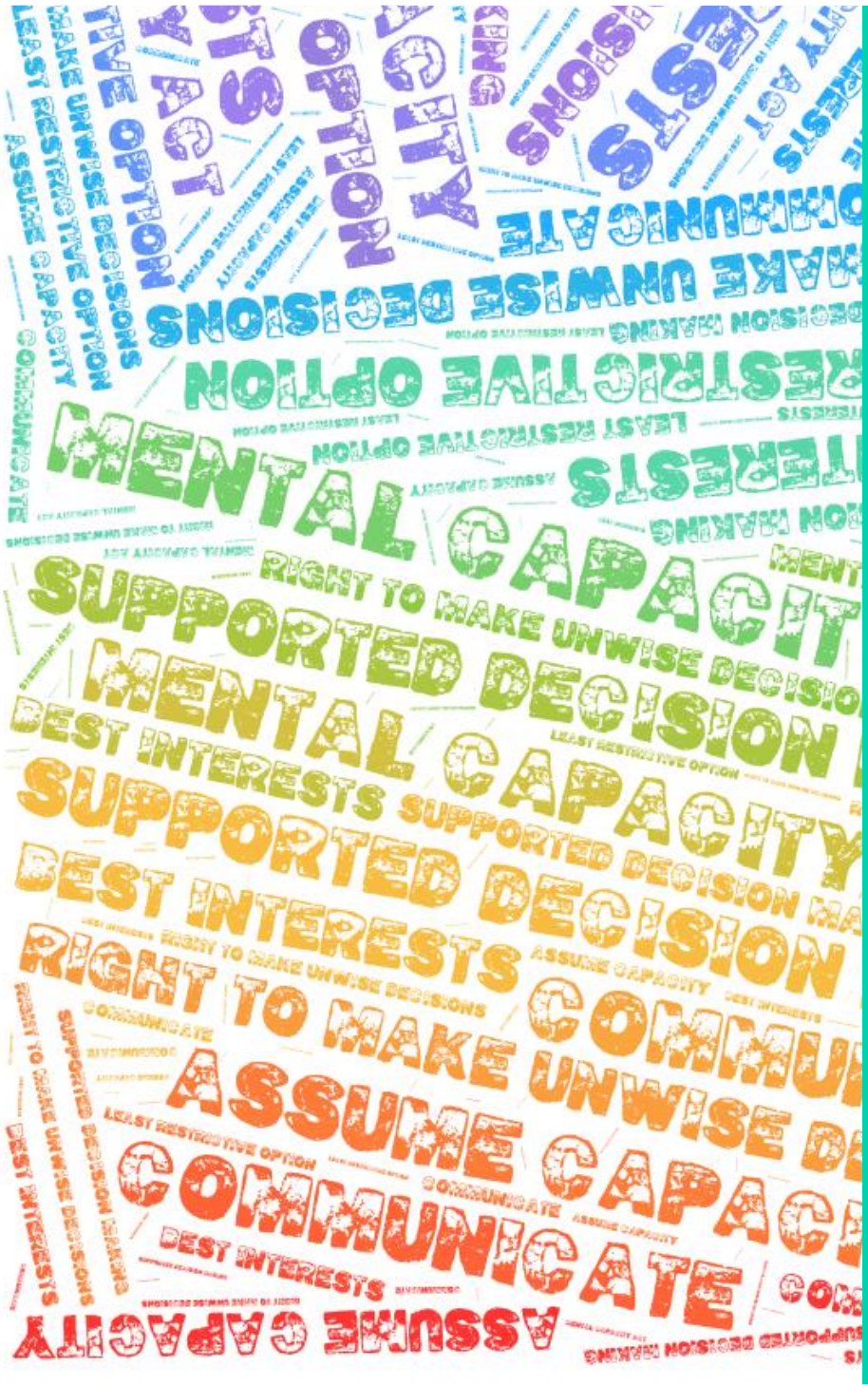
August 2015

Mental Capacity Act 2005 - Valuing every voice, respecting every right: One Year On

Department of Health



It's about seeing beyond the condition; getting to know who they are and treating them like a person.

An older lady we worked with used to become upset and ask for her mum. One of the carers asked "What would your mum do if she was here?" She answered "Buy me some new shoes."

From this simple question, the carer discovered that the lady's shoes were hurting her feet and this was the real source of her upset.

