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TO KEEP ADULTS SAFE



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Working in partnership to increase understanding and implementation of the MCA **Central Midlands**

MCA Case Studies

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CASE STUDIES

General Questions

Capacity

What decision needs to be made? And what are the options / what is the information necessary to understand / retain / weigh up?

Has everything reasonable been done to help the patient have capacity?

Why is the presumption of capacity being rebutted?

Who needs to assess capacity?

Best Interest

What are the available options?

Who is the decision-maker?

Who has been consulted?

Where has the Best Interest decision making been recorded?

Do you need legal advice?

Is the decision about, for example, sex, family relationships?

Does the decision restrict Human Rights?

Is the assessment of capacity or best interests decision contentious or finely balanced?

Is it a matter that needs to go to Court in any event – eg serious medical treatment or a deprivation of liberty in the community, outside the scope of DOLS?

ACUTE SETTING

- Edith is an elderly resident of a care home. She has been living there for 3 years but has recently started wandering around at night, and so a deprivation of liberty safeguards Standard Authorisation has been sought and granted after her care plan was amended be more restrictive to prevent this.

- On one of the regular 30 minutes checks, she is found on the floor of her room in a lot of pain. She is saying that “she just want to go to the pictures with her girlfriends to see the latest Cary Grant movie”.
- An ambulance is called and after an X-ray at A&E she is admitted into hospital with a fractured neck of femur, and later listed for surgery. This is explained to her, and she agrees because it will stop the pain, and mean she “can go dancing again”.
- After the operation a standard dose of prophylactic heparin is prescribed. When this is being administered sometimes she is agitated and refuses the heparin, saying that she doesn't want the “witch doctor magic” medicine. Sometimes she is compliant and accepts the heparin.

Points to Note

There are a number of different decisions – the restrictions in the care home to prevent wandering at night; the transfer to hospital in ambulance; the admission and surgery; and the post op heparin (and, in due course, presumably a decision about discharge). Edith's capacity should be considered for each decision. There is reason to question the assumption of capacity, given her apparent confusion, and she has already been assessed to lack capacity for the care planning decisions relevant to the DOLS authorisation.

The DOLS authorisation will not extend to transfer to hospital, or allow any care or restrictions there. If she lacks capacity to agree to transfer by ambulance, and it is deemed to be in her best interests to go to hospital, then any restraint reasonably required if she is resistant would need to be reasonably necessary to prevent harm and proportionate to the likelihood and seriousness of that harm. It would need exceptional circumstances (such as an unusually long journey or extreme level of restraint / sedation) before a transfer to hospital would be considered a deprivation of liberty in itself, but in such a case (far more often in planned transfer for treatment) the Court should be involved.

She seems to understand that the operation will stop the pain, and mean that she is able to walk again, but care should be taken to test capacity to consent to the operation, making sure she can understand, retain and weigh up the risks as well as the benefits, any other options, and what will happen if she says no, or doesn't make a decision.

Her capacity to make decisions about the heparin should be considered – and not just when she refuses it. Compliance is not the same thing as a capable consent and if a best interests decision is being made for Edith this should be explicit. The issues and the information are different to the surgery itself, and so it is possible that she has capacity for one decision but not the other. This means it is sensible to see the treatment as a whole – if she is going to refuse heparin (and has capacity to do so) it is better to know this before the surgery as it may well affect the balance of risks and benefits of proceeding with the operation. If she has capacity for a decision about heparin she can be offered it, and can refuse it, and it should be carefully recorded when she agrees and when she refuses. Inconsistency is not incapacity.

COMMUNITY SETTING

- Mary has a learning disability and recently had surgery for uterine cancer. She has never liked hospitals or doctors, and was very resistant to the investigations and treatment that were required. Some covert medication was necessary to get her to hospital and sedation / restraint in the post op recovery, and the balance of risks / benefits of surgery was complicated by her very high BMI. The case was considered by the Court of Protection, which found that she

lacked capacity to decide on surgery, and authorised the proposed care plan including surgery, as in her best interests.

