Welcome to Gloucestershire’s Autumn Edition Mental Capacity Act (MCA) and Safeguarding Adults Newsletter produced jointly by Mental Capacity Act Governance Group (MCAGG) and the Safeguarding Adults Board (SAB).

The aim is to provide relevant and interesting news and information about local and national topics relating to Safeguarding Adults, the Mental Capacity Act and the Deprivation of Liberty Safeguards (DoLS). As you go through the Newsletter you will be able to gain additional information by clicking on the picture or hyperlink to the original report or news item.

This edition is focused on Best Interest decisions when it is established the person lacks capacity with a look at the case of the Wye Valley NHS Trust v Mr B, a powerful case that really demonstrates how empowering the MCA is. As the Judge said in that case, ‘when a person lacks decision-making capacity, it is not an ‘off-switch’ for his rights and freedoms’. With regard to the MCA training feature, the Best interest theme is continued with an overview of the ‘process’ for practitioners looking at the law and principles relating to the assessment of best interests. Safeguarding publicises Gloucestershire’s new Multi Agency Safeguarding Policy & Procedures with highlights to the changes this brings. Looking at domestic abuse, information is given about an updated guide to support practitioners and managers in this difficult area as well as a focus on human trafficking. Locally Gloucestershire Safeguarding Adults Escalation Protocol is featured to assist in a quick resolution when agencies cannot agree a way forward.

Valuing every voice, respecting every right – One Year On

The scope of the MCA is vast – from decisions on where to live, to managing financial affairs to planning ahead for later life. Yet it is clear that awareness and understanding of the MCA is low. The House of Lords Select Committee (HLSC) report on the MCA [March 2014] stressed that as a result, many vulnerable people who may lack capacity are not receiving their rights under the law. The government’s update [to its response to the HLSC] is “Valuing every voice, respecting every right One Year On August 2015”. This document describes the momentum of the MCA work that has taken place over the last year and highlights best practice in local areas, one of which is Gloucestershire as sited below:-
Case Study Three – Gloucestershire Council

‘Gloucestershire has taken a comprehensive and co-ordinated approach to MCA implementation through its MCA Governance Group. A shared “Multi-Agency Policy” guides the actions of statutory health and care organisations but also the police, care providers’ associations, HealthWatch and third sector organisations. Highlights of recent work includes regular newsletters updating professionals on MCA developments, a well-received information leaflet for family members and carers, specific work with GPs on capacity assessments, pod-casts and prompt cards. All materials can be found on an easily navigable website’.

http://www.gloucestershire.gov.uk/extra/mcapolicy

Appointment of the Chair of the National Mental Capacity Forum

The Ministry of Justice (MOJ) and the Department of Health (DH) have announced that Baroness Ilora Finlay has been appointed Chair of the new National Mental Capacity Forum.

Baroness Finlay is a Crossbench Peer, having been made a Life Peer in 2001. She is a consultant in palliative medicine.

She is a frequent public speaker and extensively published author, who has appeared regularly in the media. Baroness Finlay was an active contributor to the legislative stages of the Mental Capacity Act (MCA) and has drafted guidance on the MCA and lectured on it.

MCA Rights Card

The Government has produced a short, pocket-sized “Z card” containing key information about the MCA. You are welcome to reproduce these cards yourself using the MCA Rights Card (design version), providing no alterations are made to the text. Any professional printing company should be able to process these. The design version can be found at the link below. Local printers should be able to reproduce these cards. Please see link below to cards and other SCIE resources.

http://www.scie.org.uk/mca-directory/keygovernmentdocuments.asp
Financial Deputies can reside outside of the UK
DGP Law v DGHP & Ors [2015] EWCOP 58


This case is the first post-MCA case that has considered the appointment of deputies who are resident outside the jurisdiction. It marks a departure from the previous case-law and commonly held view that a person outside the jurisdiction should not be appointed a deputy. It recognises that there have been considerable technological and other advances over the last century or so that make communication and travel faster, cheaper and easier and mean that distance alone is no longer the obstacle to appointment it once was.

The proceedings concerned an elderly lady, Doreen, who suffered from dementia. She had been residing in a care home since May 2013. Her daughter lived in the United States and applied to be appointed as her mother’s deputy. Doreen’s two brothers and a niece had raised objections to the appointment of the daughter on the basis that the court should not appoint anyone as deputy who lived outside the jurisdiction of the court.

