Ministry of Justice

Department of Health

National Mental Capacity Forum
Listening Event
8 February 2016

Purpose

The National Mental Capacity Forum (NMCF) seeks to bring together professionals from a range of sectors to seek to improve awareness of the rights and responsibilities contained within the Mental Capacity Act (MCA). Further details on the Forum can be found at the following link: http://www.scie.org.uk/mca-directory/forum/

To ensure the work of the Forum is informed by what really matters to individuals affected by the MCA, the NMCF held a "Listening Event" on 8 February 2016, to hear the experiences – good and bad – of service users, their family members and carers.

In the words of one contributor:

"I really do think it is important for patients, family and friends to get their experiences and perspectives to Baroness Finlay's group, because otherwise professionals end up discussing the problems which seem more important to them: and the most important problems can seem different depending on whether you are a patient, a GP, a nurse or a family member supporting a patient".

This document summarises the main messages from the Listening Event.

Messages

1) The challenge for carers and service-users of navigating the system of support

Problems:

- Navigating different services and multiple professionals can be as much of a challenge and time commitment as supporting a loved one; the "relentless" pressure of advocating for a loved one was mentioned by many
- Carer's and service user's opinions may at times not be valued and/ or trusted
- Sometimes little or even no information is provided to service users and their family on their rights under the MCA, or information is provided too late
- Apparent non-compliance with the MCA. For example, professionals not recognising the legal rights and the need to actively engage with families and service-users and appointed representatives.

Moving forwards:

- A detailed, up to-date and shared care-plan can ensure individual's wishes and preferences are foremost throughout and reduce additional "red tape"
- Professionals should view service users and carers as part of the same team, fighting for the same cause: the rights of the individual
- Information on the MCA to be provided at the earliest diagnosis point (or at a good time before transition to adulthood).

Best practice identified:

- Local carers networks an invaluable source of support and information
- A local authority arranged training on the MCA specifically for service users and carers and facilitated access to local legal advice for carers
- Office of the Public Guardian website noted for its ease of access and use.

2) Improving professionals' knowledge and practice

Problems:

- Some professionals lacking a basic grasp of core MCA tenets – for example, the fact that if a person makes an unwise decision, that in itself does not mean the person lacks capacity to make that decision
- Variability in standard and quality of practice across different sectors and geographies: professionals seeming to interpret the Act in different ways
- MCA principles in some instances misused. For example, to justify not intervening in supporting individuals ("they have capacity, it's their decision")
- Little mechanism for dealing with noncompliance by responsible authorities.

Moving forwards:

- Cross-disciplinary refresher training for professionals with practical real-life scenarios
- Greater sharing and adherence to national best practice materials
- MCA leads need to be afforded time and resource to be more active in promoting good MCA practice that balances empowerment with protection.

Best practice identified:

- MCA lead recruited "MCA Champions" among staff to promote MCA awareness
- Early signposting by a GP to the benefits of seeking legal advice about their affairs, support organisations and if appropriate, the options of Lasting Powers of Attorney
- Simple pocket-sized information cards explaining MCA in simple language.

3) Making the MCA work in the real-world

Experiences:

- Recognising the great difficulties, in both assessing capacity, and working out best interests, that arise when someone is not able to communicate verbally
- Language used around the MCA can be confusing and imprecise. In the case of the "Deprivation of Liberty Safeguards" it can seem frightening

- The realities of operating in a time of constrained budgets – for example applying least restrictive principles
- LPAs are an important tool, but not easy for organisations to check their validity, existence; mobility across different organisations a challenge
- MCA knowledge and adherence particularly important, but poorly applied, in transition from childhood to adulthood
- Confusion and misunderstanding over the role of Mental Health Act/ Mental Capacity Act; issues of stigma complicates matters
- Professionals devolving responsibility to family and carers but without sufficient on-going support and information-provision for example, in case of direct payments
- Exhaustive repeat best interest assessments for seemingly limited value
- Challenge of fluctuating capacity
- Court of Protection Deputyships: value of these clear but problems noted regarding expense, time and process involved in obtaining one and lack of understanding in some services as to what one is.

Moving forwards:

- Improved collaboration and communication
- Greater education, communication, distribution of information
- Providing simple reassurance to professionals and carers who have difficult judgments to make. For example, in negotiating an unwise decision/ an incapacitated decision
- Greater honesty and understanding all-round that budgets are not limitless, but that simple low or zero cost changes can be made to improve individuals' well-being
- Greater partnership working between hospital and service-users to jointly shape practices.
- Sharing widely the skills gained by relatives as well as professionals, improving communication approaches, for example with individuals unable to communicate verbally.

Next steps

The valuable insights gained from the Listening Event will be shared with the "MCA Implementation Group" – the most senior national group responsible for MCA implementation. They will also be widely shared ahead of the "National Mental Capacity Action Day" on 15 March 2016 where the expectation is that these insights will help focus minds on the actions required to improve MCA implementation and realise real benefits for service users and their carers.

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