Should, or can, a Personality Change make an Advance Decision inapplicable?

In a recent thread of mine about how an Advance Decision can become invalid (an Advance Decision, or ADRT, under the Mental Capacity Act), a person posted a comment which I think is actually about when an Advance Decision can be considered inapplicable. To discuss that, I've posted this thread.

I think this issue is much more complex than the issues around the validity of an ADRT which I have been writing about in my other thread. It is also more complex than what I typically write about, which often involve situations such as the cardiopulmonary arrest of a person who is capacitous until the arrest.

To begin, I will state that I think the MCA tries to incorporate 'the person's individuality' into decision-making which is taking place at a time when the person has lost the capacity to make the decision him/herself. And the MCA also allows, by means of ADRTs, a person who is capacitous, to anticipate future incapacity and to project forwards into a future period of incapacity a decision (in fact, only the refusal of an intervention can be projected forwards).

I've recently written a piece about section 2 of the MCA, at

https://www.dignityincare.org.uk/Discuss-and-debate/Dignity-Champions-forum/Section-2-of-the-Mental-Capacity-Act-should-be-unnecessary/1165/

and I will reproduce how I described the MCA's description of capacitous decision-making here:

It makes it clearer, if we re-present section 3(1) as:

3(1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—

(a) to understand the options and outcomes of the decision,
(b) to retain the options and outcomes,
(c) to think about the options and outcomes as part of the process of making the decision, or
(d) to communicate his decision (whether by talking, using sign language or any other means).

Really, this is a 2-stage process: first the person needs to be able to understand the outcomes/consequences of the decision adequately, and then the person applies his or her beliefs and values – what I usually term 'the person's individuality' – to the decision-making process.

The MCA definitely tries to insert 'the person's individuality' into the best-interests process. Let us consider 'George'.

George doesn't enjoy life much, and he has a very negative outlook. He creates some ADRTs which refuse various life-sustaining interventions.

Some years later, George is living with severe dementia. He hardly speaks, and he definitely doesn't have meaningful conversations: George doesn't give understandable answers to even simple questions, such as 'Do you want a cup of tea?'. George is 'living in his own world' but he seems to be enjoying life, and he gives the impression of being 'cheerful and positive'.

George develops pneumonia. Without antibiotics he will almost certainly die. With antibiotics, he will probably be back to normal within a few days. Except for the dementia, and the current infection, George seems physically reasonably fit.

One of the ADRTs refuses antibiotics. I think the 'natural human instinct' would be to give antibiotics, because George seems to enjoy being alive. So - what does the MCA say?

If we believe that this is not a situation which George had thought about when he wrote the ADRT refusing antibiotics, and if we also believe that if George had considered the situation then he would not have refused the antibiotics, then section 25(4)(c) allows us to ignore the ADRT and to give antibiotics to George. BUT: if George made it clear in his ADRT that he had considered this situation when he refused antibiotics, then section 25(4)(c) could not be used to set aside [by making it inapplicable] the ADRT.

What we have here, is 'a personality change' as well as a reduction in 'reasoning capability'. It isn't obvious, that the Advance Decision made by 'capacitous-but-not-enjoying-life George' can be ignored/overridden to save the life of 'incapacitous-but-enjoying-life George'.

Mr Justice Poole has ruled that section 25(2)(c) of the MCA applies during incapacity, so George's Advance Decision will become invalid if (I have changed the Act's 'anything else' to 'something' here, because otherwise I'll need to more-fully describe section 25(2))

'the person has done something clearly inconsistent with the Advance decision remaining his fixed decision'.

If for a moment we consider the making of ADRTs by capacitous individuals, then it is obvious that 'enjoying being alive' is NOT of itself an indication that the person would accept life-sustaining interventions. A good example is cardiopulmonary resuscitation (CPR), and to be frank the outcome of a CPR attempt which does restore life, is so uncertain, unpredictable and to be frank includes some 'horrendous' outcomes, that it seems to me that anyone who is accepting of attempted CPR is being optimistic and hopeful. Another situation might be a person who is currently fit, but who has a genetic condition which at some point in the future will almost definitely result in a severe deterioration in physical and/or mental state: such a person might forbid CPR because of a preference for death over the end-of-life which the person would probably otherwise have. George seems to currently be enjoying life, and it also seems likely that antibiotics for his pneumonia would amount to 'a

complete cure' – but we don't know if George will continue to 'enjoy life' or if at some future point he will become deeply unhappy with life.

So, I'm not sure that 'George seems to be enjoying being alive' necessarily leads to '… therefore George should be given the antibiotics'.

Written by Mike Stone, December 2025