Small things like this are at the heart of 'person centred care' and the Mental Capacity Act.

- Brenda Walker and Kim Hughes, Lincolnshire 'Making a difference in dementia care' programme.

1. Ministerial foreword

1.1 The Mental Capacity Act (MCA) is held in great esteem by many. However – as the House of Lords Select Committee noted in March 2014 – this is often not translated to widespread awareness and understanding across the health and care system. As a result, thousands of individuals who may lack mental capacity are not receiving their legal rights and the person-centred care the MCA supports.

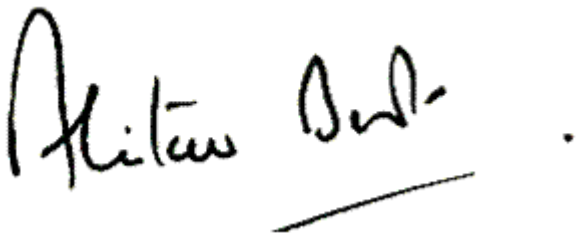
1.2 My Department and our national partners are determined to do what we can to help put this right. To enable front-line professionals, local commissioners and local provider organisations to implement the MCA to its full potential. Success in this endeavour will advance our efforts to bring high quality care to those who have dementia, learning disabilities and other mental health conditions.

1.3 Over the last year, we have made good initial progress. However, there still remains a great deal to be done. As such, my Department and the Ministry of Justice are establishing a new National Mental Capacity Forum.

1.4 Under the leadership of an independent Chair, this new Forum will bring together the fullest range of partners with a role to play in MCA implementation. It will identify and progress new actions to realise real benefits for service users. It will build on and spread the best practice that already exists in some parts of the country.

1.5 Please accept my thanks and admiration for the work you do. The last year, especially with the upsurge in applications under the Deprivation of Liberty Safeguards, has been exceptionally busy. It is a credit to your professionalism and a reflection of the passion you have for supporting those who lack capacity that more and more people are waking up to the benefits that good MCA practice can bring.

1.6 This document describes the work that has taken place over the last year and highlights trailblazing work in local areas. I hope you find it useful. Please do get involved in the work of the new National Mental Capacity Forum. We look forward to working with you to realise our shared ambition.



Rt. Hon Alastair Burt MP
Minister of State for Community and Social Care

Contents

We are always keen to hear examples of best practice implementation of the MCA. If you would like to share your experiences with us, or want more information on this report, please get in touch via:

Twitter - @NiallatDH

Email - niall.fry@dh.gsi.gov.uk

2. Background

2.1 In March 2014, the House of Lords Select Committee on the Mental Capacity Act (MCA) published the report of its post-legislative scrutiny.

2.2 The report praised the MCA as "*visionary*" legislation but stated that its implementation has "*suffered from a lack of awareness and understanding….prevailing cultures of paternalism and risk aversion*" and as a result, the "*rights conferred by the Act have not been widely realised*". [1]

2.3 In its response of June 2014, the Government endorsed this headline finding. Working with our partners, we have since been taking forward the work outlined in "*Valuing every voice, respecting every right*"[2]. This document provides an update on our activities.

3. Overview

3.1 The challenge we have set is considerable. It involves not just the task of raising the awareness and understanding of the MCA itself, but of driving a culture change where individuals who lack capacity are treated with the dignity and respect all of us expect and where they are supported to live the life they choose.

3.2 The MCA is not the only tool we have to drive this change. It is the shared aim of much of the Government's activity; from our work on dementia and learning disability, to our work boosting the use of Lasting Powers of Attorney. However, in the MCA we do have clear legislation that, properly applied, can contribute greatly to our common ambition.

3.3 On the specific work the Government and our partners committed to in *Valuing every voice* we believe we have made solid progress. We are not complacent – there is much more to be done. The continuing engagement of our national and – vitally – our local partners is a pre-requisite for further progress. Throughout this document, attention is drawn to local best practice on MCA implementation.

4. National governance

4.1 The Department of Health's MCA Steering Group and the Ministry of Justice's MCA Strategic Group have played a key role in co-ordinating our activities over the last year. However, individuals who lack capacity do not confine themselves simply to the parts of the system led either by the Department of Health (DH) or the Ministry of Justice (MoJ).

