

Liberté, Egalité, Fraternité

A UK revolution in perception and management of mental health?



World Federation of Mental Health, World Mental Health Day

October 10, 2019



Each of us can make a contribution to ensure that people dealing with problems concerning mental health can live better lives with dignity.

Liberty

Protection Safeguards

- July 2018, the government published a Mental Capacity Act (Amendment) Bill, which passed into law in May 2019
- Into force by Spring 2020?
- replaces DoLS
- proposed reforms around supported decision-making and best interests are not included
- controversial as went through Parliament

What's New?

- start at 16 years old (no longer 18)
- no statutory definition of a deprivation of liberty beyond that in Cheshire West 2014 – the ‘acid test’
- deprivations of liberty will have to be authorised in advance by the ‘responsible body’.
 - For NHS hospitals, the responsible body will now be the ‘hospital manager’ not the local authority

To authorise any deprivation of liberty, it needs to be clear that:

- The person lacks the capacity to consent to the care arrangements
 - The person has a mental disorder
 - The arrangements are necessary to prevent harm to the cared-for person, and proportionate to the likelihood and seriousness of that harm.
- ⦿ Authorised by a person from the responsible body but not directly involved in care

What if the person objects?

- Where it is clear, or reasonably suspected, that the person objects to the care arrangements, then a more thorough review of the case must be carried out by an Approved Mental Capacity Professional.

Advanced consent to treatment?

- The Law Commission's proposal to allow advance consent to confinement was not taken forward.
- Lord O'Shaughnessy reiterated the Government's view that it is, in fact, possible to give such advance consent in the context of palliative care.

The Need for IMCAs

- responsible body must check if the person has somebody who can act as an Appropriate Person to represent them
- if not , they should take all reasonable steps to appoint an IMCA to support them through the process
- The appropriate person can request support from an IMCA

Independent Mental Capacity Advocate

The *Ferreira* decision

- Court was not satisfied on the “acid test” in *Cheshire West* that the deceased had not been ‘free to leave’... whilst in ITU
- Court considered that a death of a sedated patient in intensive care is not, in the absence of some special circumstance, a death in ‘state detention’ for the purposes of the 2009 Act.

The key decision for ITU

- In an emergency a deprivation of liberty is authorized if there is a reasonable belief the person lacks capacity to consent and steps are necessary to deliver life-sustaining treatment

L'egality?

- Court of Protection





- a superior court created under the Mental Capacity Act 2005.
- has jurisdiction over the property, financial affairs and personal welfare of people who lack mental capacity to make decisions for themselves.
- evolved from the Office of the Master in Lunacy, renamed the Court of Protection in 1947.

When do we need them in ITU?

- When do we not?
- The court has no greater powers than the patient would have if he were of full capacity
- Equality of the capacitous and incapacitous

Capacity assessment

- ⦿ MCA 1 Capacity
- ⦿ MCA 2 Best Interests
- ⦿ Consent form 4
- ⦿ What to include
 - Operative intervention
 - Tracheostomy
 - CVC
 - Changing the bed sheets?

Section 5 defence

Section 5 defence

- Provides a general defence for acts done in connection with the care or treatment of a person, provided that the actor has taken reasonable steps to establish whether the person concerned lacks capacity in relation to the matter in question and reasonably believes both that the person lacks capacity and that it will be in his best interests for the act to be done

Daily activities of care

- “the vast majority of decisions concerning incapacitated adults are taken informally and collaboratively by individuals or groups of people consulting and working together”
- Reasonableness, practicability and appropriateness.
- “Strict liability has no place here”
- Unless the decision is so serious that the court itself has said it must be taken to court

Major decisions regarding continued care where there is not unanimous agreement?

- If at the end of the medical process, it is apparent that the way forward is finely balanced, or there is a difference of medical opinion, or a lack of agreement to the proposed course of action from those with an interest in the patients welfare, a court application can and should be made.

Egalitié



Treat as One

Bridging the gap between mental and physical healthcare in general hospitals



Improving the quality of healthcare

2017

Egality ; Treat As One

- It is well established that patients with severe mental illness develop co-morbid physical health conditions, like heart disease, about a decade earlier in their life.
- They are more likely to die more than a decade earlier than those without mental health conditions.
- There is inconsistency in how physical health care is delivered to patients with co-existing mental health conditions.



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Equality for all?

- All hospital staff who have interaction with patients, including clerical and security staff, should receive training in mental health conditions in general hospitals.

Normalise asking the questions

- ① Do you have any mental health concerns?
- ① Have you ever been seen or treated by a psychiatrist?
- ① Have you ever been treated for depression, anxiety or psychosis?

The A to G for liaison psychiatry review

○ A-G

- a. What the problem is
- b. The legal status of the patient and their mental capacity
- c. A clear documentation of the mental health risk assessment – immediate and medium term
- d. Whether the patient requires any further risk management e.g. observation level
- e. A management plan including medication or therapeutic intervention
- f. Advice regarding contingencies e.g. if the patient wishes to self-discharge please do this ‘...’
- g. A clear discharge plan in terms of mental health follow-up

Eradicate discriminatory terms such as 'medically fit'

- Alternatives
 - 'fit for assessment',
 - 'fit for review' or
 - 'fit for discharge'

Documentation

- ⦿ mental capacity assessments should be documented in the case notes
- ⦿ regular audits of the quality of the documentation undertaken.

Fraternity

- Well being initiative



- Mental Health First Aiders
 - World Mental Health Day 2019 focused on Suicide prevention.
- Pet therapy

