

CASE EXAMPLES AND STUDIES FOR CSHS AND CSIP MCA SEMINARS

MENTAL CAPACITY ACT AND SHELTERED AND SUPPORTED HOUSING

Assessing Capacity, principles and precautions to be applied, and S5 protection

Mrs Brown is 82 years old, and has recently moved into an Extra Care scheme in a built-up urban area. She suffers from diabetes and has used an electric buggy since her lower leg was amputated three years before. Before moving to the Extra Care scheme, she lived in a three-bedroomed council house in a quiet suburb. Since the operation, she had moved her bed to the ground floor and made do with washing rather than going upstairs to use the bathroom. The house was not ideal for her changing needs. Her eyesight was deteriorating and she was also becoming forgetful. One of the pleasures in her life was to go shopping in her wheelchair, chat to people she met en route, and sit in the local café for a cup of coffee and watch the world go by.

When she moved to the Extra Care scheme, she was determined to take her buggy out to the local shops. This necessitated crossing a number of busy roads. Staff at the scheme were unsure whether her sight was good enough for her to be safe. They were not convinced that she would be able to find her way back. They were also not sure whether she understood the risks.

- What should they do to help Mrs Brown make an informed decision?
- If having supported Mrs Brown to understand the risks and concerns, Mrs Brown still insisted on going out, and staff still had doubts about her level of understanding, what should they do to assess Mrs Brown's capacity to make that decision?
- If housing staff judged that a professional needed to make that assessment, and in the meantime, Mrs Brown was insisting on going out, and there were insufficient staff to accompany her, would staff be justified in stopping her from going? How could they do this? What principles should apply to any act they took? What should they do to maximise the likelihood that they would be immune from prosecution by an angry Mrs Brown?
- If they physically prevented her from going out, would it be seen as reasonable restraint or deprivation of liberty?
- If they felt that they were not entitled to stop her going out while the assessment of her capacity to decide was pending, and she went out and was hit by a passing lorry as she crossed the road at an unsafe point, could there be any come-back on the staff at the scheme?
- If, having been assessed as being capable of making that decision, i.e. she truly understood the risks and chose to take them, would housing staff be entitled to prevent Mrs Brown from going out on the basis that they considered the choice she was making to be unwise?

Hierarchy of Decision makers, Assessing Capacity, potential abuse – Financial Issues

Arnold Bennett arranged for his son, James, to have a property and affairs LPA when he was first diagnosed with dementia. Although registered with the OPG, Arnold wanted to continue handling his own financial affairs whilst still capable of doing so. James lives some distance away and is only able to visit his father occasionally.

Arnold lives in a private retirement housing complex and is known to the housing manager as a dapper, proud man. He is a widower with some modest savings. Over the last three years, two things have happened. He has formed a relationship with a local woman, Lolita, who is twenty years his junior. They go out together to expensive restaurants and shows. Secondly, the housing manager has noticed that Arnold's

dementia has worsened. His apartment is showing signs of neglect and he appears to be losing weight.

The housing manager talks to Arnold about getting help in but Arnold says Lolita can do anything that is needed. The housing manager is concerned that Lolita is in this relationship for what she can get out of it, and doesn't appear to be doing much to ensure Arnold's day-to-day health and well-being, though he accepts that Arnold enjoys going out with her. The housing manager shares his concerns with Arnold's son.

James visits his father and after talking to him, his GP and the housing manager, judges the time has come to use the LPA to take control of his father's bank accounts. On going through bank statements he notices a recent withdrawal of £7,000, and when he looks at his father's cheque books, several cheques have been made out to Lolita Stubbs: the one for £7k and some smaller sums though his father doesn't recall signing them or what they were for. James is considering what action if any he should take when the manager walks past Arnold's flat and sees Lolita standing over Arnold with a pen and a cheque book in front of him, pointing at it in a slightly menacing manner. He rings James at work.

James decides to confront Lolita who says that Arnold agreed to give her £7K to buy a second hand car so she could take him out. She said the smaller sums were reimbursements for shopping she had done for him, though she was unable to produce receipts.