---

[1] House of Lords report: http://www.publications.parliament.uk/pa/ld201314/ldselect/ldmentalcap/139/13902.htm

[2] Valuing every voice: https://www.gov.uk/government/publications/mental-capacity-act-government-response-to-the-house-of-lords-select-committee-report

4.2 To ensure we build an integrated programme of work, greater than the sum of its parts, we are merging these two groups to form the MCA Implementation Group. This group will comprise government departments and the bodies that report directly to them. It will be accountable to Ministers and will lead our continuing MCA programme.

4.3 Government has a clear leadership role in MCA implementation. But alone we can do little. It is essential that the wide range of organisations and stakeholders with a role to play in bringing the benefits of the Act to individuals come together, identify shared actions and press on with delivering these.

4.4 This is the role of the new National Mental Capacity Forum which will meet for the first time this autumn. The Government has conducted an open recruitment process and the new independent chair of this forum will be announced imminently.

4.5 Under the leadership of the new Chair – and with the proactive engagement of all those with a role to play in MCA implementation – we have high hopes for the potential of the Forum. We also expect that it will considerably improve communication between the national level and the many regional and local groups charged with MCA implementation.

Case Study One – Nottingham MCA Forum

The "Nottingham MCA Forum" brings together social workers, care homes, health professionals, charities, legal and financial advisors and the emergency services. The Forum offers a place where best practice can be shared and the challenges of realising the MCA's aims for real people can be jointly addressed and overcome. It also provides a way in which planned upcoming activities can be advertised so that partners can become involved at an early stage and maximise the impact of such work.

5. Monitoring progress

5.1 Measuring the impact of our actions on improving MCA implementation is key if we are to determine what works and where our future efforts should be targeted. Balanced against this is the need to minimise the requests for information placed on local teams.

5.2 The Government has a variety of indicators at its disposal. Official statistics, for example, continue to show a growing rise in the use of Independent Mental Capacity Advocates (IMCAs) and Lasting Powers of Attorney (LPAs). Inspection reports from the Care Quality Commission (CQC) provide a detailed review of individual providers' MCA compliance. These appear to show a clear link between providers rated inadequate overall and providers that fail to implement the basics of the MCA – demonstrative of the core importance of the Act.

5.3 Most insightful are the qualitative reports we receive from our local partners either at conferences and visits or through correspondence and online. The new National Mental

Capacity Forum will provide an even greater means of gathering an accurate picture of implementation across the country.

5.4 The reports we have collected over the last year support our view that awareness and understanding of the MCA has improved. But there is still a long way to go and considerable regional variation. We hope that the new National Forum will help spread best practice to those areas that continue to struggle.

Case Study Two – Local Monitoring

North Yorkshire County Council commissioned an independent audit of all MCA-related systems and practices and is using the resulting recommendations as a basis for action over the coming year.

The MCA lead at University College London Hospital provides regular updates to the Trust Board on progress with the MCA. Records of staff attendance at MCA-training sessions, ad-hoc audits of patient consent forms, monitoring of occurrence of supported decision making; all are used to understand compliance.

NHS England (London Region) commissioned the Mental Health Foundation to undertake an in depth MCA audit (interviews, case sampling, review of procedures) of nine offender health teams in London. The outcome report led to the strengthening of their assurance frameworks and MCA elements with team development days.

5.5 The Local Government Association (LGA) and the Association of Directors of Adult Social Services (ADASS) have developed a valuable "Improvement Tool" for the MCA and DoLS[3].

5.6 This tool is used as a basis both for self-assessment and local authority peer challenges to assist local partners in assessing MCA compliance and identifying further areas for improvement. Three such peer challenges have been conducted so far and a number of local authorities are utilising the tool for self-assessment. The Improvement Tool is equally applicable for health partners. Over the next year, a multi-agency network will lead on rolling out these resources, promote innovative practice and consider how best to monitor impacts.

5.7 Public Health England (PHE) is focusing on enabling access to monitoring information on the implementation of the MCA within local areas. This information will inform local Directors of Public Health in their discussions at Health and Wellbeing Boards.

[3] ADSS/ LGA MCA Improvement Tool: http://www.adass.org.uk/mental-capacity-act-2015/

6. Increasing awareness and implementation

6.1 Raising awareness of the MCA is everyone's responsibility. Every professional who works with individuals who may lack capacity – in effect every professional – should regard it as one of their basic duties to familiarise themselves with the Act.