Doreen had a modest estate, which amounted to £12,000 held in a current account and cash ISA. She had indicated through the clinical manager of the care home that she wished her daughter to act as her deputy.

The daughter had a good working relationship with those that cared for Doreen and funded her care and she remained fully involved in her mother’s care, even though she lived in the United States.

Mr Justice Lush stated 2 important points:

“In my judgment, the fact that someone lives outside the jurisdiction should not be an impediment to their appointment as a deputy if, in all other respects, they are the most suitable candidate to be appointed and their appointment is in P’s best interests.”

“Moreover in the two decades (from earlier judgements) there have been further technological advances in communications, such as online banking, digital reporting, mobile phone, email and Skype, and cheaper air travel as a result of a proliferation of budget airlines.”

Going forward, the fact that an applicant is out of the jurisdiction will be one of a number of factors to be considered by a judge when deciding on the applicants suitability to be appointed P’s deputy and will not of itself be determinative.
Dementia, rights, and the social model of disability

Published: September 2015

http://www.mentalhealth.org.uk/content/assets/PDF/publications/dementia-rights-policy-discussion.pdf?view=Standard

This paper describes the social model of disability in relation to dementia, as well as national and international law that is informed by it or that it connects with. It goes on to describe tools that can be used to apply the model through policy, practice, service and community development.

Using the social model of disability has implications for the rights of people with dementia under the law, for disability discourse and public policy, and for how dementia is experienced and perceived by people with dementia and their carers, as well as how it is viewed and discussed in public.

Issues from Training

A brief guide to carrying out best interests assessments

In MCA training, professionals, as decision makers, are concerned that they are applying MCA appropriately when “best interest” for the individual is not defined. 39 Essex Chambers have produced a brief guide to carrying out best interest assessments for social workers and those working in front-line clinical settings which gives a brief overview of the law and principles relating to the assessment of best interests. Its focus is on (a) how to apply the MCA 2005 principles when assessing best interests; and (b) how to record your assessment, primarily in the context of health and welfare decisions.1 It is a companion to 39 Essex Chambers’s brief guide to carrying out capacity assessments.

The document cannot take the place of legal advice. In any case of doubt as to the principles or procedures to apply, it is always necessary to consult with your line manager and legal department. It take the place of the MCA Code of Practice, to which professionals must have regard but it does summarise case-law that has been determined since that Code of Practice was written which has made clear how the MCA 2005 is to be applied.

Gloucestershire Mental Capacity Act Governance Group (MCAGG) MCA13 – BEST INTERESTS MEETINGS GUIDANCE

If a best interest meeting is required Gloucestershire have Guidance, the primary purpose of this is to provide chairs of best interests meetings with additional guidance on the process, content and structures of best interests meetings. This Best Interests Guidance builds on an assumption of a general understanding of the Mental Capacity Act. The guidance is an appendix to the multi-agency MCA Policy, Procedure & Guidance. Further information for more detailed information on best interests meetings can be found in the British Psychology Society guidance on determining best interests. It also includes many helpful examples.

http://www.gloucestershire.gov.uk/extra/CHttpHandler.ashx?id=60388&p=0


Judge rejects call to give life-saving treatment against opposition of patient

A Court of Protection judge has ruled that it would be unlawful for an NHS trust to carry out life-saving treatment against the patient’s opposition.

In Wye Valley NHS Trust v B [2015] EWCOP 60 the issue was whether it was lawful for doctors treating Mr B, a 73-year-old man with a severely infected leg, to amputate his foot against his wishes in order to save his life.

Mr B had a long-standing mental illness that deprived him of the capacity to make the decision for himself.

The operation could therefore only be lawfully performed if it was in his best interests, so the NHS Trust applied to the court.

A hearing took place before Mr Justice Peter Jackson on 24 September, with expert evidence given. The judge visited Mr B in hospital the following day. He then received further submissions from the parties.

Refusing to grant the NHS trust’s application, Mr Justice Peter Jackson emphasised that the effect of his decision was not that it would be unlawful to carry out the operation, rather that it would be unlawful to carry it out against Mr B’s opposition.

“Given his views on life and death, it is very unlikely that he will change his mind,” the judge said. “But if he does, there is nothing to prevent the operation taking place, unless it is by then too late.”
Mr Justice Peter Jackson said that, having considered all of the evidence and the parties’ submissions, he had reached the clear conclusion that an enforced amputation would not be in Mr B’s best interests.

