End-of-Life and Perspective part 5: MCA and ACP

Advance Care Planning, as it applies to end-of-life, strikes me as rather conceptually peculiar, from my 'I read the Mental Capacity Act **first**' background.

I am going to duck the issues of what these 'planning ahead' concepts and processes are actually called, by commenting that it obviously makes sense to try and plan for the future. But it doesn't make sense, to imply that the course of the future is fully understood when the planning is performed: we can think about what might happen, what probably will happen, what might be on offer, and we can add in predictions about choices not yet made – so we definitely 'cannot tightly-define the future within ACP'.

Starting from the MCA, inevitably 'informed decisions' assume a centrality: decisions are made within the context of the situation at the time the decision needs to be made. If the patient is capacitous then once adequately-informed the patient makes the decision a the time the decision is needed, and while the nature of 'the decision-maker' is much more complex during incapacity, the theme of 'informed decision-making' is if anything even stronger during best-interests decision-making [than it is for the Informed Consent of capacity].

There is something, which I perceive in the context of ACP and incapacitous EoL patients. Put simply, I see within clinical ACP material what appears to be thinking based on 'making the best-interests decision in advance'. I'm not at all sure, that I can see that as a principle within the MCA: the MCA seems to require a best-interests decision-maker to apply the MCA's section 4 **at the time the decision has to be made –** so, it can be argued that the MCA doesn't lead to 'make best-interests decisions in advance', and instead it imposes 'a duty on anyone who might in the future be faced with the need to make a best-interests decision, to acquire the understanding needed to make a satisfactory best-interests decision at that future time'. **Those are not the same: making an anticipatory best-interests decision, is not the same as anticipatory understanding-acquisition in order to make a good best-interests decision at a future time.**

In fact, 'ACP' often strays further, into something which I perceive to be incompatible with the MCA. When I look at 'ReSPECT' and similar 'EoL ACP' I see not only 'anticipatory best-interests decision-making' (which is a reasonable fall-back position, provided the decision-making is correctly performed – and it isn't in ReSPECT) but also the idea that 'a best-interests decision can be justified by reading about why another person made an anticipatory best-interests decision', and I dispute that. The justification for best-interests decision-making hinges on an acquired understanding of the patient/person as an individual – nobody can do that, simply by looking at a few documents written by someone who has acquired that understanding:

4(6) He must consider, so far as is reasonably ascertainable—
(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
(b) the beliefs and values that would be likely to influence his decision if he had capacity, and
(c) the other factors that he would be likely to consider if he were able to do so.