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

6.2 On behalf of Government, the Social Care Institute of Excellence (SCIE) conducted a national call for MCA materials. These were reviewed by an expert panel and placed on a new online "MCA Directory"[4]. This is now the "go-to place" for professionals who wish to understand more about the MCA and find useful tools to aid their practice.

6.3 Over the next year, SCIE will continue to develop the MCA Directory including a discussion forum, a news feature and will collaborate with 39 Essex Street Chambers to produce short case law briefings for non-legal professionals.

Case Study Four – Newcastle and Gateshead CCG

NHS Newcastle and Gateshead Clinical Commissioning Group (CCG) have pursued a multi-faceted MCA project. Presentations have been made to carers' forums, videos on "planning ahead" put on TVs in hospital waiting rooms, a regular newsletter on upcoming MCA activity and best practice circulated. "MCA Champions" take the message of the MCA out to fellow professionals, academic qualifications have been developed with Northumbria University, and bespoke awareness sessions run in GP surgeries.

[4] MCA Directory: http://www.scie.org.uk/mca-directory/

6.4 In order to deliver information on the basics of the MCA to front-line professionals and carers, the Government has produced a pocket-sized "MCA Rights Card". This is available for download from the MCA Directory and is proving popular.[5]

6.5 The Academy of Medical Royal Colleges is leading a working group of multiple royal colleges to map and disseminate MCA activity. The proactive and prominent support of the royal colleges will be key in supporting a positive attitudinal change towards the MCA within the clinical community. Over the coming year, this group will be working to ensure all members' on-line resources contain basic MCA information and direct them to the more comprehensive materials available on the MCA Directory.

Case Study Five – Carers

Providing information on the MCA to carers and family members will empower them to help the people they support realise the benefits of the Act. The Radford Care Group is a local community charity based in the Nottingham area. The Group has developed a programme of MCA information sessions for carers. Whole families have taken part in these and feedback has shown that carers felt more confident and (together with the individual) had a greater sense of control and desire to plan ahead.

Elsewhere, NHS England (London) commissioned four workshops from the National Carers Forum for family carers. 125 family carers attended to learn more about decision-making, advance decision-making and the Mental Capacity Act (MCA)

7. Digital

7.1 The more accessible and user-friendly MCA support materials are, the more likely it is that they will improve MCA implementation.

7.2 As mentioned above, the new on-line MCA Directory is the go-to place to access MCA materials. In addition, SCIE has developed a number of MCA information videos and is currently working on a video for service-users[6].

7.3 NHS England has developed an MCA "app" to aid professionals' decision-making called "Deciding Right". See http://www.nescn.nhs.uk/common-themes/deciding-right/.

7.4 NHS Nottingham CCG has also developed an app on the MCA – available for free online. As has Imperial College Healthcare NHS Trust: "Mental Health Decision Pathways".

7.5 "Assess Right" is an excellent resource developed by NHS Aylesbury Vale CCG and NHS Chiltern CCG in collaboration with Buckinghamshire County Council and Buckinghamshire New University Service User & Carer Forum. It provides an online

[5] MCA Rights Card: http://www.scie.org.uk/mca-directory/keygovernmentdocuments.asp
[6] SCIE MCA videos: http://www.scie.org.uk/socialcaretv/topic.asp?t=mentalcapacity

guide and toolkit for capacity assessments and has been designed for use by service users as well as professionals. http://www.assessright.co.uk/

8. Professional training

8.1 Training is critical to supporting MCA implementation. Improving the skills and capability of health professionals to respond to the needs of people who may lack capacity is an explicit part of the Government's mandate for Health Education England (HEE).

8.2 HEE, in partnership with the Academy of Medical Royal Colleges, has been successful in ensuring the MCA is now part of the Foundation Programme Curriculum for doctors[7]. In the years to come, the Government believes this will have a significant impact in driving MCA-compliant practice. Over the next year, HEE will work closely with the Academy to review current curriculum content across medical royal colleges, updating this as necessary.

8.3 Together with multiple partners, HEE has also developed the Dementia Core Skills and Knowledge Framework[8]. The Framework will guide the commissioning of education and training of staff across the whole patient pathway. The MCA is included as a key subject area in the framework.

Case Study Six – MCA-DoLS London Network

The MCA-DoLS London Network (part of ADASS London) consists of MCA-DoLS leads from boroughs across Greater London. The network has taken a joint approach to identifying training requirements and used this collective influence to secure greater, fit-for-purpose and more cost effective training provision for their staff.