“Mr B has had a hard life. Through no fault of his own, he has suffered in his mental health for half a century. He is a sociable man who has experienced repeated losses so that he has become isolated. He has no next of kin. No one has ever visited him in hospital and no one ever will,” the judge said.

“Yet he is a proud man who sees no reason to prefer the views of others to his own. His religious beliefs are deeply meaningful to him and do not deserve to be described as delusions: they are his faith and they are an intrinsic part of who he is. I would not define Mr B by reference to his mental illness or his religious beliefs. Rather, his core quality is his ‘fierce independence’, and it is this that is now, as he sees it, under attack.

“Mr B is on any view in the later stages of his life. His fortitude in the face of death, however he has come by it, would be the envy of many people in better mental health. He has gained the respect of those who are currently nursing him.”

The judge said he was “quite sure that it would not be in Mr B’s best interests to take away his little remaining independence and dignity in order to replace it with a future for which he understandably has no appetite and which could only be achieved after a traumatic and uncertain struggle that he and no one else would have to endure.

“There is a difference between fighting on someone’s behalf and just fighting them. Enforcing treatment in this case would surely be the latter.”

Mr Justice Peter Jackson said the application had been rightly brought, but should be dismissed.

David Lock QC of Landmark Chambers appeared for Mr B, instructed by the Official Solicitor.

Lock said: “The case has considerable legal significance because, on the particular facts, the Judge did not apply a presumption in favour of prolonging life but instead upheld the wishes and feelings of a person who lacked capacity.

“In previous cases Judges have almost invariably approved life-saving medical treatment despite the opposition of a patient who lacked capacity. In this case Peter Jackson J decided that it would not be in Mr B’s best interests to force him to have surgery against his wishes because his wishes should be respected.”

Vikram Sachdeva from 39 Essex Chambers appeared for the NHS Trust, which is understood to be considering whether to take the case to the Court of Appeal.
Legal Update

Cheshire West will not be reconsidered by the Supreme Court

Deprivation of liberty and the end of the Rochdale saga

Article 5 ECHR

KW (by her litigation friend) v Rochdale MBC [2015] EWCA Civ 1054

Summary

This is the second appeal to the Court of Appeal from a decision of Mostyn J in this long-running Court of Protection matter. In his first decision, the judge questioned the reasoning and conclusions of the majority in Cheshire West. That led to an appeal that was allowed by consent but without a judgment. Mostyn J duly listed the matter for consideration of the effect of the consent order and further directions in relation to the review of KW's deprivation of liberty. In a reserved judgment handed down on 13 March 2015, Mostyn J questioned whether the Court of Appeal had decided whether KW was deprived of her liberty, thereby leaving her in a state of legal "limbo", concluded that the consent order was made ultra vires and that KW was only entitled to a court review if she were to be subjected to “… bodily restraint comparable to that which obtained in P v Cheshire West and Cheshire Council...”.

Comment

Whilst this case is mainly of interest in relation to the Court of Appeal’s powers to set aside or vary an order of a lower court without determining the merits, it also decisively brings to an end the attempts by Mostyn J (at least within these proceedings) to have Cheshire West reconsidered by the Supreme Court. It is also of interest to the extent that the Court of Appeal considered that the use of the phrase “to the extent to which P is deprived of his liberty it is in his best interests and lawful” contained with the ‘Re X model order’ should be replaced with a more affirmative statement that “P is deprived of his liberty but the same is in his best interests and is lawful”.

http://www.39essex.com/content/wp-content/uploads/2015/11/MC-Newsletter-November-2015-Compendium.pdf?utm_source=Newsletters&utm_campaign=c07a0c5a6a-MCL+Nov+2015&utm_medium=email&utm_term=0_0dd23690b2-c07a0c5a6a-91550593
NEW: Multi Agency Safeguarding Policy & Procedures for Gloucestershire

The Gloucestershire Safeguarding Adults Board have updated their Safeguarding policy & procedures, they take into account some changes required by the Care Act 2014

What are the changes?

The key areas to note are:

New duty to make enquiries
The local authority has a responsibility to ensure enquiries are made where safeguarding criteria below are met:
• if a person has care and support needs and
• is experiencing, or at risk of abuse or neglect and...
• as a result of care and support needs, is unable to protect themselves from abuse, neglect or the risk of it.

An enquiry is the action taken or instigated by the local authority in response to a concern that abuse or neglect may be taking place.

Any enquiry should establish whether any action needs to be taken to prevent or stop abuse and neglect and by whom. It could range from a conversation with the adult, risk management action right through to a much more formal multi-agency course of action, involving strategy, enquiry and protection planning.