- Does it appear that Arnold had the capacity to make an informed decision to give Lolita £7K? And the smaller sums?
- If, for the sake of this case study, we assume that Arnold wasn't capable of shopping for himself any more, or keeping track of his expenditure, might Lolita claim a legitimate defence under the MCA for purchasing necessities, even if some of the time the "necessaries" were expensive meals out?
- What else should the housing manager have done apart from talking to James about his concerns?
- What if...
 - Lolita had been cohabiting with Arnold for ten years although they had always kept their money in separate bank accounts. In that scenario, would her claim to be Arnold's common law wife carry more weight than James' LPA in spending decisions?
 - the situation was the other way about, and Arnold had a common law wife who was concerned that James was misusing his father's savings? What could she do about it?

Section 5 Protection

Ryan O'Reilly was admitted to a geriatric ward following a stroke. He had been living on his own in a small privately rented property. By all accounts he had allowed his flat to get into quite a state, littered with newspapers and bottles, dirty pots and pans etc. Whilst he lived an eccentric lifestyle, there was no reason to believe that Ryan was suffering from an "impairment to the functioning of his brain." His family also reported that he wasn't coping very well and felt it would be a good idea if he moved from his flat, but they were having difficulty persuading him to agree.

Ryan was making a good recovery from his stroke and discussions were started about his future, when his son announced that he had cleared his father's flat, so there was nothing to return to.

- Would Section 5 protection apply to the son in this scenario?

- If Ryan had lacked capacity to make a decision to move house, and his family and others felt it would be in his best interests to do so, would his son's actions then be protected under S5?

Decisions involving moves

Doris Larch

Doris Larch has lived in a sheltered housing scheme for many years. She is well liked by her neighbours, and takes part in social activities. She is growing increasingly forgetful and has twice left a saucepan to boil dry. She has done her own shopping for years and is well known to the local shopkeepers. However once or twice recently she has been picked up by a neighbour looking lost, and escorted home. Her daughter wants her to move to a more protected environment, but she says the only way she'll go from here is in a wooden box. This is her home. The scheme manager is sympathetic to both perspectives, but feels that Doris could probably be given more support where she is rather than making her move. Doris also has a son, but he tends to leave his sister to deal with his mother's affairs.

- What might the scheme manager's role be in this situation?
- Does the daughter have the right to make her mother move? What does that depend on?
- If the scheme manager and Doris' son both felt it really was not in Doris' best interests to move, what if anything could they do?
- What difference would it make if Doris' daughter had a personal welfare LPA?

Mr Biswas

(Thanks to Richard Bartholomew for this example)

Mr Biswas (85) is living in extra-care housing, and was accompanied by his wife until she died during a recent hospital admission. The couple were childless and Mr Biswas' health is now failing so that as a large man with Motor Neurone Disease, he now needs 3 carers using a hoist to do transfers. These practical issues are combined with the fact that Mr Biswas says that he wants to move out of the flat to a nursing home in part to not have daily reminders of his wife's absence. As well as the physical difficulties you sense a developing change of personality in Mr Biswas, and although you are mindful of the fact that he is grieving for his wife's recent death and having to face his own increasing infirmity you are concerned with his increasing forgetfulness, irritability and the fact that he has started to accuse staff that he has always got on with well of theft. These allegations have been investigated and the items that are the subject of the allegations have always been found tucked away in unlikely places in the flat.

You have referred your concerns for the various aspects of Mr Biswas' deterioration to the GP for assessment, and you have also suggested to your tenant that if he is serious about a move to a nursing home that he needs to see a social worker to advise him. There are no living relatives that you are aware of.

- Is there any other service that the social worker would need to involve with Mr Biswas if the decision is that he does not have the capacity to decide on the issue of the move by himself?

OTHER CASE EXAMPLES

'Best Interests' Dilemma

(Thanks to Stonham Housing Association for this example)

Saskia, who has a learning disability, lives in supported housing. She is a member of the local neighbourhood forum and has been a member of this group for a couple of years.

There have been some local issues relating to tenancy enforcement where a couple of people have been letting other people come to their house whilst they have been away. These 'visitors' have been causing problems for other local tenants including noise and intimidation. The tenancy enforcement officer (TEO) has been in touch and asked if Saskia and other tenants would be willing to give evidence to help prepare the case for court against the other tenants on the estate.