8.4 Progress has also been made in social care. The Chief Social Worker for Adults has launched a new "*Knowledge and Skills Statement*" that sets out expected key skills and knowledge at the end of the Assessed and Supported Year in Employment[9]. The MCA is a core part of this statement that acknowledges that "*social workers have a key leadership role in modelling to other professional proper application of the MCA*".

8.5 A CPD (Continuing Professional Development) guide around the MCA together with an extensive set of learning materials for adult social care workers has been produced and will be published in autumn 2015 by the Department of Health.

[7] Foundation Programme Curriculum: http://www.foundationprogramme.nhs.uk/pages/home/curriculum-and-assessment/curriculum2012

[8] Dementia Core Skills and Knowledge Framework: http://southwest.hee.nhs.uk/ourwork/dementia/framework/

[9] Adult Social Workers Knowledge & Skills Statement: https://lynromeo.blog.gov.uk/2015/03/12/knowledge-is-the-power-to-do-good/

8.6 Finally, the Care Certificate developed by Skills for Care, Skills for Health and HEE sets out standards for the non-regulated health and care workforce. The MCA is specifically incorporated into the Care Certificate – recognition of its clear contribution to compassionate high-quality care[10].

Case Study Seven – Bracknell Forest Council

Bracknell Forest Council, together with its local Clinical Commissioning Group, has successfully bid for NHS England innovation funding to develop and deliver a train-the-trainer programme to support greater understanding of the MCA across the health and care system.

9. System design and partnership

9.1 Aligning system levers to ensure these support greater MCA implementation is a core responsibility for the Government and our national partners.

9.2 NHS England has amended the standard NHS contract that commissioners sign with NHS providers to include reference to the MCA[11]. NHS England has also developed commissioning guidance for Clinical Commissioning Groups on the MCA[12] and eight national "commissioning for compliance" workshops have been delivered to highlight the importance of this work.

9.3 Meanwhile, the LGA and ADASS have developed a guide for commissioning MCA-compliant adult social care: "*Putting the MCA principles at the heart of adult social care commissioning*"[13]. The purpose of this guidance is to embed the MCA specifically throughout the commissioning process, by the promotion of an individual's right to autonomy and choice balanced with protection where necessary. The guidance and the sector-led programme to support Care Act implementation highlights that adherence to MCA-compliant commissioning will promote the wellbeing principle of the Care Act

[10] Care Certificate: http://www.skillsforcare.org.uk/Standards/Care-Certificate/Care-Certificate.aspx
[11] NHS Standard Contract: http://www.england.nhs.uk/nhs-standard-contract/15-16/
[12] NHS MCA Commissioning Guidance: http://www.england.nhs.uk/resources/resources-for-ccgs/#safe
[13] Putting the MCA principles at the heart of adult social care commissioning: http://www.adass.org.uk/putting-the-mental-capacity-act-principles-at-the-heart/

9.4 In March 2014, the Chief Social Worker for Adults hosted a national MCA seminar, that brought social workers, together with representatives of other professions that have a key role to play in MCA implementation (health professionals, high street legal and financial services, police, charities), to examine the challenges of MCA implementation with a view to identifying joint work to achieve this. A key output was the need for local teams to map services available to those who may lack capacity to ensure partners can signpost towards them[14].

Case Study Nine – Birmingham, Sandwell and Solihull CCG's

A collaboration of Clinical Commissioning Groups (CCGs) across Birmingham, Sandwell and Solihull has launched a multi-faceted MCA Project. With a strong focus on public engagement across this diverse geographical area, the project has consulted with over 300 citizens. The partnership extends through public and private care and support providers, emergency services and community initiatives.

The collaboration has delivered a range of resources including for family members and friends acting as representatives for people who lack capacity, prompt cards, information videos, easy read fact sheets and fun quizzes, games and scenarios for a range of different learning styles. These enable people to feel the impact of the legislation rather than simply to hear about it.
http://bhamsouthcentralccg.nhs.uk/2012-02-08-14-59-22/mental-capacity-act

9.5 Health and Wellbeing Boards are a key focus for developing a shared local approach to the challenge of improving MCA implementation. Over the last year, Public Health England (PHE) has been working via Directors of Public Health to raise the importance of the MCA at Health and Wellbeing Boards discussions.