Once enquiries are completed, the local authority should then determine with the adult what, if any, further action is necessary and acceptable.

Great emphasis on outcomes
The new policy gives even higher priority than before to the key messages of Making Safeguarding Personal, about how we might respond in safeguarding situations in a way that improves involvement, choice and control as well as improving quality of life, wellbeing and safety.

Other types of abuse:
The Care Act acknowledges the wider aspects of adult safeguarding and makes links with self-neglect, human trafficking /modern slavery and domestic abuse.

Safeguarding will include some cases of the above.

However, it is important to note that it will only be if the criteria set out at Care Act 2014 section 42.1 are met (i.e. the person must have needs for care and support) before the issue is considered as a safeguarding concern.
A guide to support practitioners and manager

Adult safeguarding and domestic abuse: a guide to support practitioners and managers: second edition

The Local Government Association (LGA) & Association of Directors of Social Services (ADASS) have published the above guide. It doesn’t replace any local protocols but is useful as a quick overview. It aims to help staff give better informed and more effective support to people who need an adult safeguarding service because of domestic abuse. It addresses situations where an adult who has care and support needs is being harmed or abused by an intimate partner or close family member in a way which could also be defined as domestic abuse. It does not seek to replace existing safeguarding procedures and it is anticipated that it will be read and used in the context of local procedures and protocols.

Modern slavery – spot the signs

In March 2015 the Modern Slavery Bill gained Royal Assent becoming only the second piece of anti-slavery legislation in 200 years. The Act gives law enforcement the tools to fight modern slavery, ensure perpetrators can receive suitably severe punishments for these appalling crimes and enhance support and protection for victims.

Slavery and human trafficking can take many forms, ranging from the sexual exploitation of adults and children, to forced labour and domestic servitude. Sadly, it is far more widespread in the UK and other developed nations than many of us realise. One of the ways of reporting it is to telephone the Modern Slavery Helpline on 0800 0121 700. Alternatively, you can call Gloucestershire Police on 101.

Child sexual exploitation:
The repercussions from child sexual exploitation reverberate into adulthood.

The Jay report was published in September 2014. Over 1,400 children were sexually exploited over a 16-year period in Rotherham and has been the subject of worldwide attention. Rotherham is not an isolated case: Rochdale, Oxford, Derby and Reading have all hit the headlines following prosecutions for child sexual exploitation (CSE).

But there are further implications. These children grow up; they reach the age of 18 when they are no longer the responsibility of children’s services. Partner agencies (statutory and voluntary) are encouraged to report information to the police if they perceive that the information may relate to potential issues concerning sexual exploitation of children or adults.
SCIE’S FLIM: RAISING CONCERNS – WHISTLEBLOWING

Social Care Institute for Excellence (SCIE) encourages organisations to build an open culture, where raising concerns is seen as part of normal working practice, rather than developing into a situation where staff feel they need to become a whistleblower in order for action to be taken. This means that organisations need to actively develop a working environment where staff, carers, family and service users feel able to raise concerns and be listened to. GSAB has a whistle blowing protocol which can be found at

SCIE’s recent film on the subject aims to help organisations feel confident in hearing concerns and taking action, seeing it as a key part of successful and positive practice. Blowing the whistle is not easy and needs careful consideration, but it is a vital part of safeguarding for adults in health and social care services. This resource can be useful to managers, health and social care staff, housing staff, social workers, care providers, care staff, people who use services.

Gloucestershire Safeguarding Adults Escalation Protocol

Generally there is a good working relationship between agencies, but occasionally there will be a difference of professional views. Staff across all partner agencies should be aware of the Gloucestershire Safeguarding Adults Board Escalation Protocol. The aim of this document is to inform the quick resolution of a case where an adult may be at risk of abuse or neglect and agencies cannot agree a way forward.

To view a copy of the protocol go to: Escalation Protocol

An update from the last Board meeting

Under the Care Act 2014, every Local Authority in England must have a Safeguarding Adults Board (SAB) a multi-agency partnership set-up to prevent abuse and neglect of adults. It is made up of different voluntary and statutory organisations involved in protecting adults, including Social Services, Police, and the NHS.

The main purpose of the board is to make sure that arrangements are in place to protect adults who may be experiencing abuse or neglect and are unable to protect themselves.