You know that Saskia is bothered by the behaviour of the visitors and can voice her unhappiness around this but you have a 'reasonable belief' that she doesn't understand the consequences of submitting evidence.

Questions

- Using the 5 principles of the act, how would you approach this issue?
- If you assess that Saskia doesn't have the capacity to make the decision to give evidence to the TEO, would you need to make a decision on her behalf?

Advance Decisions Case Study

(Thanks to Richard Bartholomew for this case study)

Leon (59) lives in supported housing and manages well with his living arrangements. He has a neurological condition that is gradually worsening and rendering him with less muscular control. In the last couple of years his coughing reflex has become impaired and last winter he had to be admitted to hospital for intervention with chest infections that were threatening to overwhelm him. He found the suction needed to remove secretions worse than the inability to cough them up and after discussion with GP, social worker and support staff has gone to his solicitor to draw up an Advance Decision to refuse suction of his secretions. His solicitor felt that Leon had mental capacity to make this decision, having got advice that his condition did not imply any impairment of mind or brain. In addition Leon demonstrated that he could understand the issues involved, could retain that information, was able to deliberate on the implications and was able to communicate his decision. Leon understands that next time he has severe difficulty breathing that he will just be given oxygen, but will not suffer what he describes as the indignity of suction apparatus down his throat. He understands that this may well result in his death. A copy of the AR is retained in his Patient-Held record in his flat, and there is a copy with his GP and in his hospital file.

- **Question 1**-How can support and care staff stand by while Leon commits medical suicide? Is there anything that they can do to stop him? Is there anything they can do to support him?

Two months after making this decision a bout of cold weather renders Leon's breathing difficult, and the GP decides not to admit him to hospital but to offer him oxygen therapy at home. This along with some homeopathic remedies seem to hold

the situation for a few days, and his sister arrives from the other end of the country and is appalled to find that her brother seems to be written off by those people who should be helping him. When the situation is explained to her, she shares that their mother had died only just before he made the Advance Decision and she thinks that the balance of his mind may have been disturbed by his grief.

- **Question 2**-Is there any means that she might use to challenge the validity of the Advance Decision?

Rapid phone calls to Leon's brother result in him arriving with a faxed copy of what seems to be a Lasting Power of Attorney (personal welfare) made out naming him and dated after the Advance Decision was made.

- **Question 3**-When the Support Team leader is shown this by Leon's brother what should her next step be? What should Leon's GP do when shown this document?

The doctor feels that he has to now ignore the Advance Decision and gets Leon into hospital at the brother's request even though Leon protests.

- **Question 4**-Is the GP right in this?

Suction is administered even though Leon struggles during the process. Leon instructs his solicitor to approach the Court of Protection to get the LPA set aside as he alleges that he never signed it in the end despite his brother's urging, and that the smudged nature of the faxed copy of the LPA has obscured this basic fact. The Court makes a declaration that the LPA is invalid.

- **Question 5**-So what is the position at the moment?

Leon decides after all the drama of these events that he can't bear the emotional upset of his sister and brother challenging his wishes, and he tells his solicitor that he wants to withdraw his Advance Decision.

- **Question 6**-Can he do this, and if so on what condition?

Involving Professional opinion (From Code of Practice p 60)

Ms Ledger is a young woman with learning disabilities and some autistic spectrum disorders. Recently she began a sexual relationship with a much older man who is trying to persuade her to move in with him and come off the pill. There are rumours that he has been violent towards her and has taken her bankbook.

Ms Ledger boasts about the relationship to her friends but has admitted to her key worker that she is sometimes afraid of the man. Staff at her sheltered accommodation decide to make a referral under the local adult protection procedures. They arrange for a clinical psychologist to assess Ms Ledger's understanding of the relationship and her capacity to consent to it.

Best Interests

Two residents of an Extra Care scheme, both with dementia, start having a sexual relationship. Neither is thought to have much insight into what they are doing, and probably don't have the capacity to make an informed decision, but both show signs of improved well-being. The family of the man is quite happy with the situation and feels no-

one is getting hurt. The daughter of the woman is shocked, feels the staff have acted negligently in letting this happen and that her mother would never have got into the relationship had she still had the capacity to make an informed decision.