Case Study Eight – Wakefield Council

Wakefield Council is pursuing active engagement with partner organisations. Regular monthly meetings are held with participation from the ambulance service, police, local hospitals, and housing partners. These meetings address a wide mental health agenda but the MCA is explicitly included.

Torbay and Southern Devon Health and Care NHS Trust have been working to embed the MCA in multidisciplinary teams. This approach puts strong emphasis on the role of social work in supporting NHS professionals to apply the MCA, particularly in more complex cases.

9.6 PHE will be writing to all Directors of Public Health in autumn 2015 to communicate the results of recent evidence gathering work and to provide them with information on proven best practice as to how Health and Wellbeing Boards can realise their potential in boosting MCA implementation.

[14] Outputs of the Chief Social Worker's MCA Seminar: http://www.scie.org.uk/mca-directory/keygovernmentdocuments.asp

10. System regulation

10.1 Appropriate regulation and inspection of health and care providers is a vital part of our approach to improving MCA implementation.

10.2 The CQC is committed to embedding the MCA into the way it operates, improving the knowledge and confidence of inspectors, and encouraging them to support all the services CQC regulates to use confident, human rights-based, MCA-compliant practice. A crucial part of this is a Key Line of Enquiry (KLOE) about consent, which ensures that all inspections, where relevant, include an assessment of how providers are using the MCA to promote and protect the rights of people using their services[15]. If a provider is found to be non-compliant with the MCA, enforcement action can be taken under Regulation 9: Person-centred care, Regulation 11: Need for consent, or Regulation 13: Safeguarding service users from abuse and improper treatment, of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Case Study Ten – Extract from a CQC Inspection Report

"We saw that staff sought people's consent before they provided care and support. One staff member said, "Some people don't have the capacity to make big decisions about their care, but we always offer them choices and respect their decisions for the smaller parts of care, like; what clothes to wear and what to drink." We saw that people who had a DoLS authorisation in place were supported to leave the home with the right level support to keep them safe. For example, during our inspection, we saw that two people who had a DoLS authorisation in place to prevent them from leaving the service unsupervised were supported to go on a trip to a local tourist attraction of their choice."

The CQC inspection team recognised the excellent practice in how staff in the care home supported decision-making, and rated them outstanding both for the effectiveness of the service provided, and for the service overall.

10.3 The changes to CQC's inspection regime have been supported by significant training and revised guidance. Over 600 CQC operational staff have received MCA training and over 100 CQC inspectors have undergone advanced training. MCA training is also now part of standard induction training for all staff. CQC's priority for the next year is to continue to improve how the Act including DoLS is inspected, to more consistently capture accurate information about providers' performance.

[15] CQC Provider Handbooks: http://www.cqc.org.uk/content/provider-handbooks

11. Care planning

11.1 The MCA should be at the heart of care assessment and planning for those who may lack capacity. So much flows from this that it is essential MCA principles are properly integrated.

Case Study Eleven – Shropshire Council

Best practice care planning puts the individual's voice at the heart of the discussion. As such, it is greatly beneficial if the individual understands their rights under the law. Shropshire Council, working with Taking Part Advocacy, have designed and piloted an innovative course that aims to provide individuals with learning disabilities with the same information on the MCA that is provided to their carers. The pilot course was very well received by participants, one of whom commented: "*I find it hard to get the language and different meanings of MCA…… this exercise worked well for me…. I found it neat and interesting and easy to learn*". The course is now been rolled out to other locations.

11.2 The Social Care Institute of Excellence (SCIE) has produced a detailed report for commissioners and care providers on how to embed the MCA into care and support planning[16]. This resource is supported by on-line films and on-line care planning materials developed by the Rix Centre at the University of East London[17].

11.3 In April 2015, the Care Act came into force. The Act places an individual's wellbeing at the heart of the social care system. The Care Act reinforces the person-centred principles of the MCA and represents a real opportunity to ensure care is planned for those who may lack capacity in a way that supports them to live the lives they wish to lead.

