

HUTH

Statutory Frameworks

- Care Act 2014 (adults)
 - Has needs for care and support (whether or not the local authority is meeting any of those need) 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
- Mental Capacity Act 2005 (16 years and over)
 - Framework for decision making
 - With and without capacity
 - Decision Specific
 - Deprivation of Liberty 2007 (18 years and Older)
 - The safeguards apply to anyone who: is aged 18 and over is accommodated in a care home or hospital registered with the Care Quality Commission
 - **Liberty Protection Safeguards 2019 (16 years and over)**

MCA /Care Act

- Encompasses everything we do in the Health Care Setting
 - There is a significant relationship between Safeguarding and MCA
- Therefore has particularly resonance when supporting vulnerable adults
- If your curiosity is triggered –investigate
- If concerned about someone's safeguarding or capacity
 - Have to give consent to referral
 - Or the concern raises issues for the wider community

5 Principles of the MCA

1. A person must be assumed to have capacity **UNLESS** it is proved otherwise
2. Until all practicable steps **MUST** be taken before assessed as not having capacity (**capacity and cognition are not the same thing**)
3. Unwise decisions do not indicate a lack of capacity

When making a decision on behalf of someone who lacks capacity

4. Made in person's best interest
5. **LEAST** restrictive option

Case Study 2 – Clinical Decision Making

- 25 year old man detained HMP, admitted to hospital following a 6 month period of intermittent eating and drinking which has significantly worsened in the last 3 weeks following a move from one prison to another. Refusing all intervention
- Clinical presentation
 - BMI 13
 - Nutritionally anorexic
 - High risk of Cardiac Arrest death if not corrected
- Mental Health Presentation
 - Diagnosed as having depression but unable to treat in current condition as MH have assessed as lacking capacity in understanding his current health condition
- Plan
 - Promote oral intake
 - Correct U's& E's/ replace vitamins and minerals
 - Potential recourse to enteral feeding
 - Quiet and withdrawn

Lacking Capacity

- Assess capacity as the decision maker
- Can the decision to artificially feed wait – how long?
- Communication – Support
- Understanding the patients version
- Pursue all nutritional options
- Least Restrictive options
- Court of Protection application
 - Not for the treatment decision but for the level of restraint which may be required

With capacity

- The MCA supports people with capacity to make unwise decisions
- However

Outcome

- Support sought from SG team
- Consultant reviewed capacity and sought further support from Clinical Lead – **lack capacity at that time**
- Patient listened to and he agreed to receive IV replacement and team agreed to give him 24 hours to try and eat
 - This gave the opportunity to try and improve his decision making ability
 - Opportunity to have discussion with legal team
 - Prep for COP application
- There was a turn around for 3-4 days then a dip
 - Back to Legal teams
- Capacity reassessed – regained and maintained eating plan.
- Discharged back to prison

This occurred over a holiday period

Case Study 3 – Complex discharge

43 year man with LD and Autism. Admitted with aspiration pneumonia following community tooth extraction , extended stay in ICU, vented for 3 weeks. Went on to have a period of rehab but did not return to premorbid abilities. Complex family arrangement. Lived with father but there were already SG concerns about this arrangement. Mother was involved on a daily basis and did not want son to return to the previous home.

Discharge presentation

- Change in mobility
- Refusing to eat a normal diet
- Change in behaviours
- ?environment suitable

Actions

- Can the parents make decisions for this gentleman?
- Capacity was assessed for different decision making
 - Decision maker is the social worker in this instance
- Early identification of need to use the MCA process
- Numerous best Interest meetings
 - Documentation
- Independent Mental Capacity Advocate (IMCA) Appointed to represent patient
- Family involvement
- MDT involvement – including medical team and community LD teams

Outcome

- Patient was discharged home at risk
- SG referral to the community
- Significant support measures put in place
- Respite planned

Complaint

Admission generated significant complaint but nothing was upheld in terms of Care Act and MCA because of Clear concise documentation

On-going involvement

Patient needs further extraction as an in-patient but this is now classed as serious medical treatment. Surgical and Nursing teams involved in COP Application

Addendum (update)

- Deterioration of dentition to such an extent, clinical proposal for full dental clearance.
 - Best interest meetings (again) Primary and secondary care
 - IMCA and litigation friend
 - Classed as serious medical treatment
 - Joint presentation to COP (Be prepared)
 - Requested second opinion to recommended treatment e.g. implants/dentures **(showing workings out why one decision better than another)**
 - Reasonable adjustments – Consultant anaesthetist covertly met patient in HMV – as never met the patient
 - Back to COP with – 2 x 10 page care plans on transfer and restraint

Take Away Messages

- If in doubt seek advice – every trust has SG and legal leads
- Think ahead – be prepared
- Assessment and documentation is key
- Look at Trust eLearning platforms for further learning support
 - May be different processes in your Trust but all work to the same legal principles
- If a patient is 16 years or older and has capacity no-one else can make a decision for them
- 16-18 year olds without capacity can defer to parent or legal guardian
- Patients can legally make unwise decisions
 - But if those decisions are potentially life threatening seek advice – there are other processes that can be invoked.

Useful References

- <https://www.legislation.gov>
- [MCA Legislation](#)
- <https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005>.
- <https://www.gov.uk/government/publications/liberty-protection-safeguards-factsheets>