- How would one assess whether staff have been negligent or not?

Restrictive Action

A tenant with a history of bi-polar disorder has stopped taking his medication. He has become increasingly depressed and heads out of his accommodation saying he is going to jump in front of a train at King's Cross station.

- What should you do?
- Would you be protected under S5 if you physically restrained him in order to prevent him from carrying out his intention?

Examples from calls to the Action on Elder Abuse helpline

An elderly lady with dementia in sheltered housing. Her son takes care of all her finances. He cashes her pension for her, pay bills and does the shopping. One of the carers has called the helpline to say she is concerned that there is hardly any food in the flat for her. He seems to buy the bare minimum and occasionally she runs out of food/milk. Recently credit card statements have started to appear and the caller doesn't think that the lady actually has a card?

- Neglect and financial abuse?

An elderly lady in sheltered accommodation "doesn't have full capacity". Her son has moved in with her. He is a drug addict and all of his friends call round all times of the day and night. The housing association have been involved and have warned her that unless he leaves she risks losing her home. The lady is terrified of her son and won't ask him to go.

- More of a POVA issue than a capacity issue?

Sue Garwood
Extra Care Specialis
On behalf of Housing LIN
February 2008

Sample Supported Decision Making Agreement - Stonham Housing Association

Name: Melanie Bruckner

Date agreement developed: 26th February 2007

People involved in developing this agreement with me: My mum Cheryl, my friend Alex and my support worker Frankie

Important Decisions in My Life	The views of important people in my life	What support I need to make informed decisions about £	How is the final decision made?
  <p>Sometimes I have big financial decisions to make like booking a holiday or hiring a car or putting a new kitchen into my flat.</p>	<p>My view - I can make my own financial decisions. I have capacity and can make informed choices about how to spend my own money. I do not like other people sticking their noses into my financial affairs.</p> <p>My mum's view - Mel is very capable with money and is able to make informed choices about how to spend it.</p> <p>The problem is other people who take advantage. Mel is a trusting person and if someone else is in trouble (or says they are) she will 'willingly' hand her money over. This is really hard as it means that nothing can be done by the police as Mel has handed her money over and it hasn't been stolen from her.</p> <p>Recently a support worker told Mel that she was in trouble financially and needed money very badly. Mel had taken some money out of a trust fund to get a new kitchen fitted, her support worker knew this and spun Mel a line. Mel handed over the money and now hasn't got enough money to sort out her kitchen.</p> <p>Alex's View - Mel is very capable with her money and it is important that she doesn't lose her independence in this area because of other people who take her for a ride but I don't want to see this sort of thing happening again.</p> <p>Frankie It's hard to work out what's right to do in this situation because as Mel's support worker I don't want to intrude in Mel's financial affairs as she is very capable and independent in this area but I really am not convinced that Mel made an informed choice in this situation.</p>	<p>Although I am not happy with other people sticking their noses into my financial affairs, I know that I have been ripped off and don't want this to happen again.</p> <p>My social worker said that she thought all my money should be put into appointee ship. This means someone else would have control over my money, no way!</p> <p>So we have talked about another way of supporting me not to get ripped off. I will continue to handle my weekly money but if there is a large amount of money to be spent, I will bring this idea to this group. If you can't all make it I can't be waiting around so I am OK to meet with 2 of you.</p> <p>I would follow through on the transaction with Frankie and let Alex know by text. This is not because I can't do it on my own! I will bring all the paperwork back to this group.</p>	<p>The final decision is made by me with the support of this group.</p> <p>If everyone in the group says to me that I am being ripped off and I don't agree then it is up to me and if I lose my money so be it. Just because I sometimes make bad choices doesn't mean that I don't have capacity.</p> <p>Support workers must not lend money to me and must not ask me for money. If a support worker asks me for money, I promise that I will tell this group or a member of this group.</p> <p>I know that you may well decide to act like you did with the last support worker who ended up sacked. I don't like it but I know that you did it because you thought you were 'acting in my best interests' and it was an 'abuse of power' issue.</p>