12. Office of the Public Guardian

12. 1 The Office of the Public Guardian (OPG) is the Government Agency responsible for registering lasting and enduring powers of attorney, supervising Court of Protection appointed deputies and safeguarding adults at risk that fall within its jurisdiction in England and Wales. The MCA underpins OPG's work. To contact OPG, you can email: customerservices@publicguardian.gsi.gov.uk

12.2 Many local authorities act as deputies for service-users who have lost mental capacity. OPG has just published standards for public authority deputies, following the completion of its fundamental review of deputy supervision.[18]

[16] SCIE Report: MCA and Care Planning: http://www.scie.org.uk/publications/reports/70-mental-capacity-act-and-care-planning/index.asp

[17] Rix Centre Care Planning Materials: http://www.scie.org.uk/socialcaretv/video-player.asp?v=using-the-key-principles-in-care-planning
https://www.klikin.eu/page/view/cat/22035

[18] OPG Deputy Standards: www.gov.uk/government/publications/office-of-the-public-guardian-deputy-standards

12.3 More and more people are registering a lasting power of attorney (LPA), which is very positive news, not least because attorneys must act within the MCA. However, OPG is working hard to achieve more customer diversity and to encourage people to consider making an LPA earlier in life. In 2015, following customer feedback, OPG launched new LPA forms. New guidance for attorneys has been published too. More information, as well as the digital tool and guidance for creating an LPA can be found on GOV.UK.[19]

Case Study Twelve – Hull Council LPA Champion

Hull City Council has trail-blazed an "LPA Champion" pilot with Office of the Public Guardian. This initiative introduces the benefits of LPA creation and registration directly to council service-users. This has mutual benefits for all concerned. For instance, less council time could be lost resolving complex family issues involving vulnerable adults, when an attorney is already in place. The service-user is empowered, by nominating the person(s) they trust to make best-interest decisions should they lose the capacity to do so themselves. Hull City Council sign-posts service-users to local charities that can assist

12.4 OPG is concerned that the interaction between front-line professionals and attorneys/deputies should be positive for all. OPG is supporting industry to up-skill staff; for example, an interactive e-learning package for bank staff will be launched in the autumn of 2015. OPG research has uncovered that along with banks, both care homes, medical practices and local authorities all come high on the list of places where attorney's and deputies exercise their powers. In the year ahead, OPG will work closer with these sectors to identify any extra support needed.

12.5 Last year OPG chaired a task force on behalf of the Prime Minister's champion group for Dementia Friendly Communities. The resultant Alzheimer's Society guidance, explained third party representation and the Data Protection Act and was published in February 2015.[20]

13. Independent Mental Capacity Advocates (IMCAs)

13.1 IMCAs continue to provide vital support across the country for those individuals who may lack capacity. In 2013/14, over 13,000 IMCA referrals were made.

13.2 The Department of Health's most recent annual report on the IMCA service made a number of recommendations. These included the need to raise awareness of the role of IMCAs among clinicians and also; the need for responsible bodies to have a clear policy in place regarding IMCA referrals for those subject to a safeguarding investigation.

13.3 The annual report also provided a continuing professional development framework to help IMCAs to gain the skills necessary to perform their role to a high standard[21].

[19] PoA: www.gov.uk/power-of-attorney/overview
[20] Alzheimer's Society Guidance: www.alzheimers.org.uk/sharinginformation
[21] Annual IMCA Report 2013/14: https://www.gov.uk/government/publications/independent-mental-capacity-advocacy-service-7th-annual-report

Case Study Thirteen – An IMCA

One IMCA in the Midlands provides support to a number of individuals who lack capacity. This IMCA has established shared learning networks with fellow IMCAs across different advocacy providers. With the expertise they have accumulated, this IMCA presents regularly to groups of NHS professionals, social workers and private sector employees– briefing them on the IMCA role and its benefits for them as professionals as well as for the individual. In doing so, they provide valuable signposting to the wider Mental Capacity Act including, vitally, for family members of those who lack capacity.

13.4 In the last year, the University of Manchester, commissioned by the Department of Health, has published guidance for potential "litigation friends" who assist individuals who lack capacity in taking their case to the Court of Protection[22]. This will be of particular interest for IMCAs. Voiceability, in collaboration with Empowerment Matters, have also produced a helpful resource to help advocates challenge decisions.[23]

14. Deprivation of Liberty Safeguards (DoLS)

14.1 Local authorities and health and care providers have been working tirelessly over the last year to meet the challenge set by the Supreme Court's "acid test" for what constitutes a "deprivation of liberty."