The SAB’s legal duties include making a strategic plan for what the board and its members are going to do, publishing an annual report that outlines what has been done and what is planned, and conducting safeguarding adult reviews. Safeguarding adult reviews are formal enquiries in cases where someone has died or been seriously harmed,
to make sure lessons are learned for the future. The SAB must lead adult safeguarding across its locality and oversee and co-ordinate the effectiveness of safeguarding work, promoting and providing scrutiny for multi-agency practice.

The Gloucestershire SAB meets four times a year and is chaired by an independent chairman, Paul Yeatman. The last Board meeting was in August 2015.

**Safeguarding Adult Case Reviews**

**Adult ‘R’**
The Board considered the key recommendations from the Review into the circumstances around ‘R’s self neglect and an action plan has been drafted. The report is available on the GSAB website.  
*Safeguarding Adult Review – Learning Process*

**‘Peggy’**
An update was presented to board members; the recommendations have been completed. The full report is available on the GSAB website.  
*SILP Review*

**Sub Groups**
There are 6 sub groups. The leads of the sub-groups gave an update on the work they have currently been undertaking.

- Safeguarding Adult Review
- Quality Assurance
- Policy & Workforce Development
- Communication and Engagement
- Fire Safety Development
- Deprivation of Liberty Safeguards and Mental Capacity Act

**Adult social care inspections are changing**
The Care Quality Commission (CQC) has introduced a new rating system for adult social care services including care homes and community adult social care.

Specialist teams, including trained members of the public who are known as ‘experts by experience’, inspect services and these inspections are unannounced. The inspections focus on what matters most to the people who use them.

They look at how safe, caring, effective and responsive they are in meeting the needs of the people using the services.
Keep warm, keep well
Advice from NHS England

Cold homes have a significant impact on people’s health. One of the best ways of keeping yourself well during winter is to stay warm.

• If you have reduced mobility, are 65 or over, or have a health condition such as heart or lung disease, you should heat your home to at least 18°C. It’s a good idea to keep your bedroom at this temperature all night if you can. During the day you may prefer your living room to be slightly warmer. Make sure you wear enough clothes to stay warm.

• If you’re under 65 and healthy and active, you can safely have your house cooler than 18°C, if you’re comfortable.

• You can also use a hot water bottle or electric blanket (but not both at the same time) to keep warm while you’re in bed.

Check on older neighbours or relatives to make sure they’re safe and well. Make sure they’re warm enough, especially at night, and have stocks of food and medicines so they don’t need to go out during very cold weather.

Reporting Abuse

If you believe that someone is being abused contact Adult Social Care or the Police. Contact as soon as possible:

In an emergency: 999
or Gloucestershire Police: 101
or Gloucestershire Adult Help Desk: 01452 426868
For more safeguarding information: www.gloucestershire.gov.uk/gsab
In all our Newsletters we hope to dedicate our final section to providing useful information for people who use Health and Social Care Services and their families.

As this Newsletter is focused on providing people with information on Adult Safeguarding and the Mental Capacity Act, we thought it would be useful to offer links to some resources that clearly explain what these areas of Policy and Government Legislation are all about.

For local information about Adult Safeguarding in Gloucestershire you can visit our website by clicking here on the link:

www.gloucestershire.gov.uk/gsab

This main page has sections with all the information you need to understand Adult Safeguarding, and also has the numbers to call should you expect that an adult you know or care for is being abused.

There are many other resources out there that also explain how you can make sure you are keeping your relative or loved one safe.

www.gloucestershire.gov.uk/gsab/CHttpHandler.ashx?id=47742&p=0

The Safeguarding Adults Board wish for the content and future development of the Safeguarding Adults and Mental Capacity Act Newsletter to be led by the views and voices of Safeguarding Practitioners, Health and Social Care Professionals, Provider Services, the voluntary and community sector and people who use services and their families.

So if you have information or work you wish to share, ideas for future articles, suggestions for improving the newsletter or questions you wish to pose you can do this by emailing:

rhiannon.mainwaring@gloucestershire.gov.uk

We would also ask that all professionals and providers share this Newsletter with all the people and families they support.

Information on Safeguarding Adults, Mental Capacity Act and Deprivation of Liberty Safeguards training can be found via this link:

www.gloucestershire.gov.uk/gsab/CHttpHandler.ashx?id=47742&p=0

The newsletter is produced jointly by Rhiannon Mainwaring, MCA Governance Manager and Ann Gribble, GSAB Business and Project Officer. In this edition we would like to give thanks to Simon Thomason for his contribution.