular time.
- Section 1(3) MCA 2005 and Chapter 3 MCA Code

BEST INTERESTS (Section 4)

- **The test of capacity has no power!** It is just a statement – the power/authority to treat/care through a Best Interests assessment.
- **Power to: give care, stop existing care or withhold care** to a person that lacks capacity
- **Standard procedure** for making best interests decisions
- **Who can do it?** Anyone [as with test of capacity]
- **Balance of probabilities** – 51%
- **Recording keeping** – must record the process – not just a statement 'this is in their best interests'!
- **Not fixed** – best interests decisions are not fixed and can change as circumstances change for the individual.

'Best Interests' decision checklist

1. **All relevant circumstances**
2. **The person's *reasonably ascertainable* past and present wishes/statements + their beliefs and values**
3. **Consult others as *practicable and appropriate* to do so. Examples: carers, relatives, attorneys, deputies,**
4. **Consider less restrictive options - can the same result be achieved in a less restrictive way?**

- *Will the person have capacity sometime in the future in relation to the matter? If so, when?*
- *Must encourage and permit the person to participate*
- *Don't base the 'best interests' decision solely on age, appearance, behaviour or condition*
- *If the decision is about life-sustaining treatment, do not be motivated by a desire to bring about the person's death.*

Gladys and Doris

- Gladys is 91 with
  - Dementia
  - Atrial fibrillation
  - Chronic kidney disease stage 3
  - Incontinent of urine
  - Frailty

- Doris is 85
  - Also diagnosed with dementia,
  - Dropped arch and hammer toe on her left foot.

Gladys and Doris, the women

- Gladys and Doris met in the 1950s, when they became a couple and began living together. They have kept their intimate relationship a secret from professionals.
- GP described them as model patients, who would bring mince pies to the surgery for the GP at Christmas, and attended all their regular health checks, such as blood pressure and annual blood tests.

Use of the MCA for the couple

- History of declining services as their dementia worsens.
- Gladys has one hospital admission due to overdosing on medication – Doris had been found by District Nurses to be confused about Gladys's medication, and there was also on one occasion a large amount of out of date medication found.

- HOW RELEVANT IS THE MCA AT THIS STAGE?
- Think about assessment of capacity
- Think about Best Interest checklist

From SAR

- *"Professionals needed to be clear about the decisions on which they lacked capacity in order to judge where assertive action in their best interests was indicated. Examples where capacity assessments were carried out indicated a tendency to apply the Act in order to facilitate necessary resource-led activity (such as hospital discharge) rather than to empower (Gladys and Doris)"*

Serious Case Review 2015

- 79 year old woman Molly, receiving two care visits a day
- Refuses assistance with personal care
- Appetite deteriorating

SCR Findings cont.

- Care workers did not initially report refusal of services
- When reported to manager, manager requested written report so this could be passed on to social services.
- Ambulance called, Molly refuses to go to hospital
- GP called, ambulance again called.

Cont.

- Admitted to hospital

- Entry from notes:
- “Unresponsive; BP [blood pressure] unreportable;
- covered in dried faeces; contracted limbs; poorly kempt; septic shock, probably from pressure ulcers.”

- 13 pressure ulcers, nine at grade 4

Nursing notes

- “Molly was emaciated. She was covered in her own faeces which was stuck to her skin. I would describe it like snake skin it was stuck all over the lower part of her body, legs and feet it must have been there for months.

Findings

- The need for a greater degree of focus on the individual.
- Practice in respect of assessment care planning and review.
- Practice in working with risk.
- Identification of risk of pressure ulcers.

Findings Cont.

- Working with self-neglect.
- Practice in the context of the Mental Capacity Act (MCA) and legal literacy.
- Staff support/ supervision.

FINALLY…