14.2 The Government has issued regular updates supporting a proportionate response based in the principles of the MCA[24]. These updates have furthermore provided specific guidance around particularly complex issues such as the use of DoLS in palliative care and intensive care settings and the involvement of coroners following the death of someone subject to a DoLS authorisation. In March 2015, the Government announced an additional £25m for local authorities to support their DoLS activities.

14.3 The sector-led response to the Supreme Court judgment deserves particular mention – and praise. Working through ADASS, local authority DoLS leads have developed shared approaches that put the interests of the person who lacks capacity first. Guidance, including a DoLS application prioritisation tool, have been published by ADASS and widely welcomed[25]. Regional DoLS leads and the Department of Health meet regularly to help shape a national response. One result has been to help stimulate the provision of the market for Best Interest Assessor (BIA) training. A national protocol on the use of Independent BIAs is currently being considered.

[22] Guidance for Litigation Friends: http://www.mentalcapacitylawandpolicy.org.uk/articles-and-papers-2/
[23] Voiceability/ Empowerment Matters Guidance: http://www.voiceability.org/images/uploads/VoiceAbility_Guidance_on_Challenging_Decisions_-_July_2015.pdf
[24] Resources on DoLS: http://www.mentalcapacitylawandpolicy.org.uk/resources-2/cheshire-west-resources/
[25] ADASS Guidance/ Prioritisation Tool: http://www.adass.org.uk/adass-dols-advice-note---november-2014/

14.4 With funding from the Government, ADASS led a review and revision of the standard forms that support the DoLS process. This resulted in a reduction from 32 to 13 forms, which has been welcomed by practitioners and potentially improved the quality of assessments, promoting, as it does, a greater emphasis on recording the reasoning behind decisions made[26].

14.5 The Government also commissioned the Law Society to provide extensive guidance from the legal perspective on what now constitutes a deprivation of liberty in the health and care system. The document provides helpful key questions for health and care practitioners to ask in seek to identify a deprivation of liberty[27].

Case Study Fourteen – West Midlands

In the West Midlands, training for Best Interest Assessors is provided at a regional level and held in conjunction with Mental Health Assessors (increasing shared learning but reducing running costs). Smaller subject-specific courses have been provided for BIAs including on dementia, anti-psychotic medication, communication, autism and risk. The West Midlands also produce good practice checklists for BIA's and authorisers and have spent a year carrying out audit activity of the various assessments and mapping training provision and development work to the findings.

14.6 One area identified by practitioners as a particular cause for concern is the interface between DoLS and detention under the Mental Health Act. To provide greater clarity, the Department of Health – in co-production with expert professionals, for example the Royal College of Psychiatrists – in January 2015 published a new Mental Health Act Code of Practice complete with a new chapter on the MCA-DoLS interface[28].

14.7 The Law Commission has been charged with conducting a fundamental review of the legislation underpinning DoLS and published initial proposals for the future of the system for consultation on 7 July 2015[29]. It is vital that all those involved in and affected by DoLS feed in their views.

Case Study Fifteen – Derby City Council & Suffolk County Council

Derby City Council have instigated a quarterly multi-disciplinary DoLS meeting attended by providers, clinical commissioning groups, the police, legal services and advocacy providers.

Suffolk County Council has developed a specific strategic plan for DoLS. Included is a Champions Group that meets regularly to explore emerging case law and use this to promote best practice.

[26] ADASS Guidance on DoLS Forms: http://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/
[27] Law Society Guidance on DoLS http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/
[28] Mental Health Act Code of Practice: https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983
[29] Law Commission consultation: http://www.lawcom.gov.uk/providing-protective-care-to-people-unable-to-consent-to-treatment/

14.8 Furthermore, the Government has agreed with the Law Commission an acceleration to its work so that it will now complete (in the form of detailed policy proposals and a draft Bill) by the end of 2016.

15. Concluding thoughts

15.1 Delivering the benefits of the MCA to all service-users is no simple matter.

15.2 The House of Lords report in March 2014 was a stark reminder of the significant effort required to translate highly regarded legislation to widespread front-line practice. Yet the last year has seen progress and, as the case studies in this report show, many localities have seized the opportunity to make real strides forward.

15.3 With the establishment of the new National Mental Capacity Forum, an opportunity now exists to accelerate progress. We would urge all those with a passion for providing high quality care to those who may lack capacity to get involved with the new Forum and use their expertise to spread the benefits of the MCA more widely.