- Mary has now been discharged home, and unfortunately post operative immobility and her BMI have meant that she has developed significant pressure sores, for which she is receiving care from a community tissue viability nurse.
- Mary gets anxious when the district nurse attends, and often refuses to let her dress the pressure sore. M's parents want to know why she can't be forced to have the dressings changed in the same way as she was forced to have the surgery?

Points to Note

Capacity is decision specific; so that Mary lacks capacity for a decision about surgery for cancer does not mean that she lacks capacity for all medical intervention decisions, including the pressure sore treatment. Capacity for this must be assessed separately.

Equally, capacity can vary from time to time, and everything reasonable should be done to empower a person to have capacity if possible, or to take a decision at a time when they can do so. Mary is usually much better in the mornings, and the Nurse finds her much more calm and easy to engage with is she attends then. Other things are tried to minimise Mary's anxiety to enable her to make her own decision – eg continuity of familiar staff, having family support present, and having the nurse not attend in uniform

Even if these things don't get Mary to the point where she can make her own decision, they are likely to be better for Mary and enable a less restrictive approach to changing her dressing, in her best interests, if she still lacks capacity.

The notes should reflect whether Mary is assessed as having capacity (and if she whether she consents / refuses) and, if she lacks capacity, then what is being decided in her best interests. Any best interests decision should take into account Mary's wishes, values and beliefs, as well as involvement of those engaged in caring for Mary or interested in her welfare.

If Mary has capacity to refuse regular dressings of her pressure sores, then this must be respected. An opinion can be obtained from the Court of Protection if need be to offer reassurance that this is correct despite the uncomfortable consequences. Even so, care should be offered regularly, and every reasonable attempt made to find some appropriate care, or way of delivering it, that Mary would consent to.

If Mary lacks capacity for this decision, a holistic view of best interests must be taken. It is possible that the steps needed to overcome her resistance are so intrusive and

restrictive that they may not be in her overall best interests, even if the narrow medical benefit is very clear.

SOCIAL CARE

- Martin lives alone in a council property. He has lived there for 20 years, and it appears that he is a hoarder, and that he is keeping at least 35 canaries which are not caged and which are allowed to fly around the property.
- He claims not to have left the property in 17 years, and that he has food delivered by his niece. He presents as unkempt. He has removed his own teeth rather than leave the property to attend a dental appointment.
- He has a diagnosis of agoraphobia and General Anxiety Disorder. He is reticent to engage with social services, saying he does not want or need any help from them.
- He is now refusing to allow the landlord access to check the gas appliances, claiming that the gas has been capped. The landlord has explained that he still has to inspect the appliances under Health and Safety legislation, and is now seeking possession of the property.

Points to Note

Someone with capacity to do so is perfectly entitled to refuse assessment by social services. The Courts are loud and clear that the local authority role is as “servant not master”, offering support and services, and if need be referring cases to Court, and never intruding into someone’s life unless they have clear legal power to do so. The social worker who has attended should consider whether Martin has capacity to refuse an assessment.

The social worker must consider issues of self-neglect. The MCA forbids drawing conclusions on capacity as a result of appearance, and of course an “unwise decision” does not mean a lack of capacity (or the idea of capacity to make our own decisions would be meaningless). But the hoarding, his appearance and the large number of pets, may be indicators of self-neglect which can lead to a safeguarding enquiry being made. The new Statutory Guidance on Safeguarding under the Care Act 2014 explicitly adds “self-neglect” as a category of concern, but equally recognises that capacity means the ability to choose how to live and make decisions for oneself. There is very little guidance on how to deal with the overlap between a capable “unwise decision” and “self-neglect”, and advice and support should be sought at an early stage in every such case.

In extreme cases of impact on others, it may be possible for the local authority to intervene in someone’s home under the environmental health legislation, for example if neighbours were disturbed or adversely affected, or there was a risk of harm to others’ health and safety. But intervention to protect others is not allowed under the MCA.